

THE LAW SOCIETY OF SCOTLAND
APTITUDE TEST FOR EU QUALIFIED LAWYERS

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

5th November 2007

1330 – 1630

Candidates should answer FOUR questions, TWO
from Section A and TWO from Section B.

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.

1. Axel and Aaron are in a car which is involved in a collision on the A9 in Scotland. The driver of the other car in the collision is killed. At the scene of the collision the police ask Axel and Aaron who was driving. Both incriminate each other. The only other passenger is Aaron's civil partner Jacob. There are no other witnesses to the accident. Subsequent to the collision Axel tells his brother Josh that he, Axel, was the driver of the car. This information is passed to the police by Josh. Axel is prosecuted for the offence of causing death by dangerous driving.
 - (a) Who carries the burden of proof?
 - (b) To what standard?
 - (c) Is Jacob a compellable witness for (i) Axel; (ii) the Crown?
 - (d) Whose evidence might be regarded as hearsay and why?
 - (e) Do you think there is sufficient evidence for a conviction?

2. Discuss the main evidential issues which may arise with the following witnesses:
 - (a) A child aged 9 years
 - (b) A complainer in a rape trial
 - (c) A solicitor who is cited to appear in court on behalf of the Crown in a trial where the accused is her client who is charged with fraud.
 - (d) The spouse of an accused person who is accused of assaulting their spouse

3. Discuss the impact of the Human Rights Act upon the law of evidence.

SECTION B: CIVIL AND CRIMINAL PROCEDURE

Candidates should answer TWO of the following questions.

4. White enters into a contract with an Architect, Black in terms of which Black designs an extension to White's house, and a separate contract with Brown, a Builder, for the construction of the extension. After the work has been completed, the extension collapses. White claims that this has happened partly because of design defects in the plans prepared by Black and partly due to construction defects on the part of Brown. Can White sue both Black and Brown in the same court action and how will he go about doing so?
Brown claims that the reason the extension collapsed was because of faulty workmanship on the part of his sub-contractor Gray. Can Brown have his claim against Gray decided in the present action, and how will he go about doing so?

5. You are consulted by Smith who wishes to raise a court action against Brown for damages for serious injuries he sustained in a car accident. Consider what courts in Scotland could entertain such an action, outline the various forms of procedure available and the advantages and disadvantages of each.

6. You are acting on behalf of an accused person who is appearing from custody on a charge of attempted murder. Advise him how you would go about seeking bail on his behalf, what criteria will be applied by the court in deciding whether or not to grant bail, what he may do if bail is refused, what conditions may be imposed on the grant of bail and what consequences may follow if any of such conditions are breached by him.