



THE LAW SOCIETY OF SCOTLAND
APTITUDE TEST FOR EU QUALIFIED LAWYERS

PAPER IV
PROFESSIONAL CONDUCT AND THE ACCOUNTS
RULES

10 May 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

John is a balding maths teacher who is suffering from a mid-life crisis who bursts into your office one day without an appointment. He appears disorientated and his speech is slurred. He asserts that he is being followed by a man who he suspects is a detective from a large department store in Glasgow where he has just been shopping. He thinks the detective is interested in an expensive set of cuff links which he has absent-mindedly placed in his pocket and failed to pay for. He suggests that you should place them in the firm safe and forget about them. You decline and in the course of advising him as to his legal position in the light of the Leonardo da Vinci stolen painting case you indicate firmly that he should return the cuff links and take the chance that the store will not believe his protest of innocence. John outraged at this advice storms out shouting, "all this fuss over a bling set of cuff links. I'll make sure I take more next time". Minutes later a man, who is in fact a police detective, enters the office. He explains that following a series of thefts at the shop he has been assigned to keep an eye on the clientele. He claims to have seen a man answering John's description stealing some cuff links. He lost him in the street but shortly thereafter saw him dash out of your office and leap into a taxi.

- a) The detective asks you whether you were consulted by man in question, whether he appeared disorientated and what the man's name and address are. How should you reply?

- b) After the detective has left you notice that John has dropped the cuff links beside his chair. What should you do with them?

- c) If John is subsequently arrested and you are cited by the Crown could you be compelled in court to testify as to the contents of the interview (including his outburst), John's sobriety or his demeanour?

Question 2

- a) Ten years ago Eliza and her partner Petra bought a plot of land and the bungalow on it from a developer. The whole development estate had a standard security over it in favour of the Bank who lent to the developer to buy the estate. As part of the purchase by Eliza and Petra, the developers' lawyer undertakes to provide a deed of restriction from the Bank in respect of the land and bungalow (excluding them from the Bank's security over the whole development). However, Fred, the solicitor acting for Eliza and Petra forgets to obtain the deed of restriction, the developers' agents forget to obtain it and the Bank's agents not only lose the developers' agents request for the deed, but also forget that the matter has to be dealt with. In January 2015 Eliza and Petra discover the "house of their dreams" and seek to sell the bungalow. Only then do they discover that there is no deed of restriction. They ask Fred to sort the matter but Fred – despite blaming the developers' and the bank's agents - is woefully dilatory in pursuing them to take the necessary action to resolve matters. He does not use email or the phone but writes to the developers' agents at monthly intervals saying that it would be helpful to his clients if matters were resolved. Once again the Bank's agents manage to lose a request from the

developers' lawyers for the deed of restriction and matters are overtaken by the summer holidays. Several times Eliza and Petra think they are about to be able to purchase their dream house but each time their hopes are dashed by another setback in the negotiations between the different sets of agents. By the time that the deed of restriction is finally obtained ten months later, the house of their dreams has been sold to another buyer. This puts a strain on the relationship between Eliza and Petra and it is decided that the bungalow will be sold in any case.

Advise the three sets of agents and Eliza and Petra as to their position in terms of professional ethics and Legal Profession and Legal Aid (Scotland) Act 2007.

- b) Eliza claims that she put more of the deposit down in the initial purchase of the bungalow than Petra and that when the bungalow is sold she should get a greater share of the proceeds than Petra and instructs Fred to act on her behalf to secure this outcome.

Advise Fred as to his ethical position.

Question 3

Gerald is a generalist sole practitioner in the central belt of Scotland. He thinks that he understands the Scottish ethical rules on confidentiality and privilege but he still has issues with his duty of disclosure:

- a) In a case involving Heather (the widow of a testator who has excluded his twin daughters from his will), Gerald is the sole executor as well as the solicitor for the estate. Heather, who is the principal beneficiary under the will, is adamant that her stepdaughters should not be encouraged to claim their legal rights

from the estate. Gerald tells her that in his view he is required as the executor to inform the twins of their entitlement to claim their legal rights. Heather asserts that her late husband had fallen out with the twins and did not want them to gain from his estate. Gerald suggests that he ingather the estate and then resign as executor and assume Heather as the executor, when he will tell her of her duty as an executor to inform the twins as to their legal rights (knowing that she is likely to ignore this advice) but continue to act as the solicitor for the estate.

- b) Gerald is acting for Bob a small-time criminal who has a string of criminal convictions for petty theft and breach of the peace. This time he has been charged with armed robbery. Bob insists on giving evidence at the trial and proceeds to tell the Court a completely different story from that which he had told Gerald – a story which clearly contradicts several matters of fact which Gerald had established by corroborated evidence at an earlier stage.
- c) Gerald has been acting for another client Andrena who claims that she owns an estate in Perthshire. Gerald who assists Andrena to borrow funds on the basis of her ownership of the estate discovers that Andrena is not the true owner of the estate. The true owner is a businesswoman with a very similar name of Andrea. Gerald confronts Andrena and informs her of her duty to alert the Finance Company from whom she has borrowed the money as to the fraud. Andrena admits the fraud but undertakes to inform the Finance Company of her fraud. Gerald continues to act for Andrena for another year and is dismayed to discover this month that Andrena has not yet told the Finance Company about the fraud.

d) Gerald is involved in defending a client, Alice, who is accused of murder. Gerald is a close friend of a senior solicitor advocate Gordon whom he knows is desperate to have the opportunity to conduct a murder trial. Gerald tells Alice that he is very confident that Gordon will represent her more than competently and stresses the advantages of instructing a solicitor advocate whom he has worked with in the past and trusts and whom he knows will prioritise Alice's case over any other client and instructions.

Advise Gerald as to his ethical position in each of these scenarios.

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

John Smith, who lives in Edinburgh and has been a client of your firm for over ten years, contacts you by phone to say that, unfortunately, his father, being his last surviving parent, died last week and that he and his sister, Sarah Smith, who lives in Canada, have been appointed Executors under the Will. They wish to appoint you to act.

- a) Explain what your duties are under the anti-money laundering regulations in relation to John Smith and Sarah Smith, in each case providing reasoning for your answers; explain in each case what, if any, documents or other paperwork you would need to see.

- b) During the same telephone conversation John tells you that although provision has been made for both himself and Sarah in the Will, most of the Estate has been left by specific request to John's children and Sarah's children (the deceased's 4 grandchildren), the youngest of whom is one year old and the eldest of whom is 25 years of age. What anti-money laundering related obligations, if any, do you have in relation to the beneficiaries, and what documentation if any do you need to see? You should assume that the Estate is worth £500,000 with each grandchild inheriting around £100,000.

- c) You realise that the deceased was never a client of your firm. Are you under any obligation to check his identity and source of wealth? Please explain your answers.

d) The progress of the executry was delayed considerably because of the illiquidity of some assets. However two and a half years later you have now successfully ingathered the Estate and paid all necessary outgoings. You are now in a position to make a distribution to the beneficiaries. In the meantime you have had no contact from any of them. All your dealings have been through John and Sarah, the two Executors. Explain what checks you require to make at this stage in respect of the identity of the beneficiaries and explain what steps you would take prior to transferring any money to the beneficiaries.

e) After enquiry it transpires that the eldest grandson is now living and working in the United Arab Emirates. Does this in any way change your answer to the preceding question?

f) In addition to the legacies to the grandchildren there is a specific legacy of £30,000 to an organisation stated in the will as "The Poverty Relief Association of The Middle East". You have never heard of this organisation. John tells you that he knows it well and that it is a charitable organisation based in Scotland but which funds infrastructural regeneration projects in Islamic countries hit by war or natural disaster. John tells you that his father had been an engineer and had worked for many years in Syria and other Middle Eastern countries and had always had a strong desire to help to improve the infrastructure.

Do you have any obligations to check the nature of this organisation? Explain your answer. If you do what checks will you carry out and why?

g) You have now made your final distributions. Upon carrying out a reconciliation of the Executry Account

of Intrusions you note that you have the sum of £55.26 in credit. What do the Accounts Rules say about your obligations in respect of this money? Identify any relevant timescales.

Question 2

- a) You have become concerned about the level of balances being carried within your firm's client ledger. The Accounts Rules state how such balances should be dealt with and what options are available to the firm in tidying up the ledgers. A friend who is setting up a new legal firm has asked you for guidance on the main requirements of the Accounts Rules.

Please provide a Report on the following:-

- 1) The Books of Account that must be maintained.
- 2) The Bank Accounts which must be set up in respect of dealing with client and other money.
- 3) The Rules regarding reconciliation of such accounts and the process which must be followed to complete such reconciliations.
- 4) How client balances should be dealt with and what options are available to the firm in tidying up the ledgers.

One of your colleagues approaches you to say that he has been asked by a client to hold money on account pending the resolution of a dispute which the client is currently in with another company. He asks that you hold the money until the dispute is resolved

and that you then send the money to the party who is successful in this dispute.

Explain what considerations apply out of the Accounts Rules and the Money Laundering Regulations and what, if any, restrictions there are upon you carrying out this instruction.

b) You have been instructed to deal with the executry of Mr Smith, who recently died. You have a copy of the will. The will appoints Mr Smith's two (grown up) children, John (who lives in Edinburgh) and Sarah (who lives in Canada) as executors and leaves the entire estate to Mr Smith's grandchildren, of which there are 4. The estate is worth about £500,000. Explain what your responsibilities are under the anti-money laundering regulations in relation to John Smith and Sarah Smith, in each case providing reasoning for your answers; explain in each case what, if any, documents or other paperwork you would require to see.

END OF SECTION B

END OF QUESTION PAPER