



THE LAW SOCIETY OF SCOTLAND EXAMINATIONS

PROCEDURE

Wednesday 14 August 2019

**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 steps 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. Assume the Defender lodged a Tender of £150,000. 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

Answer the following questions with reference to appropriate procedural rules and authorities:

- a) Explain the differences between adjusting pleadings and amendment pleadings. Explain the process for obtaining the court's permission to amend in the Sheriff Court;
- b) Describe the procedure by which documentary and other real evidence may be recovered once an Ordinary action has been commenced in the Sheriff Court;
- c) What procedure is available to prevent a defender from divesting himself of heritable property during the course of legal proceedings, before decree has been granted? What matters must the Sheriff be satisfied on before granting an such order;
- d) You act for the pursuer in a Sheriff Court personal injury action. A Proof has been fixed.
 - i. When will you discover which witnesses the defender intends to lead at proof?
 - ii. What procedural steps should you take to secure the attendance of the pursuer's witnesses at court, and when should you do this?
- e) What happens when a cause is sisted? Provide 3 examples of circumstances in which a party might ask for a sist.

- f) What are the differences between a decree of dismissal and a decree of absolver in favour of a defender?

Question 3

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?

Question 4

You are consulted by Tom. He has been served with a summary complaint with a pleading diet at the local Sheriff Court on 30 August 2019.

He is charged with driving with a defective headlight on his motor vehicle on the 1st September 2018.

He accepts that the headlight was defective. He was indeed driving.

He was served personally with his citation to court by the police on 1st July 2019. He wishes your advice as to what to do on the 30 August 2019.

You are consulted by Harry. He is charged that being the registered keeper of a motor vehicle that was involved in a road traffic accident, he failed to provide the police with details of the identity of the driver who fled from the vehicle after the crash.

Harry explains that he had sold the vehicle three weeks prior to the incident and has no idea who was driving the motor vehicle. He has a pleading diet at the local Sheriff Court next week. Advise Harry.

Amy has consulted you. She attended the local Justice of the Peace Court herself, 5 days ago. She pled guilty to theft by finding of an old and empty purse she found in the street. The Justice fined her £900. The fine is to be paid at £10 per week. Amy explains she told the Justice that she is still at school and has no income.

Amy is upset at this outcome. She wants to know what, if anything she can do about this. And on what grounds.

Advise Amy on the applicable law.

Question 5

Your client William has a First Diet at the local Sheriff Court. He is on bail with a condition to attend every calling of the case. He is abroad on a pre booked holiday on the day of the First Diet.

He wonders is it possible for the First Diet to proceed without him?

He is charged with sexually assaulting his girlfriend's best friend Julie. His defence is that there was sexual intimacy, but that Julie agreed to this.

William advises that Julie has previously accused another person of sexually assaulting her in a similar way. Julie subsequently pled guilty to making a false allegation of sexual assault and was ordered to undertake 140 hours of unpaid work in the community.

William wishes that the jury be told all about this. Advise William.

William is also charged with assaulting his girlfriend Debbie. He advises that on hearing of what happened between him and Julie, Debbie attacked him with a hammer. He pushed her away and she fell over.

His best friend Mark witnessed this and gave a written statement to the police officer who attended. Mark has subsequently died.

What steps must be taken to prepare for Williams First Diet.

Question 6

Your client Michael is in custody. He is charged with assaulting his wife. He intends to plead not guilty. His wife has contacted you to say it is all a terrible misunderstanding and she wants him home

The Procurator Fiscal is content for your client to be admitted to bail on Standard bail conditions. He also wishes 2 Special bail conditions to be imposed.

Firstly, that your client does not contact or attempt to contact his wife or to reside with her.

Secondly that your client remains within his address between 7pm and 7am every night.

Your client is unhappy about the second condition. He works as a baker and has to be at work by 6am. He often gets home about 7.30pm.

Despite your best efforts, all of the Special conditions are applied. What are the Standard conditions of bail?

What if anything can be done about the imposition of the condition to remain within his home address?

Three weeks later, Michael contacts you again. He advises that his wife has fallen and broken her leg. There is nobody else to help her.

What steps could be taken to facilitate a return to the matrimonial home? What would be the applicable legal basis, if any, for the return?

END OF QUESTION PAPER