



THE LAW SOCIETY OF SCOTLAND EXAMINATIONS

LAW OF OBLIGATIONS

Tuesday 7 August 2018

**0900 – 1100
(Two Hours)**

**Candidates should answer THREE questions,
ONE question from Section A, ONE question from
Section B and plus ONE other from either section.**

All questions are worth 100 marks.

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SECTION A: CONTRACT LAW

Question 1

In relation to the law of damages for breach of contract, explain your understanding of any **three** of the following:

- a) Agreed damages clauses (also known as liquidated damages clauses);
- b) Mitigation of loss and remoteness of loss;
- c) Damages for upset and distress;
- d) The extent to which profits made by the contract breaker is a relevant consideration.

Question 2

Explain the main reforms that have been introduced by the Contract (Third Party Rights) (Scotland) Act 2017.

Question 3

Fred runs a garage in Edinburgh. In early April, he entered a contract with Quickwash Limited to install a carwash at the rear of the garage. It was agreed that the work would start on 1st July and be completed by 15th July. Work started on time but by 15th July only about 75% of it had been completed. On 16 July, Fred contacted Quickwash to find out what was happening. He was told that the work would be finished soon, although no specific completion date was mentioned. The job has still not been completed. Fred would now like to cancel the contract with Quickwash and employ alternative contractors to complete the work but he is not sure where he stands legally.

[Please turn over]

Meanwhile, Gordon instructed Fred to repair a faulty exhaust in his car. Fred carried out the repair and advised Gordon that his car was ready for collection. Gordon explained that he wishes to collect the car but would not be able to pay Fred's bill until he receives a bank loan. Fred does not wish to allow Gordon to take back possession of his car without paying his bill but is unsure of the legal position on this issue either.

Discuss Fred's legal position in relation to the above.

END OF SECTION A

SECTION B: DELICT

Question 4

Morgan and Jemma work, part-time, in The Drunken Parrot, a bar/restaurant in Newington. One day, Jemma is helping Morgan with deliveries.

The deliveries (foodstuffs and boxes of wine) are from the back of a delivery van. Both have trollies to help them with the deliveries. The deliveryman uses an electronic winch to lower the boxes onto their trollies. It is a windy day and rain has started to fall. The bar manager recommends both women to put on jackets supplied by the bar and to put the hoods up. Both ignore the bar manager's recommendation.

Jemma has long hair and due to a sudden gust of her hair is blown forward and is caught up in the winch as it is being raised back up. Morgan reacting to what she sees throws out her right hand, catches Jemma's hair and tries to free it. Unfortunately, Jemma slips backward. Morgan is left holding a substantial amount of Jemma's hair that is attached to skin torn from Jemma's scalp.

Advise Jemma.

Question 5

When advising a defender in a civil action arising from a possible breach of the duty of care, what defences apply generally in the law of delict in Scotland? Illustrate with reference to applicable case law.

Question 6

In a personal injuries action, what damages may be sought by a pursuer? Outline and discuss the main headings for a claim and illustrate with reference to appropriate case law.

END OF SECTION B

END OF PAPER