



THE LAW SOCIETY OF SCOTLAND  
QUALIFIED LAWYERS ASSESSMENT

**PROCEDURE**

10 May 2021

1500 – 1630  
(90 minutes)

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) What is the purpose of an Options Hearing in ordinary cause procedure in the Sheriff Court? What documents must be lodged in advance of it and by what deadlines? What matters should be discussed at the hearing?
- b) What are the key differences between the procedural rules applicable to actions of damages for personal injuries and ordinary actions in the Sheriff Court?
- c) What is the purpose of diligence on the dependence? What test must the Court apply in determining whether to grant a warrant for diligence on the dependence? What procedural steps must a pursuer take in order to obtain a warrant prior to commencement of an action?
- d) 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**

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

- (a) Explain the difference between preliminary pleas in law and pleas on the merits.
- (b) 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.
- (c) Explain how a pursuer would make a Pursuer's Offer in terms of the Sheriff Court ordinary rules. Describe the effects that such an offer might have at the conclusion of an action.
- (d) Assuming a Sheriff Court ordinary action is proceeding as a defended action, describe the course of an ordinary action from the point that a Notice of Intention to Defend is lodged until the conclusion of the Options Hearing.

**END OF SECTION A**

## **SECTION B: CRIMINAL PROCEDURE**

### **Question 3**

#### *Part A*

- (A) You are consulted by John. He is remanded on Petition and Fully Committed for trial.

With what time limits must the Crown ordinarily comply in bringing him to trial?

- (B) He understands that the time limits may have been shortened as a consequence of the Corona Virus as there is a desire “to process” cases more quickly to reduce the risk of infection.

Advise.

- (C) He wants to plead guilty to the charge as soon as possible. He does not want “to hang about”.

How might this be achieved?

Apart from ending the process is there any other benefit for John in proceeding in this way?

#### *Part B*

Your client Alex is charged with rape. He has a forthcoming Preliminary Hearing. He instructs you that he met the complainer Suzie in a night club for the first time about an hour before the incident. They had consensual sexual intercourse in his car on leaving the night club.

Alice has accused him of rape. He has traced three people who have had sex with her in identical circumstances. He wants you to call these witnesses to give the jury “the full picture”.

Additionally, he has discovered that in 2011 she pled guilty in Dumfries Sheriff Court to falsely accusing a man of sexually assaulting her. He wants this brought out in court.

Advise Alex what criminal procedural rules govern leading evidence of these two matters and applying these rules what are the prospects of being able to carry out his instructions?

#### **Question 4**

- (A) Prior to every First Diet in the Sheriff Court, which two documents must be lodged by the defence in every case?
- (B) Your client Paul has a First Diet in the Sheriff Court, He is charged with an assault on Steven. He advises that in a police interview he admitted committing the offence. He did so because the police advised him this was a minor offence and not serious so if he admitted the offence, he would be released from police custody.

His instructions are that the offence was committed by his twin brother Daniel and that on the night in question he, Paul, was in Manchester with his girlfriend Mary. Moreover, he is aware that there was an eyewitness, Harry, who saw Daniel assault Steven. This man has given a written statement to the reporting police officer. However, Harry is a disillusioned lawyer last heard of back packing in Australia.

What steps must you take to fully prepare for Pauls defence at the First Diet? What time limits have to be complied with if any? Paul has a pre-booked family holiday abroad when the First Diet is due to call. His bail conditions require he attend every court hearing.

Can anything be done to resolve this problem?

**END OF SECTION B**

**END OF QUESTION PAPER**