

THE LAW SOCIETY OF SCOTLAND
INTRA UK TRANSFER TEST

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

8 May 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

Dan is on the beach with a group of friends. He sees Sheila walking past. She walks up to the sand dunes and seems to be trying to hide. Dan is curious so he follows her. Though Sheila has taken steps to conceal herself completely, Dan realises that she is undoing her trousers. He knows that Sheila is extremely shy and sees an opportunity to upset her greatly. On his phone, he records a video of Sheila urinating. He shouts. "Hey Sheila, thanks for the display. I'm going to show all the lads now". He waves his phone at her.

Dan has a further thought. This time he shouts "Hey Sheila, want to see mine too? Mine in yours would be a perfect thing." He drops his trousers and underwear and thrusts his naked genitals towards Sheila. Dan is pleased when she bursts into tears.

Sheila's friends, Karen and Yvonne, are very angry when Sheila tells them what has happened. Karen marches up to Dan and swings her fist at him but unfortunately misses, and hits Dan's friend Steve by mistake, making Steve's nose bleed. Yvonne and Karen then walk into the sea and Karen screams that Yvonne is drowning. This is untrue as Yvonne is a strong swimmer and has remained within her depth of water. As Karen and Yvonne hoped, Dan approaches to try and look strong by rescuing Yvonne. When he gets to them, Karen and Yvonne splash water in his face and laugh at him. He is very angry and, in retaliation, throws a rock at Yvonne, aiming for her legs. He hits her on the knee and she falls over in the water, striking her head on more rocks as she falls. When Dan

reaches her, he finds that she is dead. He is very upset about this.

Which crimes in Scots criminal law may have been committed by Dan and/or Karen and are any defences likely to be available to either of them? 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?

[Please turn over]

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 issues, with full reference to authority:

- (a) Privilege of communications made in aid of negotiation
- (b) The effect of failure to cross-examine a witness
- (c) Special knowledge confessions

END OF SECTION B

Section C : PROCEDURE

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

Question 4

By reference to statute, court rules and authorities answer these five questions:-

- a) Discuss when and how a document should and should not be incorporated into written pleadings.
- b) Discuss the appropriateness of and issues arising from the use of purely skeletal denials in defences in an ordinary action.
- c) Is it correct to say that one ought never to make averments of law in written pleadings?
- d) Under what circumstances is it appropriate to use the phrase “believed and averred that...” in written pleadings?
- e) Describe the procedure by which documentary and other real evidence may be recovered once an Ordinary Action has been commenced in the Sheriff Court.

Question 5

You act for Astra Optical Limited (“AOL”), a manufacturer and retailer of telescopes and astronomy equipment. It has its headquarters and factory in Dumfries; shops in Glasgow and Dumfries; and its registered office in Edinburgh. AOL entered into a contract with Hebridean Academe Limited (“HAL”), a joint venture company owned

partly by University of the Western Isles; and partly by Procure Uist Limited ("PUL"). HAL has its registered office in Lochmaddy, next door to the local Sheriff Court. The contract was for the sale and supply by AOL of 20 high end catadioptric telescopes with supporting software packages for use at the University's Benbecula campus. The purchase price under the contract was £160,000, payable in four equal instalments on October 2016, December 2016, January 2017 and April 2017. The equipment was delivered in October 2016. Payment of the first instalment was made on time. No further payments have been made. Under the contract interest is due on late payment at the rate of 10% per month. AOL wishes to obtain payment of the full sums outstanding. However, they are concerned that no explanation has been given for the non-payment of the balance of the purchase price. HAL is now late in lodging its statutory accounts with Companies House which are now 6 months overdue. There are rumours that PUL is in dispute with the University over the operation of the HAL and that HAL has not been paying its suppliers on time. AOL want your advice on how to recover the money owed to them.

- a) List all the courts in Scotland that would have jurisdiction for an action for payment against HAL and explain the basis of their jurisdiction.
- b) 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 HAL.
- c) By reference to statute and case law, advise AOL on the prospects of obtaining warrant for diligence on the dependence of the action.

Question 6

a) Your client is indicted on charges of sexual assault on a young child within the meaning of section 20 of the Sexual Offences (Scotland) Act 2009, allegedly committed some years ago against a child aged 12 at the time of the events complained of. The trial is before a sheriff and jury. During the second day of the trial, the following events occur; what would you do in relation to each of these matters? What procedure should be followed?

- i. The Crown seeks to lead evidence of a statement made by the accused in which he apparently confesses to the offences. The statement was obtained after nearly six hours of questioning. The accused is elderly and has a heart condition. He maintains that the police withheld essential medication for that condition during questioning. He sought and obtained advice from a solicitor prior to the interview, but declined to have a solicitor present during the interview.
- ii. One of the jurors tells the bar officer that he lived in the same area as the accused for a number of years, and during that time he heard that the accused had a certain reputation in relation to young girls.
- iii. One of the Crown witnesses unexpectedly reveals during her evidence that your client has a previous conviction for a serious sexual offence. This information is volunteered spontaneously, and not in answer to a specific question from the Fiscal Depute conducting the trial.

b) Your client is being prosecuted on complaint in the Sheriff Court for threatening and abusive behaviour contrary to Section 38(1) of the Criminal Justice and Licensing (Scotland) Act 2010. What do you do in each of the following circumstances and when do you do it:

- i. it is the day before the Intermediate Diet and the prosecutor has yet to disclose you any statements for witnesses.
- ii. at the close of the prosecution case there is no evidence that your client has used threats or sworn at anybody.

END OF SECTION C

END OF PAPER