

## 2.4 Module 9 Law of Evidence

### 2.4.1 Headline information about the module

<b>Module title</b>	Law of Evidence
<b>Module NFQ level (only if an NFQ level can be demonstrated)</b>	N/A
<b>Module number/reference</b>	Module 9
<b>Parent programme(s) the plural arises if there are embedded programmes to be validated.</b>	LLB (Hons)
<b>Stage of parent programme</b>	2
<b>Semester (semester1/semester2 if applicable)</b>	Semester 1 or Semester 2
<b>Module credit units (FET/HET/ECTS)</b>	ECTS
<b>Module credit number of units</b>	5
<b>List the teaching and learning modes</b>	Full Time, Part Time
<b>Entry requirements (statement of knowledge, skill and competence)</b>	Learners to have successfully completed Stage 1 of the programme.
<b>Pre-requisite module titles</b>	None
<b>Co-requisite module titles</b>	None
<b>Is this a capstone module? (Yes or No)</b>	No
<b>Specification of the qualifications (academic, pedagogical and professional/occupational) and experience required of staff (staff includes workplace personnel who are responsible for learners such as apprentices, trainees and learners in clinical placements)</b>	Lecturers expected to hold at least a level 8 legal qualification, preferably with a professional legal qualification. It is an advantage to have completed the Certificate in Training and Education provided by Griffith College.
<b>Maximum number of learners per centre (or instance of the module)</b>	60
<b>Duration of the module</b>	One Semester, 12 weeks
<b>Average (over the duration of the module) of the contact hours per week</b>	2
<b>Module-specific physical resources and support required per centre (or instance of the module)</b>	Lecture room with internet access and digital projector.

Analysis of required learning effort										
Effort while in contact with staff										
Classroom and demonstrations		Mentoring and small-group tutoring		Other (specify)		Directed e-learning (hours)	Independent learning (hours)	Other hours (specify)	Work-based learning hours of learning effort	Total effort (hours)
Hours	Minimum ratio teacher/learner	Hours	Minimum ratio teacher/learner	Hours	Minimum ratio teacher/learner					
24	1:60						101			125
Allocation of marks (within the module)										
				Continuous assessment	Supervised project	Proctored practical examination	Proctored written examination	Total		
Percentage contribution							100	100%		

#### 2.4.2 Module aims and objectives

The Module allows learners to understand and identify the tenets of the law of evidence in respect of criminal trials and civil hearings. Learners also analyse the relevant statutory instruments, legislation and common law governing the rules of evidence. The Module enables learners to discuss and evaluate the differing perspectives arising from the application of the rules of evidence by State authorities and defendants and identify potential reforms in the Law of Evidence.

In this Module learners also develop the ability to appraise and apply the relevant rules of evidence to hypothetical factual scenarios. This includes the ability to research information from library and online sources, including case reports and scholarly research, and to formulate and deliver an effective legal opinion in writing.

### **2.4.3 Minimum intended module learning outcomes**

On successful completion of this module, learners will be able to:

- (i) Analyse the principles and rules underpinning the law of evidence;
- (ii) Apply knowledge of the rules of evidence in respect of criminal and civil trials;
- (iii) Analyse and discuss categories of evidence where corroboration may be an issue;
- (iv) Evaluate the rationale behind the exclusion of improperly obtained evidence;
- (v) Apply the concepts of the rules of evidence relating to criminal trials and civil trials in different factual situations
- (vi) Communicate and effectively employ advanced research skills, including the use of legal databases, in relation to the law of evidence;
- (vii) Critically analyse the legislative framework and relevant case law as they relate to the competing interests of preserving the common good, the rights of the accused and the rights of the victim;
- (viii) Analyse potential reforms in the law of evidence.

### **2.4.4 Rationale for inclusion of the module in the programme and its contribution to the overall MIPLOs**

The Law of Evidence is an important area of practice and academic focus within the Irish Legal System. This Module examines the rules of evidence from both a civil and criminal perspective. This area of law is also a core topic in the entrance examinations to the Honorable Society of King's Inns. This Module also integrates with learning on the Criminal Law and Miscarriages of Justice modules and is pre-requisite module for taking the Innocence Project Module in Year 3. This module serves to directly underpin programme learning outcomes 1, 3, 4, 6.

### **2.4.5 Information provided to learners about the module**

Learners will receive the following resources and materials in advance of commencement including:

- Learner Handbook;
- Timetable (Moodle and via email);
- Module descriptor;
- Module learning outcomes;
- Assessment strategy;
- Reading materials;
- Class Notes (on a weekly basis).

Moodle, the College Virtual Learning Environment, is also used to provide learners with ongoing access to module related information, from the handbooks and module outlines provided in advance of module commencement, to the lecture material and links to related resources provided on a scheduled basis in line with module delivery.

#### **2.4.6 Module content, organisation and structure**

Law of Evidence is an elective module that is delivered over a 12-week period with two hours of direct contact per week. Learning outcomes have been articulated using the *Quality and Qualifications Ireland (QQI) Awards Standards for Honours Bachelor of Laws and Master of Laws (July 2014)* and for *Generic Higher Education and Training (July 2014)*.

#### **2.4.7 Module teaching and learning (including formative assessment) strategy**

The module uses participative lectures, which consist of tutorial-style discussions, group work sessions and exercises. The lectures are supplemented by structured on-line resources and directed reading. Formative assessment is provided in the form of interactive exercises such as directed class discussion topics which reference current affairs pertaining to Evidence Law at the time of instruction. Formative assessment is also provided through tutorial-style discussions, group work and exercises. These focus on specific case law and problem-based learning requiring learners to analyse the law and apply it to practical evidence law disputes or issues.

Learners also engage in collaborative work in pairs or small groups to brainstorm what learning has been achieved at the end of lectures. In order to support learners through the examination process, they engage in the answering of sample examination questions and correction of their own or peer's papers, thereby familiarising themselves with the marking criteria. Learners also engage in activities where they draft their own exam questions in order to recap and consolidate a particular topic. The final two lectures consist of workshops seeking to directly enforce the module learning outcomes by the practical application of Law of Evidence rules and principles to factual scenarios.

Learners undertaking the course via blended learning benefit from varied and additional options for engagement to compensate their reduced attendance of campus. These include webinars, screencasts (recorded lectures), discussion fora, and increased use of the College's VLE (Virtual Learning Environment), Moodle.

#### **2.4.8 Work-based learning and practice-placement**

Law of Evidence is a class-based module and does not require work-based learning and practice placement.

#### **2.4.9 E-learning**

Moodle, the College Virtual Learning Environment, is used to disseminate notes, advice, and online resources to support the learners. Moodle can be accessed in the learner's home, various open labs on campus and in the library. The learners also have access to Lynda.com as a resource for reference.

#### **2.4.10 Module physical resource requirements**

Requirements are for a fully equipped classroom. The classroom is equipped with a PC and Microsoft Office; no other software is required for this module. The College library has a dedicated law section and online legal research tools (Justice One, Westlaw, Hein Online).

#### 2.4.11 Reading lists and other information resources

##### Primary Reading:

McGrath, D. (2014) *Evidence*. Dublin: RoundHall

Fennell, C. (2009) *The Law of Evidence in Ireland*. Dublin: Bloomsbury Professional

Heffernan, L. & Ní Raifeartaigh, U. (2014) *Evidence in Criminal Trials*. Dublin: Bloomsbury Professional

##### Secondary Reading:

Twining, W. (2006), *Rethinking Evidence: Exploratory Essays*: Cambridge University Press

Hamilton C. (2007), *The Presumption of Innocence and the Irish Criminal Law 'Whittling the Golden Thread'*. Irish Academic Press.

Law Reform Commission Paper on 'Expert Evidence' (2008)

Law Reform Commission Consultation Paper on 'Documentary and Electronic Evidence' (2009)

Law Reform Commission Consultation Paper on 'Hearsay in Civil and Criminal Cases' (2010)

#### 2.4.12 Specifications for module staffing requirements

Lecturers are expected to hold at least a level 8 legal qualification, preferably with a professional legal qualification. It is an advantage to have completed the Certificate in Training and Education provided by Griffith College.

Learners also benefit from the support of the Programme Director, Programme Administrator, Lecturers, Learner Representative, Students' Union and Counselling Service.

#### 2.4.13 Module summative assessment strategy

The Module is assessed through a written examination worth 100%. The examination consists of an equal choice of both essay and problem style questions. Essay style questions place emphasis on the learners demonstrating their understanding of the fundamental principles of evidence law. Problem style questions enable learners to apply principles of evidence law to factual scenarios.

The assessed work breakdown can be seen in the table below.

No	Description	MIMLOs	Weighting
1	Exam	i, ii,iii,iv,v, vi	100%

## 2.4.14 Sample assessment materials

### Sample Examination

Answer any **three** of the following questions.

All questions carry equal marks.

#### Question 1

John was tried and convicted before Cork Circuit Criminal Court last year on a charge of robbery. During the trial the trial judge, Judge Quo, included, in evidence, the fact that an iPhone, which had been stolen during the purported robbery was found in John's house. John's house is No. 5 on Leaders' Row. When the Gardaí called to his house, John requested they show him the search warrant. John informed the Gardaí that they were at the wrong address in that the search warrant quite clearly referred to No. 5 Reader's Row, which was a set of terraced houses about a quarter of a mile away. One of the Gardaí told John not to worry about it and that they were at the correct property.

Judge Quo also included the evidence of the existence of the phone even though he had heard evidence that the Gardaí had obtained the search warrant having told the District Court Judge that they had a reasonable suspicion that John was involved in the robbery. Finally, Judge Quo included an inculpatory statement made by John. He confessed to the robbery while in custody and seemed quite relieved to have lifted the burden from himself. He stated that he was the one in the ski mask who stole the phone. Upon making the confession, John noticed that the clock in the interview room had stopped.

Garda Lou was supposed to purchase batteries for the clock that morning but had totally forgotten due to the excitement of John's arrest. It turned out that John had been in custody for 24 Hours and 15 minutes. John's confession came after the expiry of the 24 hours. When John's barrister raised the issue of the address on the search warrant, how the search warrant was obtained, and the confession, Judge Quo merely pointed out that: "Everybody makes mistakes, this is why pencils have erasers". John has appealed his conviction on the grounds that evidence had been admitted at trial which was improperly obtained.

Advise John, citing relevant case-law and academic material, as to the merits of his appeal.

#### **Sample Answer 1**

*Students should discuss the salient cases related to unconstitutionally obtained evidence. They should discuss the O'Brien case and what is meant by a deliberate and conscious breach. They should discuss the Kenny case to give their analysis of the JC case context. They should analyse the JC judgment and the change that that judgment has brought to this area.*

#### Question 2

"There are certain classes of documents which ought not to be produced under any circumstances: in these cases, the courts will not inspect them. Minutes of government meetings, documents relating to military and diplomatic matters, memoranda dealing with

proposed legislation and letters between departments relating to policy formation are examples of the types of document the non-disclosure of which is necessary for the proper functioning of the State...In addition, where the minister feels that documents outside this class should be withheld the court should normally accept this view.”

Per Kenny J in *Murphy v Dublin Corporation* [1972] IR 215

Citing case-law and academic commentary, critically analyse the correctness of Mr. Justice Kenny’s statement in relation to documents that the State is claiming privilege over.

### **Sample Answer 2**

*Students should begin their answer by disagreeing with Kenny J as it is the courts who are the arbiters of what is privileged or not. The students’ analysis should include the appeal in the *Murphy* case, the *Ambiorix* decision, *Keating*, *Gormley*, *W v Ireland*.*

### **Question 3**

Nasir was recently on trial for the rape of Andrea. The two had met at a nightclub and Andrea invited Nasir back to her house to do some drugs. During the trial Nasir’s counsel wanted to cross-examine Andrea in relation to her prior sexual history. In the absence of the jury Nasir’s counsel informed the Judge that it would be his client’s evidence that Andrea had told him back at her house that she had been with “hundreds of guys” and that he should therefore “relax”. The trial judge felt this was an irrelevance and would not allow Andrea to be cross-examined regarding her prior sexual history. Also, during the trial, Andrea’s workmate, Mary was allowed to give evidence that the day after the alleged rape, at work, Andrea broke down in the canteen and told her that she had met a guy in a nightclub, that they went back to her place to do some drugs and listen to some tunes and to generally “chillax” (slang term for calm down/relax) but that he had forced himself on her. What Andrea said to Mary is quite similar to what she subsequently reported to the Gardaí.

Nasir was convicted of the rape of Andrea. He now wishes to challenge, on appeal, the trial judge’s refusal to allow him to cross-examine Andrea in relation to her prior sexual history and in allowing Mary to give evidence in relation to what Andrea told her the next day.

Citing relevant case-law, advise Nasir.

### **Sample Answer 3**

*Students need to address the circumstances when a complainant can be cross-examined as to her prior sexual history. They will need to refer to s. 3 Criminal Law (Rape) Act 1981, as amended by s. 13 Criminal Law (Rape) (Amendment) Act 1990 and s. 34 Sex Offenders Act 2001, and the cases of *People (DPP) v McGuinness* [1978] IR 189, *People (DPP) v Moloney*, and *People (DPP) v GK* [2007] 2 IR 92. Students should then discuss the doctrine of recent complaint and the purpose of admitting such a statement into evidence. Students should discuss the criteria for allowing such a statement such as it being made as soon as reasonably as possible after the event and that there should not be big discrepancies in various narratives. *Brophy*, *Kiernan*, etc.*

#### Question 4

*“There is **no** general rule of evidence to the effect that a witness may not testify as to the words spoken by a person who is not produced as a witness. There **is** a general rule, subject to many exceptions, that evidence of the speaking of such words is inadmissible **to prove the truth of the facts which they assert**; the reasons being that the truth of the words cannot be tested by cross-examination and has not the sanctity of an oath. This is the rule known as the rule against hearsay.”*

*Per Kingsmill Moore in Cullen v Clarke [1963] IR 368*

Drawing on the above quote by outlining the exceptions to the hearsay rule.

#### **Sample Answer 4**

*Students should begin by giving a definition of the rule against hearsay and then should discuss the exceptions to the rule such as Confessions, the Doctrine of Res Gestae, Spontaneous Statements made by a Participant in an Act, Spontaneous Statements which Accompany and Explain a Relevant Act, Spontaneous Statements Showing the Maker’s Contemporaneous State of Mind, Spontaneous Statements of Contemporaneous Physical Sensation By The Maker, Declarations of deceased persons in certain circumstances, Statutory Exceptions.*

#### Question 5

*“The essential question for this court to resolve remains whether a reasonable opportunity to consult his solicitor must occur *in relation to the inference to be drawn under s. 18* so that the opportunity is afforded either after the section is invoked, or perhaps where a solicitor is informed in advance that the section may or will be invoked.”*

*Per O’Donnell J in DPP v Fitzpatrick [2013] 3 IR 659*

Address the question raised by O’Donnell J, with specific reference to section 18 of the Criminal Justice Act 1984 (as amended), and an arrested person’s general right of access to a solicitor.

#### **Sample Answer 5**

*Students should discuss cases like Healy, Buck, Lavery, Gormley, Doyle. Students should finish with an analysis of the Judgment in Fitzpatrick by discussing whether reasonable access to a solicitor includes access to a solicitor following a member of An Garda Síochána invoking Section 18 or any other Section upon which inferences could be drawn.*

#### Question 6

Jessica was on trial last year for a robbery at a shopping centre. Evidence was given at trial by a sales assistant and a security guard. The Judge in his charge to the jury highlighted that the security guard was a very experienced fellow and certainly they should take that into account when assessing his evidence. In his statement to the Gardaí at the time the security guard said that he had checked back the CCTV footage and recognised Jessica from that. He said he knew her from previous shoplifting incidents. The CCTV footage shown in court appeared to

be grainy. The sales assistant in her statement to the Gardaí after the robbery said the robber had fair hair and was approximately 5 foot 9 inches. (Jessica has brown hair and is 5 foot 2 inches). The Sales assistant made her first ID of Jessica two weeks after the robbery. The Gardaí called to the store and asked her would she assist them in the identification of the robber. The Gardaí drove to the local courthouse, stopped across the street, and said to the Sales Assistant, that if she looked across the road she should be able to spot the robber. Jessica is the only female on the steps of the courthouse. The sales assistant positively identified Jessica at this point. The Judge during the trial was asked to exclude the Sales Assistant's first identification. The trial judge refused and went on to say "that for the avoidance of doubt we can have her identify the accused from the dock". This identification was proceeded with and the Sales Assistant identified Jessica in open court. Jessica was convicted. She now wants to appeal on the basis of the identification evidence given at trial and on the Judge's charge to the jury.

Advise Jessica as to the merits of her appeal.

**Sample Answer 6**

*Students need to discuss the importance of a Judge warning a jury in relation to ID evidence (Casey, Fagan, Turnbull). Students need to discuss whether a person's job makes them better at identifying a suspect (Smyth). Students should discuss how a suspect should be identified, by way of ID parade or otherwise (O'Reilly). Students should discuss the difficulties with identifying a suspect such as the conditions the identifier finds themselves in at the relevant time. Students should discuss whether Dock Identification is satisfactory.*