



THE LAW SOCIETY OF SCOTLAND
INTRA UK TRANSFER TEST

PAPER II
SCOTS CRIMINAL LAW, WITH CIVIL AND CRIMINAL
EVIDENCE AND PROCEDURE

31 OCTOBER 2016

1330 – 1530

Candidates should answer **THREE** QUESTIONS;
Candidates **must** answer Question One from Section A,
one from Section B, and **one** from Section C.

No marks will be awarded for copying out the text of materials which candidates are permitted to take into the exam.

Answers to each SECTION should be written in a separate answer book

Section A : SCOTS CRIMINAL LAW

Candidates MUST answer this question.

Question 1

Patricia is determined to win the annual prize in her life-drawing class. Fergus is her main rival. On the night of the next class Patricia waits outside the building where it is to be held. When she sees Fergus coming she goes in the door and pours water on the shiny floor there. As she has hoped, Fergus comes through the door, slips on the water, and falls heavily bumping his head so hard that he is knocked unconscious. He is taken to hospital where his condition deteriorates and he is placed on a life support machine. His family takes the decision to turn this off and he dies.

When she arrives home from the class, Patricia takes her prescribed medication for anxiety. She feels so anxious, however, that, instead of taking the one tablet which constitutes her prescribed dose, she takes six. She feels increasingly strange and goes outside into the street where she starts shouting at passers-by. She shouts "I can kill. I'm going to kill all dogs. I hate dogs." As she shouts, she is standing at the entrance to a park where dogs are frequently exercised. People passing are disturbed by her behaviour. Some dog owners challenge her. Patricia has a feeling that she should probably not be behaving in this way but she feels so strange, after taking the tablets, that she is unable to stop.

The next day, feeling completely restored to her normal state, Patricia realises that she has no money. She decides to try to take money and other valuables out of the pockets of pedestrians as they walk past her and to use the proceeds to go on a shopping spree. She walks

behind Saul and, when she is close enough, she gently pushes her hand into his coat pocket. He notices immediately and Patricia is arrested. It transpires that Saul had nothing in that pocket.

Which crimes (if any) in Scots law may have been committed by Patricia and what defences (if any) may be available to her? Give full reasons for your answer, citing authority as appropriate.

END OF SECTION A

Section B : EVIDENCE

Candidates should answer EITHER question 2 OR question 3. All answers should be fully reasoned and supported by adequate citation of authority.

Question 2

Andy is on trial for supplying heroin. Comment on the admissibility of the following pieces of evidence:

- i. During the course of the police investigation, an undercover officer is sent to Andy's house to buy a gram of heroin. Andy sells it to him and the police officer pays with a marked note. This note is recovered in a later search of Andy's house.
- ii. Andy is taken to the police station, cautioned and informed that he has the right to access legal advice. Andy refuses the opportunity to seek legal advice and during the course of questioning he gives several incriminating responses.
- iii. Andy is charged with the relevant drug offences and detained in police custody. One of the prison guards overhears a conversation between Andy and the person in the adjacent cell, during which Andy reveals further incriminating information. The guard signals to one of his colleagues to join him and to listen to the rest of the conversation, during which Andy incriminates himself further.

Question 3

Write brief notes setting out the law on **TWO** of the following points, with full reference to authority:

- (a) Expert evidence as to the credibility of a witness.
- (b) Evidence of an accomplice.
- (c) The admissibility of 'mixed statements'.

END OF SECTION B

Section C : PROCEDURE

*Candidates should answer either question 4 **OR** question 5 **OR** question 6.*

Question 4

Your client is Wonder Golf Carts Limited ('WGCL'), a small manufacturer of sports equipment with a factory in Falkirk and a registered office in Edinburgh. WGCL have contacted you this morning to ask for advice about a contract they have that seems to be going bad.

The contract is to supply 60 golf carts to a golf course business with a registered office in Dundee and place of business in Forfar called Angus Golf Resorts ("AGR"). The carts have now all been delivered, but AGR has only paid for the first 20. This means that £40,000 has been paid, but £80,000 is outstanding. Under the contract interest is due on late payment.

WGCL is worried because AGR has started to advertise the golf carts for sale online direct to customers. AGR does not normally sell its golf cars and there are rumours that the company is having trouble with its bank and other suppliers who have not been paid in full or on time.

WGCL want your advice on how to recover the money owed to them:-

- (a) List all the courts in Scotland that would have jurisdiction for an action for payment against WGCL and explain the basis of their jurisdiction.
- (b) Pick the court that you would prefer to use and describe by reference to the appropriate rules of

procedure what steps you would need to take to commence proceedings against WGCL.

- (c) By reference to statute and caselaw advise WGCL on whether they can obtain diligence on the dependence of the action.

Question 5

With reference to appropriate authority answer the following six questions about procedural concepts.

- a) What is the difference between a proof and a proof before answer?
- b) What does it mean to plead that the other side's case is "irrelevant and lacking in specification"?
- c) It is often said that the use of the expression "believed and averred" should only be used with extreme care; why might that be?
- d) What is the weaker alternative rule and how does it restrict the way that a case may be pled?
- e) When might it be helpful to include a call in pleadings and why?
- f) What is a tender and when might it be helpful to use one in an action in respect of damages caused by personal injury?

Question 6

Your client is being prosecuted on complaint in the Sheriff Court for threatening and abusive behaviour contrary to Section 38(1) of the Criminal Justice and Licensing

(Scotland) Act 2010. What do you do in each of the following circumstances and when do you do it:

- a) When you first meet him in the cells before the complaint calls for the first time you client tells you he did not carry out the actions that are set out in the complaint, but that these things were said and done by his friend John Smith who was standing next to him when the police arrived.
- b) It is the day before the Intermediate Diet and the prosecutor has yet to disclose you any statements for witnesses.
- c) At the close of the prosecution case there is no evidence that your client has used threats or sworn at anybody.
- d) Your client eventually gives evidence, but at the end of the trial he is convicted. You wish to appeal the conviction.

END OF SECTION C

END OF PAPER