

THE LAW SOCIETY OF SCOTLAND
APTITUDE TEST FOR EC QUALIFIED LAWYERS

PAPER IV
PROFESSIONAL CONDUCT AND THE ACCOUNTS
RULES

1 March 2005

1000 – 1200+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 CARRY EQUAL MARKS

(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 TWO questions only 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.)

1. Colin has been watching his good friend Paul, a sole practitioner, slowly lose his battle with illness and alcohol. Colin knows from long association that Paul was once an able lawyer but that a series of personal crises including two strokes, a messy divorce and incipient alcoholism have greatly reduced his ability to practise effectively. Even at 10am when Paul goes into court his breath smells heavily of drink, although he could not be described as intoxicated on these occasions. Following the strokes, Paul suffers from memory impairment and has lost several cases in the Sheriff Court which objective observers consider that he should have won. Colin is concerned as to Paul's fitness to practise. Advise Colin as to whether the Law Society has any grounds to take disciplinary action against Paul on the facts stated.

Colin hesitates for a month or two in which time he discovers that Paul has forgotten to take out his practising certificate for several weeks, has failed to complete his requisite hours of Continuing Professional development for several years and been convicted twice in a week of driving while under the influence of alcohol. Unaccountably, the media fails to get Paul's surname correct in reporting the convictions, or to identify him as a solicitor, although a number of local lawyers are aware of the details. Paul has begun an affair with a new client, who suffers from anorexia and low self esteem, who is suing the local hospital for medical negligence. Paul has never handled a medical negligence case before but sees no reason why he cannot "learn the ropes" as he goes along. Paul has no intention of calling in counsel since he dislikes the Faculty of Advocates. Advise Colin as to the ethical issues raised by Paul's behaviour, including what, if anything he should do about Paul.

- 2.(a) Colin is also worried about the position of Malcolm, Paul's hard-pressed newly qualified assistant. He is frequently left to man a branch office on his own while Paul is elsewhere. Being an entrepreneurial young man he has printed his business cards with the logo "the best in the business" emblazoned on them and also on a series of beer mats which he has delivered to several of the local pubs. In the last month he has asked a client to sign a legal aid form in blank to save time, written to the local supermarket offering to do their employment contracts with their staff, "unless they already have a solicitor", and completed a power of attorney for his grandmother at her telephoned request, in favour of his father, although to save time again, he got his father to obtain the relevant signature in front of witnesses. Colin's efforts to offer kindly advice to Malcolm are rebuffed as the latter replied

'I know my ethical position. I'm a first offender. I've not really been "culpable in all the circumstances". All I have to do is to cite the Law Society's examiner in Ethics to appear at the Tribunal. He'll persuade them in his evidence that all I did was "unsatisfactory behaviour" at worst.'

Comment on Malcolm's ethical position and the soundness of his understanding of his position.

AND

- 2(b) Roberta is a rural solicitor who has acted for many years for Foggets the local builder. Only one house (Seaview) remains for sale in Foggets' latest development site but it is sticking on the market. Sophie, also a client with longstanding connection with Roberta and her firm decides that she would like to buy Seaview to enhance her business as a freelance artist but she cannot quite afford the asking price. After discussing the matter with Roberta, Sophie asks Roberta to submit a bid for her but offering £1,000 below the sale price. Roberta arranges a 100% endowment mortgage for Sophie with a Scottish bank omitting to mention to Sophie or the Bank that the offer price (since it includes carpets, curtains and furniture) still exceeds the market value of the property.

Foggets accept the offer verbally in the knowledge that Sophie has agreed to be bound by the standard missives conditions which Foggets normally insist on in their developments. Before Roberta can arrange for a formal acceptance to be submitted for Foggets her partner Hamish phones her to say that he has discovered a buyer for Seaview who is willing to pay the full asking price. Roberta tells Foggets who instruct her to accept the higher offer. When Roberta declines, Foggets make it clear that the offer must either be accepted or they will take their business elsewhere.

Comment on the ethical issues raised in this problem

- 3(a) Robin, one of your longstanding clients with numerous criminal convictions is being prosecuted in the District and Sheriff Courts for separate offences at about the same time. Rather to your surprise, your request for bail for Robin in the District Court is denied and he is remanded in custody pending the outcome of your swiftly entered bail appeal. The next week Robin appears from custody on the charge in the Sheriff Court and you again apply for bail, in the hope that if this motion succeeds, then you need only win the bail appeal to obtain Robin's interim liberation. You carefully do not mention the fact that Robin is currently in custody to the Sheriff. When the Sheriff discovers this, he considers your actions to constitute a breach of duty to the Court and he complains to the Law Society. What is your ethical position?

AND/...

AND

- 3(b) When you are preparing for the trial in the Sheriff Court case, which relates to a serious assault charge, Robin is adamant that he only acted in self-defence. However, your precognitions of the witnesses do not support this and Robin then admits that his recollection of the events that night are somewhat hazy, because the amount of drink he had consumed. Nevertheless he insists that you continue to try to get him off. What options are open to you as a matter of ethics?

AND

- 3(c) Against your better judgement Robin insists on going into the witness box and no sooner have you begun your examination of Robin than he reverts to his original story. What is your ethical position now?

SECTION B : FINANCIAL SERVICES AND THE ACCOUNTS RULES

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

4. (a) You are consulted by John Smith who says he is representing his brother George who is normally resident in Cyprus. George you are told is the owner of an Israeli registered company which is involved in the growing and export of citrus fruits from Israel. The Israeli company wishes to buy the issued share capital amounting to 100,000 £1 shares in Cormack and Company Limited, who operate out of the Glasgow Fruit Market selling and distributing fruit and vegetables throughout Scotland. John Smith explains that, whilst the Israeli company will put you in funds to the extent of £100,000 by credit transfer from its Israeli bank, George Smith is, in addition, going to transfer ownership in a villa in Cyprus to William Cormack, who is owner of the 100,000 shares in Cormack and Company Limited.

Explain what steps you would take in relation to the instructions arising out of the Money Laundering Regulations and Proceeds of Crime Act and discuss the issues which arise.

AND

- (b) You are approached by Joseph Green, a solicitor who wishes to sell you his sole practitioner business. You are interested and carry out a due diligence exercise in which you discover:-
- (1) that the only bank account operated by the firm is a general client account;
 - (2) that there is a pattern of individual client funds provided for the purchase of houses sitting in the general client account before being paid over to the selling solicitor, sometimes for many weeks;
 - (3) that there are monthly withdrawals from the client account of £7,500 into Joseph Green's personal account with a different bank and that these sums are regularly greater than the fees paid into the general client account in respect of fees for the month in question.

Joseph Green tells you there is no problem as he is always able to meet any payments he requires to make on behalf of any client on the due date as there is always sufficient in the account to do so.

Discuss the issues which arise under the Accounts Rules.

5. (a) Give a full and detailed account of the identification procedures you would adopt to comply with the Money Laundering Regulations and Proceeds of Crime Act in respect of:-

- (i) a private individual;
- (ii) a partnership;
- (iii) a trust;
- (iv) a public limited company;
- (v) a company limited by guarantee; and
- (vi) a public authority.

AND

(b) Give a full and detailed account of the processing and payment of outlays on behalf of clients and the recovery of these and fees due to you in respect of the transaction involvement (1) where you hold no funds for that client, and (2) where you do hold sufficient funds to cover the sums referred to above.