

THE LAW SOCIETY OF SCOTLAND
INTRA UK TRANSFER TEST

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

6 November 2017

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

Elizabeth, who is aged 23, wants to attend a motor show at her local Exhibition Centre but she has very little money. She borrows a school uniform from her younger cousin and puts this on. She goes to the Centre and asks the ticket-seller for a child's pass. Seeing the uniform, the seller assumes she is aged under 18 and sells her a half-price child's concessionary ticket. Elizabeth is delighted. She has saved around £30.

At the show, she sees a car which is a model which she is interested in buying. She asks if she can take it for a test drive but the salesperson refuses. Seeing the keys on the dashboard, Elizabeth jumps in and drives off. She calls out the window "I'll bring it back some time – don't worry."

Elizabeth drives the car past her flat. On the street outside, she sees her husband, Mark, hugging another woman. She is very angry. She parks the car, jumps out and runs back to where her husband is standing talking to the woman. Elizabeth shouts "how dare you? Who is she? I hate you". Her husband says, "This is my cousin, Rhona, visiting from Australia for the first time in 20 years. We grew up together." Elizabeth doesn't pay enough attention to take all of this in. She punches her husband very hard on the nose. He loses his balance, falls over, bangs his head on the pavement and dies. Elizabeth is distraught. She shouts at Rhona, "This is all your fault. You are a fucking bitch. I'm going to kill you and take all these people on this street out at the same time."

Rhona, who is an Australian police officer, is not alarmed and does her best to calm Rhona down.

In Scots law, which crimes may have been committed by Elizabeth and are any defences likely to be available to her? 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

Bob is suspected by the police of involvement in a number of violent sexual assaults, all on prostitutes. In an attempt to obtain evidence to confirm their suspicions a female plain-clothes officer, Jan, is instructed to make contact with Bob and to befriend him, without revealing the fact that she is a police officer. Jan discovers that Bob is using an online dating site and manages to arrange a meeting with him through this site. She gains his trust and they start to meet on a regular basis. During one of their meetings, she says to him, still without revealing her true identity, "Look I know you were involved in those attacks. But don't worry – actually it's a bit of a turn on. Why don't you tell me all about it? Bob replies, "Yeah, it was me, strangulation is the only way to deal with women like those."

Jan has been carrying a concealed recording transmitter, which allows a colleague, Jack, to listen in to her conversations with Bob. However, at the time Bob made his statement, the quality of the recording was poor and Jack could only make out some of what was being said. Later, on playing back the machine at the police station it was found that the recording of the conversation between Jan and Bob remained indistinct.

Is Bob's statement admissible?

The statement is the only piece of evidence against Bob. Assuming that it is admissible, is there sufficient evidence to sustain a conviction against him?

Question 3

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

- a) Judicial admissions.
- b) Expert evidence as to the credibility of a witness.
- c) The effect of a failure to cross-examine a witness.

END OF SECTION B

Section C : PROCEDURE

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

Question 4

- a) What is the difference between a proof and a proof before answer?
- b) What does it mean to plead that the other side's case is "irrelevant *et separatim* lacking in specification"?
- c) Under what circumstances is it appropriate to use the phrase "*believed and averred that...*" in written pleadings?
- d) What is the weaker alternative rule and how does it restrict the way that a case may be pled?
- e) What is a tender? When might it be helpful to use one in an action in respect of damages caused by personal injury? Your answer should explain the consequences of a pursuer beating or failing to beat the tender.

Question 5

Caledonian Aspiration Limited ("**CAL**") is a provider of drilling equipment. It has its headquarters in Dundee; and its registered office c/o its solicitors' office in Edinburgh. In 2010 CAL entered into a contract with Northern Services Limited ("**NSL**"), a company having its registered office in Aberdeen. NSL operates a number of oil rigs in the North Sea. The contract was for the supply by CAL to NSL of a blowout preventer ("**BP**"). NSL immediately appointed Jolly Riggers Limited ("**JR**") to install the BP in one of its oil rigs in the North Sea. JR is based in Inverness. Installation took place in June 2010. Twelve hours after the BP was installed, the oil rig suffered a blow out. The oil rig required to be shut down for a period of 5 days. As a result of that blow out, NSL estimate they lost profit of £1,000,000. In addition, the remedial works required to clean up the blow out, repair the damaged components and install a new BP cost NSL £300,000. A subsequent investigation by NSL's investigators concluded that the BP had been defectively manufactured. The contract between NSL and CAL provided that "*the parties hereby irrevocably agree that the Court of Session shall have jurisdiction in respect of any dispute arising out of this agreement*". NSL wish to seek damages from CAL.

- a) List all the courts in Scotland that have jurisdiction in respect of NSL's claim for damages and in each case state the basis of jurisdiction.

[please turn over]

- b) Assume you act for NSL. Pick the court that you would prefer to use; explain why; and describe by reference to the appropriate rules of procedure what steps you would need to take to commence proceedings against CAL.
- c) Assume that an action was raised in the Court of Session in April 2017 and that you act for CAL. (i) In addition to the usual pleas as to relevancy, specification and the merits, having regard to the date on which the action was raised, what additional plea would you state for CAL? (ii) Procedurally, how would such a plea be determined? (iii) CAL obtain an expert report suggesting that the blow out was partly caused by JR's defective installation of the BP. What procedural remedies are available to BP as a result of this evidence? How could they be pursued? How would you advise NSL to pursue any such remedies?

Question 6

- a) Discuss the procedure to be followed where a person accused of a sexual offence wishes to attack the character of the complainer in solemn proceedings.
- b) Are there any circumstances in which reference may properly be made by the Crown during a trial to previous convictions or alternative disposals in the presence of a jury prior to verdict?
- c) Discuss, under reference to statute, where, when and how the the 110-day, 140-day and 40-day rules apply in the prevention of undue delay in criminal proceedings.

END OF SECTION C

END OF PAPER