



THE LAW SOCIETY OF SCOTLAND
QUALIFIED LAWYERS ASSESSMENT

PROCEDURE

1 November 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

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. What should the Pursuer do if it wishes to accept the offer?
- iii. Assume instead that the Defender lodged a Tender of £150,000 and the offer was not accepted. 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 amending 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?
 - iii. A key witness tells you then can't attend the Proof because they are emigrating to Australia. What could you do to ensure that the witness' evidence is available for the proof?
- 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 absolvitor in favour of a defender?

END OF SECTION A

SECTION B: CRIMINAL PROCEDURE

Question 3

- (i) What documents must be lodged by the defence in every case prior to a First Diet calling at the Sheriff Court?
- (ii) You are representing John who has been served with an Indictment and there is a First Diet calling in two weeks at the local Sheriff Court.

He is charged firstly with sexually assaulting his former girlfriend, Susan. He instructs you that he met Susan at a party two weeks after they split up. There was some sexual intimacy but John states that Susan was the instigator and seemed perfectly happy when they parted company. He believes that Susan has made up the allegations because her new boyfriend, Peter, found out what had happened. John remembers that Susan was previously fined in the local Sheriff Court for making an allegation of sexual assault which she later admitted was false.

John faces a second charge of assaulting Susan's new boyfriend. He instructs an hour after Susan left him Peter confronted him in the street with a metal pole. John thought he was going to be injured so he hit Peter on the head with a bottle that he was holding. John advises that his two friends Derek and Liam saw this incident. He further advises that Liam has recorded the whole incident on his mobile phone and has kept the recording.

Lastly, John is charged that on the day after these incidents he drove a vehicle whilst disqualified. John instructs that it is true that he drove the vehicle whilst disqualified, but that this was because he was confronted by Peter's friends in the street. There were five or six of them and they all had knives and were threatening to kill him by stabbing him with their knives. John explains he drove the vehicle a short distance of about a mile along the main road in order to get away from the people. He advises that his friend, Harry, was with him at the time and indeed Harry gave a written statement to the reporting police officer. However, Harry is a retired lawyer who was last heard of on a worldwide golf tour and his current whereabouts are unknown.

What steps must you take in order to be fully prepared for the First Diet, and what time limits must you comply with?

Question 4

- (i) You are consulted by Ian. He has a pleading diet at the local Sheriff Court. He is charged that being the owner of a dog that is dangerous he failed to keep it under control whereby the dog bit and injured a child. Ian advises that he has no knowledge of the incident as he had given the dog to an old friend three weeks before the date of the alleged incident.

What steps must you take to represent Ian's interests in full at the pleading diet?

- (ii) You are consulted by Sonia. She advises that she represented herself the day before coming to see you and plead guilty in the local Justice of the Peace Court at a Pleading Diet to a minor public disorder. Sonia advises that the Court was told by her that she received State Benefits of £70 per week. The Justice fined her £3000 to be paid at the rate of £50 per week. The Justice moreover told her that he would have fined her more if she had plead guilty to the charge at a later stage. Sonia wants to appeal. She advises you that her friend has told her that in Scotland any accused person has an automatic right of an appeal hearing in the Appeal Court if they wish to appeal.

- a) What method of appeal should be utilised to assist Sonia?
- b) What time limit, if any, applies to making any such appeal?
- c) What is the ground of appeal that would be relied upon?
- d) Has Sonia's friend advised her correctly about her automatic right of appeal? If not, what advice should have been given by Sonia's friend?

- (iii) You are consulted by John. He has no previous convictions, but he is charged on summary complaint with theft by housebreaking. He wishes to know:

- a) Is it true that because the housebreaking happened 15 months ago, and he was caught on the night in question by the police that the prosecution is now time barred?
- b) If the prosecution is not time barred, what is the maximum sentence of imprisonment that can be imposed upon him if he pleads guilty at the pleading diet?
- c) If the Court is thinking of imprisoning him, are there any steps it must take before sentence is passed as he wants to make it clear that he has turned his life around?

Advise John.

END OF SECTION B

END OF QUESTION PAPER