



THE LAW SOCIETY OF SCOTLAND
APTITUDE TEST FOR EU QUALIFIED LAWYERS

PAPER II
SCOTTISH LEGAL SYSTEM, INCLUDING EVIDENCE AND
CIVIL & CRIMINAL PROCEDURE

8 May 2017

1330 – 1630

Candidates should answer **FOUR** questions, **TWO** from
Section A and **TWO** from Section B.

All questions are marked out of 100 and are weighted equally

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

SECTION A : EVIDENCE

Candidates should answer TWO of the following questions. All answers should be fully reasoned and supported by adequate citation of authority.

Question 1

Bob is suspected by the police of involvement in a number of violent sexual assaults, all on prostitutes. In an attempt to obtain evidence to confirm their suspicions a female plain-clothes officer, Jan, is instructed to make contact with Bob and to befriend him, without revealing the fact that she is a police officer. Jan discovers that Bob is using an online dating site and manages to arrange a meeting with him through this site. She gains his trust and they start to meet on a regular basis. During one of their meetings, she says to him, still without revealing her true identity, "Look I know you were involved in those attacks. But don't worry – actually it's a bit of a turn on. Why don't you tell me all about it? Bob replies, "Yeah, it was me, strangulation is the only way to deal with women like those."

Jan has been carrying a concealed recording transmitter, which allows a colleague, Jack, to listen in to her conversations with Bob. However, at the time Bob made his statement, the quality of the recording was poor and Jack could only make out some of what was being said. Later, on playing back the machine at the police station it was found that the recording of the conversation between Jan and Bob remained indistinct.

Is Bob's statement admissible?

The statement is the only piece of evidence against Bob. Assuming that it is admissible, is there sufficient evidence to sustain a conviction against him?

Question 2

Write a critical account of the operation of presumptions in the law of evidence.

Question 3

Anne sees an assault on Brian taking place. Two police officers arrive on the scene and Anne makes a statement to them. One officer notes the statement in his notebook and the other hears it being made. Anne indicates to the police officers that Cameron, who has been detained by other police officers at the scene, is the perpetrator of the assault. Cameron is charged with assaulting Brian. He pleads Not Guilty and the case goes to trial. Brian gives evidence for the Crown and identifies Cameron in the dock as the assailant. Anne is the next Crown witness. She describes the assault clearly in her evidence, but claims that due to lapse of time between the incident and the trial she no longer has any clear recollection of the perpetrator and is unable to identify anyone in court. However, under questioning by the prosecutor, she agrees that she made a statement to the police at the time of the incident and that what she said in it would have been true.

- (a) What action might now be taken in the trial by the prosecution in an attempt sufficiently to corroborate Brian's evidence to enable a conviction to be secured?
- (b) Cameron intimates a special defence of self-defence. When the complainant, Brian, gives evidence for the Crown he is vigorously cross-examined by the defence. It is put to him that it was he who attacked Cameron and the latter simply responded. It is further suggested to Brian that he was well-known to be a violent and hot-headed person who was always in trouble. Both Brian and Cameron have numerous previous convictions for crimes of violence and

crimes of dishonesty. Discuss the circumstances in which the Crown would be entitled to make reference to Cameron's criminal record.

END OF SECTION A

SECTION B: CIVIL AND CRIMINAL PROCEDURE

Candidates should answer TWO questions from this section.

Question 4

- a) Discuss when and how a document should and should not be incorporated into written pleadings.
- b) Discuss the appropriateness of and issues arising from the use of purely skeletal denials in defences in an ordinary action.
- c) Is it correct to say that one ought never to make averments of law in written pleadings?
- d) Under what circumstances is it appropriate to use the phrase “believed and averred that...” in written pleadings?
- e) Describe the procedure by which documentary and other real evidence may be recovered once an Ordinary Action has been commenced in the Sheriff Court.

Question 5

You act for Astra Optical Limited (“AOL”), a manufacturer and retailer of telescopes and astronomy equipment. It has its headquarters and factory in Dumfries; shops in Glasgow and Dumfries; and its registered office in Edinburgh. AOL entered into a contract with Hebridean Academe Limited (“HAL”), a joint venture company owned partly by University of the Western Isles; and partly by Procure Uist Limited (“PUL”). HAL has its registered office in Lochmaddy, next door to the local Sheriff Court. The contract was for the sale and supply by AOL of 20 high end catadioptric telescopes with supporting software

packages for use at the University's Benbecula campus. The purchase price under the contract was £160,000, payable in four equal instalments on October 2016, December 2016, January 2017 and April 2017. The equipment was delivered in October 2016. Payment of the first instalment was made on time. No further payments have been made. Under the contract interest is due on late payment at the rate of 10% per month. AOL wishes to obtain payment of the full sums outstanding. However, they are concerned that no explanation has been given for the non-payment of the balance of the purchase price. HAL is now late in lodging its statutory accounts with Companies House which are now 6 months overdue. There are rumours that PUL is in dispute with the University over the operation of the HAL and that HAL has not been paying its suppliers on time. AOL 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 HAL and explain the basis of their jurisdiction.
- b) Pick the court that you would prefer to use; explain why; and describe by reference to the appropriate rules of procedure what steps you would need to take to commence proceedings against HAL.
- c) By reference to statute and case law, advise AOL on the prospects of obtaining warrant for diligence on the dependence of the action.

Question 6

- a) Your client is indicted on charges of sexual assault on a young child within the meaning of section 20 of the Sexual Offences (Scotland) Act 2009, allegedly committed some years ago against a child aged 12 at the time of the events

complained of. The trial is before a sheriff and jury. During the second day of the trial, the following events occur; What would you do in relation to each of these matters? What procedure should be followed?

- i. The Crown seeks to lead evidence of a statement made by the accused in which he apparently confesses to the offences. The statement was obtained after nearly six hours of questioning. The accused is elderly and has a heart condition. He maintains that the police withheld essential medication for that condition during questioning. He sought and obtained advice from a solicitor prior to the interview, but declined to have a solicitor present during the interview.
- ii. One of the jurors tells the bar officer that he lived in the same area as the accused for a number of years, and during that time he heard that the accused had a certain reputation in relation to young girls.
- iii. One of the Crown witnesses unexpectedly reveals during her evidence that your client has a previous conviction for a serious sexual offence. This information is volunteered spontaneously, and not in answer to a specific question from the Fiscal Depute conducting the trial.

b) 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:

- i. it is the day before the Intermediate Diet and the prosecutor has yet to disclose you any statements for witnesses.

- ii. at the close of the prosecution case there is no evidence that your client has used threats or sworn at anybody.

END OF SECTION B

END OF QUESTION PAPER