

THE LAW SOCIETY OF SCOTLAND
QUALIFIED LAWYERS ASSESSMENT

PROCEDURE

6 November 2023

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), 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

- (a) In an ordinary cause action in the Sheriff Court, the defender considers that the case pled by the pursuer is irrelevant.
 - (i) what is meant by the notion that "the case pled is irrelevant"?
 - (ii) what steps must the defender take to advance this argument, and when must they take them?
- (b) If decree in absence has passed against a defender in an ordinary action in the Sheriff Court, what procedure might the defender use in applying to have that decree recalled, and what test would the Sheriff apply when determining the application?
- (c) Explain what it means to sist an action. Give 3 examples of circumstances in which a party to an action might ask the court to grant a sist.

Question 2

- (a) Using examples, describe the purpose and effect of a summary decree in an ordinary action in the Sheriff Court and explain the procedure for obtaining it.
- (b) Assuming a Notice of Intention to Defend has been lodged on time, describe the course of an ordinary action from that point until conclusion of the Options Hearing.
- (c) Explain how, in an ordinary cause action in the Sheriff Court, a pursuer would make a "Pursuer's Offer" and describe the effects it might have at the conclusion of the action.

END OF SECTION A

SECTION B: CRIMINAL PROCEDURE

Candidates are required to answer ONE question only from Section B

Question 1

- (a) Prior to every First Diet in the Sheriff Court, which documents must be lodged by the defence in every case? What is the statutory timeframe for lodging such documents?
- (b) You are consulted by Murray. He has a First Diet in the local Sheriff Court. He faces numerous charges. In respect of each charge advise Murray what steps you must take prior to the First Diet to properly represent his interests at the First Diet.
 - (i) Murray is charged firstly with theft of a motor vehicle. Murray advises you that he was questioned by the Police and admitted the theft. He states that he did so because he was told that his wife had also been arrested by that if he confessed to the theft his wife would be liberated from police custody.
 - (ii) Murray is also charged with assault. He states that on the night in question he was attacked in the street by a stranger who tried to strike him with a knife. Murray advises he picked up a bottle nearby and struck the stranger to the head. His friend John witnessed this and gave a written statement to the investigating police officer. Unfortunately John has left Scotland to go backpacking around the world and Murray does not know his present whereabouts.
 - (iii) Murray is charged with a contravention of Section 1 of the Sexual Offences (Scotland) Act 2009 alleging that he had raped his former girlfriend, Mary. He states that at the time that it is libelled this offence was committed he was in his own house with his new girlfriend Suzy. Moreover Mary has recently texted Murray to say that she lied to the police and made the whole story up. Murray advises you that Mary has previously been convicted in the local Sheriff Court for offences of making false allegations of sexual assault.

Question 2

- (a) You are consulted by Ian. He represented himself in the local Justice of the Peace Court 5 days ago. He pled guilty to a charge of speeding at 10 miles over the speed limit. The Justice fined him £1000 to be paid within 30 days as an effort to 'deter other speeders'. Ian lives off Social Security benefits of £70 per week. Ian wants to know:
 - (i) Can he appeal against his sentence?
 - (ii) If he can appeal, what is the method of appeal?
 - (iii) What are the grounds of the appeal?
 - (iv) Is he in time to appeal?

- (b) You are consulted by Ryan. He is cited to appear at the local Sheriff Court. He faces numerous charges. He wishes advice on how to plead.
- (i) He is firstly charged that being the keeper of a motor vehicle that was involved in a road traffic accident that he failed to provide the police with details of the identity of the driver at the time of the accident. He advises you that he had sold the motor vehicle a month earlier and has no idea who the driver was at the time of the accident.
 - (ii) He is charged with assaulting a stranger in the street. He accepts that he shouted and swore at the stranger and threatened to kill him.
 - (iii) He is charged with a road traffic offence that he was driving his motor vehicle without displaying L plates and without being accompanied by an adult over the age of 21 who was the holder of a full driving licence. He accepts that this is the case but you notice that the date of the alleged offence was 20 months ago.
 - (iv) He is charged with a separate offence of driving while disqualified. He states that he was disqualified from driving 6 weeks ago and the date of this offence is 3 weeks ago. He accepts that he was driving but advises that on the night in question he was walking home when he was accosted by 3 men with weapons. They chased him along the street. He had the keys to his motor vehicle. He got into his motor vehicle and drove away from the men.

END OF SECTION B

END OF QUESTION PAPER