



THE LAW SOCIETY OF SCOTLAND

APTITUDE TEST FOR EU QUALIFIED LAWYERS

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

11 May 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

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

Question 1

Should the common law relating to hearsay in criminal proceedings be abolished and replaced with a statutory scheme? Give a fully reasoned answer, with reference to appropriate authorities.

Question 2

What evidential issues arise from the following scenario?

Jill and Dave were colleagues. One evening after work they went to a bar and consumed quite a number of drinks. During the evening, Jill went to use the ladies' bathroom, and Dave was seen following her in there. Later, the bar manager Ian found Jill and Dave in the bathroom – Dave was asleep in a cubicle, while Jill was in another corner, crying and shaking. Jill said to Ian, "he raped me", pointing to Dave.

The police were called by the bar staff, and Jill and Ian recounted to the police what had happened. Dave was woken up, and Jill's allegations were put to him.

At a trial for rape, Ian stated that he could not identify whether Dave was the man in the bathroom, but claimed he would have told the police the truth at the time. The Crown wish to lead evidence from the police officer to whom Ian had made his statement.

Dave seeks to lead evidence relating to Jill's history of meeting men online, which she had told him about previously.

Question 3

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

- a) the prohibition on expert witnesses giving evidence on questions of ordinary human nature and behaviour;
- b) the admissibility of precognitions in evidence;
- c) the *Howden* doctrine.

END OF SECTION A

SECTION B: CIVIL AND CRIMINAL PROCEDURE

Candidates should answer TWO questions from this section.

Question 4

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

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

Question 5

You act for Amalgamated Widgets Corporation (AWC) a medium sized manufacturer based in Falkirk. AWC have 150 staff and a long heritage in widget manufacture and their key product is the Mark 23 Widget; an essential component in much modern factory machinery. Your contact at AWC contacts you today with an Initial Writ that had been raised against AWC in Dunfermline Sheriff Court under Chapter 36 of the Ordinary Cause Rules.

You read the Initial Writ and the pursuer has craved for £50,000 in damages plus interest and expenses. It appears she is a 54-year-old former employee who claims that on 5 May 2012 she slipped on hydraulic oil whilst working in the factory. She lives

in Dunfermline. She avers that the oil that had spilled from one of the machines on the production line. She furthermore avers that she has suffered damage to her back and first became aware of the injury on 1 June 2012. Your contact says there is no record of the accident in the accident book at AWC, that the pursuer left the company around two years ago and that the action should be defended.

- a) What steps must be made to defend the action and when must they be taken?
- b) From the information you have what particular criticism can be made of the relevancy of the pleadings?
- c) Which procedural steps must be made by you to advance such a plea to the relevancy?
- d) When would the Sheriff be called upon to decide what procedure should be adopted for this case and what must document must you lodge in advance of the hearing at which that will be decided?

Question 6

Your client is being prosecuted on complaint for driving dangerously through Edinburgh at 2 o'clock in the morning in his girlfriend's car for which he was not insured. He has pled not guilty and has been granted bail. The Intermediate Diet is on Thursday and the Trial Diet is set down for 26 May 2015. This is not a legal aid case.

Your client has explained that he was just a passenger and that his cousin Vinny was driving the car and that Vinny has comprehensive car insurance to drive any car.

He further explains that he and his cousin left Edinburgh at 10am that morning and drove to Aberdeen to see a man called

WS. He says WS will be able to confirm that when they left Aberdeen at 11pm Vinny was driving.

The disclosed prosecution case your client comprises:-

- A CCTV disc that shows CCTV of the driving of the car being driven at night through the streets of Edinburgh.
- Two police officers (AB and CD) who will speak to following the car through Edinburgh without seeing the driver clearly, losing track of it and eventually finding it abandoned with Vinny asleep in the passenger seat.
- Two police officers (EF and GH) who will speak to finding the accused, with the car keys in his hand, in a street around 200 metres from the car.
- Constable AB also speaks to how the accused's girlfriend was required under Section 172 of the Road Traffic Act 1988 to identify the driver of her car at the time of the incident and that she said that she gave the keys to the accused at 10am that morning and had not seen him since.

Putting aside issues of sufficiency:-

- a) Your client appears to be incriminating Vinny. What procedural steps do you have to take to make it possible to advance this defence?
- b) What witnesses should the defence cite to give evidence?
- c) Yesterday your client was served with a Certificate under Section 283 of the Criminal Procedure (Scotland) Act 1995 in respect of the CCTV disc. What is the effect of the Section 283 Certificate?

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d) Cousin Vinny is on holiday in Portugal. He has told you over the phone that he is due to return to Scotland on 28 May 2015. What effect will this have on the defence and what motion will you make at the Intermediate Diet?

END OF SECTION B

END OF QUESTION PAPER