

THE LAW SOCIETY OF SCOTLAND
INTRA UK TRANSFER TEST

PAPER II
SCOTS CRIMINAL LAW, WITH CIVIL AND CRIMINAL
EVIDENCE AND PROCEDURE

11 May 2015

1330 – 1530

Candidates should answer **THREE** QUESTIONS;
Candidates **must** answer Question One from Section A,
one from Section B, and **one** from Section C.

**No marks will be awarded for copying out the text of
materials which candidates are permitted to take into
the exam.**

**Answers to each SECTION should be written in a
separate answer book**

Section A : SCOTS CRIMINAL LAW

Candidates MUST answer this question.

Question 1

Archibald lives on the ground floor of a block of flats. He realises that he can get good photos up the skirts of women going up the stairs within the tenement from just outside his door. He rigs up a tiny camera, hides it a little with his doormat and sets it to take photos periodically. When he retrieves it, he has recorded a number of high quality images of his neighbours' underwear worn under their skirts and a very few photos of the genitals of one neighbour who was not wearing any underwear. He finds these as sexually arousing as he had hoped.

He is particularly keen to show the pictures to Thelma, one of his neighbours, who has complained previously about noise from his flat. He hopes that she will find them upsetting. He knows that she is a Star Wars fan so he invites her in to his flat to view the film *The Empire Strikes Back*. He makes it seem as if there will be many people there. In fact, he has not invited anyone else and he plans, instead of the film, to show her his staircase photos on a back-to-back loop.

Thelma is really keen to see *The Empire Strike Back* but she is instantly suspicious when she enters Archibald's flat but there is no one else present. She says she is leaving but Archibald has locked the door and is already projecting the first of the images (one where no underwear was worn) on to his computer screen. Thelma cannot avoid seeing it. Thelma is upset by the picture and alarmed by Archibald's behaviour.

Thelma phones her flatmate, George who comes down and pounds on Archibald's door till he opens it. An argument ensues and George punches Archibald on the nose, calling him a "dirty pervert". Archibald is enraged by George's actions and grabs a knife which he has left lying about on a nearby table, after he cut up an apple with it. Archibald stabs George once, severing an artery. George bleeds to death. Archibald had not intended to kill George and is shocked that this is the outcome.

Identify any crimes which may have been committed by Archibald under Scots law, considering also the likelihood of conviction. Give full reasons for your answer, citing authority as appropriate.

END OF SECTION A

Section B : EVIDENCE

Candidates should answer EITHER question 2 OR question 3. All answers should be fully reasoned and supported by adequate citation of authority.

Question 2

Following various incidents in the town centre Ned is charged with breach of the peace. When the police arrived at the scene, Betty said that she had seen what had happened. She pointed to Ned and said that he has been involved. Ned is then arrested and is taken to the police station.

The police interview Libby, who was also at the scene. She tells them that she saw something but wasn't sure if she could recognise the culprit if she saw him again. At an identification parade Libby tells the police that Ned looks quite a lot like the man she saw.

At a later identification parade, another witness Nellie picks out Ned as the culprit and tells the police that he was definitely the man involved. Prior to the trial Nellie has disappeared and despite police efforts to find her she cannot be traced.

At the trial Betty fails to identify Ned and in her evidence she says that she had not pointed out anyone to the police at the scene. Libby gives evidence that although she remembered taking part at an identification parade she cannot recall what she did or said there.

The procurator fiscal is considering leading evidence from the various police officers involved with the investigation. Will this evidence be likely to help prove Ned's guilt?

Question 3

Write brief notes setting out the law on the following points, with full reference to authority:

- (a) Entrapment;
- (b) The admissibility of precognitions in evidence;
- (c) Evidence of an accomplice.

END OF SECTION B

Section C : PROCEDURE

Candidates should answer either question 4 OR question 5 OR question 6.

Question 4

With reference to authority answer the following five questions about procedural concepts.

- a) What does it mean to plead that the other side's case is "irrelevant and lacking in specification"?
- b) It is often said that the use of the expression "believed and averred" should only be used with extreme care; why might that be?
- c) What is the weaker alternative rule and how does it restrict the way that a case may be pled?
- d) When might it be helpful to include a call in pleadings and why?
- e) What is the difference between a proof and a proof before answer?

Question 5

You act for Amalgamated Widgets Corporation (AWC) a medium sized manufacturer based in Falkirk. AWC have 150 staff and a long heritage in widget manufacture and their key product is the Mark 23 Widget; an essential component in much modern factory machinery. Your contact at AWC contacts you today with an Initial Writ that had been raised against AWC in Dunfermline Sheriff Court under Chapter 36 of the Ordinary Cause Rules.

You read the Initial Writ and the pursuer has craved for £50,000 in damages plus interest and expenses. It appears she is a 54-year-old former employee who claims that on 5 May 2012 she slipped on hydraulic oil whilst

working in the factory. She lives in Dunfermline. She avers that the oil that had spilled from one of the machines on the production line. She furthermore avers that she has suffered damage to her back and first became aware of the injury on 1 June 2012. Your contact says there is no record of the accident in the accident book at AWC, that the pursuer left the company around two years ago and that the action should be defended.

- a) What steps must be made to defend the action and when must they be taken?
- b) From the information you have what particular criticism can be made of the relevancy of the pleadings?
- c) Which procedural steps must be made by you to advance such a plea to the relevancy?
- d) When would the Sheriff be called upon to decide what procedure should be adopted for this case and what must document must you lodge in advance of the hearing at which that will be decided?

Question 6

Your client is being prosecuted on complaint for driving dangerously through Edinburgh at 2 o'clock in the morning in his girlfriend's car for which he was not insured. He has pled not guilty and has been granted bail. The Intermediate Diet is on Thursday and the Trial Diet is set down for 26 May 2015. This is not a legal aid case.

Your client has explained that he was just a passenger and that his cousin Vinny was driving the car and that Vinny has comprehensive car insurance to drive any car.

He further explains that he and his cousin left Edinburgh at 10am that morning and drove to Aberdeen to see a man called WS. He says WS will be able to confirm that when they left Aberdeen at 11pm Vinny was driving.

The disclosed prosecution case your client comprises:-

- A CCTV disc that shows CCTV of the driving of the car being driven at night through the streets of Edinburgh.
- Two police officers (AB and CD) who will speak to following the car through Edinburgh without seeing the driver clearly, losing track of it and eventually finding it abandoned with Vinny asleep in the passenger seat.
- Two police officers (EF and GH) who will speak to finding the accused, with the car keys in his hand, in a street around 200 metres from the car.
- Constable AB also speaks to how the accused's girlfriend was required under Section 172 of the Road Traffic Act 1988 to identify the driver of her car at the time of the incident and that she said that she gave the keys to the accused at 10am that morning and had not seen him since.

Putting aside issues of sufficiency:-

- a) Your client appears to be incriminating Vinny. What procedural steps do you have to take to make it possible to advance this defence?
- b) What witnesses should the defence cite to give evidence?

- c) Yesterday your client was served with a Certificate under Section 283 of the Criminal Procedure (Scotland) Act 1995 in respect of the CCTV disc. What is the effect of the Section 283 Certificate?
- d) Cousin Vinny is on holiday in Portugal. He has told you over the phone that he is due to return to Scotland on 28 May 2015. What effect will this have on the defence and what motion will you make at the Intermediate Diet?

END OF SECTION C

END OF PAPER