THE LAW SOCIETY OF SCOTLAND
QUALIFIED LAWYERS ASSESSMENT

PROCEDURE

7 November 2022

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

Candidates are required to answer ONE question only from Section A

Question 1

Several years ago, Jenny underwent surgery for removal of a pre-cancerous growth. The growth was not entirely excised and a cancerous growth formed. Jenny had to undergo major surgery to have the cancerous growth removed. Jenny is now cured but she has obtained a report expressing the view that the failure to completely remove the pre-cancerous growth was negligent. She has been advised to raise an action for damages for personal injuries against the NHS Trust in the Sheriff Court.

a) What Chapter of the Ordinary Cause rules contains the procedural rules relative to personal injury actions?

b) What form should be used for the Initial Writ?

c) If defences were lodged by the NHS Trust on the date of this exam, when would the adjustment period be likely to end, and within what period would a proof be likely to take place?

d) If the NHS Trust, by reason of an administrative error, failed to lodge Defences on time and Jenny obtained decree in absence, what steps could the Trust take to try to remedy its error and defend the action?

e) During the course of the action, Jenny discovers that, rather than being completely cured, there is a 30% chance of the cancer returning. She is reluctant to settle the action on a full and final basis because, if the cancer does return, she may need a lot of extra treatment and incur further medical costs. Is there anything that can be done to alleviate her concern?

f) In due course, the NHS Trust admits liability. Jenny needs money to undertake modifications to her house as a result of disabilities arising from her treatment. The cost of the modifications is relatively small as against the overall sum she is likely to be ultimately awarded in damages. Is there anything that can be done to enable Jenny to get some money from the Trust prior to the ultimate determination of the action at proof?

Question 2

a) Explain the difference between preliminary pleas in law and pleas on the merits.

b) 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?

c) The court sustains the preliminary plea sought re question (b). What decree will the court pronounce in the defender’s favour?
d) 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?

e) 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.

f) If a defender has a plea of adjudication sustained, what will happen to the court action?

END OF SECTION A
SECTION B: CRIMINAL PROCEDURE

Candidates are required to answer ONE question only from Section B

Question 3

Part A

Prior to every First Diet in the Sheriff Court, which two documents must be lodged by the defence in every case? What is the timeframe for lodging such documents relative to the First Diet?

Part B

You are consulted by Ian. He has a First Diet in the local Sheriff Court containing a number of charges. In respect of each charge please advise what steps you must take prior to the First Diet in order to properly represent his interests.

i) Ian is charged with an offence of driving while disqualified. He states that on the night in question he was the passenger in the vehicle which was actually driven by his friend Harry. There were two other witnesses, Kevin and Fraser, who were within the vehicle who can confirm this to be the position.

ii) The second charge which Ian faces is that on a different date he assaulted a man in a nightclub in the local area. Ian’s position is that on the date this offence is labelled he was on holiday in Switzerland with his girlfriend. He understands that in fact the assault that is alleged to have occurred was carried out by his twin brother and his twin brother has written him a letter admitting his involvement in this matter.

iii) The last charge that Ian faces is a charge on a third date of sexual assault upon his former girlfriend. He states that his former girlfriend has met up with him after they had separated and they had become intimate together in the back of her motor vehicle and that she had in fact instigated kissing and cuddling. Ian thinks that the reason the allegation has been made is because her new boyfriend found out and has become jealous. Ian states that this is not the first time that his former girlfriend has made false allegations of sexual assault and he recollects that she was ordered by the local Sheriff Court to undertake several hundred hours of work in the community having admitted making a false allegation on a prior occasion. Ian is concerned that his friend Alison saw him and his former girlfriend getting into the car together and knows that Alison gave a written statement to the police saying that this looked to her to be entirely consensual. Alison is however now on a backpacking tour of Australia and cannot be traced.

Question 4

You are consulted by Amy, Rebecca and Sarah about their respective cases. They all have pleading diets calling in the local summary Sheriff Court. Please advise Amy, Rebecca and
Sarah on how they should plead and what steps should be taken to protect their position at Court.

i) Amy is charged that being the owner of a motor vehicle that was involved in an accident that she failed to provide the police with details of the identity of the driver on the date in question. Amy advises you that she told the police at the time she did not know who the driver of the motor vehicle was because she had sold the motor vehicle by private sale in a newspaper about four weeks before the date of the incident.

ii) Amy also faces another charge that she drove a different motor vehicle while she was disqualified from driving. Amy states that she accepts that she drove the motor vehicle while she was disqualified from driving. She advises that she had been out with her sister that evening and she Amy had the car key in her pocket. When she returned home on her own she was confronted by a gang of youths in the street and then pursued her with knives in their hand. Amy had then run to the car which was nearby and got into the vehicle and then driven about a mile up the road away from these people.

iii) Rebecca is charged on summary complaint with assault on another female. She states that at the time of the incident the other female had grabbed her by the hair and pulled her to the ground. Rebecca states that at that point she had managed to get to her feet and punched her attacker in the face. This had knocked her attacker to the ground and at that point Rebecca had seized her chance to run away.

iv) Sarah is charged with driving her motor vehicle without insurance on 15th August 2021. Sarah accepts that she was driving the motor vehicle without insurance and advises you that she had received a citation hand delivered to her by police officers on 8th of August 2022 citing her to attend at Court on 28th of August 2022.