



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

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

9 May 2017

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**

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***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**

Robert is a sole practitioner in Dundee. A latecomer to the law, having previously worked in advertising, he has never felt very confident in his abilities. He finds that the stress of modern day practice is too much for him and clinical depression sets in. He then develops an addiction for sleeping pills. His short term memory is affected and he fails to apply for a practising certificate until several weeks after his last one has expired.

For an insecure lawyer, Robert can be very aggressive. When consulted by clients in neighbour disputes his policy is to “shoot first and take no prisoners”. His letters are pure aggression, he takes pride in not checking his facts even when litigation is looming. Although his first letter always makes it clear that his assertions are made on the instructions of his clients, by the time of the third or fourth letter he drops this formula and has been known to write “I say you are a liar” to the neighbours.

Robert has constructed a website for his firm and spurning the obvious route of using the website as a form of direct advertising he posts a blog which indicates that he will inform clients who instruct him in motoring cases of the location of the favourite speed traps by the police with handheld radar guns or vans with cameras, in the Dundee area.

Two years ago Robert took on a personal injury case which had little prospect of success. Because he lacked

confidence and experience Robert has even told his clients that the case has been progressing normally and is now in court when in fact he has not even raised an action on his clients' behalf. Robert thinks that he is fairly safe from a serious negligence suit from the clients, however, since he included in his letter of engagement that his liability for negligence was limited to £5,000 and the clients did not reject this condition.

Advise Robert as to his position in terms of his professional service and conduct.

## **Question 2**

- a) Alicia is a salaried partner in a medium sized legal firm. She is reflecting on a transaction which has gone badly wrong. It all began on a Monday morning two years ago when she had had an appointment with Mr and Mrs George, longstanding clients and their son and daughter in law Bob and Jane. The Georges were proposing to purchase a retirement bungalow in a new housing estate with funds from Bob and Jane and the family group had asked Alicia to represent them all by doing the conveyancing of the house as well as the standard security for Bob and Jane. She recalls telling them at the meeting that there might be disadvantages in her representing all of the parties but they had insisted and Alicia had neither pressed the matter nor followed it up in writing. Unaccountably, two years on Alicia has discovered that the standard security document is still in her file unsigned by the Georges and not recorded in the Register, and that she has still not received the deed of revocation from the developers' lawyers. In the meantime there has been a family breakdown between the Georges and Bob and Jane.

Indeed the Georges are denying that Bob and Jane lent them any money in the first place.

Advise Alicia as to her position in terms of professional conduct.

## **AND**

b) Mr and Mrs John have scrimped and saved until they are in a position to achieve their lifetime ambition, to buy a dilapidated cottage in a seaside resort which they plan to turn into a tea shop. Seeking to save money they approach **Roland & Co.** a firm of solicitors to handle the purchase, but agree with Tony, the senior partner in Roland & Co. that he will only handle the planning application in respect of the change of use, but not attend the planning hearing. Unfortunately for them their new neighbours, Mr and Mrs Davis, object to the proposals and the planning hearing takes place one month after the Johns have taken entry. To the horror of the Johns, when they appear at the hearing they are confronted by Blake, the junior partner in Roland & Co. who, not knowing of his partner's links with the Johns (despite having run his usual search of the firm's conflict database) has accepted instructions from the Mr and Mrs Davis at short notice to object to the proposed change. So thrown are the Johns at the sight of their opponents being represented by their own lawyers that they lose all confidence and also the application. It is clear that Blake has not spoken to Tony about the case or seen his file; nevertheless, the Johns are so upset that they complain to the Law Society about the behaviour of the firm and Blake in particular.

Advise Roland & Co. and its partners as to their position in terms of professional conduct.

### **Question 3**

Sam is a personal injury specialist in a litigation firm, who regards legal aid rates as derisory. He has taken to leaving tasteful leaflets in hospital Accident and Emergency departments and from this he has attracted his latest client, Melanie, who was seriously injured in a “road rage” incident. Melanie is unemployed and has few savings but Sam fails to mention that she may be eligible for legal aid persuading her instead that he can do a better job for her if she allows him to be funded by a contingent fee arrangement (he will get a third of her winnings if they win the case and nothing if the case is lost). Sam instructs two expert medical reports for Melanie, one of which is much more pessimistic as to her prognosis than the other. Sam decides to ignore the more optimistic report and to lead only the more pessimistic one as evidence. After the proof but before the judgment is delivered, the two medical experts happen to meet and compare notes, and both agree that Melanie is making excellent progress and that her prognosis is considerably better than the evidence led at the proof would suggest. The experts inform Sam of their conclusion, but he decides to do nothing, informing neither Melanie nor the Court.

Sam is mulling over whether he has done the right thing in Melanie’s case when the law firm’s receptionist informs him that two policemen are in Reception with a warrant to obtain his file for Roberta, another client whom he has been advising in relation to an accident which he suspects may have been fabricated.

Advise Sam as to his position in terms of professional conduct.

**END OF SECTION A**

## **Section B: The Accounts Rules**

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

### **Question 1**

- (a) You receive a phone call from Mrs Campbell who advises you that her father, Mr Anderson, died at the weekend. She states that your firm hold the Will in your Will Safe and she has been appointed as an Executor under the Will. You check your system and you discover that your firm does hold a Will for Mr Anderson prepared 15 years ago but that your firm has not acted for him since then. Mrs Campbell makes an appointment to come in to see you. What, if any, obligations are you under in respect of client identification and verification and what documents, if any, will you require to see in order to act for Mrs Campbell as Executor?
- (b) Mrs Campbell attends your office on the agreed date and at the agreed time in order to give you instructions in relation to her late father's estate. Her husband, Mr Campbell, is with her. He states that he would like to instruct your firm on behalf of a Company, which he says he owns, to purchase a small shop in Leith. You check your system and you note that your firm has never previously been instructed by Mr Campbell or his Company. What checks will you require to carry out and what documentation should you see before you can act for Mr Campbell's Company?
- (c) What checks require to be carried out and what documentation will you require to see if, upon enquiry, it turns out that Mr Campbell owns the

Company 100% but that he is not a Director?

- (d) What is meant by a Politically Exposed Person?
- (e) Your firm agrees to act for Mr Campbell's Company. You take instructions from him in relation to placing an offer having carried out client verification and identification processes. Mr Campbell advises you that the Company will not require a loan to purchase the property as he intends to inject his own money into the Company so that it will be in a position to pay cash by electronic transfer from a UK High Street bank. Evaluate the implications of this and explain what your obligations are, if any, and how you would go about fulfilling those.
- (f) 3 months later you have completed the property purchase for the Company. You note that you still hold £200 belonging to the Company. Under the Accounts Rules what are your obligations in respect of this money? What steps must you take and what are the timescales?
- (g) You happen to mention to Mr Campbell that there is £200 being held by your firm. He asks you to send him a cheque made payable to him because he provided the purchase price for the shop. Do the Accounts Rules allow this? Briefly explain your answer.

## **Question 2**

- (a) The Accounts Rules set out rules governing the dealings which Solicitors have with client money. Explain the purpose behind the rules and explain what accounting records must be kept.

- (b) Detail the rules relating to drawings from client accounts
- (c) Detail what your obligations are in relation to any client balances held after the conclusion of a matter.
- (d) Detail the rules relating to obligations to deliver certificates.
- (e) List the key points being brought in by the fourth AML Directive explaining what additional procedures your Law Firm will need to take, if any, as a result.

**END OF SECTION B**

**END OF QUESTION PAPER**