

THE LAW SOCIETY OF SCOTLAND
QUALIFIED LAWYERS ASSESSMENT

PROCEDURE

2 November 2020

1500 – 1600
(One hour)

Candidates are required to answer TWO out of four questions.

The question paper is divided into Section A (Civil) and Section B (Criminal) and candidates are required to answer ONE question from Section A, and ONE question from Section B.

Candidates should note that, in examination answers, they are expected to cite relevant authority and procedural rules.

SECTION A: CIVIL PROCEDURE

Question 1

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

- a) Explain the difference between a decree of dismissal and a decree of absolvitor. Explain the circumstances in which the court will grant each of these decrees;
- b) Describe the procedure by which documentary evidence may be recovered after an Ordinary action has been commenced in the Sheriff Court;
- c) On 1 December, you telephone the Sheriff Clerk at Edinburgh to ascertain the procedural position in an action where you act for the defender, Mr Smith. The clerk advises you that decree in absence was granted in the case on 29 November.
 - i. What can be done, if anything, to enable your client to maintain his defence of the case?
 - ii. Under what rule of court, if any, might Mr Smith be entitled to proceed?
 - iii. If proceeding, about what matters would the court require to be satisfied, before granting a remedy?
- d) In the same case as (c) above, assume that the court granted the remedy available and the case has proceeded. On 10 December, Mr Smith contacts you to advise that his bank has informed him that an arrestment on the dependence of the action has been served at its head office. Mr Smith tells you that one of his commercial deals is at a delicate stage of negotiation and he must have the arrestment recalled. What if anything can be done and what factors will be relevant for consideration by the court in determining whether the arrestment should be recalled?
- e) The defender in an action for payment of damages for breach of contract wants to argue a preliminary plea to the relevancy of the pursuer's averments. Describe the procedure which the defender would have to follow if the action was:
 - i. An ordinary action in the sheriff court;
 - ii. An ordinary action in the Court of Session

Question 2

- (a) Explain the difference between preliminary pleas in law and pleas on the merits.
- (b) What is the appropriate preliminary plea where proceedings are raised in Scotland in circumstances where proceedings are already taking place between the same parties, involving the same subject matter, in another court in Scotland?
- (c) What is the appropriate preliminary plea for a defender to take where he or she considers that they are not subject to the Scottish court's jurisdiction?
- (d) The court sustains the preliminary plea sought re question (c). What decree will the court pronounce in the defender's favour?
- (e) What is the appropriate preliminary plea for a defender to take where he or she considers that there is another court or Tribunal which would be a more appropriate forum to determine the issue in dispute between the parties?
- (f) Draft the preliminary plea that a defender would insert into his or her Defences if wishing to challenge the relevancy and specification of the pursuer's pleadings.
- (g) In what circumstances would a defender take a plea to the competency of an action?
- (h) If a defender has a plea of adjudication sustained, what will happen to the court action?

END OF SECTION A

SECTION B: CRIMINAL PROCEDURE

Question 3

- (a) You are consulted by John. He was charged with driving without insurance on the 8 January 2020. He explains the police stopped his vehicle and he admitted he had never had an insurance policy. A summary complaint was served on him on the 8 November 2020 charging him with driving without insurance and he has a pleading diet on the 21 January 2021.

Advise him how to plead.

- (b) You are consulted by Billy. He has a pleading diet at the Sheriff Court on the 6 December 2020. He is charged that being the registered keeper of a motor vehicle, he failed to tell the police who was driving the vehicle when it was involved in a road traffic accident on the 1 September 2020. He explains he told the police he did not know, as he sold the vehicle to a man in a bar on the 30 July 2020.

Advise him how to plead.

- (c) You are consulted by Fiona. She had represented herself to-day at the Justice of the Peace Court. She had pled guilty to a minor breach of the peace by shouting and swearing. The Justice imposed a fine of £1000, to be paid at the rate of £100 per week. In the event of missing a payment, the alternative period of 28 days imprisonment has to be served. She only earns £80 per week.

Advise her on

- (1) the appropriate method of Appeal
- (2) the grounds of Appeal
- (3) Any applicable time limits

- (d) You intend to call Anne as a defence witness. She suffers from anxiety and depression. She is frightened of coming to court.

Advise Anne on what could be done to assist her give evidence to the court.

- (e) Your client Paul has made a second appearance on Petition at the local Sheriff Court. He has been remanded in custody having been Fully Committed for trial.

Advise him as to

- (1) What step might be taken to secure his liberty
- (2) If he is to remain in custody what, if any, time limits apply to prosecuting him
- (3) If he wishes to plead guilty to the charge how might he speed up the process
- (4) If he proceeds in that way is there any benefit to him

Question 4

You are consulted by Paul on the 2 November 2020. He has that day been served with an Indictment. He has a First Diet in the Sheriff Court on the 2 December 2020. He explains that he appeared on Petition in connection with these charges on the 5 September 2019.

The first charge is of sexual assault on Susie. He explains he met her in a bar. He accepts the conduct libelled actually happened, but that Susie started it and went along with everything that happened.

The second charge is that on a different date he sexually assaulted Marie. He explains that she is Susie's best friend. He states that she made this allegation a week after the incident with Susie. But on the date alleged he did not even see Marie as he was in Edinburgh with his friend Raymond, forty miles away. Unfortunately, Raymond has left Scotland and was last known to be back packing in the Australian Outback. The last time he saw Raymond was the day he drove him to the police station to give a statement to the reporting police officer PC True. He further advises Marie is an attention seeker. He knows she pled guilty in 2018 at the local Sheriff Court to falsely accusing a man of raping her. He wants her "destroyed" in court.

The last charge is of driving a motor car dangerously on the motorway, overtaking the police and subsequently making good his escape from the police by abandoning the car. He accepts the vehicle is his and states he lent it to his friend Garry. He had nothing to do with this, however he has Garry's wallet which he found in the car when the police returned it.

What steps must be taken to fully prepare Paul's defence for the First Diet?

END OF SECTION B

END OF QUESTION PAPER