

Procedure

Thursday 16th May 2024

9.30am to 11.00am

Candidates are required to answer TWO out of four questions.

The question paper is divided into Section A (Civil) and Section B (Criminal), candidates are required to answer ONE question from Section A, and ONE question from Section B.

Candidates should note that, in examination answers, they are expected to cite relevant authority and procedural rules.

Civil Procedure Section

Question 1

- a) What is a motion for caution? When, or in what circumstances, is it made? What is sufficient to satisfy an order for caution? What are the consequences of failure to find caution or give security in a form which is acceptable to the court?
- b) Explain how, in an ordinary cause action in the Sheriff Court, a pursuer would make a "Pursuer's Offer" and describe the effects it might have at the conclusion of the action.

Question 2

- a) In an ordinary cause action in the Sheriff Court, the defender considers that the case pled by the pursuer is irrelevant.
 - i) what is meant by the notion that "the case pled is irrelevant"?
 - ii) what steps must the defender take to advance this argument, and when must they take them?
 - iii) Assuming a Notice of Intention to Defend has been lodged on time, describe the course of an ordinary action from that point until conclusion of the Options Hearing.

Criminal Procedure Section

Candidates are expected to refer to Statutory authority throughout.

Question 1

- a) Prior to every First Diet in the Sheriff Court which two documents must be lodged by the defence? What is the time frame for lodging the documents relative to the First Diet?
- b) You are instructed by Paul. He is currently on bail. He has been served with an Indictment containing numerous charges, with a First Diet on the 10th of next month. He is on a family holiday in Australia which had been booked many months ago.
 - i) Must Paul attend the First Diet?
 - ii) Is there anything that can be done to resolve Paul's attendance difficulties and allow him to go on holiday.
- c) Paul faces a charge of sexual assault upon his former girlfriend. He states that there was intimacy between them, but that she was the initiator. He has been provided with a telephone recording of his ex-girlfriend telling another friend, Olivia, that she was 'going to fit up Paul' for a sexual offence, recorded three weeks before the date of the alleged offence.
 - i) What steps must you take to properly represent Paul's interests at the First Diet?
- d) Paul faces a charge of driving while disqualified. He was reported anonymously to the police. He was indeed the driver but made an admission to the police at interview because the police had arrested his partner and had promised to release her if he admitted the offence. Moreover, Paul advises that he had driven a short distance because he had been accosted in the street by his ex-partner's new boyfriend and his three brothers, all armed with knives.
 - i) What steps must you take to properly represent Paul's interests at the First Diet?
- e) Paul is concerned that at the back of the Indictment he has been served with a Statement of Uncontroversial Evidence. As far as he is concerned, he advises it is very controversial and he denies everything it says.
 - i) What is a Statement of Uncontroversial Evidence?

- ii) What is the potential impact of such a Statement?
- iii) What, if anything, can be done about it, and within what time limit to ease Paul's concerns?

Question 2

You are consulted by Michael. He has a Pleading Diet calling in the Justice of the Peace Court. He faces numerous charges and wishes your advice.

- i) He faces a charge that being the owner of a dog he failed to keep the dog under proper control, whereby the dog bit a child causing serious injury. He states that he knows nothing of the incident, that he had sold the dog three weeks earlier to a stranger in the local pub who had admired the dog.
- ii) He is charged with an offence of assault by punching and a second offence of being in possession of a sharply pointed implement in the public street without reasonable excuse at the time of the assault. He advises he was with his friend Ryan when he was attacked by a stranger who was trying to strike him with a corkscrew. He got the better of his attacker, took possession of the corkscrew and was then arrested by police officers who arrived just at that point.
- iii) He is further charged with assaulting the police officers by shouting and swearing at them, calling them idiots when he was arrested for possession of the sharply pointed corkscrew. He accepts that he was shouting and swearing at them.
- iv) He is charged on a separate date with driving dangerously. He states that on the day in question he was abroad with his girlfriend, Layla. Moreover, he understands his identical twin, Sean, was the driver of the car. He understands that his friend Harry was a passenger and gave a written statement to the police that Michael's twin was the driver. However, Harry is a disillusioned accountant who left for Australia to go scuba diving and his whereabouts are unknown. Michael understands that another passenger, Jessica recorded the whole incident on her mobile phone.

Advise Michael on what pleas should be tendered on his behalf and what other steps should be taken to be ready for any subsequent trial on these charges.

END OF PAPER