



**THE LAW SOCIETY OF SCOTLAND
EXAMINATIONS**

SCOTS COMMERCIAL LAW

Friday 9 February 2018

**1000 – 1200
(Two Hours)**

Candidates should answer any THREE questions

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Question 1

With reference to legal authority, consider the implications of the following scenarios in respect of the enforceability of the bill of exchange and each parties potential liability on it:

- (a) William, the cashier of Big Builders Ltd, has made out a demand bill of £250,000 in favour of one of the company's largest suppliers, Charles Good. Once the Managing director of Big Builders Ltd has signed the Bill as "drawer", William then forges the indorsement of Charles Good and gives it to James, to whom William owes £250,000. Alexander is the drawee and James presents the bill to him and obtains payment.
- (b) Considering the same circumstances, what would be the situation if the bill had been negotiated specially by William to James, who simply indorsed it generally and sold it on to Felicity for £25,000 and she then sold it on to Raphael, for £200,000. Raphael then gives it to his son Amos for his birthday and on Amos presenting it to Alexander, the latter refuses payment.

Question 2

- (a) Explain the general principles and procedures associated with Diligence; and
- (b) Discuss in detail the procedures and effects of diligences against real rights in heritable property.

Question 3

Grant and Michelle recently paid £1,165,000 for a Super yacht. This is their first venture into buying a yacht but they have done a bit of sailing with friends and more importantly have enjoyed many an excellent cocktail party on board such a yacht in the Riviera. So they thought it would be a good idea to have one of their own. They wish to use the yacht mainly for entertaining and as they often suffer from sea sickness, do not intend to move it much themselves once it is berthed in Antibes.

They have done a bit of research however and feel that this is the right yacht for the job, being good value but also the right size to host their lavish parties. For reasons of aesthetics, they had wished it to be traditionally built and as this is wooden then it seems to fit the bill too - it will give the right impression to their many rich friends. By their own admission too, they know very little about yachts and what to look for in one as far as sail ability is concerned but as long as it looks good, they are happy. "What can go wrong?" says Grant. "Our guy will sail it wherever we wish and we shall enjoy it"

The dealer assures them that it has been recently overhauled and is in excellent working order for a boat of that age and further advising that it was certainly suitable for what they wish it to do.

As the yacht is about to leave for Antibes from Largs Marina, Michelle notices that there has been paintwork done on the hull and it is a bit shoddy. She is most upset as it spoils the look of the exterior of the yacht. Whilst the yacht is en route the Captain employed by Grant and Michelle to sail it reports that it has taken on some water as there is a small hole in the hull and the engine is not working at all. Grant and Michelle then fly out to meet the yacht in Antibes but on their first night on board, Grant manages to trip over a part of the deck and injures his knee. The final straw comes when the on-board built-in wine fridge ceases to function.

They immediately contact the seller to advise him of the defects they have discovered since purchasing the yacht and to argue that the yacht is not fit for purpose and that they should at least get their money back as well as costs to cover their loss in having to cancel their party and for Grants visit to the local private hospital for his knee injury.

Advise Grant and Michelle as to the likelihood of success in their claims.

Question 4

Discuss the effect of the House of Lords decision in *Smith v Bank of Scotland* 1997 S.L.T. 1061, when Lord Clyde relied on the English decision in *Barclays Bank Plc v O'Brien* [1994] 1 A.C. 180, by applying the principle of good faith and thereby disabling a creditor from enforcing a cautionary obligation. How has this further affected the relationship between the lender and the cautioner when entering into a cautionary arrangement?

Question 5

- (a) Gillian has been recently sequestrated and the trustee in sequestration is seeking to deal with her estate. The trustee has discovered the following information which may unfairly prejudice the creditors. Consider each situation and advise the trustee of the position in terms of the law.
- i. A year before being sequestrated Gillian granted a security over her business premises in favour of her largest creditor.
 - ii. However, within the last 9 months before the sequestration she also had granted a Standard Security over her home in favour of the Bank to cover a loan she

needed to keep her business afloat.

- iii. Gillian gave her nephew her Ferrari 18 months ago as she decided to take up cycling to work - it was nearly his 18th birthday so she said it was an early birthday present.
- iv. A few days before the date of sequestration , on her way to the bank to deposit some cash she had received that day from Bob who owed her for some work her business had recently completed for him , Gillian met Jason , one of her creditors she owed quite a considerable amount to for refitting the office. She said “that’s handy that I’ve met you, here is the cash I owe you”.

(b) How does the law treat a sequestrated debtor’s earnings from employment?

Question 6

Critically evaluate how effectively the Insurance Act 2015 has resolved the previous difficulties encountered in respect of an insureds pre-contract disclosure of material information.

END OF QUESTION PAPER