## **CONTENTS**

			I	Pages	
Pre	face			v	
(1)	THE BURDEN OF PROOF AND STANDARDS OF PROOF IN CRIMINAL PROCEEDINGS: A COMPARATIVE STUDY OF ENGLISH LAW				
	A	AND A CODIFIED ASIAN SYSTEM 1			
	I.	THE	CONCEPTUAL FRAMEWORK OF THE LAW	01	
	II.	THE	BURDEN OF PROOF IN RESPECT OF		
		EXC	ULPATORY AND MITIGATORY PLEAS	02	
		(a)	The English Common Law	02	
		(b)	The "burden of proving" general and special exceptions in Sri Lanka	07	
		(c)	The scope of "general or Special exceptions"	09	
		(d)	A relevant classification of defences in the setting of the two burdens	16	
		(e)	The English Common Law and Sri Lankan Law contrasted	18	
	III.	THE	BURDEN OF PROOF IN REGARD TO FACTS		
		PECU	JLIARLY WITHIN THE KNOWLEDGE OF ONE OF		
		THE	PARTIES	19	
	IV.	VAR	YING STANDARDS OF PROOF	27	
		(a)	Proof of the essential elements of liability by the prosecution	27	
		(b)	Proof of collateral facts by the prosecution	29	
		(c)	The Establishment of a defence not vitiating one or more of the requirements of liability	30	
		(d)	The Establishment of a defence inconsistent with one of more of the requirements of liability	r 31	
		(e)	Invocation by the prosecution of a proviso defeating an exception pleaded by the accused	32	
		(f)	Rebuttal by the accused of a presumption equivalent to proof of an ingredient of the offence	32	

		(i)	Proof on a balance of probabilities, English law Sri Lankan, Indian and Malaysian Law	36
		(ii)	The raising of a reasonable doubt	38
	(g)		rischarge of the evidential burden by the rosecution	42
VI.	SH	IFTIN	IG OF THE BURDEN OF PROOF	43
	(a)	Т	The legal burden	43
	(b)		The evidential burden	44
	(c)		Evaluation of the terminology	44
VI			USION	45
(-)			IISSIBILITY OF EVIDENCE OBTAINED LLY: A COMPARATIVE ANALYSIS	49 - 88
I	. n	NTRO	DUCTION	49
I	i. A	LTER	NATIVE APPROACHES	50
	(8	a)	Proposition One: If evidence is relevant, it cannot be excluded on the ground that it was obtained by illegal action.	50
	(	b)	Proposition Two: If evidence is obtained by illegal action, it is never admissible	56
	(	(c)	Proposition Three: The trial Judge should have discretion whether or not to admit evidence obtained illegally	62
	III.		TORS GOVERNING THE EXERCISE OF DISCRETION BY COURTS	
	IV.		RELATION BETWEEN THE CONFESSION RULE AND EXCLUSION OF EVIDENCE OBTAINED BY ILLEGAL MEAN	64 s 80
	V.	CO	NSIDERATIONS OF POLICY MILITATING AGAINST THE CLUSIONARY RULE	85
	VI.	СО	NCLUSION	88

CI A	HE ADMISSIBILITY OF CONFESSIONS IN RIMINAL PROCEEDINGS: COMPARATIVE ANALYSIS OF THE AW OF SRI LANKA AND ENGLAND	89 - 141
I.	THE DEFINITION OF A CONFESSION	89
II. III.	THE VOLUNTARY CHARACTER OF CONFESSIONS CONFESSIONS MADE TO POLICE OFFICERS	94 114
IV.	CONFESSIONS MADE WHILE THE ACCUSED IS IN POLICE CUSTODY	118
V.	THE DOCTRINE OF CONFIRMATION BY SUBSEQUENTLY DISCOVERED FACTS	121
VI.	THE SCOPE OF EXCLUSIONARY RULES IN RESPECT OF CONFESSIONS	129
VII.	POLICY OBJECTIVES OF THE LAW GOVERNING CONFESSION	NS 131
	EW ZEALAND AND SOUTH ASIAN EGAL SYSTEMS	142 - 173
I.	INTRODUCTION	142
II.	THE PRIVILEGE IN THE CONTEXT OF POLICE INVESTIGATIONS AND SIMILAR SITUATIONS	144
III.	THE RELEVANCE OF THE PRIVILEGE IN THE CONTEMPORARY CONTEXT	150
IV.	APPLICABILITY OF THE PRIVILEGE TO THE PRODUCTION AND DISCOVERY OF DOCUMENTS	152
V.	STATUTORY ABROGATION OF THE PRIVILEGE IN EXTRA-JUDICIAL CONTEXTS	154
VI.	CONSEQUENCES OF INVOCATION OF THE PRIVILEGE BEFORE TRIAL	155
VII.	EFFECT OF EXERCISE OF THE PRIVILEGE IN COURT	163
VIII.	CONCLUSION	171

(5)			RENDS IN THE COMMONWEALTH 1		74 - 195	
	I.		E RELATION BETWEEN UNSWORN STATEMENTS AND E COMPETENCE OF THE ACCUSED AS A WITNESS	a B	174	
	П.		E APPROPRIATE TIME FOR MAKING AN UNSWORN ATEMENT		178	
	III.	UN	SWORN STATEMENTS AND THE RETAINING OF COUNSEL	,	179	
	IV.	Uì	NSWORN STATEMENTS AND THE ADDUCING OF EVIDENCE	3	179	
	V.	Tł	HE VALUE OF UNSWORN STATEMENTS		183	
	VI	i. Ri	ELEVANT CONSIDERATIONS OF POLICY		190	
(6)			RULE AGAINST HEARSAY AND THE DOCTRINE LES GESTAE: A COMPARATIVE ANALYSIS OF			
		SOU'	TH AFRICAN, ENGLISH AND SRI LANKAN LAW	196 -	234	
	1	i. T	THE RULE AGAINST HEARSAY		196	
	1	II. 7	THE DOCTRINE OF RES GESTAE		200	
			Statements accompanying and explaining Relevant Acc	ts -	201	
			Spontaneous Exclamations		210	
			Acts or declarations forming part of the Same Transact	tion	222	
			Acts and statements reflecting a State of Mind or Emot	tion	225	
			Statement indicative of Physical Sensation		232	
			The Admission of Hearsay in the context of Expert Op	inion	233	
		III.	CONCLUSION		233	
	(7)		VIDENCE OF SYSTEM IN COMMONWEALTH			
		L	AW	235	- 287	
		I.	THE FOUNDATIONS OF THE LAW		235	
		II.	THE CONCEPT OF 'SIMILAR FACT EVIDENCE'		237	
		III.	THE CONCEPTS OF 'RELEVANCE' AND 'ADMISSIBILITY'		255	

		(a)	Exclusion of Evidence Relating to Other Instances on the Ground of Irrelevance	255
		(b)	'Relevance' Distinguished from 'Admissibility'	258
		(c)	Multiple Connotations of Relevance	262
	IV.	PROC	OF OF THE ACTUS REUS	269
	V.	CATE	GORIES OF SIMILAR FACT EVIDENCE	273
		(a)	Proof of the International Quality of the Accused's Act	274
		(b)	Rebuttal of a Plea of Ignorance or Mistake of Fact	274
		(c)	Refutation of an Innocuous Explanation as to Purpose	277
		(d)	Negation of a Plea of False Identification	277
		(e)	Rebuttal of the defence of Innocent Association	278
	VI.	EXCL	LUSIONARY DISCRETION	283
	VII.	CON	CLUSION	285
(8)	T(C)	O THI RIMII	OMISSIBILITY OF EVIDENCE RELATING E CHARACTER OF THE ACCUSED IN NAL TRIALS: A COMPARATIVE STUDY LANKAN AND ENGLISH LAW	288 - 333
	I.		STRUCTURAL FRAMEWORK OF SRI LANKAN LAW ENGLISH LAW	288
	II.	THE D	DEFINITION OF "CHARACTER"	293
	III.		COPE OF THE RULE EXCLUDING EVIDENCE OF CHARACTER	298
	IV.		S WHERE THE BAD CHARACTER OF THE JSED IS A FACT IN ISSUE	302
	V.		UMSTANCES WHERE THE BAD CHARACTER OF ACCUSED IS A RELEVANT FACT	304

VI.	IN RE	ADMISSIBILITY OF EVIDENCE OF BAD CHARACTER BUTTAL IN CASES WHERE THE GOOD CHARACTER HE ACCUSED HAS BEEN PUT IN ISSUE	309		
	(a)	The Advantage Accruing to the Accused from Adducing Evidence of Good Character	309		
	(b)	Putting in issue the Good Character of the Accused	311		
	(c)	The Purpose of Leading Evidence of Bad Character in Rebuttal	313		
	(d)	Permissible Modes of Adducing Evidence of Bad Character in Rebuttal	313		
	(e)	The Indivisibility of Character	315		
	(f)	The Propriety of a Conviction Notwithstanding Unwarranted Reception of Evidence of the Accused's Bad Character	316		
V	IN TH	E ADMISSIBILITY OF EVIDENCE OF BAD CHARACTER REBUTTAL IN CASES WHERE THE CHARACTER OF IE PROSECUTOR OR OF A PROSECUTION WITNESS AS BEEN ASSAILED	318		
V	IN	HE ADMISSIBILITY OF EVIDENCE OF BAD CHARACTER REBUTTAL IN CASES WHERE THE CHARACTER OF A D-ACCUSED HAS BEEN ASSAILED	329		
		ECEPTION OF EVIDENCE OF BAD CHARACTER AFTER HE VERDICT	331		
	<b>x</b> . c	CONCLUSION	332		
, <b>b</b> )	CO	RROBORATION IN JUDICIAL PROCEEDINGS:			
	А. Т	THE TESTIMONY OF ACCOMPLICES	334 - 373		
	I. THE DOCTRINAL FOUNDATIONS OF ROMAN-DUTCH LAW AND ENGLISH LAW CONTRASTED				
	II.	THE EVIDENCE OF ACCOMPLICES	342		
		(i) The Scope of the Cautionary Rule	342		
		(ii) The Definition of an "Accomplice"	348		

	(iii)	Respective Functions of Judge and Jury	354
	(iv)	Distinguishable Categories of Witnesses	355
		(a) Police Traps	355
		(b) Private Detectives	360
		(c) Co-Accused Testifying in Their Defence	361
	(v)	The Content of Corroboration	362
		(a) The Basic Test	363
		(b) Some Particular Points	366
	III. AN	OVERALL ASSESSMENT OF THE EXISTING LAW	370
(9)	CORR	OBORATION IN JUDICIAL PROCEEDINGS	
	B. CO	MPLAINANTS IN SEXUAL CASES, CHILDR	EN
	ANI	D MORAL DELINQUENTS	374 - 413
	I. SEX	UAL MISCONDUCT	374
	(i)	Criminal Proceedings	374
	<b>(4.89</b> )	(1) The status of the Rule as to Corroboration	374
		(2) The Extent of Corroboration *	377
	(ii)	Civil Proceedings	382
		(1) The Delictual Action for Seduction	382
		(2) The Action for Maintenance	383
		(3) Matrimonial Causes	385
	п. тн	E EVIDENCE OF CHILDREN	388
	III. OTI	HER SITUATIONS	394
	(i)	The Taint of Infamia	394
	(ii)	Confessions	395
	(iii)	Identification	397
	(iv)	Claims to the Property of Deceased Persons	399
	IV. THI	E NATURE OF CORROBORATION	399
	(a)	The Behaviour or Statements of the Person	
		Whose Testimony is Sought to be Corroborated	400

.

	(b)	The Conduct or Statements of the Persons, the Evidence against Whom Needs Corroboration	402
	Novi		402
	(i)	Admissions	403
	(ii)	Silence	408
	(iii)		410
	(iv)	Similar Conduct	
	v. co	NCLUSION	411
(10)		ILEGE IN COMMONWEALTH LAW EGAL PROFESSIONAL PRIVILEGE	414 - 448
	I. R	ATIONALE AND STRUCTURAL FRAMEWORK OF THE LAW	414
		OMMUNICATIONS BETWEEN CLIENT AND LEGAL ADVISER OMMUNICATIONS WITH THIRD PARTIES FOR THE	
	P	URPOSE OF LITIGATION	422
	A	The Degree of Probability of Litigation	422
	E	3. The Criterion of Purpose	423
	(	C. Plurality of Purposes	423
	IV.	THE NATURE AND DIMENSIONS OF THE PRIVILEGE	433
		A. Professional Privilege: Its Incidence and Purview	
		B. The Requisite of Confidentiality	435
		C. Secondary Evidence of Documents Governed by the Privilege	437
	V.	PROFESSIONAL PRIVILEGE IN THE SETTING OF SEARCH AND PRE-TRIAL DISCOVERY	440
	VI.	EXCEPTIONS TO APPLICABILITY OF THE PRIVILEGE	443
		A. Waiver of the Privilege	443
		B. Perpetration of a Crime or Fraud	445
		C. Statutory Abrogation of the Privilege	446
	VII	. CONCLUSION	446

	B.	MEI	DICAL PROFESSIONAL PRIVILEGE	449 - 480
	I.	INTR	ODUCTION	449
	II.	OBJE	ECTIVES OF SOCIAL POLICY	451
1811 - 15		A.	The Logical Basis for Denial of Professional Privilege in Civil Proceedings	452
		B.	Equitable and Policy Factors Relevant to Recognition of Medical Professional Privilege	453
		C.	Alternative Approaches: Discretion and Privilege	456
		D.	The Dichotomy between Civil and Criminal Proceedings	459
		E.	Problems of Definition and Scope in Respect of the Recipient of the Communication	461
		F.	The Cultural and Sociological Context	463
		G.	Current Attitudes to the Interpretation of Statutory Privileges	464
	III.	THE	DIMENSIONS OF MEDICAL PROFESSIONAL PRIVILEGE	465
		A.	The Duration of the Privilege	465
		B.	A Contractual Nexus and Reposing of Confidence	465
(*)		C.	Limiting Criteria Predicated on Purpose	467
		D.	"Communication" and "Information": Tasmanian Victorian and New Zealand Law Compared	, 469
		E.	Applicability of the Privilege to Interrogatories	471
	IV.	WAI	VER OF THE PRIVILAGE	471
		A.	Legal Effect of Waiver	471
		B.	Express and Implied Waiver	472
		C.	Entitlement to Waive the Privilege	473
	V.	COM	PETING THEORETICAL APPROACHES	475
	VI	CON	ICLUSION	478

.

(C) C	(C) CROWN PRIVILEGE 48				
ı. r	NTRODUCTION		481		
II. 7	THE JURIDICAL CHARACTER OF THE DOCTRINE OF EXCLUS	SION	481		
m.	THE SCOPE OF THE EXCLUSIONARY RULE		482		
IV.	RESPONSIBILITY FOR DETERMINING THE ISSUE OF PUBLIC INTEREST		495		
V.	TECHNIQUES FOR RESTRICTING THE SCOPE OF THE EXCLUSIONARY DOCTRINE		504		
VI.	FACTORS CONDITIONING THE EXERCISE OF JUDICIAL DISCRETION		509		
VII.	SPECIAL CONSIDERATIONS APPLICABLE TO CRIMINAL PROCEEDINGS		516		
VIII	. PROCEDURAL ASPECTS		518		
IX.	CONCLUSION		519		