

**LAW SOCIETY OF SCOTLAND
EXAMINATIONS**

PROFESSIONAL RESPONSIBILITY

Friday 16 February 2024

**(Four hours and fifteen minutes)
(15 minutes are allowed for reading)**

Candidates should answer FOUR questions only

All questions carry equal marks.

(Where a question is in more than one part you are expected to answer ALL parts of the question. You are expected to cite authority for your answers.)

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Question 1

John is a Partner specialising in medical negligence. John recently moved from his old firm (OldCo) to a new law firm (NewCo). The billing requirements at NewCo are far more than what John had anticipated. John struggles to meet his targets and is worried that if he does not get more clients or bill more he will be fired. To secure more business, John starts calling his former clients from OldCo telling them that he can take on their work and do the same work but for far cheaper than the fees at OldCo. He tells one of his former clients that no one at OldCo knows anything about medical negligence and that he could provide a better service if the client moved to NewCo.

To increase profitability John tells his clients that he will work on a 'no win, no fee' basis and cover all the outlays in a case. In exchange John says he will take the judicial expenses and (if applicable) a 50% share of any damages awarded.

Having successfully encouraged several clients to move to NewCo, John has realised that he cannot cope with the influx of work. The cases are more complex than John originally thought. To cope, John passes cases to colleagues who have little to no experience in medical negligence matters. John also does not have the time to supervise them. John begins settling smaller cases for less than they are worth, which gives him the opportunity to work on more complex matters. In one case John discharges a Proof as he has not had time to prepare. He explains to the client that he will personally cover any costs the client faces because of the discharge.

Unfortunately, the pressure starts to take its toll on John's personal life. He starts to drink heavily during the week. On one occasion John gets so drunk at a client lunch that he falls over, causing much embarrassment to the Firm. Later that month John is arrested for getting into a fight whilst on a night out. The managing partners pull John in for a meeting. John explains that he has been under extreme stress, that he has been going through marital difficulties and is now seeking professional help.

Discuss the professional and ethical issues arising from the above.

Question 2

Katie is a solicitor in a family law practice. One of her friends, Andrea, is going through a difficult separation from her partner. Andrea's money is tied up in property and she cannot afford to pay for legal advice. Andrea asks Katie if she can help her draft a separation agreement 'as a friend'.

Katie uses one of the separations agreements from a file she has been working on at her firm as style for Andrea. Katie updates the style to create a separation agreement for Andrea to use. Andrea uses the agreement which is agreed to by the other side.

Unfortunately, the agreement contained a typo in the pension calculations. The effect is that Andrea is going to miss out on £100,000. In addition, Katie notices that in an earlier draft of the settlement agreement Katie had not removed one of the names from the style she had taken from her firm. Katie explains to Andrea that she can apply to the court to have the settlement agreement amended. It is obvious that this was a simple typo and should be easily rectifiable. Katie also asks Andrea to delete the earlier draft from her computer which contained the other party's name and not to mention this to anyone. Andrea agrees, and Katie raises a court action seeking to correct the error.

After Katie lodges the court application, the solicitor acting for Andrea's ex-partner calls Katie and says he is prepared to do a deal to sort this out. He says his client is prepared to pay £50,000 in exchange for Katie dropping the court case. Katie is delighted that this can be sorted quickly and recommends that Andrea accepts the deal, explaining that the court process was going to be long and expensive, and that it is better to resolve matters now rather than go through the whole process.

Discuss the professional and ethical issues which arise from the above.

Question 3

Frank is a private client solicitor who has acted for a widow, Sarah, for several years. Sarah and Frank have grown very close over the years, and she decides that she wants to include Frank in her will. Sarah has a son, Barry, but they have not spoken in several years and Sarah does not want Barry to get anything. She tells Frank that she wants to give her estate to charity but, in recognition for all his help, to include a provision in Frank's favour. She tells Frank that he can either take a cash bequest of up to £25,000 or to select some items from her personal collection. Sarah also wants Frank to act as the sole executor. Frank is uncomfortable with the bequest to him and so, to protect himself, he gets another solicitor in the firm to take over the case so that he is not directly involved. Frank still takes instructions and gives advice to Sarah in an 'unofficial capacity' with his colleague filling in the paperwork. Frank reviews Sarah's collection and spots some rather valuable artwork (worth around £100,000) which he would like. Sarah is not interested in the art and does not know anything about it. The art had belonged to Sarah's late husband and so she is happy to bequeath this to Frank. Frank also tells Sarah that she can prevent Barry inheriting his Legal Rights using certain companies and trusts. Sarah agrees noting that she wants to make sure Barry doesn't get anything.

As time goes on, Sarah and Barry appear to reconcile. Unfortunately, at the same time, Sarah's health has taken a turn for the worse. There are times when Sarah appears lucid and capable of giving instructions, however in the last month she has had to move into a care home and has been diagnosed with dementia. To protect herself, Sarah grants a power of attorney in favour of Frank so that he can administer her affairs.

It is at this time that Barry appears to have fully reconciled with Sarah. Frank visits Sarah who tells Frank that she would now like to include an inheritance for Barry. Sarah asks Frank to update the will to give half her estate to Barry. Frank is suspicious that Barry has been taking advantage of Sarah to get an inheritance. Frank agrees to update the will and will sign it on Sarah's behalf. Frank prepares the will and gets his colleague to witness it.

Over the next couple of months Sarah's condition deteriorates further. She is rarely lucid and can barely follow a conversation without forgetting to whom she is speaking. At a subsequent meeting Sarah says she has not seen Barry in ages and has changed her mind about Barry's inheritance. She begs Frank to do whatever is necessary to make sure Barry gets nothing, including his legal rights. Frank begins transferring all the assets into trusts so that Barry can't claim his Legal Rights. In addition, Frank prepares an updated will which includes new provisions in favour of charities and also the bequest to him. When he meets Sarah later, she does not recognise Frank and does not seem to follow what he is telling her. Frank knows what Sarah's previous wishes were, and so proceeds to get the will executed. A week later Sarah dies. Barry calls in at Frank's office and asks about his inheritance.

Discuss the professional and ethical issues arising from the above.

Question 4

Kevin is a sole practitioner working in civil litigation. He has been working with a client, Garry, in respect of a long-standing breach of contract action.

Unfortunately, things have not gone well. Garry has delayed in providing instructions to Kevin, has questioned some of the advice which Kevin has provided, and challenged nearly every fee note which Kevin has rendered. On one occasion Garry got so angry with the other side that he started swearing in a meeting (though he later apologised to Kevin for his language). On most occasions Kevin has been able to deal with Garry's questions and concerns, however things have become worse the closer the case has come to Proof.

Kevin has started to lose patience with Garry; he has numerous other clients who don't question fees and frankly he could do without the hassle. Garry's case is scheduled to go to Proof in a couple of weeks and Kevin is worried that Garry will not pay him for all the time spent working on the matter.

In his latest email, Garry has said that he is refusing to settle the latest invoice as there are several entries which he does not believe ought to have been charged. In response Kevin writes to Garry and tells him that he will withdraw from acting unless his outstanding fees are paid. At the same time Kevin writes to the other side and the court to tell them that he has withdrawn from acting.

Garry writes to Kevin to say that he still wants Kevin to act for him; he simply wants to discuss the fee notes which Kevin has issued. Kevin responds telling him that he has reviewed the fees, and is satisfied that they are entirely legitimate and that Garry's refusal to pay is justification to withdraw from acting. Further, until the fees are paid Kevin is not going to release the client file to Garry.

Garry is furious and tells Kevin that he wants to challenge the fees. Kevin explains that his decision regarding the fees is final and that if Garry wants to get a copy of the file he will need to sue for its release or pay the outstanding fees.

Discuss the professional and ethical issues which arise from the above.

Question 5

Jennifer is a criminal solicitor working on a series of cases. One day she is approached by her old school friend, Ben, who has been charged with several fraud offences. Ben denies the charges but, given the nature of the charges, he has not been able to access his personal funds. As such he is not able to pay Jennifer for her work directly. Ben explains that he is the sole director and shareholder of his company and asks that Jennifer invoice his company for the work. It will settle the accounts on Ben's behalf. As a down payment, Ben says he can give Jennifer £1,000 in cash, but further payments will need to come from his company.

Ben provides a copy of his passport but does not have an up-to-date utility bill to confirm his current address. He explains that this is because he tends to shred all bills which come in. He promises that the next time he gets a bill in, he will send a copy to Jennifer though it could take a while.

Jennifer agrees to proceed provided the documentation is provided as soon as possible. She then issues a letter of engagement to Ben's company.

Work on the case proceeds, however Jennifer becomes concerned by the disclosure the Crown has sent her. The documents clearly show that her client has been involved in very suspicious transactions. There are several entries in the balance sheets which are inexplicable. Ben's explanations for the transactions are not convincing but he promises that he will send her the evidence which refutes this. Several months pass and, despite repeated requests, Ben has still not produced any documents to substantiate his defence. Jennifer is now convinced that Ben is withholding key information from her, and that the allegations against Ben are well founded.

When Jennifer presses Ben further, Ben admits that *'there may be some truth to the allegations'* but that he needs more time to sort out some administrative matters before he can tender a guilty plea. In the meantime, Ben asks Jennifer to maintain his plea of not guilty. Eventually Ben sacks Jennifer and says he has managed to get alternative representation at a cheaper rate.

A month later the police arrive at Jennifer's office and demand that she hand over the client file, explaining that Ben and his company have now been charged with money laundering. The file is needed to determine her own culpability in taking money from Ben.

Discuss the professional and ethical issues arising from the above.

Question 6

(a) Susan is a sole practitioner setting up practice as a litigation lawyer in a new town. To help generate business she places advertisements in the local papers which feature actors

(pretending to be clients) holding large bundles of money and shaking Susan's hand, whilst other actors (pretending to be clients) are crying whilst coming out of court with other solicitors. The adverts carry the slogan "*Don't you deserve the best lawyer?*". In other advertisements Susan guarantees to beat any price from any other lawyer or she will refund the difference. She also gets custom pens and pads of paper produced which state "*Best Litigator in Scotland*" on them. To set herself apart from the competition Susan starts an online blog in which she critiques the performances of other solicitor's advocacy skills in ongoing cases and ranks their performance on a scale of 1 – 10.

Advise Susan of the professional and ethical issues of the above.

(b) Philip is a defence solicitor acting for Ryan, another solicitor, who is being sued by his former client for professional negligence. The case hinges on the advice which Ryan gave his former client in a consultation. Ryan explains that he gave the client all the necessary advice but he does not have a typed file note of the meeting. Ryan eventually produces a typed file note dated the day of the consultation. The note confirms that all the necessary advice was given to the former client. When Philip asks where the note came from, Ryan explains that it was based on some scribbles from the meeting which he just found and typed up the previous night. The scribbles are incomplete, but Ryan filled in the detail based on his recollection. He assures Philip that it is an accurate reflection of the meeting and asks that Philip lodge the file note with the court.

Advise Philip of the professional and ethical issues of the above.

END OF QUESTION PAPER