

THE LAW SOCIETY OF SCOTLAND
INTRA UK TRANSFER TEST

PAPER II
SCOTS CRIMINAL LAW, WITH CIVIL AND CRIMINAL
EVIDENCE AND PROCEDURE

9 May 2016

1330 – 1530

Candidates should answer **THREE** QUESTIONS;
Candidates **must** answer Question One from Section A,
one from Section B, and **one** from Section C.

**No marks will be awarded for copying out the text of
materials which candidates are permitted to take into
the exam.**

**Answers to each SECTION should be written in a
separate answer book**

Section A : SCOTS CRIMINAL LAW

Candidates MUST answer this question.

Question 1

Rupert is a law student. He has noticed another student, named Marina, in his class and he invites her to go for a coffee with him. On the way to the cafe, they pass Rupert's flat and he asks her to come in for a minute, saying that he has forgotten his wallet. She agrees. As soon as they are inside, he locks the door, places his hand on her breast and tries to kiss her. She is horrified and does all that she can to push him away.

Hearing the commotion, Rupert's flatmate Colin appears. Feeling that she is now in danger from two men, Marina is terrified. She grabs a heavy metal golfing trophy which she spots on a table and swings it at Colin, hitting him very hard on the head. He falls to the ground, unconscious. In fact, Colin had had no intention whatsoever of attacking Marina and had come out of his room to help her.

Marina leaves and Colin regains consciousness. He says that he remembers Rupert doing something to a girl. Rupert is worried that Colin might tell someone else. He decides that he cannot take this risk and that he will have to "get rid of" Colin. Taking advantage of Colin's weakness following his head injury, Rupert puts a plastic bag over Colin's head and secures it round Colin's neck with parcel tape. He then goes out because he can't bear to watch. In fact, however, unbeknownst to Rupert, Colin's girlfriend Penelope was also in the flat and she cuts the plastic bag off. Colin is rushed to hospital and survives.

Which crimes in Scots law may have been committed by Rupert and by Marina and what defences (if any) may be available to either of them? Give full reasons for your answer, citing authority as appropriate.

END OF SECTION A

Section B : EVIDENCE

Candidates should answer EITHER question 2 OR question 3. All answers should be fully reasoned and supported by adequate citation of authority.

Question 2

Abe sees Betty being attacked in the street by a tall blond man. He calls the police to inform them of the assault. Two police officers then arrive on the scene and Abe makes a statement to them, which is transcribed into one of the officer's notebook. The possible assailant, Carl, is detained by the police, and charged with assaulting Betty.

At trial, Betty gives evidence for the Crown and identifies Carl, who is in the dock, as her assailant. Abe also gives evidence, but when questioned he says that he cannot recall the perpetrator's appearance other than that he was short in stature. Abe fails to identify anyone in court, but states that he made a statement at the time of the incident and that what he said in it would have been true.

Is Abe's evidence to the police officers admissible? Is it sufficient to corroborate Betty's evidence?

If Carl had been overheard in the police station boasting about punching Betty, would evidence on what he said be admissible?

Question 3

Write brief notes setting out the law on **TWO** of the following points, with full reference to authority:

- (a) the effect of a failure to cross-examine a witness;

- (b) presence of a witness in court during a trial or proof;
- (c) the prohibition on expert witnesses giving evidence on questions of ordinary human nature and behaviour.

END OF SECTION B

Section C : PROCEDURE

*Candidates should answer either question 4 **OR** question 5 **OR** question 6.*

Question 4

By reference to statute, court rules and authorities answer these five questions:-

- a) Your client Henry lives in Stirling. He believes that a firm of architects, Pecksniff Partners, owe him £2,500 because they over invoiced him for design work they did to his home. Pecksniff Partners have only one office; in Newcastle. Henry asks them to pay him the money, but they refuse. What steps should Henry take to use the Scottish court system to secure and enforce payment?
- b) In what circumstances may an action be raised in the Sheriff Court under the rules for Commercial Actions contained in Chapter 40 of the Ordinary Cause Rules and what are the main differences in procedure between a Commercial Action and an Ordinary Action in the Sheriff Court.
- c) How may an Initial Writ in a defended Ordinary Action be changed to add an additional crave, further averments as to fact and an additional plea in law after the Options Hearing and what might the consequences be in terms of expenses?
- d) Your client explains that she fears that her former employers are about to seek an interdict in the Sheriff Court to prevent her from carrying out her business. She believes that the restrictive covenant they claim she has signed is unenforceable. What steps can

you take to protect her position and to ensure that you can appear for her and oppose any application for an interim interdict?

- e) You have just been instructed for the defender in an action in respect of personal injury raised in the Sheriff Court under Chapter 36 of the Ordinary Cause Rules. You are handed a Decree in Absence that was granted yesterday by the Sheriff. It turns out no one at the client's offices did anything with the Initial Writ when it was received. What steps do you need to take to prevent the pursuer exercising diligence on your client's company bank accounts and assets?

Question 5

Briefly describe in terms understandable to a non-legally trained client each of the following concepts or elements of civil procedure. If appropriate give an example.

- a) Diligence on the dependence
- b) A crave
- c) The Inner House of the Court of Session
- d) Issues
- e) A tender
- f) Time bar
- g) A proof
- h) A proof before answer
- i) Judicial Review
- j) A counterclaim

Question 6

Your client is a 24 year old man and he has appeared from custody on Petition on a charge of assault and the possession of a knife in a public place whilst being on bail. He is alleged to have assaulted a person in the street by punching (in addition to the complainer there is only one other eye witness) and an hour or so later your client was stopped nearby by the police and was found to have a small knife in his pocket. He gave a 'no comment' interview. He was committed for further examination and granted bail with special conditions that he remain in his home between 7pm and 7am each night. What steps would you take in each of the following circumstances?

- a) Your client contacts you to explain that his shifts at work have changed and that he now needs to leave the house at 5am in order to be at work for 6am.
- b) Two days later you attend an identity parade and neither the complainer nor the only other eye-witness identifies your client as the person they say carried out the assault. You take instructions and your client tells you that he is prepared to plead guilty to the possession of the knife, but not to the assault.
- c) Six weeks later your client is arrested by the police for being outside his house at midnight in breach his bail conditions contrary to Section 27(1)(b) of the Criminal Procedure (Scotland) Act 1995. Assume the bail conditions are unchanged. He appears from custody on Petition charged with breach of special conditions of bail. He is committed for further examination, but bail is refused. He wants to be at liberty as otherwise he will lose his job.

- d) An indictment is served. It still contains two charges and both charges are subject to a bail aggravation that libels that your client was subject to a bail order imposed at Edinburgh Sheriff Court on 24 October 2015. You know from your records that this bail order was not in force when the offence was said to have been committed.
- e) Eventually the Crown accept a plea of guilty to the possession of the knife and a plea of not guilty the assault. As your client has never previously been sentenced to a period of imprisonment or detention before the sheriff defers sentence for reports and after hearing from you imposes a 18 month prison sentence reduced from 24 months to reflect the timing of the plea of guilty. You consider the sentence to be excessive.

END OF SECTION C

END OF PAPER