



## THE LAW SOCIETY OF SCOTLAND

### APTITUDE TEST FOR EU QUALIFIED LAWYERS

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

9 November 2015

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

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

### **Question 1**

Provide an account of the operation of the *Moorov* doctrine.

### **Question 2**

Following various incidents in the town centre Ned is charged with breach of the peace. When the police arrived at the scene, Betty said that she had seen what had happened. She pointed to Ned and said that he has been involved. Ned is then arrested and is taken to the police station.

The police interview Libby, who was also at the scene. She tells them that she saw something but wasn't sure if she could recognise the culprit if she saw him again. At an identification parade Libby tells the police that Ned looks quite a lot like the man she saw.

At a later identification parade, another witness Nellie picks out Ned as the culprit and tells the police that he was definitely the man involved. Prior to the trial Nellie has disappeared and despite police efforts to find her she cannot be traced.

At the trial Betty fails to identify Ned and in her evidence she says that she had not pointed out anyone to the police at the scene. Libby gives evidence that although she remembered taking part at an identification parade she cannot recall what she did or said there.

The procurator fiscal is considering leading evidence from the various police officers involved with the investigation. Will this evidence be likely to help prove Ned's guilt?

### **Question 3**

Under what circumstances may the Crown lead evidence regarding the character of an accused and for what purpose or purposes?

### **Question 4**

How do the Scottish courts deal with evidence which has been illegally or improperly obtained?

**END OF SECTION A**

## **SECTION B: CIVIL AND CRIMINAL PROCEDURE**

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***Candidates should answer TWO questions from this section.***

### **Question 5**

You act for defender in an Ordinary Action in the Sheriff Court. You have received the Initial Writ and have taken initial instructions.

- a) Your client instructs you that the action is to be defended. What steps must you take to prevent decree in absence and what time limits apply to that process?
  
- b) Having completed the necessary steps to ensure that the action can be defended you take full instructions from your client. On considering the terms of the Initial Writ you decide that the case advanced by the pursuer is irrelevant.
  - (i) What does it mean to say that the pursuer's case is irrelevant?
  
  - (ii) What must you include in your defences to ensure that you can advance this argument?
  
  - (iii) Once you have lodged your defences and the pursuer has adjusted what other procedural steps must you take and when must you take them to ensure that you can advance this argument?
  
  - (iv) When the time comes for the Sheriff to consider the merits of this argument what test must he or she apply?

- (v) If you succeed in persuading the Sheriff that the pursuer's case is irrelevant what sort of decree will be granted in your favour?

### Question 6

Describe in terms understandable to a non-legally trained client each of the following concepts or elements of civil procedure.

- a) A Crave
- b) An Inhibition
- c) Issues
- d) A Prayer
- e) Res Judicata
- f) Proof before Answer
- g) A Caveat
- h) An *esto* case
- i) Specification

### Question 7

Your client is being prosecuted on complaint in the Sheriff Court for a sexual assault contrary to Section 3 of the Sexual Offences (Scotland) Act 2009. In each of the following circumstances what right of appeal to a higher court does he have and briefly what steps do you need to take to appeal?

- a) Your client is granted bail with a special condition that you consider to be unnecessary to ensure compliance with any of the standard conditions of bail.
- b) You raise a plea to the competency of the complaint prior to tendering a plea of not guilty. A debate is held and the Sheriff repels your preliminary plea.
- c) At the third trial diet fourteen months after the date your client first appeared in court on the complaint the

complainer fails to attend for a second time and has not been cited. The fiscal in court moves to adjourn. You oppose that motion and the Sheriff adjourns the trial to a fourth trial diet in four months' time.

- d) Your client is convicted. During the trial you had made a no case to answer submission in terms of Section 160 on the grounds that there was insufficient corroboration of the evidence of the complainer. The Sheriff repels your submission. Your client gives evidence and is convicted. You decide that the Sheriff was wrong to repel your no case to answer submission.
- e) The Sheriff sentences your client to six months imprisonment. You consider this to be excessive.

**END OF SECTION B**

**END OF QUESTION PAPER**