

# Procedure

Thursday 15 May 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

You are acting for the Pursuer in a defended Sheriff Court ordinary cause action for damages arising from breach of contract. With reference to the relevant chapters of the Ordinary Cause Rules, by what stage, or within what timescales, would you need to take the following procedural steps:

- a) Lodging a Record in advance of the Options Hearing;
- b) Lodging a Note on the Basis of Preliminary Pleas;
- c) Exchange of Lists of Witnesses;
- d) Citation of witnesses in advance of a diet of Proof;
- e) Lodging of a motion in a Form G6 with the court after the date of intimation of that motion;
- f) Lodging of productions and affidavits in advance of a diet of Proof; and
- g) Lodging an Account of Expenses in process in proceedings where the date of final judgment is on or after 29 April 2019 (without requiring permission of the Sheriff).

### Question 2

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.

**END OF CIVIL SECTION**

## Criminal Procedure Section

Candidates are expected to refer to Statutory authority throughout.

### Question 1

- i) You are consulted by Aiden. He is in custody and due to appear at the local Sheriff Court charged with assaulting his wife. He intends to plead not guilty. The Procurator Fiscal has no objection to him being admitted to bail on the standard conditions. The Procurator Fiscal seeks an additional bail condition that Aiden does not contact his wife nor attempt to contact her nor attend at the matrimonial home. Aiden wishes to be able to live with his wife and instructs you to oppose the imposition of this additional condition of bail.

Is there a legal basis to challenge the imposition of such a condition and if so, what is the legal basis for such a challenge?

- ii) Despite your best efforts the additional condition is imposed. Two weeks later Aiden tells you that his wife who now lives alone, has had a bad fall. She is unable to move around and he wishes to live with her to help her with her everyday life. The bail conditions prohibit this. Is there anything that can be done to enable Aiden to assist his wife, and if so, on what legal basis?
- iii) You are consulted by Olivia. She is charged that being the keeper of a motor vehicle she failed to identify the driver of the vehicle to police officers on a date where the vehicle was involved in a road traffic accident. Olivia advises that she had sold vehicle three weeks before the date of the accident to a complete stranger in a pub. There is a Pleading Diet in two weeks time at the local Sheriff Court.

What steps should you take at the Pleading Diet to properly represent Olivia's interests?

- iv) You are consulted by Theo. He previously appeared on petition and was Fully Committed for trial and remanded in custody. He is anxious to plead guilty as soon as possible. He wants to know:

How long do the Crown have to bring the case to Court?

Is there anything he can do to speed that process up?

Is there any other benefit to Theo in speeding the process up?

If he receives a sentence that he views as 'too harsh' does he automatically have a right to be heard in the Appeal Court if he appeals against the sentence?

Advise Theo accordingly.

## Question 2

- a) At every First Diet in the Sheriff Court, which two documents must be lodged by the defence?
- b) You are consulted by Callum who has a First Diet calling in the local Sheriff Court. The Indictment contains a number of charges. Explain what steps should be taken in respect of each charge to fully represent Callum's interests at the First Diet.
  - i) Callum is charged with Fraud. He advises that he was arrested along with his girlfriend in relation to Fraud. He denies committing Fraud. He further advises that when he was interviewed by the police they told him that if he 'just admitted the fraud' his girlfriend would be released from police custody, otherwise she would be locked up for months. In consequence Callum admitted the Fraud.
  - ii) Callum is also charged with assaulting two police officers who came to his house to arrest him in connection with the earlier matter. He states that he was at his front upstairs window when he saw the police officers approach his door. He accepts that he shouted that he would come down and punch them unconscious if they did not just go away. He has had a 'bad experience' with the police in the past and therefore the police 'deserved it'.
  - iii) Thereafter Callum is charged with stealing copper from the local church on the night of his 21<sup>st</sup> birthday. He states that on that night he was at home with his girlfriend, Leona. He advises that his brother Ryan admitted to him that he, Ryan, had carried out the theft of copper and actually provided Callum with a photograph showing his brother Ryan on top of the roof with two others piling up copper stripped from the gutters of the building.
  - iv) Lastly, Callum is charged with possession of an offensive weapon and with assault. He states that on this occasion he was surrounded by local youths who attacked him and knocked him to the ground. He picked up a piece of wood to fend the youths off and had struck one of them because he was lying on the ground with the crowd of youths round him. He advises his friend Gavin saw what had happened and had given a statement to the investigating police officer at the time of the incident. He would wish to call Gavin as a witness however Gavin has gone backpacking around the world and was last seen in Australia and his current whereabouts are unknown.

**END OF CRIMINAL SECTION**

**END OF PAPER**