

THE LAW SOCIETY OF SCOTLAND
QUALIFIED LAWYERS ASSESSMENT

PROCEDURE

9 May 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) 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

Answer the following questions with reference to appropriate procedural rules and authorities:

- a. In an Ordinary Cause action in the Sheriff Court, when does the adjustment period begin and end?
- b. What procedure is available to a pursuer to prevent a defender from divesting himself of heritable property located in Scotland, during the course of legal proceedings ie prior to decree being granted? Relative to this procedure, what test must be satisfied before a Sheriff will grant an order in the pursuer's favour?
- c. What is the procedure that should be followed if a solicitor withdraws from acting in a Sheriff Court action.
- d. Explain the purpose of the Options Hearing. Which party bears responsibility for preparing and lodging a Record in advance of the Options Hearing and when is the last day by when it must be lodged?
- e. In an ordinary cause action, the defender lodges a Tender for £15,000, eight weeks prior to the Proof. The action proceeds to Proof and the pursuer is awarded £10,000.
 - i. Explain what motion the defender is entitled to make in respect of the expenses of the action;
 - ii. If the sum awarded had been £3,000, what effect might that have on the award of any expenses;
 - iii. If the pursuer is legally aided, with a nil contribution, what effect would that have on the situation regarding expenses described at (i) above?

Question 2

You act for Jenny Brown who lives in Nairn. In June 2021 she was involved in a road traffic accident on the A9 near Inverness. There was another driver involved - Penny who lives in Glasgow. Jenny says that the accident was caused by Penny and there is evidence available that supports her position.

- a. If Jenny wished to raise an action for damages, in which Sheriff court or courts could she do so and on what basis?
- b. If the accident had taken place in June 2019, and an action was not raised until the date of this exam, what particular line of defence would be available and why?
- c. Once proceedings are raised, you discover that a key eye witness to the accident is about to emigrate to Hawaii in 3 months' time and may not be available as a witness at the Proof. What could be done to obtain the evidence of the witness before their departure?

END OF SECTION A

SECTION B: CRIMINAL PROCEDURE

Candidates are required to answer ONE question only from Section B

Question 3

- (i) You are consulted by Cedric. He has a pleading diet in the local Sheriff Court and is charged that being the owner of a motor vehicle he caused or permitted his friend to drive the vehicle without insurance. Cedric advises that he had sold the vehicle to his friend the week before the date of the offence libelled and has no knowledge of it.

What steps must you take to fully protect Cedric's position at the Pleading Diet?

- (ii) Thomas is charged with assaulting his former partner and consults you. He wishes to call as a witness his 15-year-old son, James. He is concerned that James will not be able to attend Court because of his nerves and if he does attend Court may not be able to give his evidence properly. He knows that his son was interviewed by the police and that his interview was tape recorded by the police.

What steps could you take to try to minimise James' concerns about giving evidence?

- (iii) Your client Mary is in custody and has been served with a Petition in relation to an allegation of assault. Mary thinks that she will get bail.

Explain to Mary what the standard conditions of bail are.

- (iv) Mary is Fully Committed but remanded in custody.

What are the statutory time limits within which the Crown must ordinarily comply with in bringing Mary to trial?

- (v) Mary's cellmate has told her that a legacy of Covid is that cases are now processed more quickly and so the statutory time limits have been shortened.

Please advise Mary as to the position in relation to the Covid impact on time limits.

- (vi) Your client John is Fully Committed for trial and remanded in custody awaiting service of an Indictment. He wants to plead guilty to the charge as fast as possible and thinks he might get some benefit from acting in this way.

Advise John fully on what steps can be taken on his behalf to tender the plea. What impact, if any, might this have on ultimate sentence?

Question 4

- (i) **Prior to every First Diet, which two documents must be lodged at the Sheriff Court by the defence in every case? What are the applicable time limits in respect of these documents?**
- (ii) You act for Ian. He has a First Diet calling in the local Sheriff Court.
- (a) He faces a charge of assault. He admits striking the complainer but tells you that he had been struck himself by the complainer with a knife which indeed had ripped the very jacket that he is wearing at the meeting today.
 - (b) There is a second charge of driving while disqualified. He advises that he has never owned a motor vehicle but the motor vehicle referred to in the charge is actually owned by his identical twin brother.
 - (c) There is a third charge which is one of assaulting his next-door neighbour by shouting at him that 'next time I see you I'll shoot you'. Ian accepts shouting this.
 - (d) Charge number four is that Ian sexually assaulted his former partner by touching her breast without her consent. He advises that on the night libelled they had met unexpectedly and that she had intimated sexual intimacy. He is very upset and advises that the allegation of assault is not true and that moreover she may previously have reported another male for a sexual assault which was 'apparently just rubbish'. Ian wants you to put it to her in the witness box that she serially makes things up.
 - (e) Lastly, he is charged with taking and driving a motor vehicle without the owner's consent. He states the owner was a good friend and moreover that two other friend's Alex and James were present when Ian was given permission to drive the motor vehicle. In fact Alex recorded the conversation on his phone. Moreover Alex and James gave statements to the police officers and signed them in connection with this matter but since the date of the incident James has tragically contracted a bad illness and has subsequently died.

What steps do you require to take in respect of all of these charges to prepare fully for Ian's First Diet?

END OF SECTION B

END OF QUESTION PAPER