



**THE LAW SOCIETY OF SCOTLAND
EXAMINATIONS**

PROFESSIONAL RESPONSIBILITY

**Friday 16 August 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 1

Scott is a qualified assistant of three years standing in a medium sized firm in the South West of Scotland, which has a specialist clientele related to the letting of holiday cottages and timeshares. Scott has signed a restrictive covenant undertaking not to act for the firms' clients (wherever they reside) for a period of seven years from his departure from the firm. He is a keen golfer and is shortly to become the secretary of the local club. Given the region's links with Ireland he is sure that recent victory of an Irish golfer at the Open Championship at Royal Portrush will enable the firm to launch a package scheme for golfing holidays in Northern Ireland and South West Scotland the key element of which will be what looks like a very cheap form of timesharing. He is approached by a rival firm offering him a partnership if he will (a) write to his clients indicating that he is moving firm and of his willingness to continue acting for them if they were to instruct him in the future and (b) contact all members of the golf club telling them of his move to the new firm and inviting them to consider sending him their work and (c) launch the package scheme with them rather than his existing firm. Scott agrees to do as they ask. He indicates that once established in his new firm he will write to all the golf clubs in the region indicating that he is a specialist in all aspects of the law relating to golf and offering to act for them at very competitive rates if they do not already have an established firm of solicitors.

Just before the move to the new firm, Scott receives an unexpected email from a remote cousin based in Australia's Gold Coast who is an exotic fruit grower. The cousin indicates that he is looking to export exotic fruit to Scotland taking advantage of the reduced tariffs he is hoping will flow from Brexit, and that he needs advice from a Scottish lawyer who is experienced in international import contracts. Scott replies "I'll do it for you – I'm pretty experienced at that kind of thing". In fact, Scott's experience is limited to drafting contracts for the local garden centre whose suppliers are all locally based. Hearing nothing from his cousin in the following month Scott finds a rival exotic fruit grower from the Gold Coast and agrees to act as his legal

adviser in relation to the import of the fruit to Scotland. He is careful, however, to stipulate that if an expert on import licences is required, he, Stewart, will not be responsible for the experts' fees.

Advise Scott as to the professional responsibility implications which arise in these scenarios.

Question 2

Robin is a principal in a large Glasgow firm. His good friend and former classmate at university Veronica (a sole practitioner) has slowly been losing her battle with illness and alcohol. Robin knows that Veronica was once an able lawyer but stress, business pressures and a chaotic personal life have reduced her ability to practice effectively. Robin suspects from gossip amongst practitioners that Veronica has lost clients through turning up to work with her breath smelling of alcohol. Following a stroke Veronica suffers from memory impairment and has lost several cases in the Sheriff Court which objective observers consider that she should have won. Robin is concerned as to Veronica's fitness to practice.

Advise Robin as to whether the Law Society has any grounds to take disciplinary action against Veronica on the facts stated.

Robin discovers that Veronica has forgotten to take out her practising certificate for 3 weeks but was on holiday during that period, that she has failed to complete her required hours of Continuing Professional Development for the last two years and has been convicted of attempting to interfere with the course of justice by lying as to who was driving her car which was involved in motorway crash due to excessive speed. Unaccountably, the media fails to get Veronica's surname correct in reporting the conviction, or to identify her as a solicitor, although a number of local lawyers are aware of the details. Veronica has begun a lesbian affair with a new client, who suffers from anorexia and low self-esteem, who is suing the local hospital for medical negligence. Veronica has never handled a medical negligence case before but sees no reason why she cannot "learn the ropes" as she goes along, relying on experienced counsel to help her out when difficult matters arise.

Advise Robin as to the professional responsibility issues raised by Veronica's behaviour, including what, if anything he should do about Veronica.

Question 3

You are an environmental lawyer in Scotland. One afternoon a new client, Cedric a wealthy businessman with homes in various tax havens as well as a business in Scotland, comes to see you about his private rubbish tips. Cedric is somewhat agitated since it appears, he has not always been very scrupulous about

the dumping of toxic waste in his tips and some his past endeavours would undoubtedly now be struck at by recent legislation on environmental protection. Cedric in his agitated state blurts out that he occasionally supplies cannabis to his customers. However, Cedric has not lost his wits and in discussing his legal position with you, elicits various details from you relating to how the inspectorate works which inadvertently will allow him to continue to dump toxic material illegally but virtually undetectably. Sometime later you receive a letter from the inspectorate requesting that you tell them the nature of the advice which you gave to Cedric on the afternoon in question. It appears that Cedric, in the light of your advice, has been illegally disposing of highly toxic material in his tips.

- a) What is your position from a professional responsibility perspective? What if Cedric has died in the interim?
- b) Cedric, in fact is very much alive and is subsequently arrested and you are cited by the Crown as a witness. What can you say in court as to the contents of the interview including Cedric's nervousness and agitation?

Question 4

- (a) Louise is an enterprising partner in a large Scottish corporate law firm. She acts as Secretary and legal adviser to the Friends of an International Choir Festival. Three years ago, the Friends bought a concert hall with the help of their then legal adviser, Edward. It has gradually emerged that Edward, badly mishandled the transaction and that there are grounds for rescinding the purchase. Louise has procrastinated in doing this because, unbeknownst to the Friends, her life partner was one of the businessmen who sold the concert hall to the Friends and if rescission is effected, he would suffer a considerable financial loss. Louise is eventually forced to seek a legal opinion from counsel on the sale and on Edward's liability for negligence. Counsel replies indicating that there was indeed carelessness by Edward which bordered on the reckless, but counsel adds that Louise herself is at fault for not spotting (and rectifying) the situation with greater speed. Louise asks the counsel to remove the unasked-for elements in the opinion as to her own failings and to re-issue his opinion with this part deleted. This is duly done, and Louise sends the opinion to the Management Committee of the Friends as if it was the original opinion.

Advise Louise as to her position from the perspective of professional responsibility.

AND

- (b) In a quite separate transaction Louise is instructed by a major corporate client which is involved in seeking to handle a large-scale redundancy problem at

one of its factories. The client wishes Louise and her team to advise the factory workforce which is being made redundant as to the redundancy terms that are being offered by the corporate client. However, if any worker wishes to challenge the awards proposed under the scheme, he or she is advised to seek an opinion from an independent lawyer. Louise and her team strive hard to fulfil her instructions from the corporate client but is acutely aware that the advice she is giving as to the redundancy settlements suffers from the fact that it refers to the pension provision for the workforce which, as Lois is aware but the workforce are not, has now got a large hole in it.

Advise Louise as to her position from the perspective of professional responsibility.

Question 5

- (a) Diana, a sole practitioner from Fife who concentrates on personal service clients, enjoys doing executries. She finds the lack of demanding clients in this line of work to be a real benefit. Her practice is never to offer a fee estimate in her letters of engagement claiming that even in the simplest of executries she cannot gauge what the cost of the transaction will be. She regularly charges interim fees without informing the executors until several months have passed. Diana is on good terms with the local court auditor – often going to social functions with him – and who tends to be generous in his approach to her fee notes.

Advise Diana of her position from the standpoint of professional responsibility.

AND

- (b) Diana has begun acting as solicitor and executor in a small executry, but in truth the fee potential is so low that she is quite happy when her co-executor, Mark – the testator's youngest son - takes her hint and decides to wind up the estate under the small estates procedure, without the benefit of Diana's assistance. Diana's behaviour is not entirely altruistic. She knows that the testator had an elder son, Nigel, from whom he was estranged, and that Mark is adamant that Diana should not inform Nigel as to his legal rights. Having informed Mark once again that as executor he must inform Nigel as to his legal rights, Diana resigns as executor and as solicitor to the estate. Diana knows, however, that there is more than enough in the estate to meet the testator's debts and the funeral expenses. Accordingly, when Mark declines to meet the funeral expenses on the grounds that the estate has insufficient funds to do so, Diana has no compunction in advising the undertaker (who is one of her existing clients) to sue Mark.

Advise Diana as to her position from the standpoint of professional responsibility.

Question 6

- (a) Reggie, one of your longstanding clients with numerous minor criminal convictions is being prosecuted in the District and Sheriff Courts for separate offences at about the same time. Rather to your surprise, your request for bail for Reggie in the District Court is denied and he is remanded in custody pending the outcome of your swiftly entered bail appeal. The next week Reggie appears from custody on the charge in the Sheriff Court and you again apply for bail, in the hope that if this motion succeeds, then you need only win the bail appeal to obtain Reggie's interim liberation. You carefully do not mention the fact that Reggie is currently in custody to the Sheriff. When the Sheriff discovers this, he considers your actions to constitute a breach of duty to the Court and he complains to the SLCC. What is your position from the standpoint of professional responsibility?

AND

- (b) When you are preparing for the trial in another Sheriff Court case, which relates to a serious assault charge, your client Norman is adamant that he only acted in self-defence. However, your precognitions of the witnesses do not support this, and Norman then admits that he had been taking legal highs that evening and his memory of events on that night in question is somewhat hazy. Nevertheless, he insists that you continue to try to get him off. What options are open to you as a matter of professional responsibility?

AND

- (c) Against your better judgement Norman insists on going into the witness box and no sooner have you begun your examination of Norman than he reverts to asserting that his memory of the fracas is crystal clear and that he was in no way to blame for the injuries inflicted on the alleged victim. What is your ethical position now?

END OF QUESTION PAPER