



# **THE LAW SOCIETY OF SCOTLAND EXAMINATIONS**

## **BUSINESS ORGANISATIONS**

**Friday 12 August 2016**

**1330 – 1530  
(Two Hours)**

**Candidates should answer any THREE questions**

**LAW SOCIETY OF SCOTLAND  
EXAMINATIONS**

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**Question 1**

Alf and Bert Ltd is a company incorporated in 2011. It has two shareholders, Alf and Bert, who own 50 of the shares each. Alf and Bert are both directors of the company. Alf is married to Carol. Alf and Bert Ltd manufactures widgets. It owns a factory. In the factory there are widget making machines. One of these is being acquired on hire purchase from Donald. The others have been bought by Alf and Bert Ltd. Alf and Bert Ltd also lease a small shop from Ethel. The company sells widgets to the general public there. The company also owns a garage that can house two cars. Both Bert and Alf use it personally.

Alf and Bert Ltd employs 5 people, including one who works in the shop. Each is paid a monthly salary.

To supply widgets to other stores Alf and Bert Ltd owns three branded lorries. The company borrowed money from the Bank of Scotland when it was incorporated. It granted the bank a floating charge over all of its assets containing a negative pledge clause on 16th September 2011. This was registered in the Companies Register on 30th September 2011. In the meantime Alf and Bert Ltd also borrow money from the Royal Bank of Scotland and grant them a standard security over the factory to secure that debt. The security is

granted on 12th September 2011 and registered in the Land Register on 18th September 2011. It is registered in the Companies Register on 1st October 2011.

Alf and Bert Ltd operates relatively effectively for a few years but begins to struggle in 2015. It arranges an overdraft with the Clydesdale Bank, where it holds its current account, in December 2015. And in April 2016 grants a floating charge to the Clydesdale Bank over all of its assets.

Also in April 2016, Alf and Bert Ltd begins to struggle to meet its rental payments to Ethel and it misses the May to July payments. The employees are not paid in July. And when one of the lorries breaks down in July and is taken in to Fred's Garage Alf and Bert Ltd is unable to pay the repair costs.

Alf and Bert Ltd has not paid taxes due to HMRC (including VAT) and in July 2016 HMRC petition to wind up Alf and Bert Ltd. A liquidator is appointed in August 2016.

Advise the liquidator. Your answer should consider assets, liabilities, challengeable transactions, and the order of distribution of the estate.

## **Question 2**

George, Harry, and Isla are three partners in a firm which has, since 2004, run a chain of wool shops in the Lothians. As the business is expanding in 2013 they agree to incorporate the firm. Each partner takes 100 £1 shares in the new company, GHI Wool Emporium Ltd. Each shareholder is appointed director. GHI Wool Ltd uses the standard articles of association and aside from a provision that any sales of

shares have to be agreed by the company directors they do not make any amendments primarily because George, Harry, and Isla have all worked together successfully for so long.

(a) In early 2016 things change though. George and Isla are keen to encourage a new investor. The investor, Jacqueline, wants to invest money into the firm and to guarantee a return of 5% per annum for her investment. She is not that bothered about being involved directly in the management of the company but would like to have someone on the board to look after her interests. She is not keen on lending money to the company but would welcome the opportunity to benefit from any potential growth of the company.

Advise George and Isla how they should proceed using company law to enable Jacqueline to achieve her objectives. Your answer should note any potential barriers to the route you propose. (50%)

(b) Assume the investment plan falls through. As a result of this George and Isla feel that the easiest way to deal with matters is to try to force Harry out. They hold a general meeting to remove him as director, and vote to do so. They then agree to increase payments to directors while declaring no dividend. Harry approaches you for advice to protect his position and make sure he gets his money out of the company. Advise Harry (50%)

### **Question 3**

Kevin is a man who works as a tailor. He worked for Lou's Threads Ltd, a tailoring company in Motherwell. Kevin wanted to go into business by himself but had a restrictive

covenant in his employment contract providing that if he left he was not allowed to work as a tailor within ten miles of Lou's Threads Ltd and could not seek former customers of his excellent made to measure outfits. When Kevin left the business he came up with a great idea. He would set up a new company, Manly Clothes Ltd, and open up business in Hamilton. The company could then approach his old customers to ask them to come to the new company for made to measure clothing. Manly Clothes Ltd employs an office manager, Nola. There is, though, a fall out between Manly Clothes Ltd and Nola and she leaves claiming that she has been wrongfully dismissed in breach of her employment contract. Before she can claim, though, Manly Clothes Ltd ceases trading and a new company Over Manly Clothes Ltd is started up by Kevin. All of the assets of Manly Clothes Ltd are transferred to Over Manly Clothes Ltd, and it is Over Manly Clothes Ltd that approach Kevin's former customers. There is no money in Manly Clothes Ltd to pay Nola.

Kevin has been married to Orla. She and Kevin split up when he leaves Lou's Threads Ltd and divorce soon after. Kevin owes Orla financial provision on their divorce. However, all of his money is tied up in Over Manly Clothes Ltd.

Nola and Lou's Threads Ltd and Orla all feel that they have potential claims against Over Manly Clothes Ltd and raise actions. Orla demands the transfer of property from the company to meet the obligations owed to her. Advise Over Manly Clothes Ltd (and Kevin).

#### **Question 4**

Petronella is director of Quentin's Lets Ltd, a small private landlord operating in Aberdeen. She is one of two directors.

Her fellow director is Roberta. There are three shareholders, Petronella, Roberta, and Umar. Umar holds 60% of the shares but is not interested in running the business as he is heavily committed in other parts of Scotland.

Petronella is also a partner in a small building firm with Steve, S & P Builders. This building firm has been building flats in Aberdeen to sell into the private rented sector. When the flats are advertised, Petronella suggests to Roberta that the flats would be ideal for Quentin's Lets Ltd. The company, through Petronella, contacts Steve who agrees S & P Builders should sell two flats to Quentin's Lets Ltd. These flats are sold at market value, but Roberta is unaware of Petronella's connection with S & P Builders.

Petronella is always on the look out for new properties. She is approached by Tony, a property developer in the area. Having become interested in property development after watching Homes under the Hammer, Tony buys properties, does them up and sells them on for rental. Tony suggests to Petronella that if Quentin's Lets Ltd will buy the properties from him he will pay her a small commission of 5% on each sale. She agrees to this and Quentin's Lets Ltd buy two redeveloped properties from Tony.

As Quentin's Lets Ltd is doing fairly well in the rental market (and has a reasonable capital sum in the bank) Petronella, who is struggling with personal finances, decides to ask Quentin's Lets Ltd for a loan. Petronella asks Roberta and they agree that Petronella can borrow £9,000 from the company. Petronella and Roberta agree that the loan facility may be extended to £15,000 within the year.

By the time of the general meeting Umar learns about these various transactions. He is friendly with Tony and is a little

concerned about the payments to Petronella. He knows S & P Builders is Petronella's firm, and wonders what happened there. And he has a strict policy of never agreeing to the lending of money to directors or employees.

Umar approaches you for advice in relation to these situations. Can he and/or Quentin's Lets Ltd do anything about them?

### **Question 5 (Answer EITHER part A or part B)**

#### **PART A**

Mary, Niamh, Olaf and Peter are partners in a solicitors firm. Their firm was set up in 2005. In 2016 Quentin is assumed as a partner. Quentin is alarmed to discover the following:

- (a) The firm is being sued for negligence regarding a transaction in 2014. Olaf forgot to register a conveyance and the client lost the house. The claim is worth £250,000. The action against the firm, and Olaf as an individual, has only just been raised.
- (b) Peter has a drug problem. He is addicted to prescription painkillers. He doesn't turn up to the office until the afternoon, if at all. He shouts abuse at clients he dislikes. Peter is very aggressive and the other partners are too scared to have it out with him over his behaviour.
- (c) Niamh has substantial financial obligations regarding her children. To help this, she ensures that the firm hires a car from Roy's Racy Motors Ltd as a vehicle for meetings with clients. Roy's Racy Motors Ltd pays Niamh a percentage of the hire costs, and she uses that to pay after school caring fees to enable her to keep working.

(d) Mary has for some years had an extreme gambling problem. She owes tens of thousands of pounds as she has spent her weekends at the roulette wheel. Mary receive a petition for sequestration from one of her creditors.

Advise Quentin of the implications for him in the law of partnership.

**Or**

## **PART B**

Critically assess the similarities and differences between a limited liability partnership, a limited partnership, and a partnership. Among other issues your answer should give consideration to the liability of partners, rules of formation, rules of dissolution, and the external relations between the entity and third parties.

### **Question 6**

(a) Critically review the fiduciary obligations owed by an agent to a principal, and consider the remedies available to the principal in the event that the agent breaches the obligations. (50%)

(b) Detail how the law applies to cases where an agent acts for an undisclosed principal and consider whether the law strikes an appropriate balance between being fair to the principal and fair to the third party with whom the agent has dealt. (50%)

## **Question 7 (Answer EITHER part A or Part B)**

### **PART A**

In 2003 when launching its discussion paper on the registration of rights in security by companies the Scottish Law Commission argued that the law was defective in the following ways:

“the register of charges is regarded by most practitioners as incomplete and unreliable. Not all forms of security require to be registered and the selection is often seen as illogical and out of date. Since the legislation allows a period of 21 days within which to register particulars of a registrable security, it creates an “invisibility period” during which a search of the register will not disclose all registrable securities;

“in so far as the legislation requires registration at Companies House of securities – particularly securities over land – which are also registered in other specialist registers it creates unnecessary duplication;

“the sanctions applied in the event of a charge not being registered in time are viewed as unsatisfactory”.

Since the Scottish Law Commission worked on the law on registration of charges it has been reformed. Critically evaluate the current law on registration of charges. Your answer should consider the extent to which the Scottish Law Commission’s criticisms remain relevant.

**Or**

### **PART B**

What are the objectives of the law of administration as introduced by the Enterprise Act 2002? And does the law as

set out in Schedule B1 to the Insolvency Act 1986 meet these objectives?

**END OF QUESTION PAPER**