



**THE LAW SOCIETY OF SCOTLAND
EXAMINATIONS**

SCOTS COMMERCIAL LAW

Friday 10 February 2017

**1000 – 1200
(Two Hours)**

Candidates should answer any THREE questions

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Candidates should answer FOUR questions, TWO from Section A and TWO from Section B. All sections of a question must be answered.

Question 1

Critically analyse the significance of section 14 of the Insurance Act 2015.

Question 2

Danielle owes £5000 to Cecil. The sum is due for payment of work carried out by Cecil in her shop. The contract was recorded for preservation and execution in the Books of Council and Session. Danielle denies liability. Cecil notes that Danielle has the following assets;

- a) A house worth £15 000
- b) A Peploe painting worth £20 000
- c) A bank account with Strathdale Bank plc which is £1000 in credit

Can Cecil do diligence against any of these assets and if so, which diligence should he use and what steps will be necessary beforehand?

Question 3

Betheney recently bought a forklift from JDC plc, her regular supplier. At the time, she explained to the sales representative that she needed the truck to be able to lift pallets with 300 standard construction bricks on them. The representative explains that he is not familiar with the weight of such bricks. Betheney estimates that each brick weighs "around 1kg". In fact, the bricks weigh 1.5kg each.

After 3 weeks of use, the forklift stopped working and the engineer who inspected it explained that regularly lifting loads of more than 400kg have damaged the motor on the lift part and that it will cost £600 to replace.

Further, she was contacted by Denise who alleges that the forklift which Betheney bought belongs to her because she sold it to JDC plc under a retention of title clause, under which ownership would only pass when JDC plc paid the price.

Advise Betheney.

Question 4

Does Scots law provide sufficient protection for cautioners who are misled by the debtor as to the extent of the obligation?

Question 5

Peter holds a bill of exchange drawn on Freddy, payable 30 days after sight. The payee and drawer on the face of the bill is Paula. The bill bears to have been endorsed by Paula in favour of Daisy and by Daisy in blank. Peter bought the bill from Edward, who told Peter that he had bought it from Gareth and that he had no idea who Gareth had got it from.

Peter presented the bill to Freddy who refused to pay because "Paula has not performed her part of the contract of sale for which the bill was payment". He has also received a letter from Daisy alleging that the bill had been stolen from her and that Gareth forged her signature.

Advise Peter on who he can demand payment from and why.

Question 6

"From the moment that a debtor becomes aware of his insolvency, he holds his property for his creditors' benefit rather than his own." Discuss.

END OF QUESTION PAPER