



**THE LAW SOCIETY OF SCOTLAND
EXAMINATIONS**

BUSINESS ORGANISATIONS

Friday 10 February 2017

**1330 – 1530
(Two Hours)**

**Candidates should answer any THREE questions. Give
authority for all answers.**

Each question has 100 marks.

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Question 1

Adam is a wealthy businessman living in tax exile in Monaco. He has extensive property and other interests in Scotland, but in order to maintain his tax-exempt status may not spend much of his life in the United Kingdom. He therefore asks Brian, a former land agent, to look after a wide range of business and domestic matters for him. Brian is self-employed and renders Adam an agreed fee every six months for the work he does for Adam. Brian has a small estate in Perthshire, known as Blair House. Adam and Brian do not have a written contract.

Adam hears from the housekeeper at Blair House that the roof in the east wing is leaking. He instructs Brian to deal with it. Brian obtains estimates from three firms of slaters, but accepts on Adam's behalf the estimate from the firm that offers Adam a commission of 5% on the roofing bill. The roof is fixed and Brian arranges for the bill to be paid. The roofer passes on the commission to Brian.

Adam has heard on the grapevine that a portrait of one of his ancestors is possibly for sale. Adam knows very well that if he himself expresses an interest the price of the portrait will double. He therefore asks Brian to sound out the owner to see if a private deal can be done. While the owner and Brian are discussing the sale of the picture, the owner produces a second picture, this one showing Blair House in the background. Without revealing that he is acting for Adam, and without having obtained Adam's approval, Brian agrees to buy the two pictures from the owner for an overall price greater than Adam had previously authorised for the portrait. It is agreed that the sale will take place in a month's time.

Brian is asked by Adam to take a Georgian cabinet from Blair House for repair to an antique restorer. Instead of taking the cabinet himself, as he had been instructed, Brian arranges for a man with a van to take the cabinet to the restorer. The man with a van picks up the cabinet and neither he nor the cabinet is ever seen again.

Adam is a keen conservationist and does not approve of shooting or fishing. Brian nevertheless goes to a near-by landowner and explains to the factor of the landowner that he would like a day's salmon-fishing so that he may report back to Adam on the optimal fishing spots, this being of interest to Adam's guests when they come to stay in the summer. As the factor knows Adam, he presumes this is acceptable, and sends the bill for the day's fishing to Blair House.

The housekeeper has her suspicions about Brian. She secretly reports these to Adam. Adam immediately writes to Brian to terminate their agreement. He flies back to Scotland. He investigates the paperwork from the slater. The picture-seller is keen to conclude his sale but Adam is reluctant. The cabinet is still missing. The fishing bill is unpaid and Adam has no desire to pay it. Brian states that he is entitled to a fee in lieu of notice.

Advise Adam on all of the above matters

Question 2

In May 2014 Hume Ltd, a company registered in Scotland, bought a brownfield site on the edge of a city in Scotland. To do so it borrowed money from the Bank of Lanark, the bank being granted a standard security over that site. The company's title to the site was registered in the Land Register on the same day as the standard security was registered. The standard security was also timeously registered with the Registrar of Companies. The company made various botanical spirits, including gin.

In December 2014, a new development started adjacent to the site occupied by Hume Ltd. This raised the value of the site owned by Hume Ltd. On the strength of this, Hume Ltd borrowed from the Bank of Renfrew. In January 2015 Hume Ltd granted the Bank of Renfrew a floating charge over Hume Ltd's assets and undertaking. The floating charge contained a negative pledge prohibiting Hume Ltd from granting any further charge ranking ahead of the Bank of Renfrew's floating charge. It was registered at the Registrar of Companies in late January 2015.

In May 2015, the managing director of Hume Ltd, Mr Sartre, realising that Hume Ltd was short of cash, and having received approval from his fellow directors, lent some of his own money to Hume Ltd. Hoping to avoid legal and other fees, and using the floating charge documentation from Bank of Renfrew as a template, he drafted and registered with the Registrar of Companies his own floating charge, with a negative pledge clause. This negative pledge clause, however, specifically stated that his floating charge ranked ahead of the Bank of Renfrew's one. He did not intimate his charge to the Bank of Renfrew.

In March 2015 Hume Ltd needed a truck to deliver its products. With the help of a finance company, Hume Ltd obtained the truck on a hire purchase contract, terminable in March 2017.

In April 2015 Hume Ltd leased a photocopier from Kierkegaard plc, a well-known photocopier manufacturer. The rent was paid monthly.

In October 2015, Hume Ltd pledged 100 barrels of its gin to Plato in security of a fee due to Plato. Plato had no room to store the gin, but it was agreed that Hume Ltd would continue to look after the gin. Whenever Hume Ltd was short of gin to send to a purchaser, the directors of Hume Ltd would take some of the gin pledged to Plato but would replace those barrels with other ones later.

On 1st October 2016 Hume Ltd sold some of its products to Kant Ltd. The contract specified that the products were sold subject to a retention of title in favour of Hume Ltd until Kant Ltd paid all sums due to Hume Ltd. On 15th October Kant Ltd sold half of those

products for value to Russell Ltd, that company being unaware of the retention of title clause and having no means of being aware of it.

Hume Ltd was slow in paying its tax and HMRC on 1st November 2016 carried out an attachment of the stock in the warehouse used by Hume Ltd.

In mid-November 2016 Spinoza, a creditor of Hume Ltd's, served a statutory demand on Hume Ltd. Hume Ltd was unable to meet the demand and Spinoza successfully petitioned for the winding-up of Hume Ltd on 14 December 2016. The appointed liquidator discovered that the directors had failed to make the required contributions to the company's occupational pension scheme. There were only 80 barrels of the gin that was pledged to Plato. The liquidator also established that there were some funds to distribute to the creditors.

Advise the liquidator on the distribution of the estate and the ranking of the various creditors. You may assume that liquidator decided against making any claims against the directors.

Question 3

Raphael, Michael, Gabriel and Uriel decide to set up a small niche publishing business, making perfect reproductions of antiquarian books for a modern audience and providing consultancy advice on the provenance of old books. To save trouble and expense, they decide to be a partnership rather than incorporate. They do not have a partnership agreement.

The partnership needs a firm of commercial book-binders to bind and stitch the books. Raphael recommends to the partnership that they use a bookbinding firm, known as Enoch's. Enoch's offers a good price, which the partnership accepts. What Raphael does not disclose is that he is Enoch's landlord and the firm owes him rent.

Michael is approached by Cain who happens to have a very rare and valuable book which he says came from a castle in Eastern Europe. He says the book was removed before looters came during the war. The castle was later destroyed and its owners murdered. Michael researches the book. There appear to be no previous records of it and no clear evidence of ownership other than Cain's apparent ownership. Michael therefore agrees to provide a certificate of authenticity. The certificate is issued with a disclaimer of any liability. Cain swiftly sells the book to purchasers unknown and disappears both with the profits and without paying the partnership of Michael a fee. In reality, Michael is well aware that the book is stolen but thinks it is unlikely that the original owners will ever appear. It turns out that he is incorrect. The descendants of the owners sue the partnership for Michael's fraudulent action in issuing the certificate and thereby aiding the theft of the book. The partnership says that fraudulent certification is not part in the ordinary course of business of the firm, that the partnership received no payment for the certification, that no other partner knew about Michael's activity in this matter, and that the partnership is not therefore liable.

Gabriel, unbeknownst to the other partners, is addicted to on-line gambling. To begin with he uses his own savings, but he is reduced to borrowing money from an unauthorised back street lender, Abel. Abel starts to put pressure on him. Gabriel assigns his share in the

partnership to Abel, and to their astonishment intimates this to the other partners at a partnership meeting. Gabriel sheepishly explains why he has done this. Abel then appears and starts demanding his share of the partnership assets. The other partners refuse to deal with Abel and wish to remove any rights Gabriel and Abel may have in the partnership.

Each book the partnership publishes normally has an introduction written by a contemporary expert on the contents. One such expert writes an introduction which makes a defamatory remark about another author, Tobias, in the same field. Tobias then successfully sues the expert and the partnership (as publishers) for the defamatory remark. It is evident that the expert is not worth suing so the partnership becomes liable. Tobias starts enforcement proceedings against the partnership. The partnership's insurance is insufficient to meet the claim. Gabriel, as already indicated, has no funds.

Explain the law relating to these four circumstances.

Question 4

Bingo plc, a non-quoted plc which manufactures gardening equipment, is offering some shares to various individuals who are not directors. The company has issued share capital of 60,000 ordinary shares of £1 nominal value, divided equally between the two directors, James and Samantha. James is also the company secretary.

Tom is proposing to offer to carry out £5,000 worth of consultancy advice for the company next year in exchange for 5,000 ordinary shares now.

Clare wishes to sell her new design for a new lawn-raker to the company in exchange for 10,000 8% preference shares of £1 nominal value each.

Dick is happy to pay £25,000 for some ordinary shares now, but as he is to be providing quite so much capital to the company, he wants to receive 40,000 shares together with a binding undertaking from the company that they will both issue him with the shares and never seek to ask any more money from him in respect of those shares.

Frank is quite happy to pay £10,000 for 10,000 ordinary shares.

Explain the procedure required to issue these shares, and highlight any difficulties that there may be with these proposed issues. It may be assumed that the proposed issues of shares are all to take place on the same date.

Question 5

Travail Ltd has four directors, Alan, Bill, Connie and Don. Travail Ltd produces training materials for businesses. Its issued share capital is £50,000. Its net asset value is £250,000. The directors have only a small number of shares in the company.

Alan has an idea for a new method of training people how to improve their literacy skills. He wants to set up a separate business to develop it. He does not know if he may do so.

Bill borrows £12,000 from Travail Ltd to tide him over with the purchase of a yacht until the sale of his other yacht is complete. Because he is overdrawn at the bank, the bank will not give him a bridging loan.

Connie is a medical author. In her personal capacity she has written an instruction manual for certain medical equipment. She now wishes to sell the copyright of the manual to the company. She thinks its market value is £30,000 and that the company will be able to franchise it very successfully. At the next board meeting, she tells the directors about her proposed purchase, and the other directors agree to accept it.

Travail Ltd is in a lucrative contract with Onerous plc, which has opened negotiations for further deals with Travail Ltd. Don has 2% of the shares in Onerous plc. Onerous plc is a successful listed company.

Travail Ltd is owed money by Struggle Ltd. Struggle Ltd is not keen to pay the debt. Bill and Connie are both directors of Struggle Ltd. Eve is a shareholder in Travail Ltd. She thinks that Struggle Ltd ought to be made to pay the debt and at the annual general meeting of Travail Ltd suggests that Travail Ltd could make more effort to recover the debt, as a result of which all the shareholders might get larger dividends. Bill and Connie both tell Eve that they have no reason to think that the debt will not be settled in due course. When Eve asks when that will be, they blandly reply "As soon as can be managed".

Explain the points of law in the above scenario, indicating what legal remedies, if any, there may be for the above matters.

Question 6

- (a) The courts are anxious to prevent every discontented member of a company petitioning the court on the grounds of unfairly prejudicial behaviour being directed against that member. Explain, referring to the current case law as well as the procedure, (i) what is required for a successful petition on these grounds, and (ii) what steps a prudent company might take in advance to ensure that there are no or limited grounds for minority shareholders so to petition the court.
- (b) Explain why a company might wish to buy back its own shares, and explain the procedure required both for a private and a public company to do this with payment being made out of distributable profits.

Question 7

Explain the difference between receivership, administration and liquidation, indicating in respect of administration and liquidation what steps an administrator or liquidator may take against directors whose management of the company may have contributed to the ultimate appointment of the administrator or liquidator.

END OF QUESTION PAPER