

**LAW SOCIETY OF SCOTLAND
EXAMINATIONS**

PROCEDURE

Wednesday 14 February 2024

**8.30am – 11.30am
(3 hours)**

Candidates should attempt FIVE questions only.

Reference to Statutory Authority is expected in all questions attempted.

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SECTION A

Question 1

- (a) In an ordinary cause action in the Sheriff Court, the defender considers that the case pled by the pursuer lacks specification.
- (i) what is meant by the statement that "the case pled lacks specification"?
 - (ii) what procedural steps must the defender take to advance this argument, and when must they take them?
- (b) If decree in absence has passed against a defender in an ordinary action in the Sheriff Court, what procedure might the defender use in applying to have that decree recalled, and what test would the Sheriff apply when determining the application?
- (c) Describe the procedure to be followed in an ordinary cause action in the Sheriff Court if a solicitor decides to withdraw from acting. Give examples of circumstances which might lead a solicitor to withdraw.

Question 2

- (a) Using examples, describe the purpose and effect of a decree by default in an ordinary action in the Sheriff Court and explain the procedure for obtaining it.
- (b) Assuming a Notice of Intention to Defend has been lodged on time, describe the course of an ordinary action from that point until conclusion of the Options Hearing.
- (c) Explain how, in an ordinary cause action in the Sheriff Court, a defender would make a Tender and describe the effects it might have on expenses at the conclusion of the action.

Question 3

What is a motion for caution? When, or in what circumstances, is it made? What is sufficient to satisfy an order for caution? What are the consequences of failure to find caution or give security in a form which is acceptable to the court?

END OF SECTION A

SECTION B

Question 4a

- (i) What documents must be lodged by the defence in every case prior to a First Diet?
- (ii) Within what time frame must such documents be lodged?

Question 4b

You are consulted by Paul who has a First Diet calling in the local Sheriff Court. He faces a number of charges. These are listed below. What steps must you take ahead of the First Diet to properly represent Paul's interests at the First Diet in respect of each charge?

- i) Paul is charged with assault at a nightclub. He states that on the night in question he was not at the nightclub but in fact on holiday in Australia with his girlfriend, Suzy. Moreover Paul has a video of them that night standing outside the Sydney Opera House in a queue for a rock concert.
- ii) Paul faces another charge of driving while disqualified on a different date. He denies all knowledge of the offence but believes the driver of the vehicle was his twin brother, Peter. He has been advised that this was the case by Peter's best friend, Michael, who states that he was present at the time.
- iii) Paul faces a second charge of assault by shouting and swearing at the police and uttering threats of violence towards them when they came to arrest him at his house in relation to the driving while disqualified offence. Paul accepts that he did act precisely in this manner to the police.
- iv) Paul is charged with sexually assaulting his former girlfriend, Julie. He states that on the night in question Julie engaged willingly in sexual intimacy but he believes she has made up the story that she was assaulted as her new boyfriend has found out about her behaviour. He also states that Julie previously pled guilty to making false allegations of a sexual assault in the local Sheriff Court by another boy about three years ago.

Question 5

You are consulted by the undernoted clients. They all have a pleading diet calling in the local Sheriff Court. Advise what steps you would take to represent them.

- i) You are consulted by the parents of Denise. Denise has been cited to attend the local Sheriff Court along with others. There was an incident at her 11th birthday party where she and other girls were charged with assaulting a parent at the party. Denise accepts she punched the man because she thought that he was staring at her.
- ii) You are consulted by Raymond. He is charged that, being the registered keeper of a motor vehicle, he failed to advise the police of the identity of the driver of the vehicle when it was involved in a Road Traffic Accident. He states that he does not know who the driver was, as he had sold the vehicle three weeks prior to the incident to a stranger whom he had met in a public house.
- iii) David consults you, having conducted his own case. He pled guilty yesterday to a minor parking offence. The presiding Sheriff fined him £2000 and ordered payment of that money within three weeks. David only earns £100 a week. He has no way of paying the fine. Advise David:
 - a) Can he appeal against the sentence imposed upon him?
 - b) If so, what is the method of appeal?
 - c) What would the grounds of appeal be?
 - d) Is there a time limit to mark any such appeal?

Question 6a

You are consulted by Amy who has a Pleading Diet at the local Sheriff Court. Advise what steps you would take to represent her.

She is charged with assault and driving while disqualified. She states on the night in question she was confronted by her former partner, Mary. Mary accused Amy of stealing her bracelet, and brandished a metal pole at her. Amy states that at that point she punched Mary as she thought that she was going to be injured by Mary.

Amy advises her friend Carol saw all of this and gave a statement in writing to the police two days after the event. Unfortunately Carol has now left Scotland and was last heard of travelling somewhere in the South Pacific.

Amy states that after she punched Mary, three of Mary's friends produced knives and threatened to stab her. Amy states that she then got into her car and drove to the police station for help. Two police officers saw her exit the car and enter the police station in a state of distress. Amy had been disqualified from driving for a period of two years three months before this incident.

Question 6b

You are consulted in the cells at the local Court by Ian. He is charged with assaulting his wife, Lauren. He wishes to plead not guilty. You advise Ian that he is to be admitted to bail.

- i) Advise Ian what the standard conditions of bail are.

- ii) The Procurator Fiscal wishes an additional condition of bail imposed that Ian neither contact Lauren nor reside with her until the case concludes. Ian and Lauren do not wish such a bail condition to be imposed. What is the legal threshold the Procurator Fiscal must achieve to enable that condition to be imposed?
- iii) Despite your best efforts the condition is imposed. Three weeks later Lauren falls over and is incapacitated. She wants Ian to come and look after her. What, if any, steps can you take to assist Lauren and Ian in light of this incident?

END OF SECTION B

END OF QUESTION PAPER