OUTLINE CONTENTS

1	Introduction	1
2	Preliminaries	6
3	Evidence obtained by illegal or unfair means	53
4	The burden and standard of proof	79
5	Witnesses	117
6	Examination-in-chief	164
7	Cross-examination and re-examination	191
8	Corroboration and care warnings	221
9	Documentary and real evidence	254
10	Hearsay in criminal cases	272
11	Hearsay admissible by statute in civil proceedings	326
12	Hearsay admissible at common law	346
13	Confessions	364
14	Statutory inferences from an accused's silence or conduct	408
15	Evidence of character: evidence of character in civil cases	439
16	Evidence of character: evidence of the good character of the accused	444
17	Evidence of character: evidence of bad character in criminal cases	453
18	Opinion evidence	525
19	Public policy	560
20	Privilege	593
21	Judgments as evidence of the facts upon which they were based	636
22	Proof of facts without evidence	651

TABLE OF STATUTES	xiv
TABLE OF STATUTORY INSTRUMENTS	xxi
TABLE OF CODES, CODES OF PRACTICE, AND PRACTICE DIRECTIONS	xxiii
TABLE OF CASES	xxiv
1 Introduction	1
Key issues	1
Truth and the fact-finding process	2
The development of the law	3
Additional reading	5
2 Preliminaries	6
Key issues	6
Facts open to proof or disproof	7
The varieties of evidence	9
Relevance and admissibility	20
Weight	30
The functions of the judge and jury	31
Judicial discretion	43
Proof of birth, death, age, convictions, and acquittals	49
Additional reading	51
3 Evidence obtained by illegal or unfair means	53
Key issues	53
Law	55
Discretion	57
Additional reading	78
4 The burden and standard of proof	79
Key issues	79
The burden of proof	80
The standard of proof	105
The burden and standard of proof in a trial within a trial	114
Additional reading	116

5 Witnesses	117
Key issues	117
Competence and compellability	118
Oaths and affirmations	132
Live links	134
The time at which evidence should be adduced	136
Witnesses in civil cases	140
Witnesses in criminal cases	142
Additional reading	162
6 Examination-in-chief	164
Key issues	164
Leading questions	165
Refreshing the memory	166
Previous consistent or self-serving statements	174
Unfavourable and hostile witnesses	184
Additional reading	190
7 Cross-examination and re-examination	191
Key issues	191
Cross-examination	192
Re-examination	219
Additional reading	220
8 Corroboration and care warnings	221
Key issues	221
Corroboration required by statute	223
Care warnings	226
Confessions by the mentally handicapped	237
Identification cases	240
Lip-reading evidence	251
Sudden infant death syndrome	252
Additional reading	253

ix

9 Documentary and real evidence	254
Key issues	254
Documentary evidence	255
Real evidence	266
Additional reading	271
10 Hearsay in criminal cases	272
Key issues	272
Background and rationale	273
Admissibility of hearsay under the Criminal Justice Act 2003	275
Expert reports	323
Written statements under section 9 of the Criminal Justice Act 1967	324
Depositions of children and young persons under	
section 43 of the Children and Young Persons Act 1933	325
Additional reading	325
11 Hearsay admissible by statute in civil proceedings	326
Key issues	326
The background	327
Admissibility of hearsay under the Civil Evidence Act 1995	328
Safeguards	334
Proof of statements contained in documents	339
Evidence formerly admissible at common law	342
Ogden tables	345
Additional reading	345

12 Hearsay admissible at common law	
Key issues	346
Statements in public documents	347
Works of reference	351
Evidence of age	352
Evidence of reputation	352
Statements forming part of the res gestae	355
Additional reading	363

x

13 Confessions	364
Key issues	364
Admissibility	365
The discretion to exclude	379
The voir dire	392
The trial	397
Statements made in the presence of the accused	401
Facts discovered in consequence of inadmissible confessions	405
Additional reading	407
14 Statutory inferences from an accused's silence or conduct	408
Key issues	408
Inferences from silence	409
Inferences from refusal to consent to the taking of samples	433
Inferences from failure to provide advance disclosure	
of the defence case	434
Additional reading	438
15 Evidence of character: evidence of character in civil cases	439
Key issues	439
Character in issue or relevant to a fact in issue	440
Evidence of the disposition of the parties towards good conduct	440
Evidence of the disposition of the parties towards bad conduct	441
Character relevant to credit	443
Additional reading	443
16 Evidence of character: evidence of the good character of the accused	444
Key issues	444
The evidence admissible	445
The direction to the jury	445
The meaning of 'good character'	448
Additional reading	452

xi

Key issues 453 Introductory 454 Evidence of the bad character of a person other than the defendant 460 Evidence of the bad character of the defendant 460 General 516 Other provisions governing the admissibility of evidence 521 Additional reading 524 18 Opinion evidence 525 Expert opinion evidence 527 Non-expert opinion evidence 557 Additional reading 559 19 Public policy 560 Key issues 560 Key issues 560 Additional reading 593 Additional reading 593 Additional reading 593 Key issues 560 The development of the modern law 561 The scope of the exclusion on grounds of public policy 568 Procedural issues 593 Key issues 593 The privilege against self-incrimination 595 Legal professional privilege 607 Without prejudice negotiations 630 Additional reading 635	17 Evidence of character: evidence of bad character in criminal cases	453
Evidence of the bad character of a person other than the defendant 460 Evidence of the bad character of the defendant 466 General 516 Other provisions governing the admissibility of evidence 521 Additional reading 525 Key issues 525 Expert opinion evidence 527 Non-expert opinion evidence 557 Additional reading 559 19 Public policy 560 Key issues 560 Key issues 560 Non-expert opinion evidence 560 Key issues 560 Key issues 560 The development of the modern law 561 The scope of the exclusion on grounds of public policy 568 Procedural issues 593 Additional reading 593 Key issues 593 Key issues 593 Additional reading 630 Additional	Key issues	453
Evidence of the bad character of the defendant466General516Other provisions governing the admissibility of evidence521Additional reading524 18 Opinion evidence525 Expert opinion evidence527Non-expert opinion evidence557Additional reading559 19 Public policy560 The development of the modern law561The scope of the exclusion on grounds of public policy568Procedural issues585Additional reading593 20 Privilege593 Key issues593Additional reading595 21 Privilege against self-incrimination595Legal professional privilege607Without prejudice negotiations630Additional reading635 21 Judgments as evidence of the facts upon which they were based636 Civil proceedings637Civil proceedings637Civil proceedings637Civil proceedings637	Introductory	454
General 516 Other provisions governing the admissibility of evidence 521 Additional reading 524 18 Opinion evidence 525 Key issues 525 Expert opinion evidence 527 Non-expert opinion evidence 557 Additional reading 559 19 Public policy 560 Key issues 560 The development of the modern law 561 The scope of the exclusion on grounds of public policy 568 Procedural issues 593 Additional reading 592 20 Privilege 593 Key issues 593 Additional reading 593 Additional reading 593 Egal professional privilege 607 Without prejudice negotiations 630 Additional reading 635 Egal professional privilege 637 Civil proceedings 636 Civil proceedings 636 Civil proceedings 636 Civil proceedings 637 Civil procee	Evidence of the bad character of a person other than the defendant	460
Other provisions governing the admissibility of evidence 521 Additional reading 524 18 Opinion evidence 525 Key issues 525 Expert opinion evidence 527 Non-expert opinion evidence 557 Additional reading 559 19 Public policy 560 Key issues 560 The development of the modern law 561 The scope of the exclusion on grounds of public policy 568 Procedural issues 593 Additional reading 593 Key issues 593 Additional reading 593 Additional reading 636 Procedural issues 593 Additional reading 593 Additional reading 636 Key issues 593 Additional reading 636 Key issues 636 Key issues 636 Key issues 636 Civil proceedings 636 Civil proceedings 636 Civil proceedings 637 Civil proceedings <	Evidence of the bad character of the defendant	466
of bad character521Additional reading52418Opinion evidence525Expert opinion evidence527Non-expert opinion evidence557Additional reading55919Public policy560Key issues560The development of the modern law561The scope of the exclusion on grounds of public policy568Procedural issues585Additional reading59220Privilege593The privilege against self-incrimination595Legal professional privilege607Without prejudice negotiations630Additional reading63521Judgments as evidence of the facts upon which they were based636Civil proceedings637Criminal proceedings637Criminal proceedings637	General	516
18 Opinion evidence 525 Key issues 525 Expert opinion evidence 527 Non-expert opinion evidence 557 Additional reading 559 19 Public policy 560 Key issues 560 The development of the modern law 561 The scope of the exclusion on grounds of public policy 568 Procedural issues 585 Additional reading 592 20 Privilege 593 The privilege against self-incrimination 595 Legal professional privilege 607 Without prejudice negotiations 630 Additional reading 635 Z1 Judgments as evidence of the facts upon which they were based 636 Civil proceedings 637 Criminal proceedings 637 Criminal proceedings 637		521
Key issues525Expert opinion evidence527Non-expert opinion evidence557Additional reading55919Public policy560Key issues560The development of the modern law561The scope of the exclusion on grounds of public policy568Procedural issues585Additional reading59220Privilege593Key issues593The privilege against self-incrimination595Legal professional privilege607Without prejudice negotiations630Additional reading635Colspan="2">Colspan="2"Col		
Key issues525Expert opinion evidence527Non-expert opinion evidence557Additional reading55919Public policy560Key issues560The development of the modern law561The scope of the exclusion on grounds of public policy568Procedural issues585Additional reading59220Privilege593Key issues593The privilege against self-incrimination595Legal professional privilege607Without prejudice negotiations630Additional reading635Colspan="2">Colspan="2"Col		
Expert opinion evidence527Non-expert opinion evidence557Additional reading55919 Public policy560Key issues560The development of the modern law561The scope of the exclusion on grounds of public policy568Procedural issues585Additional reading59220 Privilege593Key issues593The privilege against self-incrimination595Legal professional privilege607Without prejudice negotiations630Additional reading635Z0 Privilege637Key issues636Civil proceedings636Civil proceedings637Criminal proceedings637Criminal proceedings637	18 Opinion evidence	525
Non-expert opinion evidence557Additional reading559 19 Public policy560 Key issues560The development of the modern law561The scope of the exclusion on grounds of public policy568Procedural issues585Additional reading592 20 Privilege593 Key issues593The privilege against self-incrimination595Legal professional privilege607Without prejudice negotiations630Additional reading635Civil proceedings636Civil proceedings637Criminal proceedings637	Key issues	525
Additional reading559 19 Public policy560 Key issues 560 The development of the modern law561The scope of the exclusion on grounds of public policy568Procedural issues585Additional reading592 20 Privilege593 Key issues593The privilege against self-incrimination595Legal professional privilege607Without prejudice negotiations630Additional reading635 21 Judgments as evidence of the facts upon which they were based636 Civil proceedings637Criminal proceedings637	Expert opinion evidence	527
19 Public policy560Key issues561The development of the modern law561The scope of the exclusion on grounds of public policy568Procedural issues585Additional reading59220 PrivilegeKey issues593The privilege against self-incrimination595Legal professional privilege607Without prejudice negotiations630Additional reading63521 Judgments as evidence of the facts upon which they were basedKey issues636Civil proceedings637Criminal proceedings637	Non-expert opinion evidence	557
Key issues560The development of the modern law561The scope of the exclusion on grounds of public policy568Procedural issues585Additional reading592 20 Privilege593 Key issues593The privilege against self-incrimination595Legal professional privilege607Without prejudice negotiations630Additional reading635 21 Judgments as evidence of the facts upon which they were based Key issues636Civil proceedings637Criminal proceedings643	Additional reading	559
The development of the modern law561The scope of the exclusion on grounds of public policy568Procedural issues585Additional reading59220 Privilege593Key issues593The privilege against self-incrimination595Legal professional privilege607Without prejudice negotiations630Additional reading63521 Judgments as evidence of the facts upon which they were based636Key issues637Civil proceedings637Civil proceedings643	19 Public policy	560
The scope of the exclusion on grounds of public policy568Procedural issues585Additional reading59220 Privilege593Key issues593The privilege against self-incrimination595Legal professional privilege607Without prejudice negotiations630Additional reading635Colspan="2">Colspan="2"C	Key issues	560
Procedural issues585Additional reading59220 Privilege593Key issues593The privilege against self-incrimination595Legal professional privilege607Without prejudice negotiations630Additional reading635Key issuescolspan="2">colspan="2"Colspan="2">Colspan="2">colspan="2"Colspan="2">colspan="2">colspan="2"Colspan="2">colspan="2"Colspan="2">Colspan="2"Colspan="2"Colspan="2"Colspan="2"Colspan="2"Colspan="2"Colspan="2"Colspan="2"Colspan="2"Colspan="2"Colspan="2"Colspan="2"Colspan="2"Colspan="2"Colspan="2"Colspan="2"Colspan="2"Colspan="2"Colspan="2"Colspan="2	The development of the modern law	561
Additional reading59220 Privilege593Key issues593The privilege against self-incrimination595Legal professional privilege607Without prejudice negotiations630Additional reading635Colspan="2">Colspan="2"Colspan="2">Colspan="2"Colspan="2"Colspan="2">Colspan="2"	The scope of the exclusion on grounds of public policy	568
20 Privilege593Key issues593The privilege against self-incrimination595Legal professional privilege607Without prejudice negotiations630Additional reading63521 Judgments as evidence of the facts upon which they were basedKey issues636Civil proceedings637Criminal proceedings643	Procedural issues	585
Key issues 593 The privilege against self-incrimination 595 Legal professional privilege 607 Without prejudice negotiations 630 Additional reading 635 21 Judgments as evidence of the facts upon which they were based 636 Key issues 636 Civil proceedings 637 Criminal proceedings 643	Additional reading	592
The privilege against self-incrimination595Legal professional privilege607Without prejudice negotiations630Additional reading635Key issuesKey issues636Civil proceedings637Criminal proceedings643	20 Privilege	593
The privilege against self-incrimination595Legal professional privilege607Without prejudice negotiations630Additional reading635Key issuesKey issues636Civil proceedings637Criminal proceedings643	Key issues	593
Without prejudice negotiations630Additional reading63521 Judgments as evidence of the facts upon which they were based636Key issues636Civil proceedings637Criminal proceedings643		595
Additional reading63521 Judgments as evidence of the facts upon which they were based636Key issues636Civil proceedings637Criminal proceedings643	Legal professional privilege	607
21 Judgments as evidence of the facts upon which they were based636Key issues636Civil proceedings637Criminal proceedings643	Without prejudice negotiations	630
Key issues636Civil proceedings637Criminal proceedings643	Additional reading	635
Civil proceedings637Criminal proceedings643	21 Judgments as evidence of the facts upon which they were based	636
Civil proceedings637Criminal proceedings643	Key issues	636
Criminal proceedings 643	-	
	Additional reading	650

xii

22 Proof of facts without evidence	651
Key issues	651
Presumptions	652
Judicial notice	669
Formal admissions	675
Additional reading	677
INDEX	679

xiii