



THE LAW SOCIETY OF SCOTLAND
APTITUDE TEST FOR EU QUALIFIED LAWYERS

PAPER IV
PROFESSIONAL CONDUCT AND THE ACCOUNTS
RULES

1 NOVEMBER 2016

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

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

Stewart has been a successful solicitor in a central belt boutique firm that made substantial profits before the credit crunch from re-mortgaging properties and private client work for businessmen. His business has limped along for the last eight years so he is forced to consider methods of gaining business which he would normally disdain. He encourages his litigation partner to leave her business card in the local Accident and Emergency waiting room targeting victims of the road accidents with slogans such as “Victim of road rage? Satisfaction guaranteed – come to the leading specialists in accident recovery”. (In fact the firm could only be considered as the leading specialists in the field in West Lothian – and not the whole central belt). Stewart himself writes to a large bank with headquarters in Scotland (who are re-deploying its staff around the UK following the Brexit vote), indicating, truthfully, that his firm are a niche supplier of re-location packages and associated legal advice to middle managers and offering the firms services to any bank employees. He adds, however, that if the employees already have their own lawyers they should ignore his letter.

Stewart receives an email unexpectedly from a third cousin in New Zealand who is a Kiwi Fruit grower from the Bay of Plenty. The cousin indicates that he is looking to export golden Kiwi Fruit to Scotland in the post-Brexit era and that he needs advice from a Scottish lawyer who is experienced in international import contracts. Stewart replies “I’ll do it for you – I’m pretty experienced at that kind of thing”. In fact, Stewart’s experience is limited to drafting contracts for the local garden centre whose suppliers are all locally based.

Hearing nothing from his cousin in the following month Stewart finds a rival Kiwi fruit grower in the Bay of Plenty and agrees to act as his legal adviser in relation to the import of the fruit to Scotland. He is careful, however, to stipulate that if an expert on import licences is required, he, Stewart, will not be responsible for the experts' fees.

However, Stewart does not take every case that comes to him. One day an irate farmer who feels that his prowess as a sheep dog triallist has been besmirched in the local newspaper writes to Stewart asking him to act on his behalf in a defamation action. Stewart cannot be bothered getting involved with such a case so he simply ignores the letter and several subsequent emails and phone calls from the farmer.

Advise Stewart as to the ethical implications which arise in these scenarios.

Question 2

- a) Lois is an enterprising partner in a large Scottish corporate law firm. She acts as Secretary and legal adviser to the Friends of the International Choir Festival in Edinburgh. Three years ago the Friends bought a concert hall with the help of their then legal adviser, Dougal. It has gradually emerged that Dougal, badly mishandled the transaction and that there are grounds for rescinding the purchase. Lois has procrastinated in doing this because, unbeknownst to the Friends, her life partner was one of the businessmen who sold the concert hall to the Friends and if rescission of the contract is effected, he would suffer a considerable financial loss. Lois is eventually forced to seek a legal opinion from counsel on the sale and on Dougal's liability for negligence. Counsel replies indicating that there was indeed carelessness by Dougal which bordered on the reckless, but counsel adds that Lois

herself is at fault for not spotting (and rectifying) the situation with greater speed. Lois asks the counsel to remove the unasked for aspect of the opinion as to her own failings and to re-issue his opinion with this part deleted. This is duly done and Lois sends the opinion to the Management Committee of the Friends as if it was the original opinion.

Advise Lois as to her position from the perspective of professional ethics.

- b) In a quite separate transaction Lois is instructed by a major corporate client which is involved in seeking to handle a large scale redundancy problem at one of its factories. The client wishes Lois and her team to advise the factory workforce which is being made redundant as to the redundancy terms that are being offered by the corporate client. However, if any worker wishes to challenge the awards proposed under the scheme, he or she is advised to seek an opinion from an independent lawyer. Lois and her team strive hard to fulfil her instructions from the corporate client but is acutely aware that the advice she is giving as to the redundancy settlements suffers from the fact that it refers to the pension provision for the workforce which, as Lois is aware but the workforce are not, has now got a large hole in it.

Advise Lois as to her position from the perspective of professional ethics.

Question 3

Your client Archie McCracken is a local councillor and convenor of the local planning committee. On the recommendations of the planning committee the local authority has somewhat controversially granted planning permission to the Donibristol Oil Company for a filling

station on a greenfield site very close to the entrance to a new motorway spur next to the shortly to be opened Clyde Crossing road bridge. Roy Gordon, a young cub reporter from the regional newspaper, the Daily Planet, seeking to make his mark in investigative journalism, publishes an article claiming that Archie had spent a weekend at the Rialto Hotel in Paris at the expense of the Donibristol Oil Company, and that this had influenced the local authority's decision to grant the planning permission for the filling station.

Archie vehemently denies the allegation, claiming that he has never set foot in the Rialto Hotel, and when the Daily Planet refuse to print a retraction, he instructs you to proceed with a defamation action against them and Roy, claiming £500,000 in damages.

Before raising the action, you take a precognition from Archie's close friend Donny, a local building contractor, who confirms being with Archie on a fishing expedition in Glen Lyon throughout the weekend when Archie is alleged to have been at the Rialto. You accordingly include Donny's name on the list of witnesses intimated to the other side in accordance with the rules of civil procedure.

However, you have now heard that a disaffected employee of Donny's has approached the Daily Planet with the latter's business diary which confirms that Donny was doing a high paying weekend job in Glasgow for the whole of the relevant weekend. When confronted with this, Archie reluctantly admits that he had asked Donny to cover for him, because he had actually spent the weekend in Hastings with a young lady, Margery, but had not wanted to admit it because "the wife would go mad".

Archie remains adamant that he has never been to the Rialto in Paris, and although reluctant to involve Margery, he tells you that you may now call her as a witness. You

are nearly convinced that this time Archie is speaking the truth but are worried about what you should do if Archie and Margery start to lie their way out of trouble on the witness stand. Your concerns are not relieved when Archie, under further questioning by yourself admits to having had the use of a Skoda motor car courtesy of Donibristol Oil, continuously for the two months prior to the decision of the planning committee, a fact which the Daily Planet has not discovered. Fearing that Donny's evidence may not help his cause, Archie encourages Donny to go on a six month "exchange" with a building contractor from Adelaide, Australia.

Worried by the prospect of a high profile case falling apart in your hands, you send your hard-working assistant to frequent pubs favoured by the journalists of the Daily Planet in the hope of striking up a conversation with Roy Gordon, which might provide some helpful ammunition in the case. All of this has a deleterious effect on your relationship with Archie which is coming out in petty ways. Were it not for the fact that you are secretly hoping that the litigation will make your name as a litigator to be feared and respected in the region, you would have dropped the case weeks ago.

Comment on the ethical issues involved. In this case.

END OF SECTION A

Section B: The Accounts Rules

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

Question 1

- (a) Explain the Rules (identify each Rule by number) relating to the reconciliation of accounts.
- (b) What accounts does every practice unit require to keep?
- (c) You concluded the purchase of a property on behalf of a client six months ago. On a routine check of your client balances you discover that you hold £150 in credit in the client account on behalf of that client. You try to reconcile the client account but are unclear why the balance has occurred. With reference to the specific Rule number, specify –
 - (i) Whether your practice is in breach of any Rule, and if so which one;
 - (ii) What your practice ought to have done; and
 - (iii) What it is required to do now.
- (d) Explain what steps you will take if you no longer have an up to date address for the client.

Can you pass on the cost of this exercise to your client?

- (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.

(f) What is a politically exposed person?

Question 2

- (a) You wish to introduce a Limited Company as a client to your firm. The Company wishes you to place an offer on its behalf for the purchase of commercial property in Scotland in the sum of £3,000,000. Explain what client due diligence information you should obtain from the Company providing examples of documentation that could be used to obtain or support the information given.
- (b) It turns out that one of the Directors is a retired Colonel from the French Army. Are there any additional checks that require to be carried out? Explain your answer.
- (c) One of the shareholders is the John Smith 1973 Trust for Children. That Trust has in excess of 25% of the shareholding of the Company. What checks (if any) are you required to carry out in respect of that Trust and explain your answer.
- (d) Each practice unit is required to deliver a Certificate to the Council of the Law Society of Scotland. Explain the Rules relating to the frequency and timing of delivery, the signing of the Certificate and explain the Council's entitlement in respect of the Certificate and the information on it.
- (e) You are acting for ABC Ltd in relation to the acquisition of commercial property on its behalf. You have completed all take on procedures including anti money laundering checks. You ask one of the Directors of ABC Ltd (Mr Smith) to provide you with the sum of £1,500,000 in anticipation of settlement. Mr Smith undertakes to transfer that amount to your

firm electronically. A day later your cashroom advises you that £1,750,000 has been received from a Company called BCD Ltd. You do not act for BCD Ltd and so far as you are aware your firm never has but you do know that BCD Ltd has the same Directors as ABC Ltd. What should you do with the money? Are you under any obligations to carry out due diligence on BCD Ltd? Explain what steps you will take in relation to that money.

Whilst you are still trying to decide what to do you receive a phone call from Mr Smith advising that a mistake has been made by his Accounts Department in that they only intended to send £1,500,000 and he asks if you could return £250,000 to ABC Ltd. Can you comply with this request? What are the implications and what steps should you take to satisfy yourself that you will not be in breach of the Accounts Rules?

- (f) List the obligations and responsibilities of the Cashroom Manager.

END OF SECTION B

END OF QUESTION PAPER