

Procedure

Thursday 7 November 2025

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

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

- a) In an Ordinary Cause action in the Sheriff Court, which party has the responsibility for preparing and lodging the Record in advance of the Options Hearing and when is the last day by when the Record must be lodged?
- b) What Sheriff Court procedure is available to a party who, during the course of a court action, wishes to recover documents from third parties? Explain the procedure to obtain an order from the court to allow recovery of documents. Assuming the court grants the order, what are the 2 available forms of procedure for then seeking recovery?
- c) What is a “commercial action” with reference to the Sheriff Court rules. Explain the key differences in procedure in the Sheriff Court between an Ordinary Cause action and a Commercial Action raised in terms of Chapter 40 of the Ordinary Cause Rules.
- d) What is a “tender”? Who can make a tender and what is the process for doing so? What must a tender contain?

Question 2

You act for Bob who was involved in a road accident in June 2021. You have raised an action for damages for personal injury on Bob’s behalf in Edinburgh Sheriff Court.

- a) If the action was not served on the defender until the date of this exam, what particular line of defence would be available and why?
- b) Once proceedings are raised, you discover that a key eye witness to the accident is about to emigrate to Australia and will not, therefore, be available as a witness at the Diet of Proof. What could be done to obtain the evidence of the witness before their departure?
- c) Assume that you now act for the defender. After proceedings were served on your client, he delayed in instructing you. On your instruction, you discover that the deadline for lodging a Notice of Intention to Defend has already passed and the pursuer has obtained Decree in Absence against your client. What could you do to try to remedy this for your client?

Criminal Procedure Section

Candidates are expected to refer fully to statutory authority throughout all answers.

Question 1

Part A

You are instructed by the undernoted clients who each have a Pleading Diet calling on summary complaint in the local Sheriff Court. What pleas require to be taken on your client's behalf to properly represent their interests at the Pleading Diet?

- i) You are consulted by Scott. He is charged that being the owner of a dog that is dangerous he failed to keep the dog under proper control whereby the dog bit and injured a child in a public park. Scott advised that he has no knowledge of the incident as he sold the dog about three weeks before the date of the alleged incident to a stranger that he had met in a public house.
- ii) You are consulted by Natalie. She is charged with assaulting two police officers who had come to her house in connection with non-payment of a fine by shouting and swearing at them from a third floor window and saying that she would come down to the common close entrance and punch them on the head and kick them on the body. She accepts that she shouted this to the police.
- iii) You are consulted by Mr and Mrs Bain on behalf of their son Lewis. Lewis is charged with assaulting a 35 year old man who was in attendance at Lewis' 10th birthday party. Lewis explains to you that the 35 year old man had grabbed one of his friends by the throat and when he saw this he punched the man to the back of the head in an effort to get the man to leave his friend alone.
- iv) Your client Charlotte is charged with driving her motor vehicle without insurance on 15 January 2025. Charlotte accepts she was driving a motor vehicle without insurance. Charlotte states that she was served with a citation personally by police officers on 15 May 2025 and is required to attend Court for a Pleading Diet on 24 November 2025.
- v) Isla is charged with theft of a quantity of sweets from a supermarket. She states that she did not carry out this crime but that she believes that the crime was committed by her twin sister. Her twin sister has a lengthy schedule of previous convictions for offences of dishonesty.

Part B

In a summary case can the Crown appeal against a sentence imposed upon an accused and if so:

- i) By what means
- ii) On what legal basis
- iii) Within what timeframe

Question 2

Part A

You are consulted by Finn who is current in custody awaiting to appear before the Sheriff in the custody court charged with an offence of theft. He wishes to plead not guilty. He has received certain advice from fellow prisoners waiting to appear in the court and he wishes to be advised by you on the advice he received from the fellow prisoners.

- i) The fellow prisoners have advised Finn that he is entitled to apply for bail but that it is up to an individual accused to persuade the Court to admit them to bail.
- ii) That in deciding the question of admission to bail that it is all a matter of luck as the Sheriffs can simply do whatever they want without having to explain themselves.
- iii) That both Sheriffs in the local Sheriff Court always impose a condition of bail that an accused person pay £50 to the Court in order to be released on bail.

Part B

Prior to every First Diet in the Sheriff Court, which two documents must be lodged by the defence in every case? What is the timeframe for lodging such documents relative to the First Diet?

Part C

You are consulted by Ethan who faces certain charges in the local Sheriff Court and has a First Diet calling in three weeks' time. What steps do you have to take to represent Ethan's interests fully at the First Diet.

- i) Ethan faces a charge of sexual assault upon a woman that he had met in a nightclub. Ethan states that on the night labelled he had got chatting to this person in the nightclub and had left the nightclub with her where they engaged in sexual conduct in the confines of his motorcar. He states that she had initiated the sexual intimacy. Moreover he advises that this woman has a previous conviction for falsely accusing another man of having sexual assaulted her. She was sentenced to carry out a period of 200 hours work in the community in respect of that allegation.
- ii) He is charged with an offence of driving whilst disqualified. He states that on the night in question he was the passenger in the vehicle which was actually driven by his friend Calvin. There were two other witnesses, Dylan and Leon, who can confirm that this was indeed the position and that Dylan even videoed Calvin driving the motor vehicle.
- iii) He is also charged with theft of valuable paintings from the local art gallery. He advises you that he did carry out the crime but the evidence against him is an admission that he made to the police. He states that he made the admission to the police because at the time of his arrest his girlfriend Mia was also apprehended. The police advised him that if he 'admitted matters' then Mia would be released.
- iv) He is charged with assault said to have been committed on a man in the local nightclub. He states that on the night of the alleged offence he Ethan was in Switzerland with his girlfriend. He has pictures which were taken of the holiday by his girlfriend. These are stored on his mobile phone. He understands that in fact the assault that is alleged to have occurred was carried out by his older brother Bradley. He advises you that the assault was witnessed by a mutual friend called Henry and that Henry had given a statement about what he saw happening to the reporting officer. Unfortunately he does not know where Henry currently is. Henry is a disillusioned lawyer who has retired from law and was last heard of backpacking in Australia.

END OF CRIMINAL SECTION

END OF PAPER