THE LAW SOCIETY OF SCOTLAND
QUALIFIED LAWYERS ASSESSMENT

PROFESSIONAL CONDUCT

11 May 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

Lyra is a partner in a mid-sized firm in the central belt of Scotland. She has always found it more effective to anticipate problems in advance and so crafts her letters of engagement with care. Lyra considers that Scottish solicitors are too conservative in their approach to feeing. Accordingly in addition to stating her hourly rate in her letters of engagement (which she claims cannot be challenged before a court auditor in a taxation), she also offers as an alternative to take on any case with a success fee of 20%, or to offer a discount on her fees in return for social media rights to tell her client’s story in a sensational way. As for complaints, Lyra is fed up with the “polluter pays” approach of the SLCC and so seeks to minimise any complaints against her by getting the clients to agree that (a) she is permitted to continue to act in a conflict of interest situation if it arises or (b) they will not complain to the SLCC about her actions or (c) that if they complain unsuccessfully to the SLCC against her, she will charge the clients the cost in hours taken by her to defend the unsuccessful complaint. Lyra, however, is careful if she is ever challenged about her terms of engagement letter to indicate to the client that she never intended to act on those provisions in the letters and encourages them to contact the court auditor or the SLCC in appropriate cases.

In a similar vein, when acting for a corporate client with a poor record in protecting its female staff in sexual harassment cases, Lyra draws up a generous compensation package for the relevant staff whilst also getting them to agree in return that they will not tell anyone (including the press or the public) about their experiences when working for the company.

Lyra has a poor relationship with her next-door neighbour, Felicity. She has deliberately scattered the seeds of Japanese Knotweed (a highly invasive species) in Felicity’s garden, poured poison on Felicity’s newly planted oak saplings, and made snide innuendos about Felicity’s transgender status, using social media.

Advise Lyra as to her position in terms of professional ethics.
Question 2

Leonard, a litigator in an Inverness firm, pays fixed rate referral fees to contacts in local hospitals who send him the details of accident cases that arrive in their hospitals. One of his long running cases relates to Henry, a client who was badly injured when falling between a small ferry boat and the jetty in the Highlands. The defending insurance company which acts for the ferry company surprisingly chose to fight the case all the way, despite several witnesses suggesting that a poorly trained ferry crewman was to blame. The key debates were over the issues of (1) contributory negligence and (2) the extent of Henry’s injuries and his prognosis for recovery. Leonard gets an expert medical report that suggests that Henry’s prognosis is very good, and his injuries are considerably less serious than they first appeared. The other side got an expert medical report which was much more gloomy on both fronts. Leonard does not lodge his medical report and accepts that of the defence. After the proof has been completed but before the judge can issue a judgment, Henry (whose marriage broke down after the accident) uses his expert medical report which was not used in the damages case, in a contested hearing over contact and residence to his children. He is trying to persuade the sheriff that his health has much improved and that his prognosis is excellent and therefore he is quite fit enough to look after his children for extended periods. By coincidence the doctor for the insurance company in the damages case meets his counterpart for the pursuer in both the damages and the children case, and they compare notes. The insurance doctor forms the impression that he has made a terrible mistake and that he should inform the judge in the damages case of this, before he hands down his judgment. The doctor informs the counsel and solicitors on both sides of the case. However, no one takes any action to tell the judge.

Advise Leonard as to his position in terms of professional ethics.

Leonard has another tricky case. He is acting for defence in a damages case where a child has been injured whilst trespassing on a corporate client’s land. This land was not properly fenced, and had uncovered manholes in it. Leonard’s medical report on the child reveals that the child has an aneurism which might burst at any moment. The aneurism had been caused by the child falling down one of the manholes. The child’s own medical expert fails to detect the aneurism. Leonard accepts the pursuer’s medical report and settles the case on that basis.

Does Leonard have any ethical obligation to inform the other side either before or after the settlement, that the child might be killed by the aneurism at any moment? Is Leonard permitted to make such a disclosure under the professional ethics of Scotland?
Question 3

a) Joe, a private client partner in a Glasgow firm, has been asked to act for a young married couple who wish to purchase a house using a loan from the husband’s father, with a standard security over the house to cover the loan. Since everything seems straightforward Joe agrees to act for the father also in the transaction. Joe then discovers on further investigation that the father has dementia and that the husband and his brother have a power of attorney for the father and that it is the attorneys who will be making the loan. Joe agrees to continue acting for the husband and wife but declines to act for the other attorney.

Advise Joe as to the issues of fiduciary duty and professional ethics which arise from his conduct.

b) Joe acts for a widow, Rose, who is the co-executor with Joe in an executry for her former husband. Joe is also the solicitor handling the executry. Rose was the second wife of the deceased who had a son, Morris, from his prior marriage, from whom he was estranged. Rose is adamant that her husband would not have wanted Morris to inherit any part of his estate. Accordingly, Rose forbids Joe from informing Morris as to his legal rights. Joe ingathers the estate and then resigns as executor, though not as the solicitor, telling Rose that she is legally bound as executrix to inform Morris as to his legal rights, knowing full well that Rose will not do so.

Joe is acting as the solicitor in another executry where this time he is the sole executor. He dutifully sends himself a letter of engagement but feels it is unnecessary to copy this to the beneficiaries. Joe is dilatory in handling the executry, which was quite straightforward, and corresponds with the beneficiaries on a spasmodic and minimal basis, frequently neglecting to respond timeously or sometimes at all, to their increasingly frustrated enquiries. After all, he reflects, beneficiaries are not clients.

Advise Joe as to his position from the perspective of professional ethics.

END OF QUESTION PAPER