



THE LAW SOCIETY OF SCOTLAND
APTITUDE TEST FOR EU QUALIFIED LAWYERS

PAPER IV
PROFESSIONAL CONDUCT AND THE ACCOUNTS
RULES

10 November 2015

1330 – 1530+15 minutes (reading time)

The paper is divided into two sections. Section A relates to Professional Conduct and Section B to Financial Services and the Accounts Rules. You are required to answer **TWO questions from Section A and ONE from Section B.**

All questions are marked out of 100 and are weighted equally

(Where a question is in more than one section you are expected to answer ALL sections of the question. You are expected to cite authority for your answers.)

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

Section A : PROFESSIONAL CONDUCT

Candidates should answer ONLY TWO questions from this section. Where a question is in more than one part you are expected to answer all parts of the question. You are expected to cite authority for your answers.

Question 1

Jim is a streetwise court work associate in a medium sized central belt firm of solicitors who is eager to make his mark in the profession. The partners in the firm are impressed by his energy and drive and allow him to run a branch office of the firm with relatively little supervision. He brings in many personal injury clients through leaving beermats in local pubs with his photo and contact details on it, accompanied with the words “Been hurt? Call Jim – the best personal injury lawyer in town” (Jim only has five years’ experience as a personal injury lawyer, but he is the only personal injury lawyer in that particular town). Jim rents billboards in nearby bus stops and puts up notices with the same photo and strapline. He also has a friend with a hot air balloon and he persuades him to place his photo and strapline on the balloon. Next Jim persuades the A & E department of the local hospital to put up a notice with the same strapline, prominently on its walls.

Jim is an avid user of LinkedIn and other forms of social media. He embarks on an aggressive campaign of “friending” every Facebook account he can find and of requesting as many persons as he can locate on LinkedIn to join his network. Jim also blogs regularly through the Scottish Legal News to demonstrate his knowledge of new developments in personal injury law. All of these activities have paid off in terms of increased business for Jim and his firm. The partners in the firm are even more impressed by this but very grateful that they have ensured that he is never the nominated solicitor in any legal aid cases in which he acts. Similarly they have clauses in Jim’s contract of employment preventing him from leaving for another firm of solicitors within 20 miles of the branch office and acting for any client of their firm within ten years of him leaving the firm.

Jim comes to consult you for advice in law and professional ethics in relation to his conduct whilst working in the branch office and in relation to his proposal to set up a new firm doing personal injury

work a mile away from the branch office. Jim wants to know if he may contact “his” clients directly inviting them to consider instructing him in the new firm, or even if he may take the files of “his” clients with him if he leaves.

Question 2

- a) Amy is a stressed out generalist sole practitioner. Recession has hit her hard and the loss of her staple income from domestic conveyancing has made her particularly reliant on executry work. In a case earlier this year she was the sole executor and solicitor to the estate. The testator’s widow informed Amy in no uncertain terms that the testator did not get on with his only child (a daughter) and that the child is not to be told by Amy as to her legal rights. Amy felt that this was unethical but salved her conscience by ingathering the estate and then resigning as executor in favour of the widow. Amy also resigned as solicitor to the estate and gave the widow clear instructions that she is to inform the child as to her legal rights, although Amy strongly suspects that the widow will ignore this advice.

The fees from the estate are not sufficient to prevent Amy from becoming sequestrated but she continues to handle the work of her existing clients whose work is not in the reserved areas for the legal profession.

Advise Amy.

- b) Robert is a middle aged solicitor with a chamber practice. This does not mean that he is not involved in contentious matters from time to time. In one fraught commercial lease transaction he receives an email with an attachment from the other side’s solicitor. On reading the email it is clear that the opposing solicitor has pressed the “reply all” command by mistake and that the email and its contents were not for him. Nevertheless, Robert mindful of his duties to his client opens the attachment which contains confidential and privileged information about the transaction and promptly passes this information to his client. The other side, when they discover their mistake, complain to the Scottish Legal

Complaints Commission (SLCC) relying on the clause at the end of their email that states that its contents are confidential and that if it goes astray, they will hold any unauthorised recipient liable.

Robert has a power of attorney for Alice, a female adult with incapacity. Over time Robert sees a lot of Alice and they embark on a consensual affair. Alice's relatives are unhappy with the situation and complain to the SLCC.

What is Roberts's position in terms of professional ethics?

Question 3

Fred is an experienced solicitor advocate specialising in criminal work – his partners are delighted by his success rate in significant criminal cases and have no compunction in instructing him to represent their criminal clients in the High Court. Conscious of critical comments from the High Court in recent years, they always provide their clients with the option of instructing senior counsel where the legal aid regulations permit it – but Fred still gets the lion's share of their client work. In keeping with the overwhelming majority of solicitor advocates in Scotland, Fred is not a QC, but this does not prevent him from taking instructions from one of his partners to act in an arson case, even though he has never done such a case before. Fred is careful to ensure that his partner, when suggesting to the client accused of arson that he instructs Fred, obtains the client's informed consent to Fred acting even though there are advocates with considerably more experience in arson cases available for instruction.

In another case Fred is asked by one of his partners to represent Mavis - a new middle class client - who when arrested for alleged shoplifting replied to the police that her name was Jane (Jane is her middle name) and gave them the address of her weekend cottage rather than her week day address. Mavis tells Fred that she has never been in trouble with the law before and Fred agrees to act, taking care to refer to her in court as Jane and to use her weekend cottage address. Mavis is leniently dealt with by the sheriff because she appears as a first offender, but afterwards Mavis informs you that she does indeed have previous convictions

for shoplifting in another part of Scotland, under the name of Mavis.

Advise Fred as to his position.

END OF SECTION A

Section B: The Accounts Rules

Candidates should answer ONLY ONE question from this section but both parts of the question should be answered.

Question 1

- a) You are your firm's MLRO. In advance of the 4th Money Laundering Directive coming out you are to draft an explanatory guidance document advising and instructing solicitors in your firm setting out their responsibilities in respect of AML due diligence. Your guidance document should cover their responsibilities in relation to-
- (i) client verification and undertaking work pending verification
 - (ii) understanding the nature of the business
 - (iii) source of wealth
 - (iv) source of funds and
 - (v) making suspicious activity requests.

AND

- b) With reference to the Accounts Rules please answer the following question-
- (i) A cheque for £10,000 payable to a beneficiary in an executry estate is discovered in a drawer belonging to an employee who left 2 months ago. The cheque is now 6 months old. You investigate and discover that all other beneficiaries received their share of the estate 6 months ago. What are the implications under the Accounts Rules?
 - (ii) What books of Account must a legal firm maintain, what bank accounts must it set up and outline the Accounts Rules which deal with these matters?

Question 2

- a) With reference to the Accounts Rules –
- (i) How should you deal with and what are your responsibilities in relation to credit balances in your firm's Client Ledger?
 - (ii) Discuss the main provisions within the Accounts Rules which seek to protect client money.

AND

- b) A client who owns and runs a newspaper and tobacconist shop near your office instructs you to buy a flat for him. He intends that title will be taken in his wife's name. He explains that he will not need a mortgage and intends to pay in cash.
- (i) What are your responsibilities in relation to verification and how will you discharge these?
 - (ii) What are your responsibilities in relation to establishing source of wealth and how will you discharge these?
 - (iii) What are your responsibilities in relation to establishing source of funds and how will you discharge these?

END OF SECTION B

END OF QUESTION PAPER