

THE LAW SOCIETY OF SCOTLAND
INTRA UK TRANSFER TEST

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

9 November 2015

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

Mitch is determined to save money in any way possible. He is on the train to work when the ticket inspector appears. Mitch has already travelled through nine stations but he tells the inspector that he got on at the last station where there was no opportunity to buy a ticket. The train is very busy and she has no reason to doubt this so she sells him the ticket he has asked for which is much cheaper than the fare he should have paid. Pleased with the saving, Mitch carries on to his office.

On arrival, Mitch has a terrible headache so, in accordance with the instructions on the box, he instantly takes two painkiller tablets. These instructions say to repeat the two-tablet dose in four hours if the symptoms have not improved. Mitch ignores this and takes three further tablets 30 minutes later, because he thinks the first dose has not worked.

He feels a little strange after this and goes to make himself a cup of tea. He finds his colleagues Rhona and Molly in the office kitchen. He feels compelled to shout at them to get out, though this is uncharacteristic behaviour on his part. He has no idea why he is doing this. Molly says, "get out yourself, Mitch. You don't own the kitchen". Mitch feels that these words are a terrible insult against him and becomes enraged, though he has a sense that he is probably overreacting. He is of the view that he must hurt Molly in return. He therefore swings his coffee mug at her, hitting her hard on her nose, which makes a cracking sound and bleeds copiously. He then decides that he must have a necklace which Rhona is wearing so he

pushes her hard against the wall and grabs for it. He is, however, unable to pull it free.

There has been so much commotion in the kitchen that other colleagues have now arrived on the scene. Mitch shouts at them that he will break their noses too if they come any closer.

Which crimes in Scots law may have been committed by Mitch and what (if any) defences may be available to him? 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

Fred is at home, when he hears a knock at the door. There are four police officers outside, holding a search warrant, which entitles them to search his flat for stolen furniture. Fred reads the warrant and lets them into his flat. In the course of the search, one officer finds a large bag of white powder in a drawer. No stolen property is discovered.

Subsequently, it comes to light that the address on the warrant was incorrect – it read 13 Dublin St Lane North, when in fact Fred's flat is 31 Dublin St Lane South.

At interview, Fred claims that he was asked by a man he met down the pub, Doug, to source some cocaine for him, and he was doing this for Doug as a favour. In reality, Doug is an undercover police officer.

At trial for an offence under the Misuse of Drugs Act 1971, Fred objects to the admissibility of evidence found under the terms of this irregular warrant. What is likely to be the court's conclusion in this respect?

Can Fred base any argument or objection on Doug's request to supply him with drugs?

Continued overleaf...

Question 3

Explain the law relating the admissibility of confession evidence in criminal proceedings, with full reference to authority.

END OF SECTION B

Section C : PROCEDURE

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

Question 4

You act for defender in an Ordinary Action in the Sheriff Court. You have received the Initial Writ and have taken initial instructions.

- a) Your client instructs you that the action is to be defended. What steps must you take to prevent decree in absence and what time limits apply to that process?
- b) Having completed the necessary steps to ensure that the action can be defended you take full instructions from your client. On considering the terms of the Initial Writ you decide that the case advanced by the pursuer is irrelevant.
 - (i) What does it mean to say that the pursuer's case is irrelevant?
 - (ii) What must you include in your defences to ensure that you can advance this argument?
 - (iii) Once you have lodged your defences and the pursuer has adjusted what other procedural steps must you take and when must you take them to ensure that you can advance this argument?
 - (iv) When the time comes for the Sheriff to consider the merits of this argument what test must he or she apply?

- (v) If you succeed in persuading the Sheriff that the pursuer's case is irrelevant what sort of decree will be granted in your favour?

Question 5

Describe in terms understandable to a non-legally trained client each of the following concepts or elements of civil procedure.

- a) A Crave
- b) An Inhibition
- c) Issues
- d) A Prayer
- e) Res Judicata
- f) Proof before Answer
- g) A Caveat
- h) An *esto* case
- i) Specification

Question 6

Your client is being prosecuted on complaint in the Sheriff Court for a sexual assault contrary to Section 3 of the Sexual Offences (Scotland) Act 2009. In each of the following circumstances what right of appeal to a higher court does he have and briefly what steps do you need to take to appeal?

- a) Your client is granted bail with a special condition that you consider to be unnecessary to ensure compliance with any of the standard conditions of bail.

- b) You raise a plea to the competency of the complaint prior to tendering a plea of not guilty. A debate is held and the Sheriff repels your preliminary plea.
- c) At the third trial diet fourteen months after the date your client first appeared in court on the complaint the complainer fails to attend for a second time and has not been cited. The fiscal in court moves to adjourn. You oppose that motion and the Sheriff adjourns the trial to a fourth trial diet in four months' time.
- d) Your client is convicted. During the trial you had made a no case to answer submission in terms of Section 160 on the grounds that there was insufficient corroboration of the evidence of the complainer. The Sheriff repels your submission. Your client gives evidence and is convicted. You decide that the Sheriff was wrong to repel your no case to answer submission.
- e) The Sheriff sentences your client to six months imprisonment. You consider this to be excessive.

END OF SECTION C

END OF PAPER