



**THE LAW SOCIETY OF SCOTLAND
EXAMINATIONS**

SCOTS COMMERCIAL LAW

12 August 2016

**1000 – 1200
(Two Hours)**

Candidates should answer any THREE questions

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Candidates should answer THREE questions. Please ensure you use appropriate authority for your answers.

Question 1

The front of a bill of exchange looks like this

£5,000	Gargunnoch 26 th July 2016
Thirty days after sight of this bill of exchange pay us or order the sum of £5,000 (FIVE THOUSAND POUNDS STERLING) only for value received	
To: Alf Thompson Acacia Farm Greendale North Lothian	For and on behalf of Bains (Greendale Rocket) Ltd <i>Ajay Bains</i> Director

The reverse of the bill looks like this

<i>Pay Ted Glen Bains (Greendale Rocket) Ltd</i>
<i>Nisha Bains, director</i>
<i>Pay Mrs Goggins (Parcels) Ltd Edward Glen</i>
<i>Peter Timms for Mrs Goggins (Parcels) Ltd</i>

The bill has been crossed on the front as follows

“Accepted 1st August, 2016, A Thompson”

- (a) Who is the payee?
(5%)
- (b) Who is the drawer?
(5%)
- (c) Who is the drawee?
(5%)
- (d) When is payment to be made?
(10%)
- (e) Where is payment to be made?
(10%)
- (f) Who is the holder (and why)? If you need more information explain what further information you require.
(15%)

On the date of payment Patrick Clifton arrives to demand payment of the bill. The drawee has various issues with Patrick demanding payment. First, the bill was accepted under a contract of sale entered with the drawer. The subject of sale is defective and the drawee is refusing to make payment under the contract. Second, Patrick Clifton is unknown to the drawee. All Alf knows is that Patrick is a postman and could have picked up the bill of exchange anywhere.

- (g) Can the drawee refuse to pay? Your answer should consider both defences mentioned by the drawee and consider whether there are other grounds under which payment could be denied.

(20%)

- (h) If the drawee refuses to make payment, who is Patrick entitled to claim payment from under the bill of exchange, and how will he ensure that he maintains this right or these rights to payment?

(30%)

Question 2.

Alf owns a wool shop in Linlithgow. Alf stocks his wool shop with natural wools and knitting and crochet implements, books, and patterns.

The suppliers of the natural wools are small farms around the country. Some of the wool is very expensive. Denzil's Alpaca Emporium LLP supplies Alf with alpaca wool. The wool is supplied subject to all sums retention of title clauses. The alpaca wool is supplied on a fortnightly basis and Alf usually makes payment at the end of every calendar month.

The merino wool comes from a supplier, Ewe Must be Joking Ltd in the Scottish Borders. They extend credit to Alf on a three monthly basis and Alf pays at the end of March, June, September, and December. The merino wool is supplied subject to price only retention of title clauses, coupled with a clause that provides that Alf will hold any proceeds of sale of the wool in trust for the benefit of the seller.

Alf has not paid for the alpaca wool since the end of June as he has been on holiday.

Alf has a sign up in his shop stating,
"The alpaca, merino and natural undyed sheep wool and wool products sold by this shop are hand-crafted and arise naturally and are not subject to any manual dyeing

processes and consequently any two items may not be identical or matching. No warranty is given in this respect.” Alf draws this to the attention of any customers who buy wool in his shop including Janet Jones who visits Alf’s shop in early August 2016. She tells Alf that she wants to buy some wool to make knitted blankets and clothes for a newborn grandchild. Alf recommends the merino and alpaca wool. Janet buys a few balls of each and spends some £200.

Within a week she contacts Alf. She has two complaints. First, one of the outfits took more than one ball of wool and while the balls of wool were described as being the same colour they are different shades and the outfit has been ruined. Second, when she gave the outfit to the grandchild he had a skin reaction and the wool has apparently not been treated. Alf notes the retention of title clauses in the agreements with his suppliers and worries about this too as he fears the suppliers may still own the wool he has sold.

Advise Alf on how the Sale of Goods Act and related consumer legislation applies to these points.

Question 3

Alf is owed £25,000 by Bert.

Alf knows Bert definitely has two bank accounts. He has a savings account with the Royal Bank of Scotland. This is in credit and has £6,000 in it. Bert has a current account with the Clydesdale Bank. This is frequently in overdraft. Alf does not know if Bert has any other bank accounts but suspects he does.

Bert co-owns a house with an integral garage. It is co-owned with his wife Carol. Bert runs a small shop selling model aeroplanes. The shop is leased. The lease is a 25 year lease and is registered in the Land Register. Alf knows Bert and Carol plan to sell the house to downsize to help Bert with his financial difficulties.

The shop contains a number of valuable model aeroplanes and surplus stock is housed in Bert and Carol's garage. Bert owns a number of antique clocks housed within the family home. In the back of one of the clocks he has £3,000 in Scottish banknotes.

Bert has shares in Delta's Dealers plc which he holds through a nominee company, Bert's Shareholdings Ltd. Advise Alf which diligences he can use against Bert. Consider the position both before and after Alf obtains decree for payment.

Question 4

(a) Donna is married to Ethel. They cohabited from 2009 prior to their marriage in 2016. They co-own a house in Dundee, which they acquired in 2011. There are no securities over the family home at that point. Donna runs a fast food business – Donna's Kebabs. Donna's Kebabs operates from a premises in Carnoustie which is leased on a short lease. In 2012 Donna wished to expand the business by moving in to Dundee and in to St Andrews. She intended to operate in both locations from tenanted premises. To expand Donna needs to borrow £200,000 from the Frank Bank plc. This is Donna's first contact with the bank. As she had no business premises to offer as collateral the Frank Bank plc asked Donna to grant a

security over her house. Donna mentioned that she co-owned the house with Ethel and agreed.

The Frank Bank plc was not used to operating in Scotland. It sent the security documentation to Donna to ensure it was signed. The standard security is prepared in a standard form and provided that it secured all sums due and to become due to the bank by Donna and Ethel. Donna gave the standard security to Ethel and told her that if she did not sign the document her dream of a fast food empire around the Tay estuary would be at an end. Ethel asked if Donna's business was in a good condition, and Ethel was assured that it was, but it was suggested that she contact the bank for more information. Ethel declined to do so.

When the business is doing well this is all to the good for Donna and Ethel. They are able to carry out substantial redecoration to Ethel's designs.

The Frank Bank plc takes over Donna's business banking in 2015 and Donna swiftly incurs a substantial overdraft of some £50,000. Ethel is unaware of this. She would not have agreed to Donna incurring more debt.

In July 2016 Donna's business fails. Donna is set to be sequestrated and the Frank Bank plc indicate that they plan to enforce the security.

Ethel contacts you.

Advise her if there is any way to strike down the security as it applies to her share of the house? (75%)

(b) George owes Helen £60,000. George is sequestrated. The debt owed by George is guaranteed by Indigo subject to

a maximum sum of £40,000. In George's insolvency the dividend to creditors is 20 pence in the £1.

How much will Helen be entitled to recover? And explain whether, and to what extent, your answer would be altered if Indigo paid the sum due by her prior to George's sequestration. (25%)

Question 5

Robert and Shona married in 2014. They have a 6 year old son, Ted. Robert and Shona cohabited before getting married and bought a house together in 2009. Robert and Shona are jointly and severally liable for the loan repayments on the standard security.

In 2013 Shona decides to take out a life assurance policy with Standard Death Life Assurance Company over the life of Robert for her own benefit. Shona had nursed Robert through a health scare before they bought their house when he had suspected neurological issues, and an operation for a brain tumour, that turned out to be benign, but Robert has fully recovered and Shona doesn't mention this in the proposal form, although she does note that Robert has an annual medical check-up.

In 2014 Robert takes out a life assurance policy with Standard Death Life Assurance Company over his own life. In completing the proposal form Robert warrants that he has no current illnesses, although in answer to a general question asking if there is any more information that Robert feels should be brought to the attention of the insurer does refer to his earlier treatment in relation to his brain tumour. In 2014 Shona takes out a life assurance policy with Standard Death over the life of Ted for her benefit.

In 2015 Shona takes out a life assurance policy with Standard Death over the life of her elder sister Una for her benefit. Una had a heroin problem but after a spell in rehab has not had any drugs, alcohol, or cigarettes since a period of homelessness in 2000. Una has struggled to find accommodation and jobs since her difficulties, and one month after Shona takes out the latter policy, Una borrows £20,000 from Shona. In taking out the policy there is a general question asking if Una has suffered from any conditions that the insurer should know about. Shona answers that Una had no such conditions.

In July 2016 Robert is driving Una home after she had been babysitting Ted. Ted is in the car. There is a terrible accident as Robert loses control of the car as he has a severe haemorrhage as a result of an underlying condition he has had for some 30 years. The condition had not been noticed when Robert was treated. In the accident Robert, Ted, and Una are killed.

Standard Death refuse to pay Shona on any of the policies claiming that there was material non-disclosure and no insurable interest.

Advise Shona.

Question 6

Explain by reference to case law and other primary sources the principal distinctions between lien and pledge, and drawing on this consider whether the law of lien and pledge provides sufficient types of rights in security over corporeal moveable property for unincorporated business debtors.

Question 7

Do you think the law relating to sequestration adequately deals with debtors who attempt to hide assets from their creditors by handing them over to friends or family? Your answer should consider the law relating to challengeable transactions, the discharge of the debtor, mechanisms to punish the debtor, and such other issues as you think are relevant.

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