LAW4323 Evidence

MONASH UNIVERSITY · LAW · SEMESTER 2 2026

Full guide + ask Sia about LAW4323

SIDE 1/2 PURPOSE-FIRST ROADMAP · RULES · ELEMENTS · CONTROLS

EXAM REVISION SHEET

Final: 60% · complete topic set

01 · Exam map

BRIEF · COURSE.JSON

10 | Written 30% | Examination 60%

1 - Quiz / Test 10% · 2 - Written 30% · 3 - Examination 60%.

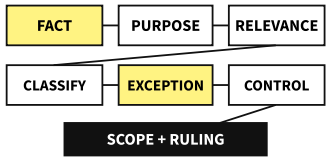
Final: comprehension and practical use across the complete topic set. Allocate revision by the published 60% weight, then practise integrated tender-purpose analysis rather than isolated labels.

MATERIALS STATUS · OFFICIAL BOUNDARY

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Permitted materials: not confirmed for this offering in the course materials we hold — check the exam instructions on the LMS.
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02 · Master admissibility method

FRONT + FAQ



The guide's stable route: classification before exception; control before the operational ruling.

RECITABLE ANSWER SPINE

```
Item + proponent → precise fact in issue → each tender purpose → rational inferential link → exclusionary rule → every exception condition → discretion / leave / notice / limitation / direction → admitted, excluded or confined.
```

★ **One item, several uses:** analyse truth, notice, credibility and state of mind on separate lines. A successful route for one use does not authorise the others.

EXAM TIP *End every item with the court action: admit, exclude, redact, limit, direct, grant leave, conduct a voir dire, or require another proof source.*

02A · Opening-question index

ALL TOPICS

TRIGGER	OPEN WITH
Any item	What fact, proponent, purpose and rational effect?
Witness	Competent for this question; then compellable by status?
Confidential material	Which privilege, holder, material and controlling purpose?
Questioning	Which examination stage and permitted function?
Attack on witness	Fact in issue or credibility only; which exception?
Silence	Pre-trial or at trial; what adverse inference?
Other conduct/events	Tendency or coincidence inference?
Prior words	Representation, maker, asserted fact and truth need?

03 · Relevance → control

CH 1 · SS 55–56



Supplied relevance funnel redrawn: crossing s 55 does not finish admissibility.

S 55 THRESHOLD

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If accepted, could the evidence rationally affect, directly or indirectly, the probability of a fact in issue? State the proposition and every intermediate inference.
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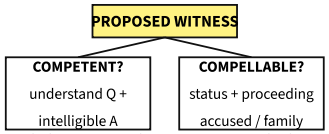
CONTROL	CHOOSE IT BY	EXAM MOVE
s 135	General discretion	Probative value substantially outweighed by listed dangers; name the danger.
s 136	Proper use exists; misuse risk	Limit the use and say what the tribunal may not do.
s 137	Prosecution evidence in criminal proceeding	Apply its distinct mandatory balance; identify unfair-prejudice reasoning.

Probative value is strength for the stated purpose. ***Unfair prejudice*** is danger of improper, emotional or irrational use against an accused—not simply damage to the case.

TRAP *Never merge ss 135–137 into "fairness". Select by proceeding, tendering party, proposed use, statutory verb and remedy.*

04 · Competence then compulsion

CH 2 · S 13

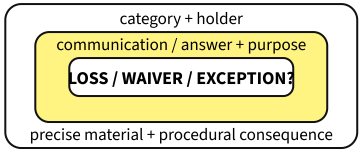


Supplied witness tree redrawn: capacity never silently answers compellability.

QUESTION	FACT CHECKLIST
Competence	Which proposed topic? Can this witness understand the question and give an answer that can be understood, with available communication support?
Sworn route	Separate competence for the fact from understanding the obligation to give truthful evidence; follow s 13 for unsworn evidence where applicable.
Compellability	Identify accused/co-accused/family/ordinary status, relationship, proceeding and party seeking the evidence.

05 · Privilege audit

CH 3



Supplied privilege layers redrawn: confidentiality alone never completes the test.

ROUTE	CONTROLLING QUESTION	FREQUENT ERROR
Self-incrimination	What precise answer creates what specified liability or penalty risk?	Treating embarrassment as enough.
Client legal privilege	Which client-held confidential communication/document meets the legal advice or litigation purpose?	Possession = ownership; sending an old record to counsel changes its creation purpose.
Protected communication	Does the distinct Victorian statutory category apply?	Importing the client-lawyer dominant-purpose test.

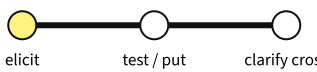
DOCUMENT-BY-DOCUMENT LEDGER

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author → recipient → time → original creation purpose → holder → later disclosure/use → claimed inconsistency with maintaining protection → redact/sever/inspect/withhold?
```

Object to the smallest defensible unit. If facts omit creation purpose, authority or disclosure circumstances, give a conditional result and name the missing evidence. If protection fails, ordinary relevance, hearsay, opinion and control questions remain.

06 · Witness examination

CH 4 · S 38



Supplied stage timeline redrawn: classify the stage before judging the question.

STAGE	CONTROL
Chief	Elicit the calling party's account; leading form restricted. Distinguish refreshing memory from tendering a previous representation.
s 38	Identify the exact unfavourable evidence, prior inconsistency or failure to make a genuine attempt to recollect; unhelpful ≠ automatically unfavourable.
Cross	Test issues and credibility; put the substance of a contradictory version before later inviting rejection—*Browne v Dunn*.
Re-exam	Clarify or qualify matters raised in cross; do not rebuild chief or introduce an unrelated topic.

07 · Credibility or character?

CH 5 · PT 3.8

	FACT IN ISSUE	CREDIBILITY ONLY
witness	ordinary relevance	ss 102–108
accused	character route	leave protections

Supplied purpose matrix redrawn: the same fact can require two separately stated routes.

GATE	WHAT MUST BE SHOWN
s 102	Is the evidence relevant only because it affects whether the witness or maker should be believed? If yes, the credibility rule engages.
s 103	For cross-examination, capacity to substantially affect credibility: nature, importance and circumstances of the inconsistency in the proceeding as a whole.
s 106	Evidence from another source: prior challenge plus the specified pathway; denial does not unlock every collateral document or witness.
ss 104, 108	Accused-witness leave and additional protection; re-examination matter arising or qualifying exception.

Character: use Part 3.8 and any required leave. Do not convert moral judgment into proof of the charged act or bypass separate tendency controls. For complainants or accused witnesses, apply the specific safeguard; do not reason from confidence, emotion, delay or demeanour stereotypes.

08 · Silence: fix the time

CH 6 · S 89

PRE-TRIAL	AT TRIAL
Evidence Act s 89	Jury Directions Act
identify inference	separate route

Supplied boundary diagram redrawn: police-question silence and trial silence are not interchangeable.

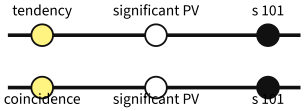
INFERENCE EXPOSURE TEST

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silence → "innocent person would have spoken" → guilt / fabrication / consciousness of guilt? If the chain needs failure to speak as evidence against the accused, confront the silence provision.
```

A later account may contain a **proved express inconsistency** that follows witness and credibility rules. Counsel cannot disguise prohibited silence reasoning as "common sense", "late explanation" or conduct. The prosecution must prove its case with evidence, not fill a gap from failure to answer or testify.

09 · Tendency ≠ coincidence

CH 7 · PT 3.6



Supplied parallel lanes redrawn: shared gates, distinct inferential entrances.

ROUTE	STATE BEFORE THRESHOLD	APPLICATION FACTS
Tendency	Other conduct/circumstances → precise tendency to act or possess state of mind → fact in issue.	Specificity, frequency, context and differences; no universal identical-incidents rule.
Coincidence	Number and features of events → improbability of chance → fact in issue.	Number, distinctiveness and combination of similarities; not a visual impression of pattern.

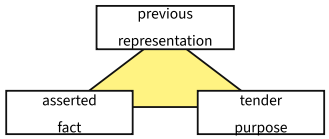
PART 3.6 GATE SEQUENCE

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define use precisely → identify fact in issue → show significant probative value → comply with notice / any leave route → for prosecution use against accused, apply s 101 → confine final scope.
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TRAP *Counting incidents is not analysis. Build a feature ledger: conduct, circumstances, time, participants, shared features and differences.*

10 · Hearsay purpose test

CH 8 · SS 59–60



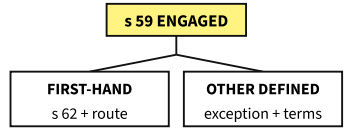
Supplied hearsay triangle redrawn: quote words, proposition and purpose before citing s 59.

s 59: evidence of a previous representation adduced to prove an asserted fact the maker intended to assert. Ask whether the fact-finder must accept the assertion as true for the proposed use to work.

PURPOSE	TRUTH?	NEXT MOVE
Prove asserted event	Yes	Hearsay rule → named exception.
Notice/effect on listener	Not necessarily	Name relevant knowledge/conduct fact; prove why receipt matters even if false.

11 · Exception router

CH 9 · PT 3.2



Supplied router redrawn: personal knowledge and availability select, but do not prove, the route.

CONDITION CHECK

```
personal perception + statutory availability + proceeding/party/timing/notice/cross-examination conditions + every embedded maker + final use against whom and for what asserted fact.
```

RULE *Name the exception before praising trustworthiness; plausible, prompt or apparently reliable is not itself a statutory exception.*

12 · Opinion bridge

CH 10 · PT 3.3



Supplied bridge redrawn: an evaluative conclusion reaches the fact-finder only through a proved basis.

PATH	REQUIRED BASIS	DIAGNOSTIC
Lay	Personal perception	Is the inference necessary to communicate adequately what was perceived?
Expert · s 79	Specialised knowledge from training, study or experience	Is the opinion wholly or substantially based on that knowledge?

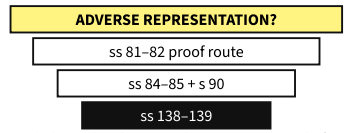
EXPERT LEDGER

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observations + assumed facts → field of specialised knowledge → qualification → method → intermediate reasoning → conclusion. Audit embedded representations separately for hearsay and proof.
```

Credentials are not reasoning. A defect may affect admissibility, probative value or weight; say which and why.

13 · Admission cascade

CH 11 · PT 3.4



Supplied cascade redrawn: an admission exception is the first gate, not the last.

LAW4323 Evidence · Drills, Judgement Cards & Final Checks

MONASH UNIVERSITY · LAW · SEMESTER 2 2026

Full guide + ask Sia about LAW4323

SIDE 2/2 WORKED HYPOTHETICALS · IF X → DO Y · CLASSIC TRAPS · EXAM-MORNING PLAN

SELF-TEST SIDE

Method: classify → apply → rule

14 · Answer frame

COURSE STRATEGY

I	R	A	C
item/use	exact test	fact links	ruling

repeat for every purpose and every item

Timed paragraph: issue, exact rule, competing factual application, operational conclusion.

ILAC SENTENCE STEM

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The issue is whether [item], tendered by [party] to prove [precise fact/purpose], satisfies [section/test]. Because [facts] support [each threshold word], while [counterfact] weakens [link], the court should [admit/exclude/limit/order], [against whom/for what use].
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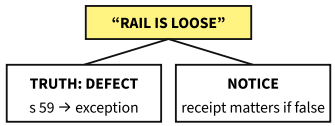
PASS	WRITE
1 · map	Margin ledger: item · maker/witness · proponent · purpose · fact in issue.
2 · route	Classification, exact statutory threshold, every exception condition, procedure.
3 · apply	Strongest inference and strongest alternative; state missing fact rather than inventing it.
4 · close	Scope, court action and consequence for the remaining proof.
Time	Check the official duration; allocate writing time proportionally by marks and reserve a contradiction scan.

SELF-TEST *Cover the rule column. From a fact pattern, can you state the first legal question and the last practical order quickly?*

15 · Drill 1 · Loose rail

HEARSAY WEX · 5

Facts. A tenant messages the manager, "the stair rail is loose". The message is offered (a) to prove the defect and (b) to prove the manager had notice.



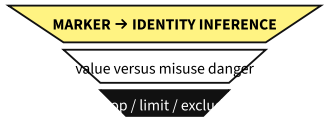
The source worked example redrawn: one representation, two independent tender-purpose paths.

1. **Representation/maker/assertion:** tenant's previous representation; intended assertion that the rail was loose.
2. **Truth route:** s 59 engages because the defect purpose needs the assertion true; identify and prove a named exception.
3. **Notice route:** if manager knowledge affects a fact in issue, receipt can matter even if the rail was not loose; explain the later conduct/inference.
4. **Scope:** only after valid non-truth admission consider s 60 and its limits; use s 136 if misuse requires confinement.

16 · Drill 2 · Graphic photograph

RELEVANCE WEX · 4

Facts. A prosecution photograph contains a location marker bearing on identity and graphic detail with little additional value.



The source relevance funnel applied: preserve the probative marker while targeting needless graphic impact.

IRAC MOVE	COMPACT ANSWER
Issue	Can the photograph be used to prove identity, and in what form?
Rule	s 55 rational-effect threshold; then choose s 135 or, for prosecution evidence in a criminal proceeding, s 137; s 136 if a permissible use can be confined.
Apply	Location marker supports identity through a stated inference. Graphic detail adding little may create improper emotional use; identify the danger, not mere damage.
Conclusion	Consider cropping/redaction, limited use or exclusion under the selected provision. State effect on identity proof.

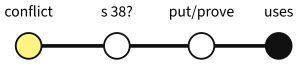
TRAP *"Relevant therefore admissible" skips every exclusion and control question.*

4 marks carried through: identity/rational effect 2 · danger 1 · selected control 1.

17 · Drill 3 · Changed vehicle colour

WITNESS WEX · 5

Facts. A prosecution witness recorded "green vehicle" but says "blue vehicle" in court.



credibility route ≠ truth route

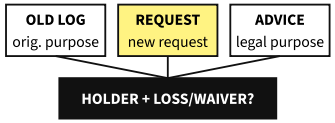
The supplied witness timeline adapted: control the contradiction before deciding each use.

1. Quote the propositions that conflict; ask whether both can be true and whether the colour matters to a fact in issue.
2. For the calling party, identify the precise s 38 category and need for leave; disappointment alone is insufficient.
3. Put the substance of the contradiction fairly. If denied, prove the previous representation by the proper route.
4. Separate credibility-only use from truth use: ss 102–108, hearsay/exception and s 60 each perform different work.

18 · Judgement card · Old log

PRIVILEGE WEX · 5

Facts. A company sends an old operational log to its solicitor with a new request for advice, then quotes one advice sentence in court.



The source privilege layers applied chronologically: attachment does not rewrite an old document's creation purpose.

ITEM	ANALYSIS
Old log	Audit separately: author, time and original purpose. Later delivery to counsel does not automatically protect it.
Request/advice	Identify client holder, confidentiality and dominant legal-advice purpose; possession by solicitor is not ownership.
Court quotation	What exactly was disclosed and relied upon, by whose authority? Does selective forensic deployment conflict with maintaining protection?
Remedy	Define the smallest protected segment; consider inspection, redaction or severance. If privilege fails, continue ordinary admissibility analysis.

5 marks carried through: old log 3 · confidentiality/dominant purpose 1 · inconsistent reliance 1.

19 · Judgement card · Rare override

TENDENCY WEX · 6

Facts. Two secure entries used a rare override known to a small team; the first entry is offered to identify the later actor.

TENDENCY	COINCIDENCE
prior use → access/ method tendency	rare shared features → chance improbable

purpose → significant PV → notice → s 101

Supplied parallel-route concept applied: define the inference before choosing its Part 3.6 lane.

If you see rare repeated conduct → articulate both possible inferences, then commit to the proponent's route. Catalogue distinctiveness, access, team size, timing, differences and alternative explanations. Apply significant probative value, notice and any prosecution s 101 restriction.

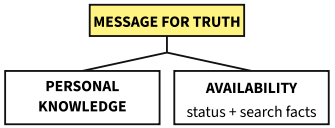
ANSWER *Rarity may strengthen either route, but neither "looks similar" nor "two incidents" proves the statutory threshold.*

6 marks carried through: two routes 4 · distinctive features 1 · notice and s 101 1.

20 · Judgement card · Missing eyewitness

HEARSAY EXC WEX · 5

Facts. An eyewitness sends a prompt voice message describing an event, then cannot be located.



The supplied exception router applied: promptness is one circumstance, not a substitute for route conditions.

1. Identify every asserted fact and the eyewitness as maker; s 59 truth use engages.
2. Prove s 62 personal knowledge by the maker's own perception. A recipient proves the words, not how the maker knew.
3. Establish statutory availability with evidence about the person and search steps; "not here" is insufficient.
4. Name the selected first-hand or other exception and map every condition—proceeding, party, timing, notice and cross-examination consequences.
5. Audit embedded statements and final scope separately.

ANSWER *Promptness may matter inside a selected provision; it does not itself make the message admissible.*

5 marks carried through: personal perception 3 · availability 1 · exception conditions 1.

21 · Judgement card · Blurred images

OPINION WEX · 5

Facts. An analyst says two blurred images show the same jacket but provides no method.

FIELD + METHOD + REASONING



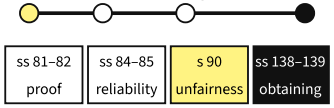
The supplied opinion bridge applied: experience alone does not disclose why observed features yield identity.

ASK	WHY IT BITES
What is opinion?	Quote the evaluative identity conclusion and fact it is offered to prove.
Which knowledge?	Name the specialised field acquired through training, study or experience.
Which basis?	Separate image observations, assumptions and any embedded representation.
Which reasoning?	Demand method and intermediate inferences showing the opinion is wholly or substantially based on the specialised knowledge under s 79.

22 · Drill 4 · Pressured interview

ADMISSIONS WEX · 6

Facts. After an omitted caution and prolonged pressure, an accused adopts an investigator's words.



The source admission cascade combined with chronology: one interview can trigger four distinct rulings.

1. **Admission:** identify the accused's own words or the precise conduct adopting the investigator's proposition; explain why adverse.
2. **Proof:** apply ss 81–82; remote retelling is not first-hand merely because the original words were adverse.
3. **Reliability:** place caution, duration, pressure, vulnerability, supplied words, breaks and recording on a timeline; apply ss 84–85 separately.
4. **Unfairness:** ask under s 90 whether using the admission against the accused is unfair.
5. **Impropriety:** apply ss 138–139 to omitted caution and obtaining conduct, including statutory balance; illegality is not automatic exclusion.

ANSWER *The words may qualify as an admission yet fail a later gate. Never let "confession" collapse proof, reliability, unfairness and impropriety.*

6 marks carried through: adoption/proof route 4 · reliability/unfairness 1 · ss 138–139 1.

23 · If you see X → do Y

ALL CHAPTERS

X IN FACTS	FIRST MOVE
Same statement, two uses	Write two tender-purpose rows; do not share conclusions.
Child/interpreter/device	Functional competence by question + support; then distinct compellability.
Document sent to lawyer	Freeze creation purpose; identify client holder and later conduct.
Changed testimony	Exact contradiction → stage/s 38 → put/prove → credibility vs truth.
Prior act or similar event	State tendency or coincidence inference before significant PV and s 101.
"Context" statement	Name the non-truth fact, relevance and misuse risk.
Expert conclusion	Split observations, assumptions, field, method, reasoning and conclusion.
Police interview defect	Chronology; then admission, reliability, unfairness and impropriety headings.

24 · Classic traps → repair

FAQ + STRATEGY

TRAP	REPAIR
Bad act = tendency	Define precise propensity inference, significant PV, notice and s 101.
Similar = coincidence	Explain why number/distinctiveness make chance improbable; test differences.
Late account = guilt	Expose silence inference; separate any proved express inconsistency.
Illegal = excluded	Apply ss 138–139 discretion and statutory balance; no automatic result.

COMPRESSION RULE *If time collapses: fact in issue → purpose → exact rule → decisive fact/counterfact → ruling. Classification and conclusion outrank undirected authority lists.*

25 · Fast-recall distinctions

GLOSSARY + FAQ

A	≠ B
Competence: can give this evidence	Compellability: must a competent witness give it?
Fact-in-issue relevance	Credibility-only use under s 102 route
Tendency: propensity inference	Coincidence: chance-improbability inference
Pre-trial silence · s 89	Trial silence · Jury Directions Act
Lay opinion: perceived shorthand	Expert opinion: specialised-knowledge reasoning
Reliability · ss 84–85	Unfairness · s 90; impropriety · ss 138–139
Possession of advice	Client's holding of privilege
Evidence damages case	Unfair prejudice: improper reasoning danger

26 · Exam-morning plan

COURSE STRATEGY



Final self-test loop: expose a route from facts, answer aloud, check exact threshold, repair the handover.

1. Reconstruct the master method and eleven topic opening questions without notes.
2. Run one dual-purpose statement, one Part 3.6 pattern, one expert report and one interview chronology.
3. Recite ss 135/136/137 as distinct controls; ss 102/103/106 as distinct credibility gates; ss 81–82/84–85/90/138–139 as an ordered admission cascade.
4. For every drill, say the operational result and scope. If a fact is missing, name it.
5. Check current Monash instructions for timing, location, identification and permitted materials.

Forward this to your tutorial group

V2 · 2026-10-25

Monash Semester 2 final assessment period, 2–18 November 2026 (check your personal exam timetable). **Check your exam instructions on the LMS for what you may bring; use this sheet to revise and self-test.**