



**THE LAW SOCIETY OF SCOTLAND
EXAMINATIONS**

PROCEDURE

Wednesday 13 February 2019

**1000 – 1200
(Two Hours)**

Candidates should attempt FIVE questions only

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Question 1

- (a) Explain the differences between adjusting pleadings and amending pleadings. Explain, with reference to the appropriate procedural rules, the process for obtaining the court's permission to amend in the Sheriff Court.
- (b) Can a decree obtained in an Ordinary Cause action, where a Notice of Intention to Defend has been lodged, be reponed?
- (c) Describe the procedure by which documentary and other real evidence may be recovered once an Ordinary action has been commenced in the Sheriff Court.
- (d) Before an Ordinary Cause action is raised, what procedure is available to inspect property?
- (e) What procedure is available to prevent a defender from divesting himself of heritable property during the course of legal proceedings?
- (f) By reference to statute, what matters must the Sheriff be satisfied upon before granting warrant for diligence on the dependence?
- (g) 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 pursuer is legally aided, with a nil contribution, what effect would that have on the situation regarding expenses described at (i) above?
- (h) What procedural step does a defender need to carry out in order to avoid decree in absence being granted?

Question 2

Ms Smith owns a cottage from which she has run a successful dental practice for over 10 years. Ms Smith purchased the property from Mr Jones. Access to the cottage is via a road which runs through Mr Jones' farm.

Three months ago, Mr Jones put a locked gate on the road preventing patients (and Ms Smith) from reaching the cottage by car. Despite requests, Mr Jones has refused to unlock or remove the gate, citing increased traffic as a reason. Ms Smith estimates she has lost £10,000 income.

Ms Smith asks for your advice.

- 1 Which documents would you require to see in order to advise Ms Smith whether she has good grounds of action, and on what remedies she might have?
- 2 Assuming there is evidence that supports Ms Smith's case, which remedies would you crave in your Initial Writ?
- 3 Which interim order might you seek at the outset of such an action?
- 4 Would Mr Jones always be aware of an application for an interim order before it came before the Sheriff?
- 5 What test would the Sheriff apply in considering your application for an interim order?
- 6 Once an action was commenced and heading towards Proof, explain with reference to authority when it would be necessary to tell the defender which witnesses the pursuer intended to lead, and which documents the pursuer intended to rely upon.
- 7 What process would you follow in order to ensure the attendance of your witnesses at the Proof.

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 near her home, 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

- a) Your client John appeared on Petition last week, charged with housebreaking. He was admitted to bail. He wishes to plead guilty to the charges as soon as possible. He is confused. His friends have advised him that the Crown have a year to indict him and that he must wait to plead guilty. They also say the sentence will be up to the Judge and there is nothing that he can do to impact the sentence that he will receive.

Advise John.

- b) Derek consults you in relation to a summary complaint pleading diet.

He is charged that being the Keeper of a motor vehicle and an accident having occurred causing personal injury as a result of the presence of the vehicle on the road, he failed to provide the police with information about the identity of the driver at the time of the accident.

He additionally is charged with theft of a television set.

Derek advises he sold the motor vehicle four weeks before the accident. He has no idea who was driving.

As for the television this was stolen by his brother Michael.

What steps must you take to properly represent Derek?

Question 5

Harry was served with his Indictment yesterday. There is a first diet next month in the local Sheriff Court.

He is charged with a sexual assault on Sally contrary to Section 3 of the Sexual Offences (Scotland) Act 2009.

There is a second charge of assaulting her boyfriend Peter.

Harry advises he was sexually intimate with Sally but that she engaged in the conduct willingly.

He advises that Sally was convicted on the 24th May 2015 in the same Sheriff Court of making a false allegation of sexual assault by another man and was fined.

In relation to the assault on Peter, Harry advises that the day after the incident with Sally, Peter entered his house uninvited and punched him on the face. Harry admits punching the man back.

- (i) In every Solemn case what documents must be lodged by the Defence and in what time frame before the First Diet?
- (ii) In this particular case what further steps must be taken to prepare Harry's defence for the first diet?

Question 6

- a) Your client William is charged with assault. He states that he acted in self-defence. His best friend John witnessed the incident and gave a statement to the police at the time confirming William's position. John has since died.
- b) You have recovered your client's medical records. The Crown do not dispute their contents. The doctor who prepared the records lives 200 miles away and does not want to attend the trial.
- c) At the end of the trial William is convicted. A Criminal Justice Social Work report is obtained by the Court. William is a first offender. He is described as remorseful. He is suitable to carry out work in the community. He can pay compensation. He is however imprisoned by the Sheriff and now wishes to appeal sentence.
 - (1) What steps if any can the defence take to overcome the difficulty caused by John's death?
 - (2) In relation to the medical records can anything be done to save the doctor from requiring to attend Court to give evidence.

In respect of William's appeal:

- (i) What is the method of appeal?
- (ii) Is there any applicable time limit for the appeal?
- (iii) Can anything be done to alter William's status in custody pending the appeal being resolved?

END OF PAPER