



THE LAW SOCIETY OF SCOTLAND
APTITUDE TEST FOR EU QUALIFIED LAWYERS

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

5 November 2018

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

Frank is charged with the theft by housebreaking of jewellery from various locations in Edinburgh. Answer each of the following questions relating to issues which arise during the course of the trial.

- (a) The Crown seek to lead evidence from two police officers that they found the jewellery in a desk drawer while executing a search warrant permitting them to search Frank's flat to locate a number of televisions alleged to have been stolen from a nearby electrical store. The defence object to admissibility of this evidence. Should the objection succeed?
- (b) The Crown seek to lead evidence from Frank's wife Jane. Jane does not wish to give evidence. Can she be compelled to do so?
- (c) The Crown seek to lead evidence from Hettie, one of the alleged victims of Frank's theft, to the effect that she saw Frank running away from her house after the break-in. She cannot identify Frank in court but says that she attended an identification parade where she picked the thief out. Can evidence of this identification parade be led?
- (d) The Crown lead evidence from Frank's lodger Iain who unexpectedly confesses that he also committed a separate theft (not on the complaint which is the subject of this trial) along with Frank. Can the Crown bring a prosecution against Iain at a later date in respect of this theft?
- (e) The defence incriminate Dot, Frank's daughter and allege that she committed the thefts. She is called as a witness and is warned as to the privilege against self-incrimination. Nonetheless, she answers a single question from Frank's solicitor and states that she committed the thefts and hid the jewellery in the desk drawer. The procurator fiscal then cross-examines her asking for details of how the thefts were carried out. She objects to answering, claiming that this would incriminate her further. Can she be required to answer?

Question 2

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

- (a) Special knowledge confessions
- (b) The *Howden* doctrine.
- (c) Privilege of communications made in aid of negotiation.

Question 3

What are the strengths and weaknesses of the law relating to expert evidence?

END OF SECTION A

SECTION B: CIVIL AND CRIMINAL PROCEDURE

Candidates should answer TWO questions from this section.

Question 4

You act for the pursuer in a personal injuries claim against her former employer. The pursuer was injured in an accident at work 2 years ago. She had to give her a well paid job as a manager as a result. Since the accident, the pursuer has only been able to work intermittently in a series of low paid, part time jobs.

You raised a personal injuries action in Glasgow Sheriff Court. A Proof has been fixed for 26-28 January 2019.

- (a) How and when will you discover which witnesses the defender intends to lead at the proof?
- (b) What procedural step(s) should you take to secure the attendance of the pursuer's witnesses at court, and when should you do this?
- (c) One of your important medical witnesses has told you that he is going to be overseas for the duration of the proof. His evidence is crucial and the issues arising from it are disputed.
 - i. What can you do to ensure that the evidence is included in the pursuer's proof?
 - ii. Outline the procedure which would be followed
- (d) Since the accident, the pursuer has had 3 part time jobs, each with a different employer. How would you go about recovering information about the pursuer's earnings with these employers?
- (e) In the Defences, the defender has not admitted that the pursuer had any of those jobs, nor how much she earned. Are there any ways in which you can try to avoid the need to call witnesses from these former employers to give what may turn out to be uncontentious evidence? If so, what are they?

Question 5

- a) Can a decree in an Ordinary Cause action where a Notice of Intention to Defend has been lodged be repined?
- b) What procedure is available to prevent a defender in a Sheriff Court action from divesting himself of heritable property during the course of legal proceedings?

- c) What is the purpose of the Options Hearing in an Ordinary Cause action? Outline the order that the Sheriff may pronounce, all of which would result in the Record closing?
- d) If a party fails to comply with a requirement of the rules and so is in default, what order(s) may the Sheriff pronounce?
- e) If a solicitor withdraws from acting, what must he do? With reference to the Ordinary Cause Rules, describe the procedure to be followed.
- f) What happens when a cause is sisted? Provide 3 examples of circumstances in which a party might ask for a sist.
- g) Four weeks before a proof, the defender lodges a tender for £10,000. The pursuer proceeds to proof and is awarded £9,000. What motion will the defender's solicitor make in respect of the expenses of the proof?

Question 6

You are consulted by John, Paul and George.

All answers should, where relevant, make reference to appropriate statutory authority.

- a) John has a First Diet calling in the Sheriff Court tomorrow. He has failed to answer correspondence. He advises he was hospitalized for months after a road accident and only left hospital yesterday.

He is charged with assault to severe injury. He states that on the night in question, he and his twin had their 18th birthday party at home. He stayed home with his girlfriend, while his brother went on to a night club where he assaulted the victim. John has brought you a letter from his brother admitting his guilt. John's best friend and John's cousin also saw the assault. John understands that his best friend gave a statement to the third police officer named on the witness list attached to the indictment. Tragically John's best friend died in the road accident where John was injured.

- i. In every solemn case, where a First Diet has been fixed, what documents must be lodged by the Defence and in what time frame?
- ii. In this case what further steps must be taken at the First Diet to fully protect John's position?

- b) Paul has a summary complaint with a Pleading Diet next Tuesday in which he intends to represent himself. He “just wants some advice”.

He is charged that three months ago, being the owner of a motor vehicle, he has caused or permitted his friend to drive that motor vehicle without insurance. He advises you that he had sold the car to his friend the week before the offence libelled.

He is also charged with a sexual offence relative to his former girlfriend which allegedly occurred on the same night.

In relation to the sexual offence, he is unconcerned. He believes that when he questions her at court she will readily admit that all sexual activity took place with her consent and she was just embarrassed when her parents walked in on them. Anyway, he wants to question her about some sexual allegation she made against another man two years ago. He does not know the ‘ins and outs’ of that incident.

Advise Paul.

- c) George has a summary complaint with a Pleading Diet in the Justice of the Peace Court. He was served with a summons today (5 November 2018). You can see from the summons it was warranted yesterday by the Clerk of court. The Pleading Diet is 30 December 2018. George explains it is a charge of parking his vehicle on the zig zags on a pelican crossing on 3 January 2018. He advises he had no cigarettes and had parked for 5 minutes at most to run into the local shop. He does not deny any part of the charge.

Advise George how to plead and why.

END OF SECTION B

END OF QUESTION PAPER