



THE LAW SOCIETY OF SCOTLAND
APTITUDE TEST FOR EU QUALIFIED LAWYERS

PAPER IV
PROFESSIONAL CONDUCT AND THE ACCOUNTS
RULES

12th May 2015

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

It is a grey Thursday morning. Stephen, a criminal lawyer from the central belt is considering the latest exchange between the Scottish Legal Aid Board and the Law Society over the latter's proposals for legal aid reform, when one of his least favourite clients, Magnus, with a history of domestic abuse arrives without an appointment. He is agitated and his shoes are soaking wet although the streets are dry. In his somewhat rambling account of how he had been arrested over the weekend for alleged reckless driving, but eventually released without charge, Magnus lets slip that his longsuffering wife Poppy has walked out on him. He blurts out: "I wish she hadn't provoked me. She shouldn't have walked out on me". Further probing reveals that Poppy left in such haste that she left all her credit cards, her mobile phone and even her favourite and distinctive watch behind. Stephen thinks little more about it until a month or so later when a woman's body is discovered in the local canal. Her description matches Poppy's, but Stephen is shocked to note that the corpse was wearing a distinctive watch with Poppy's initials on it. It transpires that it is Poppy. Magnus is duly arrested and Stephen instructed to defend him on a murder charge. Stephen would rather not take the case and wonders whether he can decline to act on the grounds that his client is somewhat unsavoury or for some other reason.

Advise Stephen as to his ethical position.

In the end Stephen decides to act for Magnus but a week or two later a Detective Constable arrives at Stephen's office asking to see his records to elicit whether Magnus consulted Stephen on the original Thursday, asking what state Magnus was in and what his client had told him on that morning.

Advise Stephen as to his position now.

Question 2

- (a) Brian is a young commercial lawyer in one of Scotland's few remaining large law firms that does not have a link up with an English firm in London. He regularly breaks the speed limit in his commute between Perth and Inverness, despite the continuous speed cameras on the road. Soon he has sufficient points on his license to be disqualified from driving for three months. During that period he relies on his girlfriend, Sally, to drive him whilst he sips modest amounts of single malt whisky from a flask. On one occasion Sally is too tired to drive the whole way home and so Brian takes over the wheel half way back to Perth. A little later, both of them get out of the car at a lay by to stretch their legs when a police car stops to see if there is a problem. Smelling the alcohol from Brian's breath the police breathalyse him, and he tests positive. However, he replies that "Sally was driving". She is breathalysed and found to be negative. The police are suspicious when they discover subsequently that Brian has been disqualified. They make an appointment to see Brian in the near future.

Advise Brian as to his position in terms of professional ethics.

AND

- (b) Brian is equally cavalier with his business clients. He and his firm act for a large firm of property developers who are building and renting out state of the art commercial properties for Small and Mid-Sized Enterprises (SMEs). Another business client comes to him seeking to rent one of the properties. Brian determines to act for both clients but after a month or so decides that he had better cover himself by approaching the Law Society for a waiver of any professional rules which might relate to the transaction. Further, he decides to follow the English practice of asking commercial clients to agree to waive incidental conflicts of interest which might arise, in his terms of engagement letters.

Advise Brian as to ethical issues which arise from his behaviour.

Question 3

Alfred is a busy general practitioner who has taken on more work than he can properly handle. As a result he has failed to register a standard security for a mortgage lender when he should have done, and failed to register a deed in the Land Register timeously. He has spent 14 months procrastinating with an Executry, making untrue excuses to the executors and the beneficiaries to explain why he has made no progress whatsoever with the Estate. Recently, his car was repaired by a garage near to his office. In order to gain its release he pays the garage a cheque and as soon as he has the car back in his possession he cancels the cheque, claiming (untruthfully) that the repair was badly done. In court matters, things are not much better. Thus he has failed to settle the account of a doctor who has appeared as an expert witness in one of his cases, claiming that his client (who has disappeared without leaving him in funds) should pay the account.

Alfred feels sympathy for Karen a local widow with two young children and rather than reveal to her that her husband's holograph will is less favourable to her than if he had died intestate, he tells her that her husband died leaving no will. He then submits an application to the court indicating that the husband had died intestate.

Finally, Alfred is involved in a commercial litigation in Argyll. His client, Matthew, has an unusual surname which is shared by a wealthy and famous family in that part of the country. Matthew, however, is from a distantly related branch of the family and is entirely dependent on his small business for a living. Alfred pays for Matthew to acquire a smart new suit and implies that Matthew lives in a large house in Argyll when it is actually divided up into a large number of small, one-bedroomed properties, one of which is rented by Matthew. As a result the sheriff hearing the case, who is relatively new to the area – mistakes Matthew for a member of the wealthy branch of the family, and forms a favourable impression of his character, as Alfred had intended. Alfred uses the favourable impression to persuade the sheriff that the damage caused by the other side's client to Matthew's business is likely to last for two years. After the proof but before judgment is handed down it becomes clear to Alfred that Matthew's business has fully recovered, far earlier than anyone had anticipated. Alfred decides

that since the proof has been completed he need not inform the Court.

Advise Alfred as to the ethical implications of his behaviour.

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) Mr & Mrs Lawson are existing clients of your Edinburgh based firm and whilst they lived in Edinburgh previously they used your services to draft wills and powers of attorney and also to settle a boundary dispute with their neighbours. At the time you assessed the nature of the business undertaken to be low risk obtaining confirmation of identity (now expired) and address. In 2007 the clients moved to South Africa, where they are still resident, and you have not had any further dealings with them since then. However they have now approached you for advice in relation to setting up offshore trusts for their Grandchildren with a total value of £1.5m and also purchasing an investment property in Spain circa £400,000. You review the copy of the will drafted in 2006 and note that the assets including the principal property at the time amounted to £450,000 and also identify from your notes that the clients were at the time close to retirement.

- (i) Bearing in mind that you have acted for the clients before explain what, if any, additional documentation is required to verify address or identity.
- (ii) In addition to the above is there any further information you would require? If so, what and why.

(b) You contact Mr & Mrs Lawson to discuss any additional requirements you have identified in (i) and/or (ii) above. Mr Lawson states that of course anything further you need will be provided to you however the post from South Africa may take a while and you should proceed with the business now rather than waiting for them to arrive particularly as they have identified the property in Spain they wish to purchase and want an offer to go in immediately.

- (i) Based on all the information above are there any grounds for suspicion, if so please detail what those grounds are and why and if not, why not. If you believe there are grounds for suspicion detail the steps you will take.

- (ii) Your cashroom have just told you that they have received £400,000 by way of electronic transfer. It has been traced to Mr & Mrs Lawson. Detail what steps you need to take, including whether or not you should speak to Mr & Mrs Lawson about the money. What do you do with the money and what further information if any should you seek?
- (iii) What do the Accounts Rules say about holding client money? Can you deduct your proposed fee from the money you hold?

OR

Question 2

(a) List the 5 key points being brought in by virtue of the 4th AML Directive. What additional procedures will your law firm need to take (if any) as a result.

(b) You are a partner in a legal firm. One of your partners has asked you, as a favour, to “deal with the paperwork” to allow them to grant a standard security over their house (they are re-mortgaging with a well-known UK bank). You check the system and see that you have client verification documents for your partner but not his wife. What do the Accounts Rules say about what you are permitted to do in these circumstances?

(c) You act for 2 companies West Coast Motors Limited and North West Coast Motors Limited. These companies are wholly owned by John Smith. The two companies have separate directors. The client due diligence paperwork is up to date. Your practice holds £3,500 on an interest bearing account for West Coast Motors Limited. Your fee of £2,000 plus VAT rendered to North West Coast Motors Limited is outstanding. The managing director (who you know well) tells you that Mr Smith wants you to take the money due under that invoice from the £3,500. You are told that the intention is to wind down trading activities of West Coast Motors Limited and that in due course West Coast Motors Limited and North West Coast Motors Limited will be merged.

What do the Accounts Rules say about what you are permitted to do and what if anything do you need in order to do so?

(d) What do the Accounts Rules say about reconciliations? What is the purpose of these rules and why are they necessary?

(e) You are closing old files and whilst reviewing one you are horrified to find a cheque for £150 still stapled to a letter which you received from this client 3 months ago. The case is finished. The letter explains that the cheque was a payment to account of outlays. £50 of outlays have been incurred and paid by your firm which is in debit in that sum. What are the rules on banking client money and how do you propose to deal with the cheque?

END OF SECTION B

END OF QUESTION PAPER