



THE LAW SOCIETY OF SCOTLAND

APTITUDE TEST FOR EU QUALIFIED LAWYERS

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

30 April 2018

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

The police have interviewed a number of persons during their investigation of a murder committed in February 2018 in a street in Glasgow.

- (a) They visit the house of Abe, who tells them that it was the local gang who 'did the job', that he (Abe) had agreed with the gang that he would bring the victim into the street but he had run away before the violence had started. Abe was not cautioned before making this statement.
- (b) The police are holding a suspect, Bob, in police custody. He has been informed that he has the right not to say anything and that he can have access to a solicitor. In response to police questioning Bob makes a statement incriminating himself in the murder. He is then cautioned and charged with that crime. His reply to the charge is 'you can't prove anything'. As he is being led away a police officer says that they still want to clarify certain details about who else was involved. They ask Bob questions, and in his replies he names various people as being party to the killing.
- (c) A police officer then goes to the house of Colin. As he arrives Colin says "Look, I know that I've been in prison for violence but I've never ever used an axe." The police have not revealed that the victim died of axe wounds though a local newspaper ran a story about the murder as involving a possible axe attack.
- (d) The police are holding Dave, who is aged 15, in custody. As the police are explaining that he has the right to have a solicitor present, Dave says that he doesn't like lawyers and doesn't want one now. The police ask Dave a variety of questions and in his answers he admits that he was involved in the attack.

Abe, Bob, Colin, and Dave are soon to go on trial for murder. Advise the Crown on the admissibility of the statement or statements made by each of the accused.

Question 2

Write brief notes on **TWO** of the following points, with full reference to authority;

- (a) Judicial knowledge.
- (b) The *Moorov* doctrine.
- (c) Privilege of communications made in aid of negotiation.

Question 3

Write a critical account of the law of hearsay in criminal proceedings.

END OF SECTION A

SECTION B: CIVIL AND CRIMINAL PROCEDURE

Candidates should answer TWO questions from this section.

Question 4

- a) Explain the differences between adjusting and amending pleadings.
- b) What procedure is available to a pursuer to prevent a defender from divesting himself of funds in a bank account, during the course of legal proceedings? Explain how the procedure operates in the context of an ordinary cause action.
- c) What is the procedure that should be followed if a solicitor withdraws from acting?
- d) Explain the purpose of the Options Hearing. With reference to the relevant procedural rules, what steps must the parties take not later than 3 days prior to the Options hearing, and what are the consequences of failing to do so? Explain also, with reference to the relevant rule, what action the Sheriff can take if one of the parties fails to attend the Options Hearing.
- e) In an ordinary cause action, the defender lodges a Tender for £15,000, eight weeks prior to the Proof. The action proceeds to Proof and the pursuer is awarded £10,000.
 - i. Explain what motion the defender is entitled to make in respect of the expenses of the action;
 - ii. If the sum awarded had been £4,000, what effect might that have on the award of any expenses;
 - iii. If the pursuer is legally aided, with a nil contribution, what effect would that have on the situation regarding expenses described at (i) above?
- f) What procedural steps does a defender need to carry out in order to avoid decree in absence being granted?

Question 5

You act for Jenny Brown who lives in Nairn. In June 2017, she was involved in a road traffic accident on the A9 near Inverness. There were 2 other cars involved – a truck owned by a company with its registered office in Edinburgh; and a car driven by Roberto, an Italian on holiday in Scotland. Jenny says that the accident was caused by the fault of the other drivers and there is evidence available that supports her position.

- a) Can Jenny raise an action for damages in Scotland?
- b) Who can Jenny raise proceedings against and what would be the grounds of jurisdiction if the context of an ordinary cause action;
- c) If the accident had taken place in June 2013, what particular line of defence would be available and why?
- d) Once proceedings are raised, you discover that the driver of the truck is about to immigrate to Australia in 3 months' time and may not be available as a witness at the Proof. What advice would you give to Jenny about what might be done to obtain his evidence before his departure.

Question 6

- a) Your client is being prosecuted on complaint in the Sheriff Court for assault.
 - i. When you first meet your client before the complaint calls for the first time he tells you that he did not carry out the actions that are set out in the complaint, but that these things were said and done by his brother who was standing next to him when the police arrived. What do you do? When must such action(s) be taken?
 - ii. Discuss whether the spouse of the accused is a compellable witness for any party.
 - iii. At the close of the prosecution case there is no evidence that your client has assaulted anyone. What do you do?
- b) Discuss the procedure to be followed where a person accused of a sexual offence wishes to attack the character of the complainer in solemn proceedings.
- c) Are there any circumstances in which reference may properly be made by the Crown during a trial to previous convictions or alternative disposals in the presence of a jury prior to verdict?

END OF SECTION B

END OF QUESTION PAPER