

JUDICIAL APPOINTMENTS BOARD FOR SCOTLAND

RECOMMENDATION OF APPOINTMENT OF A SENATOR OF THE COLLEGE OF JUSTICE

CASE STUDIES

These studies relate to the materials that you were sent last week. There is one study which relates to criminal law and procedure and one relating to civil law and procedure.

1. CRIMINAL CASE STUDY

Please consider the following facts and circumstances and decide what sentence you would impose if you were sitting in the High Court of Justiciary. You will be asked to deliver your sentence, giving any statement or explanation in respect of it that you consider appropriate. The chairing member of the interview panel will play the part of the accused i.e. you should address your remarks to him.

- The accused is aged 39 years
- He has pled guilty at a continued preliminary hearing to (a) a charge of **robbery**; and (b) a charge of **rape**. He pled not guilty to a third charge of attempting to pervert the course of justice by giving a false name when he was arrested; that plea was accepted. The victim in each charge was the same person, an elderly woman. His solicitor had indicated in an informal discussion with the local procurator- fiscal, shortly after he was first remanded in custody, that it was very

likely that the accused would plead guilty. Indeed, he was hopeful that he would get instructions to do so by way of s.76 letter. No such letter had, however, been sent.

- The accused was remanded in custody on 15th January 2011.
- He has one **previous conviction for assault and robbery**, on indictment. The victim was an elderly woman. He was sentenced to **three years imprisonment**. The offence occurred when he was 21 years old.
- He has one **previous conviction for assault to injury**. He was sentenced to **eighteen months imprisonment**. That offence occurred when he was 31 years old. The victim was a man in his 20's.
- He has other previous convictions. They are for breaches of the peace and road traffic matters, all at summary level and none of them resulted in custodial sentences.
- He has no previous convictions for sexual offences.
- He has been in fairly regular employment throughout his adult life, working mainly as a painter and decorator, often on a self employed basis, picking up work as a result of going round local neighbourhoods putting 'flyers' advertising his services, through letterboxes. He has, however, not worked for the last year or so.
- When he pled guilty, you were provided with an agreed narrative in the terms set out below.
- You called for a **social enquiry report**. It assessed the accused as being at high risk of reoffending and medium risk of causing harm to others if he does so. The author expressed considerable concern at his apparent propensity to attack elderly

women, particularly since he had now progressed to raping such a victim. The author reports that the accused presents with “clear evidence of an escalating pattern or trajectory towards more serious offending and there are two particularly worrying features, namely (a) his choice of elderly women as victims, and (b) his progression to sexual offending.” The report advises that the accused would be a suitable candidate for probation; the focus would be violence reduction and there may be a place available on a “change” programme. Community service would also be available. The report recognises that the court may be considering a custodial sentence.

- You are told that the accused deeply regrets his actions. He was depressed following the death of his mother and was looking for money to buy flowers to put on her grave. He was overcome by resentment that a woman who appeared to be older than his mother was alive and well but now realised that what he had done was reprehensible.

The agreed narrative regarding the circumstances of the offence is:

- The victim, who is aged 73 years, was walking back home from the shops, just before lunchtime, along a shortcut which was a wooded pathway.
- The accused was standing at the side of the path, smoking a cigarette and asked the woman if she knew what time it was. Whilst she was fumbling to lift her glove so as to see her wristwatch, he grabbed hold of her and snatched her handbag. Whilst still gripping her tightly with one hand, he rifled through the bag with the other, finding a £5 note. He said: “That’s

not enough! You'll have to pay some other way!" He then pulled out a knife, held it against her neck, dragged her off the path and into the trees where he raped her.

- The victim suffered severe bruising and cannot now face going out and about alone.
- Examination of a high vaginal swab taken from the victim was found to contain the accused's DNA.
- There was eye witness evidence from a passer by that they had seen a man matching the accused's description 'hanging around' the wooded pathway shortly before lunchtime on the day of these offences.
- The accused was found to have a £5 note in his pocket when arrested and his clothes were soiled with earth and leaf mould.

2. CIVIL CASE STUDY :

You will need to refer to the papers you were sent last week in the case of -

Amelia Wilson v Bruce Ramsay

Please consider whether or not you would grant the motion referred to below. You will be asked to deliver a short judgment to the interview panel explaining your decision and your reasons for it.

You are sitting in chambers at 4.45pm on a Friday afternoon when your clerk comes in to advise that there is a motion for interim interdict in terms of the second conclusion that has been waiting to be heard all day. It is in the following terms:

“ For interdict of the defender from entering into or concluding missives to sell or from selling, disposing or otherwise disposing of Ardnara House except with the consent of the pursuer, and for interdict *ad interim*.”

The motion calls in court. You are given the following information by counsel for the pursuer:

- The pursuer has learnt that not only has the defender put Ardnara House into the hands of Messrs Struth and Partage, selling agents, but a prospective purchaser is showing a keen interest. She is apprehensive that the house will be sold without her consent and without at least her being given the opportunity to discuss with the Defender the possibility of their settling their differences by his transferring a one-half share in the house to her or to allow her to buy it.
- The pursuer is currently in discussion with lenders with a view to securing funds . She is hoping, if the Defender will not transfer a one half share in the house to her, to make an offer to him shortly. That offer will make allowance for what she considers that he is due to pay her as compensation for his unjustified enrichment, an assessment that is, it is said, based on legal advice

that she has received. Unjustified enrichment is inequitable and it would be inequitable to deprive her of the opportunity of securing an interest in the house.

Although there are, as yet, no defences, appearance has been entered and the motion is opposed. Counsel for the defender submits that the Pursuer's case is a hopeless one and she will be making that plain in the defences which are in the course of being prepared. There is no *prima facie* case or, if there is, it is a weak one – the Pursuer's case is wholly irrelevant. The pleadings do not support her present claim for unjustified enrichment – it prescribed “years ago” - the house was completed in August 1994 - and the defender will almost certainly be moving for a debate on the procedure roll in due course. There are problems with the pleadings e.g. she makes no allowance for the rental that she received for the house in her calculation of recompense due. Furthermore, there is a purchaser teetering on the brink, ready to sign up, and the defender is anxious not to lose her. This is a “bird in the hand” with no prospect of one let alone two “in the bush”. The defender is sceptical about the pursuer's claim that she is trying to secure a loan and, in any event, he will not concede that he is due to pay her any compensation at all. He is not prepared to transfer half the house to her as she is not entitled to it either.