

**THE LAW SOCIETY OF SCOTLAND  
INTRA UK TRANSFER TEST**

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

30 April 2018

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**

Adrian is studying Philosophy at University. He is of the view that all of the female students in his class find him attractive. He invites a female student named Samantha to his flat to discuss writing an essay. When she gets there, he shows her straight into his bedroom. She is a little alarmed by this but she sits on the edge of his bed as this is the only available seat. Adrian sits beside her and puts his arm around her. Samantha says, "Don't touch me. I'm leaving." Adrian thinks that Samantha would not have sat on the bed if she was not attracted to him. He pushes her onto her back and inserts his penis into her mouth. Samantha moves away and runs out of the flat in tears.

Samantha tells a number of students in the class about her encounter with Adrian. He decides to do something to put a stop to this. He waits for her on the darkened street outside her house, late one night. As she returns home, he jumps out in front of her. His whole face is concealed by a black balaclava. He draws his finger across his throat and shouts "Shut it about Adrian – or else! I mean it! I know where you live." As Adrian had hoped, Samantha is terrified. A group of Samantha's neighbours, who are also returning home, witness this meeting and are angry on Samantha's behalf.

Samantha now tells others in the class that she suspects Adrian of this act. Adrian determines that he needs to take more drastic steps to silence her. He starts carrying with him a large baseball bat and waits for his moment. He sees Samantha in a University café on her own one day. He waits outside but, as she leaves, she sees him and slaps him hard in the face. He is enraged by this and swings the bat high intending to crack it down on Samantha's head. She sees it coming and side-steps, suffering a broken arm. Adrian runs away shouting, "You should have died but I'll be back, bitch."

Which crimes in Scots criminal law may have been committed by Adrian and which defences (if any) may 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**

Alan stands trial accused of murdering Brian. He has lodged a special defence of alibi. Answer each of the following questions relating to issues which arise during the course of the trial.

- a) The pathologist, Catherine, testifies that Brian died as a result of a stab wound. (No evidence of the use of a knife has been led at this point.) The advocate depute asks Catherine whether she believes beyond a reasonable doubt that the stab wound caused Brian's death. The defence object to this question. Should the objection succeed?
- b) David takes the oath in the normal form, swearing to Almighty God that he will tell the truth, the whole truth, and nothing but the truth. Unbeknown to Alan or his representatives at the time, David is in fact the President of the North Edinburgh Atheists' Association. If Alan is convicted, can he argue on appeal that David's evidence should not have been admitted?
- c) The advocate depute seeks to call Alan's doctor as a witness. It is understood that she intends to ask the doctor whether Alan attended his surgery the day after the alleged murder with injuries consistent with Alan having been in a struggle. The defence object to the doctor being called as a witness. Should the objection succeed?
- d) The defence seek to lead evidence that Brian had assaulted Alan two months before the alleged murder. The advocate depute objects to this evidence being led. Should the objection succeed?
- e) The trial judge, in directing the jury on the standard of proof, explains that a "reasonable doubt" is a doubt which would cause a member of the jury to hesitate or pause before taking an important decision in the conduct of their own affairs. Alan's lawyer is unhappy with this direction, believing it to be too weak and imprecise. If Alan is convicted, can it be challenged on appeal?

### **Question 3**

Write brief notes on **TWO** of the following points, with full reference to authority;

- (a) Judicial knowledge.
- (b) The *Moorov* 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**

- a) Explain the differences between adjusting and amending pleadings.
- b) What procedure is available to a pursuer to prevent a defender from divesting himself of funds in a bank account, during the course of legal proceedings? Explain how the procedure operates in the context of an ordinary cause action.
- c) What is the procedure that should be followed if a solicitor withdraws from acting?
- d) Explain the purpose of the Options Hearing. With reference to the relevant procedural rules, what steps must the parties take not later than 3 days prior to the Options hearing, and what are the consequences of failing to do so? Explain also, with reference to the relevant rule, what action the Sheriff can take if one of the parties fails to attend the Options Hearing.
- 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 £4,000, 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?
- f) What procedural steps does a defender need to carry out in order to avoid decree in absence being granted?

### Question 5

You act for Jenny Brown who lives in Nairn. In June 2017, she was involved in a road traffic accident on the A9 near Inverness. There were 2 other cars involved – a truck owned by a company with its registered office in Edinburgh; and a car driven by Roberto, an Italian on holiday in Scotland. Jenny says that the accident was caused by the fault of the other drivers and there is evidence available that supports her position.

- a) Can Jenny raise an action for damages in Scotland?
- b) Who can Jenny raise proceedings against and what would be the grounds of jurisdiction if the context of an ordinary cause action;
- c) If the accident had taken place in June 2013, what particular line of defence would be available and why?
- d) Once proceedings are raised, you discover that the driver of the truck is about to immigrate to Australia in 3 months' time and may not be available as a witness at the Proof. What advice would you give to Jenny about what might be done to obtain his evidence before his departure.

### Question 6

- a) Your client is being prosecuted on complaint in the Sheriff Court for assault.
  - i. When you first meet your client before the complaint calls for the first time he tells you that he did not carry out the actions that are set out in the complaint, but that these things were said and done by his brother who was standing next to him when the police arrived. What do you do? When must such action(s) be taken?
  - ii. Discuss whether the spouse of the accused is a compellable witness for any party.
  - iii. At the close of the prosecution case there is no evidence that your client has assaulted anyone. What do you do?
- b) 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.

*[please turn over]*

- c) 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?

**END OF SECTION C**

**END OF QUESTION PAPER**