



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

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

8 May 2019

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

Norman is a successful solicitor advocate who has been advising a Scots University for several years. This year he is approached by the University CEO who explains that the University has a professor, Robin, who has been privately accused of sexual assault by a student, Jade. Jade claims to have been a victim of the “sex for grades” form of university assessment and has now come forward thanks to the Me Too campaign seeking compensation for her ordeal. The CEO indicates that whilst Robin vehemently denies the allegation the view of the University is that they would prefer to reach a financial settlement with Jade. In return for dropping her claim and for her silence the University agrees to pay her £50,000 provided she signs a Non Disclosure Agreement (NDA) which binds her to silence about the incident, namely a prohibition on disclosing to anyone any of the relevant facts unless she is required by legal process to disclose the name of her assailant and the details of the assault. The NDA will also require her to limit the scope of any disclosure she is required to make, to as little as possible. In short the NDA prevents her from volunteering her story to the police unless they find a way to make her a compellable witness. Norman drafts the Non-Disclosure Agreement which Jade duly signs.

Norman is feeling uncomfortable about the NDA and when the CEO indicates that there may be other similar cases coming forward, Norman tells the CEO that he will only act for the University in such cases if the University agrees to a clause in the letter of engagement which stipulates that what the CEO has told him in the Jade case and any similar case will not be covered by client confidentiality.

Norman has also been advising a multinational company about the remuneration package they wish to pay their CEO. To show his gratitude the CEO offers Norman free membership of an expensive country club for five years, although this would not appear in the multinational’s Accounts. Unfortunately, on his way back from the club late one night, Norman crashes his Tesla car into a tree. Fearing that he might be charged with driving while intoxicated Norman persuades his passenger, a divorce client with whom he is having an affair, to state that she was driving when the accident occurred.

Advise Norman as to his various issues, from the standpoint of professional ethics.

Question 2

Mary, an established client, telephones you one evening. Mary tells you that her twin brother Simon, with whom she is very close, offered to buy her a present for her birthday. Two days later he appeared at her door with a large and expensive iPad. Mary is delighted, but puzzled because her twin has been unemployed for a year.

Mary says she is consulting you because her twin has begun asking her questions about the iPad and whether she still has it. On being informed that she had, Simon indicated that the police have been making enquiries about him and the iPad and he finally admits that he obtained iPad as part of a wager with a friend of his who has a reputation for handling stolen goods.

What do you advise Mary as to the options available to her? Can you continue to act if she refuses to accept your advice?

Next morning when you go into your office, sitting on the receptionist's desk is a cardboard box and in it, the iPad which had been left there by Mary a few moments earlier.

What do you do then?

Question 3

Ryan is the sole beneficiary in his father's estate. His father died twelve months ago and the house, which was the principal asset of the estate, has still not been sold. The combined effect of the uprated Stamp Duty and the impending threat of a "no deal" Brexit have made the local property market for sizeable houses which have not been modernised, very problematic. Ryan is daily on the phone to the solicitors who are acting as sole executors and administrators of his late father's estate, since he is anxious to realise the capital in the house. The solicitor, irritated by Ryan's incessant calls, decides not to reply to him unless he has some change in the status of the house. This upsets Ryan even more. Eventually the solicitor calls him to say that he has a local buyer who is interested in buying the house. The house has been valued at £400,000 but the would-be purchaser is only prepared to offer £320,000. Ryan is very disappointed after waiting so long to get such a low offer. He suggests lowering the asking price to £360,000 but the solicitor counsels strongly against this, asserting that the buyer is interested in another property and will not wait. The solicitor adds that he doubts that he will find another purchaser in the near future. Reluctantly Ryan accepts that the solicitor probably know what he is doing and the offer is accepted. That evening in the pub Ryan overhears one customer telling another customer that his solicitor has got him a very good deal on a big old house. Ryan listens carefully and it soon becomes clear that the customer is referring to his father's house. It is also clear that the customer is on close personal terms with his solicitor – who is also the executor and administrator of Ryan's father's estate.

PTO

Has Ryan got grounds for making a complaint against the solicitor?

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

- (a) Mr Ahmed makes an appointment to see you in your office. He explains that he would like to place an offer to buy shop premises. The purchase price will be £80,000. He tells you that the purchase price will be funded by cash which he has in the bank. You have never acted for him before.

With reference to the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017, explain what steps you will take to comply with those Regulations? (5 points)

- (b) Mr Ahmed's offer is accepted. Before Missives are concluded he explains there has been a change of plan. The intention now is that his uncle will take title to the property but he (Mr Ahmed) will pay for it. He explains that his uncle is currently in Pakistan and is unlikely to be able to come to Britain in the near future.

With reference to the Regulations what steps will you take in order to comply with the Regulations if you agree to continue acting? (4 points)

- (c) You agree to continue acting and you successfully carry out such steps as you consider necessary in order to comply with the Regulations. Two days before the transaction is due to complete Mr Ahmed explains that there is a delay in his funding arrangements and he will take a short term loan from his father-in-law who lives with him. What steps do you need to take to comply with the Regulations? Explain the reasons for your answers. What risk factors can you identify and do you consider that you ought to make a suspicious activity request? Explain the reasons for your answers. (10 points)
- (d) With reference to the Proceeds of Crime Act 2002 please list the offences relating to money laundering. (6 points)

OR

Question 5

- (a) With reference to the Accounts Rules are you entitled to borrow money from an existing client and if so, explain the Rules which will apply. (3 points)
- (b) Under the Accounts Rules what are the Rules relating to taking money out of the client account? (6 points)

- (c) You have recently completed a conveyancing transaction on behalf of a client. There is a small balance to the credit of your client in the client account amounting to £100. With reference to the Account Rules explain your obligations in relation to that money. (3 points)
- (d) With reference to the Accounts Rules explain your firm's obligations in relation to reconciling the client bank account. (10 points)
- (e) Under the Accounts Rules what is the role of the "Cashroom Manager" (3 points)

END OF SECTION B

END OF QUESTION PAPER