



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

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

7 November 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

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

Simon is an ambitious young civil litigation partner with a specialism in medical negligence cases, although he has not applied to be a Law Society accredited specialist. He is an avid user of social media and regularly tweets on the progress of significant medical negligence cases with tweets giving a summary of each witness's evidence as the case progresses. He distributes beer mats with his picture on it with the slogan "Don't waste your time with claims management companies – our specialist service offers the best returns for our litigation clients".

Simon encourages other firms to send him clients by offering them a referral fee which he disguises as an outlay in his client invoices by implying that the referring firm has carried out administrative and preparatory work with the client before referring them to Simon. Anticipating the passing of the Civil Litigation (Expenses and Group Proceedings) (Scotland) Bill Simon offers to work for his clients on a "no win no fee" basis. If he wins he gets a fee of 15% of the winnings, but indicates in his letter of engagement that if his client chooses to reject his advice to accept a settlement and tries to instruct another lawyer to take the case on, he will exercise his lien indefinitely and be free to charge them an hourly rate of £400. Although Simon does not mention this – such an hourly rate will almost certainly give Simon a much higher fee than the percentage set out in his terms of engagement letter.

Simon rarely accepts legal aid clients, despite having the legal aid logo in the office window, but if he does accept one, his terms of engagement letter makes no reference to the contributions which the client may have to pay to the Scottish Legal Aid Board (SLAB), taking the view that SLAB will explain the operation of legal aid to the client.

One of Simon's clients is an attractive young widow Beverly who has suffered trauma from a badly carried out operation on her shoulder. In the course of the litigation against the Hospital Board, Beverly has come to be increasingly dependent on the advice and support of Simon. Before the completion of the action Simon and Beverly commence an affair.

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

Question 2

Jim, a sole practitioner is acting for a developer who is constructing a small estate in a rural part of Fife. Jim is approached by the Brian and Ella an elderly, frail, couple (whose mirror will he did several years ago), to act for them as well, in the purchase of one of the new bungalows on the estate. When they met the developer Brian and Ella were persuaded to buy the bungalow because he assured them that there would be no problem in walking their dogs in the shared green areas of the estate and the pathway between the estate and the farm next door. The purchase is completed successfully but Jim's abrupt manner upsets Brian and Ella and they terminate his retainer as their lawyer once they have taken entry to the property.

Three years after they moved in, Brian and Ella receive a letter unexpectedly from Jim on behalf of the developer which is very aggressive. Jim states that he understands from the developer that Brian and Ella have been letting their dogs run around the estate without a leash, as well as walking their dogs without permission on the shared green areas of the estate and on the pathway next to the farm and thereby causing damage and upset to the neighbours as well as scaring the sheep on the farm causing some of them to miscarry. Jim states that he intends to bankrupt them with claims because of their misbehaviour and the misbehaviour of their dogs. Brian and Ella are distraught at the letter since none of the allegations contained in the letter are true, a matter which Jim could readily have established had he sought to check his facts before writing the letter.

Brian contacts Jim to express their outrage but Jim simply rebuffs them by saying they should get a lawyer to defend them against the law suits that will be coming their way. The couple cannot afford to do this but Brian asks Jim whether the developer had told Jim that they only bought the bungalow because he had assured them that they could walk their dogs on the green areas and the pathway, but Jim claims that privilege and confidentiality prevents him telling them what the developer had said to him at the time of the purchase. Ella's health, which has been poor for several years, suffers, not least because the stress caused by Jim's letter has given her repeated sleepless nights. Brian complains to the SLCC as to Jim's actions.

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

Question 3

(a);

Becky and her husband Robert are partners in a small law firm in the Highlands. Becky is the cashroom partner. Robert handles the executries for the firm and not infrequently handles those of wealthy farming families nearby. Finding the rewards of rural practice too small to sustain the lifestyle to which he aspires Robert regularly charges sizeable interim fees against executries

without get the client's prior agreement and this on occasion leads to the final fee for the executries being twice what other firms in the area would charge. Robert frequently omits to send his clients a letter of engagement. Several complaints are made to the SLCC against Robert by beneficiaries and executors, but Robert ignores letters from the SLCC and hides from Becky any letters from the SLCC directed to her as cashroom partner, which relate to the complaints.

Comment on the ethical position of Becky and Robert.

AND

(b);

Three years ago Anna consulted Peter a sole practitioner about her divorce. He advised her about the property settlement, including obtaining a share of her husband's pension. During these discussions Peter learnt that Anna's natural pessimism made her strongly risk averse in her outlook on life. Some years after the divorce was finalised Peter joined Smith & Co. a four partner legal firm who (amongst their other work) acted for insurance companies in defending personal injury claims. Anna is injured in a road accident and true to form adopts an overly pessimistic assessment as to her chances of making a full recovery. She is appalled to discover that the firm acting for the driver, who drove into her car, is the one that Peter has joined. Peter is not acting for the driver's insurance company but he works in next door room to the solicitor who does.

Advise Anna as to whether she has any grounds on which to object to Smith & Co acting against her. What difference (if any) might it make if Peter had been the solicitor instructed to act for the car driver / insurance company?

END OF SECTION A

Section B: The Accounts Rules

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

Question 1

The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 came into force on 26th June 2017.

- (a) Those regulations impose an obligation on legal firms to take appropriate steps to identify and assess the risks of money laundering and terrorist financing to which its business is subject. List the obligations which legal firms are under when carrying out this risk assessment.

- (b) Those regulations oblige legal firms to establish and maintain policies, controls and procedures to mitigate and manage effectively the risks of money laundering and terrorist financing identified in [their] risk assessment. List what must be included in the policies, controls and procedures.

- (c) List the principal obligations imposed by Regulation 21 relative to internal controls.

- (d) Legal firms are under an obligation to train “relevant employees”. List the two principal obligations in respect of training provided for by the regulations.

- (e) Write brief notes explaining when you would use enhanced customer due diligence, when you would use standard due diligence and the differences between the two.

Question 2

- a) Rule B6 of the Solicitors (Scotland) Accounts, Accounts Certificate, Professional Practice and Guarantee Fund Rules 2001 (“the Accounts Rules”) prohibit “regulated persons from acting for lenders in certain situations”. List those situations where the regulated person cannot act for the lender.

- b) You are acting in the sale of a client’s house and the subsequent purchase of a new house for that client. Unfortunately the purchase price will be due before the proceeds of sale will be received. There is likely to be a shortfall and the client needs to obtain a bridging loan of £10,000. He asks you if your firm have an arrangement with a Bank whereby you would be able to draw down a loan for him.

Identify the Rule within the Accounts Rules which deals with this situation and explain in what circumstance you would be able to draw down money on the client's behalf.

- c) You recently started up your own Legal Firm. An existing client who followed you from your previous practice has offered to lend you money to help with a short term cash flow problem. Can you borrow the money from him and if so, explain the Rules which will apply?

END OF SECTION B

END OF QUESTION PAPER