



**THE LAW SOCIETY OF SCOTLAND  
EXAMINATIONS**

**SCOTS CRIMINAL LAW**

**Wednesday 7 February 2018**

**1330 – 1630  
(Three Hours)**

**Candidates should attempt any FIVE questions, with at least ONE question taken from Section B.**

**Answers should be fully reasoned and supported by adequate citation of authority in all cases.**

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**SECTION A**

**Question 1**

Explain fully the circumstances in Scots criminal law in which an omission to act may constitute the *actus reus* of a criminal offence, citing authority as appropriate. In your opinion, are there any other forms of omission which should be criminalised?

**Question 2**

Explain fully the crime of murder in Scots criminal law, citing authority as appropriate. In your opinion, is it beneficial to have two alternative *mens rea* for the crime?

**Question 3**

Explain fully the principles of the crime of breach of the peace in Scots criminal law, citing authority as appropriate. Outline any breach of the peace cases which have been specifically concerned with aspects of the European Convention on Human Rights.

**Question 4**

Set out fully, citing authority as appropriate, the principles, in Scots criminal law of the crimes of:

- Theft;
- Reset; and
- Fraud

In your opinion, is the concept of wilful blindness in reset fair to the accused?

### **Question 5**

Explain fully the *actus reus* and *mens rea* components of criminal attempts in Scots law, citing authority as appropriate. In your opinion, is it appropriate to criminalise attempted crimes or should only completed offences be penalised?

### **Question 6**

Explain fully, considering also any relevant case law the principles of the crimes of:

- Rape (section 1 of the Sexual Offences (Scotland) Act 2009);
- Sexual Assault by Penetration (section 2 of the Sexual Offences (Scotland) Act 2009); and
- Sexual Assault (section 3 of the Sexual Offences (Scotland) Act 2009).

In your opinion, are rape and sexual assault by penetration easily distinguished from each other?

**END OF SECTION A**

## **SECTION B**

### **Question 7**

Martina is taking a walk along the river bank. She has no mobile phone signal. It is pouring with rain and the water starts lapping over the path. Martina remembers that she heard a flood warning on the radio before she left her house. The water on the path is up to her ankles and getting deeper. Martina is on a part of the path which is between the river and a high wall. She is alarmed by the situation and she is relieved to see a rowing boat moored beside her. She gets in and sails off down the river back towards where she has parked her car. She has only been in the boat for a few minutes when the rain goes off and she sees some people on the riverbank. She decides to sail the boat all the way to her car anyway.

When Martina eventually gets home, she is still very shaken. Her husband makes her a cup of tea and, without Martina's knowledge, puts a powder into it which he bought from a market stall. He thinks that it will calm her down. Martina feels very strange immediately after that. She destroys her husband's collection of ceramic animals by hitting them with a baseball bat. She has a vague idea that she should not be doing this but she feels that she cannot stop.

After a good night's sleep, Martina awakens feeling refreshed. She looks out the window and sees her husband standing on the street outside with his arms around a woman. When she confronts him he says that the woman is his cousin. Martina accepts this and goes back into the house. The encounter bothers her more and more over the next couple of hours however and she starts to suspect him of having an affair with the woman. This causes her to become very angry. She picks up her baseball bat and hits her husband over the head with it, killing him instantly.

Martina has been charged with theft of the boat, vandalism of the ceramic animal collection and murder of her husband. Which **DEFENCES** in Scots criminal law may be available to her and what is the likelihood of these being successful? Give full reasons for your answer, citing authority as appropriate.

### **Question 8**

William, Josh, Kevin and Stephanie are all taking a college course in oil painting. For every piece of work which they have so far submitted, Stephanie has obtained the best mark in the class. William, Josh and Kevin decide that they will make sure that this does not happen the next time. They agree to meet at the college the night before the next class when they know that Stephanie will have put her latest painting on display in readiness for marking. William will keep watch outside the room; Kevin will remove Stephanie's painting from its easel and hold it so that Josh can cut holes in it with a pair of scissors.

They all duly meet up the next night. Kevin and Josh enter the room where the paintings are displayed. William waits outside but he quickly decides that he does not want to be involved any further. He goes home stopping only to send a text to Kevin and Josh which reads "I'm off". Neither of them reads the text till much later. Kevin and Josh both carry out the acts in relation to the painting as previously agreed.

Suddenly, Stephanie appears in the room. Josh rushes up to her shouting "I hate you. Why are you so much better than me?" He uses the scissors to stab her three times in the hand shouting "bet you can't paint so well now." William is horrified by this turn of events and does all that he can to help Stephanie.

Which crimes in Scots criminal law may have been committed by William, Josh and/or Kevin? Give full reasons for your answer, citing authority as appropriate.

**END OF SECTION B**

**END OF QUESTION PAPER**