



**THE LAW SOCIETY OF SCOTLAND
APTITUDE TEST FOR EU QUALIFIED LAWYERS**

**PAPER IV
PROFESSIONAL CONDUCT AND THE ACCOUNTS
RULES**

6 November 2018

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

Brian is sole practitioner in a Perthshire town with a generalist practice which brought him reasonable returns before the financial down turn in 2008. He has always been willing to take on a few legal aid cases a year – seeing it as his part of his professional duty. However, he has never quite got the hang of the on line application system – so an inspection of his legal aid files would reveal that he rarely sends out letters of engagement (since the Legal Aid Board does not pay for them), prefers to ask clients to pay for expert reports rather than applying for additional legal aid, and always asks his clients to sign blank declarations concerning their disclosure of their assets and income.

Brian regards executries as an opportunity to make significant profits to make up for what he loses on legal aid cases. Despite the pressure from the Competition and Markets Authority for transparency of pricing he never provides a quotation or an estimate in such cases referring instead to his hourly rate even if the work is actually delegated to a very experienced para-legal in wills and executry work. Brian has clashed with Alice the sole beneficiary in an executry in which he is the executor and solicitor for the estate. Alice wants to know why he is taking so long to wind up the estate, but Brian is reluctant to communicate with her on a regular basis (he says she is not his client). Brian is aware that Alice might complain to the SLCC but since she has not received a letter of engagement from him, is hoping that Alice will never hear about the SLCC's existence.

Brian has recently been approached by Ernst a German businessman whose father had moved to Perthshire many years ago and has recently died. Ernst asks Brian to handle the estate treating the father as intestate. After several communications with the businessman Brian elicits from Ernst that the father has probably left a will in Germany in which the principal beneficiaries are environmental charities. Not surprisingly Ernst is not particularly keen to encourage Brian to make checks in Germany to clarify if such a will exists – since he stands to gain more if the father was intestate. Even Brian is taken aback when subsequently Ernst implies that he has asked his relatives in Germany to dispose of the will if it emerges.

Because he wishes to be of assistance to his rural clients Brian has no concerns about acting for the buyer and seller when properties come up on the market in his town. He does this whether or not the buyer and seller are existing clients of the firm, and whether or not the seller is a developer.

Advise Brian as to his situation from the perspective of professional ethics.

Question 2

Doris is a middle-aged housewife who bursts into your office one day without an appointment. Her breath smells strongly of gin and her clothes are dishevelled. She claims that she is being followed by a man who she suspects is a store detective from an upmarket establishment in Glasgow where she has just been shopping. She thinks his interest is in a necklace which she has absent-mindedly placed in her shopping bag and failed to pay for. She suggests that you should place it in the firm safe and forget about it. You decline and in the course of advising her as to her legal position you indicate firmly that she should return the necklace and take the chance that they will not believe her protest of innocence. Doris, outraged at this advice storms out shouting, "All this fuss over a bling necklace. I'll make sure I take more next time". Minutes later a man, who is in fact a plain clothes policeman, enters the office. He explains that following a series of thefts at the shop he has been assigned to keep an eye on the clientele. He claims to have seen a lady answering Doris's description stealing a necklace. He lost her in the street but shortly thereafter saw her dash out of your office and leap into a taxi.

- (1) The policeman asks you whether you were consulted by the lady, whether she appeared distressed and what the lady's name and address are. How should you reply?
- (2) After the policeman has left you notice that Doris has dropped the necklace beside her chair. What should you do with it?
- (3) Doris sensing that you may be called as a witness against her, complains to the Scottish Legal Complaints Commission as to the quality of the advice which you gave her. Doris is subsequently arrested, and you are cited by the Crown as a witness. What can you say in defence of the complaint and what may you say in court as to the contents of the interview (including her outburst), Doris's sobriety and appearance?

Question 3

Ryan is a young partner working mainly on personal injury cases, in an up and coming firm in Dundee. He is impatient to make his first million and not averse to sidestepping any unnecessary and timewasting regulations which might come in the way. He uses social media to advertise his expertise in areas of practice which he has little acquaintance with, claims (falsely) to have the largest personal injury practice in Dundee, puts his name and areas of practice on beer mats in local pubs and on flyers distributed in the Accident and Emergency unit of the local hospital, and hires drones to fly over public golf courses offering to act for anyone injured by stray golf balls.

Ryan meets Callum an unqualified entrepreneur at a party who has many connections with claims management companies in England. Callum offers to work in Ryan's department on an unsalaried basis but taking a 10% commission on every PPI case he brings to the firm. Ryan has no expertise in the PPI field but is sure that Callum has and that will require the minimum of supervision while he handles the cases. After a year Callum appears to have brought in many PPI cases, to have paid generous referral fees to the claim's companies without the knowledge of the clients, to have handled some cases which seem on their face to be potentially fraudulent whose origins Callum has turned a blind eye to. Needless to say, Ryan has been too busy to take much interest in Callum's actions.

In part Ryan has been distracted by a hi profile oil and gas related litigation which is currently in the Outer House but seems destined for the UK Supreme Court. Ryan, hoping to make his name by a spectacular success in the case has meticulously prepared every witness (holding mock cross examinations with them), and discarding any that do not support his case including a medical expert whose prognosis for his client is more optimistic than that of the expert he subsequently uses.

Fiona, Ryan's longsuffering trainee, has watched some of these developments with growing concern. She remembers some of her lectures in the Diploma on Professional Ethics but cannot recall if she is under any obligation to tell anyone about Ryan or Callum's actions.

Advise Ryan and Fiona as to their position in terms of professional ethics.

END OF SECTION A

Section B: The Accounts Rules

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

Question 4

You receive a phone call from John Smith. He tells you he has taken over “ABC Metalworking”, the family business, from his father. He would like to come to see you to discuss some property transactions.

After the phone call you check on the computer and you discover that “ABC Metalworking” more correctly describes a company called ABC Metalworking (Edinburgh) Limited. You note from the website of Companies House that John Smith has recently become a 75% shareholder. Also, you note that he took over from his father as the sole Director last year. You see from your firm’s records that a copy of the father’s passport is held by your firm and it is still in date and valid. However, you have no identification documents in respect of John Smith. Further you note that your firm was last instructed by ABC Metalworking (Edinburgh) Limited four years ago.

- a) In order to act what anti-money laundering documentation do you need to see?

You attend a meeting with Mr Smith. Mr Smith explains that ABC Metalworking owns units forming part of an industrial site. The units are being offered for sale and he would like you to act for the company in the sale. You agree to act. He presents the anti-money laundering documentation which you decided you required to see.

After the meeting and in preparation for the sale you check Registers of Scotland and you note that the units are in fact owned by ABC Metalworking (Glasgow) Limited. You check your firm’s records and you find no reference to your firm ever having acted for ABC Metalworking (Glasgow) Limited. You note from Companies House that Mr Smith is a director.

- b) Do you currently have enough documentation following your meeting with Mr Smith to act and if not, what documentation do you need to see?

Three months later the sale of the units on behalf of ABC Metalworking (Glasgow) Limited is proceeding. Mr Smith consults with you again, this time on behalf of ABC Metalworking (Edinburgh) Limited. He states that his company would like to buy commercial premises in Edinburgh and instructs your firm to act. The price is £1.5million.

c) What information do you consider you should ask about funding?

Mr Smith advises you that part of the funding will come from ABC Metalworking (Glasgow) Limited and he instructs you, once the sale price is received by your firm, to transfer the entire sale proceeds over to the ledger in the name of ABC Metalworking (Edinburgh) Limited to fund the purchase.

d) What do the Accounts Rules say about this situation?

The day before the sale completes, Mr Smith changes his mind and asks you to direct the sale proceeds to a new company which he has just formed called ABC Metalworking (Inverness) Limited.

e) What issues do you consider arise from this instruction? Set out your thoughts on how you would approach this situation.

At the same time as instructing you to send the sale proceeds to ABC Metalworking (Inverness) Limited you receive notification from your finance department that part of the purchase sums required by ABC Metalworking (Edinburgh) Limited have come in to your account from a source noted as "ABC Metalworking (Group) Limited".

f) What issues do you consider arise? Set out your thoughts on how you would approach this situation.

g) Can you accept those funds?

h) If not, why not?

i) If so, what steps do you consider that you are under a duty to take in respect of those funds?

OR;

Question 5

a) You work for a law firm. In terms of the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (the Regulations) when should you apply enhanced customer due diligence?

b) List 2 steps which the Regulations state must be taken in applying enhanced due diligence.

- c) What can be drawn from a client account under the Accounts Rules?
- d) what two things must each firm do monthly in respect of its client account?
- e) In terms of the Accounts Rules what is the role of “Cashroom Manager”?
- f) What do the Accounts Rules say about Accounts Certificates?

END OF SECTION B

END OF QUESTION PAPER