



THE LAW SOCIETY OF SCOTLAND EXAMINATIONS

PROCEDURE

Wednesday 8 August 2018

**1000 – 1200
(Two Hours)**

Candidates should attempt FIVE questions only

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Question 1

In an Ordinary Cause action in Edinburgh Sheriff Court, your client, the Defender, instructs you to make an offer to settle the action by paying a principal sum (inclusive of interest) of £150,000 plus expenses to the pursuer. You have advised your client that the making of such an offer might offer some costs protection in the event that the case proceeds to Proof.

- i. What procedural step must you take in order to make the offer?
- ii. Draft the document that would be prepared by you to set out the terms of the offer.
- iii. Explain what motion in respect of expenses you would make on the Defender's behalf in the event that the case proceeds to Proof and the Pursuer obtains a decree for £120,000 (inclusive of interest) plus expenses.

Question 2

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? With reference to the relevant procedural rules, explain how the procedure operates in the context of a Sheriff Court Ordinary Cause action. Explain the matters the Sheriff would have to be satisfied on before making an order in the Pursuer's favour.

Question 3

You act for Jenny Brown who lives in Nairn. In June 2017, she suffered an injury as a result of being involved in a road traffic accident on the A9 near Inverness. The accident did not occur in the course of Jenny's employment. There was another vehicle involved, driven by John who lives in Glasgow. Jenny says that John was responsible for causing the accident and there is evidence available that supports her position. You have assessed the value of the claim and believe it is worth no more than £3,000.

- i. In what court, and under what procedure, could the action be raised and why?
- ii. If the accident had taken place in June 2013, what particular line of defence would be available and why?
- iii. Draft the plea in law for the Defender relative to (ii) above.
- iv. Once proceedings are raised, you discover that an important witness who saw the accident is due to emigrate to Australia in 2 months' time and will not be available as a witness at the Proof. What might be done before his departure to ensure his oral evidence is available at Proof?

Question 4

Your client is in custody, he has no previous convictions. He is charged with assaulting his wife. Another prisoner at the Court has told him the he will get 'standard condition' bail and a special bail condition not to approach or contact his wife directly or indirectly and he will probably need another address. Your client tells you he wants to go home and is confident his wife will be happy to see him. He gives you his wife's telephone number but she is uncontactable.

- a) What are the standard conditions of bail?
- b) What arguments can you deploy to try and prevent the application of the additional bail condition referred to by your client's cellmate?

Despite your best efforts the additional condition of bail has been imposed. A week later your client advises that his wife has had a fall and is immobile. She now lives alone and needs his help on a daily basis. He wants to return home. The trial is three weeks away.

- c) What steps if any can you take to facilitate his return home immediately?
- d) What would be the legal basis for taking this step?

Question 5

Your client consults you in your office. He has previously pled guilty by letter to assaulting a stranger in the street at his local Sheriff Court. He has received a letter from the Clerk of Court telling him to attend at the Social Work Department for a Criminal Justice Report to be prepared for the Court. He has attended at the Social Work Department and now wishes you to attend at Court to represent him.

He advises that he is a lorry driver. Two hours before the incident he had been laid off from his work. He has a mortgage and a family to support. He was upset and crying in the street when the stranger saw him.

The stranger approached him and wanted to know why he was upset and how he could help. The stranger refused to move away despite being requested to do so. Your client then punched him in frustration. Unfortunately he was wearing a ring which has cut the stranger's cheek and has left scarring.

Your client has no previous convictions. He is described in the report as remorseful. He is assessed as suitable to carry out work in the community. The Social Work Report identifies no other ongoing problems in his life. He has no outstanding cases. The social worker has established that your client has £1000 of savings in an account. He is in a position to pay compensation.

Despite the favourable report the Sheriff imposes a sentence of six months imprisonment discounted from nine months. He advised your client in Court that too many unprovoked attacks were happening in the streets of the local Sheriff Court and it was time that these were stamped out. Your client is now in custody in prison and you have visited him in prison and he wishes to appeal the sentence imposed.

- a) What his method of appeal?
- b) What is the time limit in which he must appeal?
- c) Can anything be done to alter the status in custody pending the appeal being resolved?
- d) What, with reference to authority are the grounds of appeal?
- e) Draft an outline sketch of the grounds of appeal that you would wish to advance.

Question 6

Your client appeared on Petition at the local Sheriff Court eight months ago. Despite correspondence from you he has failed to provide you with instructions. He arrives at your office yesterday advising that the police have now served him with an Indictment citing him to the local Sheriff Court with a first diet in three weeks' time. He was charged with theft of a motor vehicle from the village 15 miles away, secondly with a sexual assault on a 26 year old woman contrary to Section 3 of the Sexual Offences (Scotland) Act 2009. He advises his position is that the motor vehicle in question was being driven by his friend Dave who had arrived to pick him up and take him for a spin in the car. Dave had not given him any indication that the vehicle was stolen. He further advises that he and Dave met two girls while driving about in the car. They had all gone to a secluded woodland area where he and one of the girls had got 'friendly' and the conduct libelled in the charge had happened with her consent. Before interview the police advised him that he should admit the theft of the car because if he did then they would make sure he got out of custody that night and if he didn't they would make sure he would be locked up for months.

[Please turn over]

In every case where an Indictment is served and a First Diet intimated

- (a) What documents and within what timeframe must the defence lodge with the Court to comply with their duties to the Court?

In this particular case –

- (b) What steps would you take prior to the First Diet and within what timeframe to protect your client's position and be ready to assign a Trial Diet?
- (c) Would any of the steps that you have been taken be different if Dave was a co-accused as opposed to a potential witness?

END OF QUESTION PAPER