



**THE LAW SOCIETY OF SCOTLAND
EXAMINATIONS**

SCOTS COMMERCIAL LAW

Friday 11 August 2017

**1000 - 1200
(Two Hours)**

**Candidates should answer THREE questions
All sections of a question must be answered.**

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Question 1

Terence has been appointed as Debbie's trustee in sequestration, following a petition by three of Debbie's creditors. Debbie runs a small shop in Dundee. The petitioners were granted warrant to cite Debbie on 17 July 2017.

Advise Terence on the effect of the following grants made by Debbie:

- (a) A gift of a Peplow painting to Debbie's sister Sophie. The gift was made on Christmas Day 2016 but Terence has discovered that the present was accompanied by a note which said, "Better you have this than my creditors."
- (b) The pledge of a van which Debbie granted to Winnie, her wholesaler, in security for goods which Winnie supplied after the van was pledged.
- (c) The transfer of a small warehouse which belonged to Winnie: the disposition was granted on 15 July, pursuant to a contract of sale. The price has been paid and the disposition was registered on 20 July 2017

Question 2

Explain the effect of an inhibition with reference to case law and statute. In particular, consider whether an inhibition can be said to give the inhibitor a right in security.

Question 3

Bethany runs a plumbing business. One day she goes into the showroom of Splendid Bathrooms Ltd, where she speaks to a sales representative. She explains that she needs a shower unit for her own home and 15 baths for jobs that she is doing as part of her work. She also explains that the shower unit needs to be able to work with a cold-water supply and that the baths will be combined with the shower units so they need to be strong enough to hold the weight of someone standing in them. The sales representative explains that the shower unit will work with the cold-water supply and that the baths "should be fine but you but he is not sure about them". Bethany decides to press on with the order anyway, agreeing that the baths should be fine. Bethany pays for the goods and they are delivered to her workshop a week later.

She installs three of the baths and the shower unit. The next morning, she finds that the shower is cold and further investigation shows that this is because the unit is not suitable for cold-water supply. She also receives a call from one of her customers, who stood in the bath that she installed to have a shower and fell through the bath. On checking the specifications, Bethany discovers that they are not suitable for standing. This means that the baths she has installed will need to be replaced and the others will be no use for the jobs that she has lined up.

Advise Bethany about the rights she has against Splendid Bathrooms Ltd.

Question 4

(a) Explain the differences between being “a holder”, “a holder for value” and “a holder in due course” of a bill of exchange in terms of the conditions for each status and the consequences which flow from it.

(b) Propose a policy rationale which explains the protections enjoyed by the holder in due course.

Question 5

Does the Consumer Insurance (Disclosure and Representations) Act 2012 provide sufficient remedies to protect insurers in the event of misrepresentations by the insured?

Question 6

Does Scots law impose sufficient safeguards to ensure that close family members who provide caution for their relatives' debts are not subject to misrepresentation or undue influence by the borrower?

Question 7

Does Scots law make it too difficult for sole traders and partnerships to use their moveable property as collateral for loans?

END OF QUESTION PAPER