



**THE LAW SOCIETY OF SCOTLAND  
EXAMINATIONS**

**PROFESSIONAL RESPONSIBILITY**

**Friday 15 February 2019  
0900 – 1215  
(Three hours and fifteen minutes)  
(15 minutes are allowed for reading)**

**Candidates should answer FOUR questions only**

**All questions are of equal weight.**

***(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.)***

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**Question One**

Dougal is an associate solicitor in a niche Aberdeen law firm which specialises in personal injury litigation from the North Sea oil sector. Dougal had made his name from acting for relatives of the victims in the last helicopter crash which occurred whilst ferrying oil workers to the rigs. However, business since then has been slow. Dougal persuades Donna, his partner to allow him to implement an ambitious marketing plan. First, to have brochures and business cards printed with a photo of Dougal in front of a crashed helicopter, with the heading, “world class litigator in Northern Scotland” and describing himself as offering “an unrivalled personal injury service”. Dougal plans to distribute the brochures in the A and E departments of hospitals as well as in the helicopter terminals, pubs and other venues frequented by oil rig workers on their break from the rigs. Secondly, to draw up an arrangement with a claims management company to refer clients to the firm in return for a referral fee amounting to 0.5% of any settlement achieved on behalf of that client by the firm. Third, to carry on an active twitter commentary from any large personal injury case that goes to proof in the Court of Session covering not only the comparative expertise of the expert witnesses giving evidence but also the strength and weaknesses of the judge hearing the case. Finally, in a bid to make his fees competitive Dougal indicates that (1) although he does not normally undertake legal aid cases, for clients who are eligible for advice and assistance he will use it to obtain an expert’s opinion before switching to a private fee for the rest of the case and (2) that for litigation he charges 5% of any damages recovered from the other side ( including wage loss and future care costs ).

Advise Dougal and Donna as to their ethical position. Where there are any concerns advise them how best the various strands of the marketing campaign might be revised to keep them recognisably intact but also reasonably safe from ethical challenge.

## Question Two

Angela has acted for twenty years as the personal lawyer for Ruth, a wealthy widow, helping her in many and varied ways e.g. to master internet banking, and arranging cheap flights on-line, that go far beyond the normal role of the solicitor. To celebrate their 20-year association Ruth takes Angela on a free cruise round the world on a large ocean liner. Angela and Ruth are genuinely fond of each other and it is eventually agreed that Angela will move into Ruth's large mansion to look after Ruth in her old age and provide her legal services for free during the period of the arrangement. In return, Angela will receive 25% of the value of the mansion if the arrangement lasts for five years and a further 25% if it lasts for 10 years. Angela drafts an agreement implementing these conditions and arranges for it to be independently witnessed. At the same time Angela drafts Ruth's revised will, which leaves the remaining 50% of the mansion to Angela after Ruth's death, together with a cash legacy of £3,500. Angela arranges for the revised will, which leaves Ruth's estranged son, Michael, unprovided for in the estate, to be independently witnessed also. Ruth insists that Angela is appointed as the sole executor and the solicitor to the executry. Ruth further insists, and Angela with some reluctance agrees, that when Angela is the executor, she will not inform Michael as to his legal rights.

As Ruth grows more frail Angela decides that a power of attorney is necessary. Considering that it might be improper for her to draft it, she arranges for her partner, Graham, to draft the power (which is in Graham's name), assuring him that Ruth is still fully alert as a Skype conversation with Ruth will prove. Graham makes the call, drafts the power of attorney and gives it Angela for Ruth to sign. The signed power is put in the law firm's safe.

Advise on the ethical issues raised in these scenarios.

## Question Three

- a) Ronald, a partner in a medium sized firm is acting as the executor and solicitor for the estate in a small executry where the legatees are the 4 young children of a couple who have been tragically killed in a skiing accident. The children are not well provided for and Ronald determines to realise the estate for as much as he can, to boost the funds eventually available to them. The principal asset in the estate is the family home – a semi-detached property in a leafy suburb of Edinburgh. The children having moved to stay with their maternal grandparents in Edinburgh so that their schooling can continue without disruption, Ronald proceeds to put the family home on the market. In the further particulars it is stated that the property is

part of an executry identifying Ronald as the executor and solicitor acting in the sale. After, a prolonged period an offer comes in that is £3,000 below the asking price. Given the difficulty in getting any offers Ronald agonises for a little, believing the offer to a significant undervaluing of the property, but reluctantly accepts the offer and tells the buyer's solicitors that they have a deal. Two weeks later, whilst the missives had not yet been completed, out of the blue an offer comes in from another firm that is £5,000 over the asking price in return for a quick sale. Ronald does not hesitate. He accepts the second offer. The solicitor for the original buyer is incensed and complains to the SLCC.

Advise Ronald as to his ethical position. Would it make any difference if the particulars had been silent as to the seller and selling agent?

**AND:**

- b) Norman is Ronald's senior partner who has recently had a troubling case. His clients Jane and Gill are the two of the five children of Simon, a millionaire who died last year. When he died, he was treated as being intestate by David the solicitor acting for the estate, because none of the family nor the executors were aware of a will. Jack and Gill in going through an old desk of Simon a year later discover that there is a copy of a will dated ten years ago drawn up by David's firm which left the estate more in their favour than the other children. They believe that David deliberately suppressed this will and has acted fraudulently. Jack and Gill have instructed Norman to apply to have the handling of the estate reduced on the grounds of the fraud of David. Norman is very careful to state that his clients have instructed him that David has acted fraudulently and not to indicate what his own view of the situation might be. David is very angry with Norman and complains to the SLCC as to his conduct in making a false allegation about David. Relying on the case of *Law Society v SLCC* [2010] CSIH 79 the SLCC rejects David's complaint as being "totally without merit".

Advise Norman and the SLCC as to their position.

#### **Question Four**

Philip is a successful solicitor advocate specialising in public law and civil cases generally. He is approached by a well-known movie producer Stan who has been privately accused of sexual assault by Mavis an up and coming actor in the film industry. Mavis claims to have been a victim of the “film producer’s couch” form of casting and has now come forward thanks to the Me Too campaign seeking compensation for her ordeal. Stan can see the way the wind is blowing and is open to reaching a financial settlement which will buy – off Mavis. In return for dropping her claim and for her silence Stan agrees to pay her £100,000 provided she signs a Non Disclosure Agreement (NDA) which binds her to silence about the incident, namely a prohibition on disclosing to anyone any of the relevant facts unless she is required by legal process to disclose the name of her assailant and the details of the assault. The NDA will also require her to limit the scope of any disclosure she is required to make, to as little as possible. In short, the NDA prevents her from volunteering her story to the police unless they find a way to make her a compellable witness. Philip drafts the Non-Disclosure Agreement which Mavis duly signs.

Philip is feeling uncomfortable about the NDA and when Stan indicates that there may be other similar cases coming forward, Philip tells Stan that he will only act for him in such cases if Stan agrees to a clause in the letter of engagement which stipulates that what Stan has told him in the Mavis case and any similar case will not be covered by professional privilege or client confidentiality.

Philip is having difficulties with an immigration and asylum case in which he is acting as the agent and a specialist advocate is acting as the counsel. A hearing is coming up and William the asylum-seeking client has not provided the information required by counsel. Philip knows he can probably get a continuation to seek further information but wonders whether the better course is simply to withdraw from acting. The advocate makes the decision for him by indicating that not only is he going to withdraw but that Philip must do so also. Philip decides that he will not pay the advocate’s fee note in the circumstances.

Advise Philip as to his various issues, from an ethical standpoint.

### Question Five

- a) Ellen is a sole partner in the Highlands north of the Caledonian canal. Ellen's is a generalist practice. Having recently purchased a new printer that copies, scans and faxes, she sells the firm's existing photocopier (which is still relatively new) to another sole practitioner in a town 20 miles away. She arranges for delivery of the copier to the other office in exchange for a cheque drawn on the firm account of the other sole practitioner. Somewhat to her dismay the cheque is returned to her from the bank with an indication that the cheque has been stopped by the purchaser. The latter when contacted on the phone, indicates that he stopped the cheque because the copier did not work when it arrived. Ellen is adamant that it was working fine when she sent it off, and suspects that the purchaser is trying to get a reduction on the purchase price. Advise Ellen as to the scenario from the perspective of professional ethics.

### AND:

- b) Ellen is contacted by the Smiths who own a croft not far from her office. The Smiths wish to sell the croft to their neighbours the Browns who are also clients of Ellen. Ellen advises both parties on the price and then does the conveyancing for them both as well, arguing that it would be unfair to have to send one of them away to the nearest solicitor with crofting experience which is 60 miles away. Half way through the transaction, the Browns accuse Ellen of favouring the Smiths in the missives negotiations and hand her a mandate in favour of the sole practitioner with whom she had the dispute over the photocopier. Ellen indicates she will not implement the mandate until her fee note has been made up and paid. Ellen is in no hurry to do this, taking a month to even send the file to law accountant.

Advise Ellen as to the ethical implications of her behaviour in this case.

## **Question Six**

Gregory is the litigation partner in a central belt law firm. He is involved in a substantial commercial litigation in Dunbartonshire. His key witness rejoices under the name of Frederick Pilkington Smyth – an unusual surname which is shared by a wealthy and famous family in that party of the country. The witness, however, is from a distantly related branch of the family and is penniless. Gregory pays for Frederick to acquire a smart new suit – as a result the sheriff hearing the case, who is relatively new to the area – mistakes Frederick for a member of the wealthy branch of the family. This was just as Gregory had hoped for since he had noticed that the judge was not impressed by the rigorous cross examination being given to Frederick by the other side and seemed to be coming round to the view that Frederick's integrity was being besmirched.

Gregory is representing Lydia in a summary trial on a careless driving charge. Lydia has previous driving offence convictions under her maiden name but has recently changed her name to that of her long-term partner, even though they have not become married. Lydia has moved into her partner's home and gives that address when arrested rather than the address where she has been living until recently. Lydia admits to Gregory that she was driving her vehicle at 50mph in a 30mph limit and that this was a bit too fast given the road conditions. Nevertheless, she insists on entering a plea of not guilty and instructs Gregory to defend her irrespective of her admissions to him. When the trial arrives, Lydia's nerve fails her and she asserts to the sheriff that she was driving at only 20 mph. Lydia had instructed Gregory that if she is convicted that he is on no account to volunteer to the sheriff that she has previous convictions.

Advise Gregory as to his ethical position in relation to each of the scenarios set out above.

**END OF QUESTION PAPER**