

THE LAW SOCIETY OF SCOTLAND  
INTRA UK TRANSFER TEST

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

7 May 2019

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**

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**Candidates MUST answer this question.**

### **Question 1**

Dennis is out on his mountain bike. He is riding up a forestry track in the middle of the countryside when it starts to snow. Within ten minutes, there is a blizzard raging around him and he is scared that he won't be able to get to safety. He sees a 4x4 vehicle parked by the side of the track. Dennis notices that the vehicle's keys have been left on its roof but there is no one anywhere near it. He decides to take it to get to the nearest town. He grabs the keys and drives off in the 4x4. He feels very relieved to be escaping the weather conditions. Within five minutes, however, the snow stops and Dennis sees another mountain biker cycling, with ease, down the track. Dennis decides he will be more comfortable if drives the 4x4 home so he continues to drive it all the way back to his flat. He plans to return the vehicle the next day.

When he gets home, Dennis is hungry. A restaurant near his flat offers half-price burgers to students. Dennis goes along there and, in an attempt to get the discounted price, tells the staff that he is an engineering student at a local University. He flashes his gym membership card hoping it looks like a student registration card. In fact, the restaurant manager recognises him and knows that he is not a student. Dennis is asked to leave the restaurant.

Dennis is very annoyed and waits outside "to make her see how it feels". When the manager leaves, Dennis throws a punch at her but, at that moment, a customer steps out of the restaurant, and Dennis hits him by mistake. Annoyed that this has happened, Dennis starts shouting and swearing. People passing by avoid him and members of staff in the restaurant call the police. Local residents come out onto the street and some shout back at Dennis, telling him to go away.

Which crimes in Scots law may have been committed by Dennis and are any defences likely to be available to him? Give full reasons for your answer citing authority as appropriate.

**END OF SECTION A**

## Section B : EVIDENCE

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***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 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 on **TWO** of the following points, with full reference to authority

- (a) Expert evidence as to the credibility of a witness.
- (b) The *Howden* doctrine.
- (c) Privilege of communications made in aid of negotiation.

**END OF SECTION B**

## Section C : PROCEDURE

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

### Question 4

In an Ordinary Cause action in Edinburgh Sheriff Court, your client, the Defender, instructs you to make an offer to settle the action by paying a principal sum (inclusive of interest) of £150,000 plus expenses to the pursuer. You have advised your client that the making of such an offer might offer some costs protection in the event that the case proceeds to Proof.

- i. What procedural steps must you take in order to make the offer?
- ii. Draft the document that would be prepared by you to set out the terms of the offer.
- iii. Assume the Defender lodged a Tender of £150,000. Explain what motion in respect of expenses you would make on the Defender's behalf in the event that the case proceeds to Proof and the Pursuer obtains a decree for £120,000 (inclusive of interest) plus expenses.

### Question 5

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

- (a) Explain the differences between adjusting pleadings and amendment pleadings. Explain the process for obtaining the court's permission to amend in the Sheriff Court;
- (b) Describe the procedure by which documentary and other real evidence may be recovered once an Ordinary action has been commenced in the Sheriff Court;
- (c) Before a Sheriff Court Ordinary action is raised, what procedure is available to inspect property?
- (d) What procedure is available to prevent a defender from divesting himself of heritable property during the course of legal proceedings, before decree has been granted? What matters must the Sheriff be satisfied on before granting an such order;
- (e) You act for the pursuer in a Sheriff Court personal injury action. A Proof has been fixed.
  - a. When will you discover which witnesses the defender intends to lead at proof?

- b. What procedural steps should you take to secure the attendance of the pursuer's witnesses at court, and when should you do this?
- (f) What happens when a cause is sisted? Provide 3 examples of circumstances in which a party might ask for a sist.
- (g) What are the differences between a decree of dismissal and a decree of absolvitor in favour of a defender.

### **Question 6**

- a) What documents must be lodged with the Sheriff Clerk by the defence before every First Diet?
- b) What time limits, if any, apply to the lodging of these documents?

Your client Tom has a First Diet at the local Sheriff Court. He is charged with assault. He states he was not present at the incident but was in England with his friend John. John gave a statement to the investigating police officer at the time but tragically John was killed in a road traffic accident last week. Tom advises the offence was committed by his cousin Willie. Moreover, Willie has admitted committing the offence to Steven.

- c) What steps must you take to fully prepare Toms case for the First Diet?

Alan consults you. He has a pleading diet in the Sheriff summary court. He is charged that being the registered Keeper of a motor vehicle, which was involved in an accident and failed to stop, that he has failed to provide the police with details of the identity of the driver.

He advises you that he sold the car a week before the accident to a car buying company and does not know who was driving.

- d) What steps do you require to take to protect Alan's position at the pleading diet?
- e) In summary procedure, what is the method of appeal against sentence alone?
- f) What time limit if any applies to such an appeal?

**END OF SECTION C**

**END OF QUESTION PAPER**