



THE LAW SOCIETY OF SCOTLAND

APTITUDE TEST FOR EU QUALIFIED LAWYERS

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

9 May 2016

1330 – 1630

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

All questions are marked out of 100 and are weighted equally

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.

Question 1

Abe sees Betty being attacked in the street by a tall blond man. He calls the police to inform them of the assault. Two police officers then arrive on the scene and Abe makes a statement to them, which is transcribed into one of the officer's notebook. The possible assailant, Carl, is detained by the police, and charged with assaulting Betty.

At trial, Betty gives evidence for the Crown and identifies Carl, who is in the dock, as her assailant. Abe also gives evidence, but when questioned he says that he cannot recall the perpetrator's appearance other than that he was short in stature. Abe fails to identify anyone in court, but states that he made a statement at the time of the incident and that what he said in it would have been true.

Is Abe's evidence to the police officers admissible? Is it sufficient to corroborate Betty's evidence?

If Carl had been overheard in the police station boasting about punching Betty, would evidence on what he said be admissible?

Question 2

What does it mean to say that a matter is "within judicial knowledge"? In what circumstances will a matter be so regarded?

Question 3

Dave is at home, when he hears a knock at the door. There are four police officers outside, holding a search warrant, which entitles them to search his flat for stolen furniture. Dave reads the warrant and lets them into his flat. In the course of the search, one officer finds a large bag of white powder in a drawer. No stolen property is discovered.

Subsequently, it comes to light that the address on the warrant was incorrect – it read 13 Dublin St Lane North, when in fact Dave's flat is 31 Dublin St Lane South.

During the police interview, Dave claims that he was asked by a man he met down the pub, Eric, to source some cocaine for him, and he was doing this for Eric as a favour. In reality, Eric is an undercover police officer.

At trial for an offence under the Misuse of Drugs Act 1971, Dave objects to the admissibility of evidence found under the terms of this irregular warrant. What is likely to be the court's conclusion in this respect?

Can Dave base any argument or objection on Eric's request to supply him with drugs?

END OF SECTION A

SECTION B: CIVIL AND CRIMINAL PROCEDURE

Candidates should answer TWO questions from this section.

Question 4

By reference to statute, court rules and authorities answer these five questions:-

- a) Your client Henry lives in Stirling. He believes that a firm of architects, Pecksniff Partners, owe him £2,500 because they over invoiced him for design work they did to his home. Pecksniff Partners have only one office; in Newcastle. Henry asks them to pay him the money, but they refuse. What steps should Henry take to use the Scottish court system to secure and enforce payment?
- b) In what circumstances may an action be raised in the Sheriff Court under the rules for Commercial Actions contained in Chapter 40 of the Ordinary Cause Rules and what are the main differences in procedure between a Commercial Action and an Ordinary Action in the Sheriff Court.
- c) How may an Initial Writ in a defended Ordinary Action be changed to add an additional crave, further averments as to fact and an additional plea in law after the Options Hearing and what might the consequences be in terms of expenses?
- d) Your client explains that she fears that her former employers are about to seek an interdict in the Sheriff Court to prevent her from carrying out her business. She believes that the restrictive covenant they claim she has signed is unenforceable. What steps can you take to

protect her position and to ensure that you can appear for her and oppose any application for an interim interdict?

- e) You have just been instructed for the defender in an action in respect of personal injury raised in the Sheriff Court under Chapter 36 of the Ordinary Cause Rules. You are handed a Decree in Absence that was granted yesterday by the Sheriff. It turns out no one at the client's offices did anything with the Initial Writ when it was received. What steps do you need to take to prevent the pursuer exercising diligence on your client's company bank accounts and assets?

Question 5

Briefly describe in terms understandable to a non-legally trained client each of the following concepts or elements of civil procedure. If appropriate give an example.

- a) Diligence on the dependence
- b) A crave
- c) The Inner House of the Court of Session
- d) Issues
- e) A tender
- f) Time bar
- g) A proof
- h) A proof before answer
- i) Judicial Review
- j) A counterclaim

Question 6

Your client is a 24 year old man and he has appeared from custody on Petition on a charge of assault and the possession of a knife in a public place whilst being on bail. He is alleged to have assaulted a person in the street by punching (in addition to the complainer there is only one other eye witness) and an hour or so later your client was stopped nearby by the police and was found to have a small knife in his pocket. He gave a 'no comment' interview. He was committed for further examination and granted bail with special conditions that he remain in his home between 7pm and 7am each night. What steps would you take in each of the following circumstances?

- a) Your client contacts you to explain that his shifts at work have changed and that he now needs to leave the house at 5am in order to be at work for 6am.
- b) Two days later you attend an identity parade and neither the complainer nor the only other eye-witness identifies your client as the person they say carried out the assault. You take instructions and your client tells you that he is prepared to plead guilty to the possession of the knife, but not to the assault.
- c) Six weeks later your client is arrested by the police for being outside his house at midnight in breach his bail conditions contrary to Section 27(1)(b) of the Criminal Procedure (Scotland) Act 1995. Assume the bail conditions are unchanged. He appears from custody on Petition charged with breach of special conditions of bail. He is committed for further examination, but bail is refused. He wants to be at liberty as otherwise he will lose his job.

- d) An indictment is served. It still contains two charges and both charges are subject to a bail aggravation that libels that your client was subject to a bail order imposed at Edinburgh Sheriff Court on 24 October 2015. You know from your records that this bail order was not in force when the offence was said to have been committed.
- e) Eventually the Crown accept a plea of guilty to the possession of the knife and a plea of not guilty the assault. As your client has never previously been sentenced to a period of imprisonment or detention before the sheriff defers sentence for reports and after hearing from you imposes a 18 month prison sentence reduced from 24 months to reflect the timing of the plea of guilty. You consider the sentence to be excessive.

END OF SECTION B

END OF QUESTION PAPER