



THE LAW SOCIETY OF SCOTLAND
QUALIFIED LAWYERS ASSESSMENT

PROFESSIONAL CONDUCT

3 November 2021

1300 – 1430
(90 minutes)

Candidates are required to answer TWO out of three questions.

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. As a take home, open book exam you are expected to cite authority for your answers).

Question 1

- a) Belinda is a senior associate in a large city law firm in the central belt. Belinda is aggrieved that despite being at the firm for over a decade she has failed to progress as far in the firm as all of her colleagues who started at the firm at the same time. Belinda thinks it is because she is Afro-Caribbean in origin whilst her colleagues are all white. Belinda's other grievance is that at the Christmas party she was sexually assaulted by Jack, a drunken partner. Belinda takes her grievances to the HR department in the firm and they agree to compensate her for both matters if she leaves the firm without a fuss and agrees to sign a Non-Disclosure Agreement (drawn up by Malcolm the HR partner) in terms of which she cannot discuss the events leading up to her departure with anyone.

Advise Belinda, Jack and Malcolm as to their position in terms of professional ethics.

- b) Robert is a qualified assistant of four 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 Airbnb's. Robert has signed a restrictive covenant undertaking not to act for the firm's clients (wherever they reside) for a period of six years from his departure from the firm. Robert has taken to leaving his business card at two local country clubs containing the wording " Looking for the ideal staycation? Our firm has an unparalleled set of Airbnb's on its books. Rent through us and we'll give you a 10% discount on every property". The country clubs get a £100 payment for every tenant they refer to Robert's firm.

Robert is approached by a rival firm offering him a partnership if he will (1) 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 (2) contact all members of the country clubs telling them of his move to the new firm and inviting them to consider sending him their tenancy work, if they do not already have a lawyer. Robert agrees to do as they ask. He proposes to describe himself on his new business cards " The hottest property lawyer in Galloway". Robert is an avid user of Twitter and plans to tweet for his new firm with the hashtag "best in town".

Advise Robert as to the ethical implications which arise in these scenarios.

Question 2

- a) Maggie is a middle-aged partner in a Glasgow law firm which focuses on personal services work for clients. She is acting for Henry, an elderly client, who already has a power of attorney in operation for his property. Henry wants to revise his will to leave everything to his carer who has befriended him and to disinherit his only child, Nora, who he feels has neglected him in recent years. Henry seems slightly confused when the carer brings him in to see Maggie, but Maggie recalls from her training that the solicitor is the arbiter of capacity and concludes that there is no need for her to obtain a medical opinion as to Henry's capacity to alter his will.

Advise Maggie as to her position in terms of professional responsibility.

- b) Davey is an ambitious young assistant in a rival firm to Maggie's. Davey specialises in civil litigation and one evening he encounters Nora at a newly opened night club. Nora pours out her resentment concerning Henry, whom she feels she has gone out of her way to support in his declining years, the carer whom she describes as "scheming" and Maggie whom she regards as gullible. On hearing her story, but aware that Nora cannot afford to challenge the will, Davey offers to act using a Success Fee Agreement (SFA) in which he will act for 25% of whatever Nora gains from the litigation and nothing if she is unsuccessful. Davey fails to tell Nora about legal aid, after the Event Insurance or QOCS. Davey sends Nora a draft SFA which is not modelled on the Law Society style. The draft fails to contain any of the provisions of the Civil Litigation (Expenses and Group Proceedings)(Scotland) Act 2018 (Success Fee Agreements) Regulations 2020. Davey considers that he is doing Nora a favour and sees no reason why he should suggest that Nora consider taking independent advice, and pushes her to sign the SFA within a week of receiving the draft. Furthermore, Davey does not provide a cooling-off letter.

Advise Davey as to his position in terms of professional responsibility.

- c) One dreary, wet Monday when Davey is gloomily contemplating the disruption to the city centre and to his commuting arrangements which he expects from COP26, a dishevelled man, Grigor, is brought into his room, by appointment. Grigor pours out his troubles concerning the damage which he claims has been caused to his beloved Yeti car by Smiths, a large garage in the West End. Grigor is quite agitated and on questioning by Davey, implies that his car had pre-existing defects prior to being sent to Smiths for its MOT. Davey listens patiently, tells Grigor what his hourly rates are, comments generally on the duties of care owed by garages to car owners and asks Grigor to provide further details about the car including its logbook for the next appointment. The next day Davey is sent an internal memo from the senior partner indicating that Smiths is a new client of the firm who would like to talk to Davey about a Yeti car that they damaged at its MOT service.

Advise Davey and Grigor as to ethical aspects raised by this scenario

Question 3

- a) Sarah is an enterprising partner in a large Scottish corporate law firm. She acts as Secretary and legal adviser to the International Charity with headquarters in Scotland. Four years ago, the Charity bought a forest in the Highlands with the help of their then legal adviser, Nathan. It has gradually emerged that Nathan badly mishandled the transaction and that there are grounds for rescinding the purchase, since it transpires that it was mainly ash trees and the ash dieback disease has spread dramatically since before the purchase took place, and is likely to destroy much of the forest. It appears that the sellers were aware of the presence of the disease before they put the trees on the market. Sarah has procrastinated in rescinding the contract because, unbeknownst to the Charity, her brother was one of the businessmen who sold the forest to the Charity. If rescission is effected, he would suffer a considerable financial loss. Sarah is eventually forced to seek a legal opinion from counsel on the sale and on Nathan's liability for negligence. Counsel replies indicating that there was indeed carelessness by Nathan which bordered on the reckless, but counsel adds that Sarah herself is at fault for not spotting (and rectifying) the situation with greater speed. Sarah asks the counsel to remove the unasked-for opinion as to her own failings and to re-issue his opinion with this part deleted. This is duly done and Sarah sends the opinion to the Management Committee of the Charity as if it were the original opinion.

Advise Sarah as to her position in terms of professional ethics.

- b) Gregory is the litigation partner in a central belt law firm. He is involved in a substantial commercial case from Helensburgh. His key witness rejoices under the name of Frederick Pilkington Smyth – an unusual surname which is shared by a wealthy and famous family in that part of the country. The witness, however, is from a distantly related branch of the family and is penniless. Gregory pays for Frederick to acquire a smart new suit – as a result the sheriff hearing the case, who is relatively new to the area – mistakes Frederick for a member of the wealthy branch of the family. This was just as Gregory had hoped for, since he had noticed that the judge was not impressed by the rigorous cross examination being given to Frederick by the other side and seemed to be coming round to the view that Frederick's integrity was being besmirched.

Gregory is representing Lydia in a summary trial on a careless driving charge. Lydia has previous driving offence convictions under her maiden name but has recently changed her name to that of her long-term partner, even though they have not become married. Lydia has moved into her partner's home and gives that address when arrested rather than the address where she has been living until recently. Lydia had instructed Gregory that if she is convicted that he is on no account to volunteer to the sheriff that she has previous convictions.

Advise Gregory as to his ethical position in relation to each of the scenarios set out above.

END OF QUESTION PAPER