THE LAW SOCIETY OF SCOTLAND
QUALIFIED LAWYERS ASSESSMENT

PROFESSIONAL CONDUCT

9 November 2022

1300 – 1430
(90 minutes)

Two questions only to be attempted. Where a question is in more than one section you are expected to answer ALL sections of the question. You are expected to cite authority for your answers.
Question 1

Angela 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 Edinburgh where she has just been shopping. She thinks his interest is in a bracelet 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 bracelet and take the chance that they will not believe her protest of innocence. Angela, outraged at this advice storms out shouting, “All this fuss over a bling bracelet. I’ll make sure I take more next time”. Minutes later a man, who is in fact a plain clothes detective, 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 Angela’s description stealing a bracelet. He lost her in the street but shortly thereafter saw her dash out of your office and leap into a taxi.

1) The detective 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 detective has left you notice that Angela has dropped the bracelet beside her chair. What should you do with it?

3) Angela sensing that you may be called as a witness against her, complains to the Scottish Legal Complaints Commission as to the quality of the advice which you gave her. Angela is subsequently arrested and you are cited by the Crown as a witness. What can you say in defence of the complaint and what may you say in court as to the contents of the interview (including her outburst, Angela’s sobriety and appearance)?
Question 2

Roderick, an entrepreneurial sole practitioner who dislikes the “polluter pays” approach of the SLCC and the pressure it creates to settle complaints from clients that Roderick regards as spurious, has decided to hit back against such complaints. He uses his terms of engagement letters as a way of preventing or inhibiting complaints by stating that clients cannot complain about (a) the quality of service offered by the lawyer on the other side (b) the quality of service offered by Roderick and (c) Roderick continuing to act even if a serious potential conflict of interest has arisen in the case. Roderick adds that if, despite these provisions, the client complains to the SLCC about his work and that the complaint is rejected by the SLCC he will charge the clients the cost in hours taken by him to defend the unsuccessful complaint. Finally, Roderick adds that if the client is going to complain about the solicitor and put a bad review on the solicitor’s website, the client must give the solicitor 3 days warning otherwise they will be liable for £3,000 for loss of reputation and injury.

Roderick is on the dual carriageway being driven back home from a success in a major sheriff court case by his mature trainee Gordon. Unfortunately, Gordon, distracted by his mobile (which is not hands free) going off in the car, skids on the rain-soaked road and crashes into a tree. Gordon is knocked unconscious with bleeding coming from his head because he wasn’t wearing his seat belt. Rather than wait for the emergency services, Roderick, knowing that every second counted, despite having downed three medium glasses of white wine after the Court case, drives down the road to the nearest Accident and Emergency Department using one hand while frantically trying to alert the A & E unit with his mobile in his other hand.

Roderick uses social media regularly. Sometimes it is about his cases. Sometimes it is to advertise his specialism e.g. “Best criminal court lawyer in Fife” and sometimes, on a Saturday afternoon it is to make disparaging remarks about politicians or his local rivals, none of whom, as he points out truthfully, have won their last four cases in the High Court – as he has done. Roderick intends to re-vamp his website to offer his services as a defence lawyer on a “no win, no fee” basis but suggesting that he will charge a double fee for an acquittal.

Advise Roderick as to his position in terms of professional responsibility.
Question 3

a) Marjorie is an experienced private client lawyer in a mid-sized law firm in Inverness. Her longstanding client, Ruth is growing frailer but has no close family or friends to take care of her. Marjorie decides that a power of attorney is necessary. Considering that it might be improper for her to draft it, she arranges for her life partner, Tom who works in another law firm to draft the power (which is in Tom’s name), assuring him that Ruth is still fully alert as a Skype conversation with Ruth will prove. Tom makes the call, drafts the power of attorney and gives it Marjorie for Ruth to sign. The signed power is put in the law firm’s safe.

b) Marjorie is contacted by the Smiths who own a croft not far from Marjorie’s home village. The Smiths wish to sell the croft to their neighbours the Browns who are also clients of Marjorie. Marjorie advises both parties on the price and then does the conveyancing for them both as well, arguing that it would be unfair to have to send one of them away to the nearest solicitor with crofting experience which is 40 miles away. Halfway through the transaction, the Browns accuse Marjorie of favouring the Smiths in the missives negotiations and hand her a mandate in favour of another lawyer in Inverness. Marjorie indicates she will not implement the mandate until her fee note has been made up and paid. Marjorie is in no hurry to do this, taking a month to even send the file to law accountant.

c) Marjorie is instructed by her wealthy client Shona to realise her one major investment. Marjorie then receives a Mandate signed by Shona in favour of a bank in respect of the total sum. Marjorie is overworked but is also reluctant to lose control of such a large account. She fails to implement the Mandate despite several reminders. When she eventually does so Shona raises an action of professional negligence against her because of losses she has sustained from Marjorie dilatory response.

Tom, Marjorie’s life partner is the solicitor instructed by the Master Policy Insurers to represent Marjorie. Under the policy Marjorie is covered for negligence but not for recklessness or fraud. Tom’s discussions with Marjorie leads him to suspect that the withholding of the funds may not have been entirely in good faith.

Advise Marjorie and Tom as to their position in terms of professional ethics in these scenarios.