



THE LAW SOCIETY OF SCOTLAND APTITUDE TEST FOR EU QUALIFIED LAWYERS

PAPER IV PROFESSIONAL CONDUCT AND THE ACCOUNTS RULES

1 May 2018

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

Madeleine is the senior partner in a mid sized firm in the Borders. She has only recently discovered the temptations of social media and the buzz that she gets from sending off snappy tweets to her handful of followers on the Twittersphere. Feeling particularly stressed at the end of a long and hard day at the office she makes racial remarks about a Black golfer at the Augusta Masters in a Friday evening tweet. Madeleine is careful not to identify herself as a solicitor in her tweets or hashtags and none of her 9 followers knows of her occupation, however the local newspaper somehow discovers the tweet and reports the tweets luridly on the front page identifying her as a solicitor and her firm.

One of Madeleine's partners, Kevin, is a Solicitor Advocate who has been acting for an accused, a childminder, in a high profile culpable homicide case in the High Court where the child is alleged to have died as a result of the gross negligence or recklessness of the accused. Kevin feels that the judge who is presiding in the trial is biased against him and after enduring repeated interruptions from the judge which were accompanied by meaningful looks at the jury, Kevin challenges the impartiality of the judge in open court. A reporter from local radio happens to be in court and the events of the day are broadcast that evening. Kevin waits until the trial is over and his client has been acquitted, before formally complaining about the judge. Kevin has now been approached by the local radio in search of a follow up story, asking Kevin for his comments.

Kevin is ambitious for the firm and has taken to tweeting that the firm has a place of business in Edinburgh and Glasgow – in truth the firm merely rents rooms in each of the cities when a client wishes to meet him there. In an endeavour to attract more clients Kevin's blog asserts that when acting in motoring offence cases he "always gets good results for his clients".

Finally, Madeleine has been acting for Alice, a trustee in a charitable trust that is well funded. Alice is at odds with her fellow trustees and after six months of acrimonious correspondence (conducted through Madeleine), she offers to resign as a trustee if the other trustees will pay the fees that Alice has incurred to Madeleine in the matter. In the discussion that follows Alice

suggests that Madeleine should replace her as a trustee (whilst remaining as Alice's lawyer after she has ceased to be a trustee) in the hope that this will enable the dispute to be brought to an end. .

Advise Madeleine and Kevin as to their situation from the perspective of professional ethics.

Question 2

- 2 a) Jill is a partner in an Edinburgh firm. In this morning's post she has she receives a mandate from Daniel a solicitor from a nearby firm, on behalf of Brenda a client for whom Jill has been acting in the defence of an action for breach of contract. A debate in the case has been assigned for the following month. Jill takes the view that she will delay implementing the mandate while she finds out why Brenda is unhappy with her. She assumes that Brenda's concerns were triggered by Jill refusing two weeks ago to send a firm cheque in settlement of the action on the grounds that if the other side were to reject the offer Jill will not be able to cancel the firm cheque. Rather to her surprise the next week she receives a letter from Daniel indicating that Brenda is considering suing Jill for her alleged negligence in handling the breach of contract case. Jill wonders how she can defend herself in court without breaching client confidentiality.

The next day Jill begins to feel that this is definitely not her week. She is the co-executor along with two sisters who are beneficiaries in a substantial executry. Most of the estate has been ingathered but the sisters have grown tired of Jill's refusal to prioritise the handling of the estate in her busy schedule and provided a mandate to Robert, another local solicitor to take over running the executry. Jill angrily refuses to implement the mandate asserting that she will charge both a generous interim feenote (which has not been mentioned before to the co-executors) and then in five weeks time, when her law accountant returns from his holidays, fee the account for the executry to the absolute maximum that she can.

Comment on Jill's ethical situation.

- 2b) Jill is troubled by another of her cases. She acts for Conrad a local businessman and venture capitalist who is working on a house building estate transaction which will net him a six figure profit if it is successful. She is informed by one of Conrad's business partners that Conrad has suppressed from the proposal details of long forgotten mineworkings in the relevant area and which, if known would probably lead to the other parties to withdraw or the elimination of almost all of the profit element for Conrad in the transaction.

[please turn over]

Advise Jill as to her ethical position. Would it make any difference to your answer if there was a risk of serious personal harm to either the builders or the eventual house owners if the development is undertaken in ignorance of the old mineworkings?

Question 3

Your client Frankie is a local councillor and convenor of the local planning committee. On the recommendations of the planning committee the local authority has somewhat controversially granted planning permission to Darien Holdings Ltd for a filling station on a greenfield site right next to a Site of Special Scientific Interest (SSSI) which is also very close to an upgraded section of dual carriageway on the A9 from Perth to Inverness. Robert, a young cub reporter from the regional newspaper, the Highland Clarion, seeking to make his mark in investigative journalism, publishes an article claiming that Frankie had spent a weekend at the Waterloo Hotel in Amsterdam at the expense of Darien Holdings, and that this had influenced the local authority's decision to grant the planning permission for the filling station.

Frankie vehemently denies the allegation, claiming that he has never set foot in the Waterloo Hotel, and when the Highland Clarion refuses to print a retraction, he instructs you to proceed with a defamation action against them and Robert, claiming £500,000 in damages.

Before raising the action, you take a precognition from Frankie's close friend Billy, a building contractor, who confirms that he was with Frankie on a stag night in Benidorm throughout the weekend when Frankie is alleged to have been at the Waterloo hotel. You accordingly include Billy's name on the list of witnesses intimated to the other side in accordance with the rules of court.

However, you have now heard that a disaffected employee of Billy's has approached the Highland Clarion with Billy's business diary which confirms that Billy was doing a high paying weekend job in Edinburgh for the whole of the relevant weekend. When confronted with this, Frankie reluctantly admits that he had asked Billy to cover for him, because Frankie had actually spent the weekend in Bournemouth with a young lady, Marion, but had not wanted to admit it because "my wife would kill me if it came out".

Frankie remains adamant that he has never been to the Waterloo Hotel, and although reluctant to involve Marion, he tells you that you may now call her as a witness. You are nearly convinced that this time Frankie is speaking the truth but are worried about what you should do if Frankie and Marion start to lie their way out of trouble on the witness stand. Your concerns are not relieved when Frankie, under further questioning by yourself admits to having had the continuous, free use of a luxury Highland Lodge courtesy of Darien Holdings, for the six months prior to the decision of the planning committee, a fact which the Highland Clarion has not discovered. Fearing that Billy's evidence may not help Frankie's cause, you encourage Billy to go on a six month "exchange" with a building contractor from Adelaide, Australia. You

also hold mock “coaching” sessions with Marion to make sure that she is word perfect when it comes to her being cross-examined at the proof. All of this has a deleterious effect on your relationship with Frankie which is coming out in petty ways. Thus he has declined to pay the fee of the expert you instructed on his behalf in relation to SSSIs.. Were it not for the fact that you are secretly hoping that the litigation will make your name as a litigator to be feared and respected in the region, you would have dropped the case weeks ago.

Comment on the ethical issues involved.

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

The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017. Regulation 17 provides that each supervisory authority must identify and assess the international and domestic risks of money laundering and terrorist financing to which those relevant persons for which it is the supervisory authority there are subject.

- a) Identify the relevant regulation which imposes an obligation upon legal firms to carry out a risk assessment and, having identified that regulation, state the obligations which a legal firm is under in terms of that regulation.
- b) Regulation 19(1) states that “a relevant person must establish and maintain policies controls and procedures to mitigate and manage effectively the risks of money laundering and terrorist financing identified in any risk assessment undertaken by the relevant person”. State the obligations which legal firms are under in relation to those policies, controls and procedures as set out in regulation 18(1).”
- c) List five customer risk factors which are relevant when assessing “whether there is a high risk of money laundering and terrorist financing” (Regulation 33).

Question 2

- a) Explain the obligations which legal firms are under in respect of obtaining approval of beneficial owners, officers or managers of the firm by the supervisory authority of the firm under the Money Laundering, Terrorist Financing and Transfer of Funds (information on the payer) Regulations 2017.
- b) You are a Scottish Solicitor. A legal firm in London would like to instruct you to act for one of their clients which is considering taking the lease of commercial premises in Scotland. Their client is a limited company. The London solicitors would like to be the point of contact meaning that you will not have direct contact with the underlying client. Explain how you will go about complying with your firm’s obligations under the 2017 Regulations and explain the rules which apply if you wish to rely on the English firm’s customer due diligence.

[please turn over]

- c) Solicitors (Scotland) Accounts, Accounts Certificate, professional practice and guarantee fund rules (“the Accounts Rules”) contain obligations in relation to client balances held after the conclusion of a matter. State what these obligations are.
- d) What is the purpose of the Guarantee Fund?
- e) Who may apply to the Society for a grant from the guarantee fund? Are there any time limits in making a claim?
- f) Under the Accounts Rules what is meant by
 - (i) A client account?
 - (ii) “balance its books”?
 - (iii) “accounting records”?

END OF SECTION B

END OF QUESTION PAPER