

Procedure

Thursday 7th November 2024

9.30am to 11.00am

Candidates are required to answer TWO out of four questions.

The question paper is divided into Section A (Civil) and Section B (Criminal), candidates are required to answer ONE question from Section A, and ONE question from Section B.

Candidates should note that, in examination answers, they are expected to cite relevant authority and procedural rules.

Civil Procedure Section

Question 1

Several years ago, Carol underwent surgery for removal of a pre-cancerous growth. The growth was not entirely excised and a cancerous growth formed. Carol had to undergo major surgery to have the cancerous growth removed. She is now cured but she has obtained an independent expert report expressing the view that the failure to completely remove the pre-cancerous growth was negligent. She has been advised to raise an action for damages for personal injuries against the NHS Trust in the Sheriff Court.

- a) What Chapter of the Ordinary Cause rules contains the procedural rules relative to personal injury actions?
- b) What form should be used for the Initial Writ?
- c) If defences were lodged by the NHS Trust on the date of this exam, when would the adjustment period be likely to end, and within what period would a proof be likely to take place?
- d) If the NHS Trust, by reason of an administrative error, failed to lodge Defences on time and Carol obtained decree in absence, what steps could the Trust take to try to remedy its error and defend the action?
- e) During the course of the action, Carol discovers that, rather than being completely cured, there is a 30% chance of the cancer returning. She is reluctant to settle the action on a full and final basis because, if the cancer does return, she may need a lot of extra treatment and incur further medical costs. Is there anything that can be done to alleviate her concern?
- f) In due course, the NHS Trust admits liability. Carol needs money to undertake modifications to her house as a result of disabilities arising from her treatment. The cost of the modifications is relatively small as against the overall sum she is likely to be ultimately awarded in damages. Is there anything that can be done to enable Carol to get some money from the Trust prior to the ultimate determination of the action at proof?

Question 2

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

- a) In an Ordinary Cause action in the Sheriff Court, when does the adjustment period begin and end?
- b) What procedure is available to a pursuer to prevent a defender from divesting himself of heritable property located in Scotland, during the course of legal proceedings ie prior to decree being granted? Relative to this procedure, what test must be satisfied before a Sheriff will grant an order in the pursuer's favour?
- c) What is the procedure that should be followed if a solicitor withdraws from acting in a Sheriff Court action.
- d) Explain the purpose of the Options Hearing. Which party bears responsibility for preparing and lodging a Record in advance of the Options Hearing and when is the last day by when it must be lodged?
- 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 £3,000, 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?

END OF CIVIL SECTION

Criminal Procedure Section

Candidates are expected to refer to Statutory authority throughout.

Question 1

You are instructed on behalf of the undernoted clients who have a pleading diet calling at the local Sheriff Court. Please advise the clients what plea should be tendered on their behalf in respect of their cases.

A

- i. You are consulted by Mr and Mrs Smith. Their son Jack has a forthcoming Pleading Diet in the Justice of the Peace Court. They advise that on the day in question it was Jack's older brother Harry's 12th birthday party. Jack saw Harry being assaulted by an adult at the party and came up to the adult and struck him once on the back of the head. Jack is charged with assault to injury.
- ii. You are consulted by Oliver. He is charged that being the keeper of a motor vehicle that was involved in a road traffic accident he failed to advise the police of the identity of the driver when required to do so in terms of Section 172 of the Road Traffic Act 1988. Oliver states that he sold the vehicle three weeks before the date of the accident and has no idea who the driver was.
- iii. Callum has consulted you because he faces two charges of assault on summary complaint. In the first charge it is alleged that he assaulted Laura by punching her to the head to her injury. In the second charge he is alleged to have assaulted two police officers who attended the incident by shouting and swearing at them and threatening to find their home address and firebomb them. Callum is full of remorse. He accepts all of these actions and advises he was very drunk at the time.
- iv. Gemma has been charged with speeding. The incident happened on 1st March 2023. Gemma advises that she was speeding and was in a hurry to get to work as she was late. Police officers served Gemma with a citation on 2nd July 2024 (her birthday) and the pleading diet is on 3rd December 2024.

B

Libby has consulted you from prison. She represented herself yesterday at the local Sheriff Court. She plead guilty to a charge of assault on summary complaint. Libby has 23 previous convictions for assault. She has been imprisoned 11 times for assault. The Sheriff sentenced her to 20 months in custody. She wants to appeal the sentence. Advise Libby as to:

1. the mechanism(s) of appeal that might be open to her.

2. the ground of appeal open to her.
3. any relevant time limits applicable.

Question 2

- i. You are consulted by Ryan. He has been indicted in the High Court of Justiciary. There is a Preliminary Hearing in Edinburgh. He is charged that on 14th May 2023 he attempted to murder his wife in a five star hotel in Paris. Attempted murder is a crime in French Law. He accepts that he did attempt to murder her.

What plea should be tendered on his behalf and why.

- ii. You are consulted by Mark, he is in custody charged with assaulting his wife. He is pleading not guilty. The prosecutor is content that Mark be admitted to bail with additional conditions that he does not return to the matrimonial home where his wife lives pending trial and that he does not contact her directly or indirectly pending trial. Mark does not wish these conditions to be added to his standard bail conditions.

1. What legal argument can you advance in support of your opposition to these bail conditions being applied.
2. Despite your best efforts the conditions are made part of the conditions of bail. Two weeks before the trial Mark's wife has a fall and cannot look after herself as she has broken an arm and a leg. Mark wishes to return home to look after her. Is there anything you can do to enable this? What would be any legal basis?

- iii. At every First Diet in the Sheriff Court which two documents must be lodged by the defence and within what timeframe?

- iv. You are instructed by Lecroy who has a First Diet upcoming at the local Sheriff Court.

1. He is charged with an assault to severe injury. He states that on the night libelled he was in Paris on a romantic weekend with his girlfriend. He has pictures of their night at the Moulin Rouge on his mobile phone.
2. The second charge is one of sexual assault on his ex-girlfriend the night before he went to Paris. He states that he had met up by chance with his ex-girlfriend in a nightclub. She had intimated sexual intimacy. He believes that the allegation of assault has been made up because he told her after the event of his trip to Paris with his current girlfriend.

3. The third charge is driving while disqualified. He accepts that he is a disqualified driver but states that the driver on the night in question was his identical twin. He knows that his friend Anthony gave a statement to the police stating the driver was Lecroy's brother. Lecroy advises that Anthony was actually a passenger in the vehicle at the time. Anthony is a disillusioned lawyer who has left Scotland and has gone to the live off the land in Tasmania and his current whereabouts are unknown.

What steps must be taken to represent Lecroy's interests at the First Diet?

END OF CRIMINAL SECTION

END OF PAPER