



THE LAW SOCIETY OF SCOTLAND
QUALIFIED LAWYERS ASSESSMENT

PROFESSIONAL CONDUCT

4 November 2020

1330 – 1430
(One hour + 10 minutes of reading time)

Candidates are required to answer TWO out of three questions.

All questions are marked out of 20 and weighted equally.

Question 1

Avril is a bright 15-year-old whose widowed mother Mavis has married Gavin a widower in a second marriage. Gavin who has twin sons by his first marriage puts his house into joint names with Mavis with a survivorship clause. Four years later the couple split up amicably and within a further two years Mavis dies of COVID 19 without attempting to reach a divorce settlement with Gavin. However, Gavin agrees verbally with Mavis to leave a third of the family home to Avril in his will in recognition of Mavis's share of the house. Avril is a second-year trainee in a court firm (she plans to become an advocate in five years' time) when Mavis dies and is dismayed at the lack of assets left to her in her mother's estate. Gavin who is fond of his stepdaughter has been seeking her legal advice about how to handle an access dispute with his neighbour. Avril sensing an opportunity sends a draft Minute of Agreement under which she is entitled to a third of the free proceeds of the sale of Gavin's house when he sells it, or if it is sold on his death. Avril advises Gavin to seek independent advice before signing the Minute because the document has legal implications, but Gavin sees no reason why he should do so and signs the Minute anyway.

Three years later Gavin is diagnosed with terminal cancer and having moved into the home of his twin sons is encouraged by them to write a new will in which they are the executors and residuary legatees and Avril's share of the free proceeds of the house is reduced to a quarter. Gavin duly rewrites his will. When Gavin dies the sons arrange for the executry to be handled by a sole practitioner friend of theirs, Fiona, who delays inordinately in winding up the estate in the hope of boosting her fees. Viewed objectively her service is poor but the sons are quite happy with it.

Advise Avril as to her position from the point of view of professional ethics. Does it make any difference if prior to Gavin dying she succeeds in becoming an advocate?

Question 2

Betty is a middle-aged housewife who bursts into your office one day without an appointment. Her breath smells strongly of gin and her clothes are dishevelled. She claims that she is being followed by a man who she suspects is a store detective from an upmarket establishment in the High Street where she has just been shopping. She thinks his interest is in a necklace which she has absent-mindedly placed in her shopping bag and failed to pay for. She suggests that you should place it in the firm safe and forget about it. You decline and in the course of advising her as to her legal position you indicate firmly that she should return the necklace and take the chance that they will not believe her protest of innocence. Betty, outraged at this advice storms out shouting, "All this fuss over a bling necklace. I'll make sure I take more next time". Minutes later a man, who is in fact a plain clothes policeman, enters the office. He explains that following a series of thefts at the shop he has been assigned to keep an eye on the clientele. He claims to have seen a lady answering Betty's description stealing a necklace. He lost her in the street but shortly thereafter saw her dash out of your office and leap into a taxi.

- (1) The policeman asks you whether you were consulted by the lady, whether she appeared distressed and what the lady's name and address are. How should you reply?
- (2) After the policeman has left you notice that Betty has dropped the necklace beside her chair. What should you do with it?
- (3) Betty sensing that you may be called as a witness against her, complains to the Law Society as to the quality of the advice which you gave her. Betty is subsequently arrested, and you are cited by the Crown as a witness. What should you do about the complaint and what may you say in court as to the contents of the interview (including her outburst), Betty's sobriety and appearance?

Question 3

David is a junior partner in a large corporate law firm in Edinburgh. He handles the personal client work for a number of corporate clients. One day he acts for a developer who two years ago had completed an up market housing development in East Lothian and sold one of the earliest houses to be completed by promising the elderly purchasing couple that they could walk their dogs all-round the estate and in the neighbouring field (also owned by the developer). Today the developer has been in touch to say that other owners in the development were complaining about the elderly couple's dogs being walked around the estate and the field. He tells David to write a solicitor's letter to the elderly couple accusing them of trespass and causing damage to the estate and the crops in the field and instructing them to cease or he will raise a court action against them. Without checking the situation David fires off the required letter in very abrupt terms. Receiving the letter without warning and conscious of their conversations with the developer when they bought the house, the couple, whose assets have declined in recent years and cannot now afford a lawyer, are adamant that they and their dogs have caused no damage. They write to David stating their case, but he replies that they are liars. The couple (who are now quite frail) are devastated by David's letters and the consequent stress causes them to lose weight, to be prone to anxiety attacks and to have many sleepless nights.

The following month the developer tells David that he has reason to believe that he has been cheated in a business transaction in which an "investment report" which purported to be from a well-known hedge fund was supplied to him by Robert, another businessman. The developer says the investment was a scam and that the report was plainly forged. David, eager to please the developer, again immediately writes a letter at the developer's instructions to Robert's solicitors accusing Robert of fraud and implying that the solicitors were involved in the scam.

The following month another corporate client Rowena admits to him that she supplied the "investment report" to Robert to give to the developer to pay the developer back for being unpleasant to her. However, she tells David that he may not reveal her prank to the developer. David is glad that his week is nearly over since he finds the current COVID 19 lockdown rules in Scotland highly irksome and accordingly has taken to going round to the homes of different friends at the weekend for drinks. He is confident that even if the police get to hear of it, he will be let off with a warning.

Advise David as to his position in terms of professional ethics.

END OF QUESTION PAPER