



# THE LAW SOCIETY OF SCOTLAND EXAMINATIONS

## LAW OF OBLIGATIONS

**Tuesday 12 February 2019**

**0900 – 1100  
(Two Hours)**

**Candidates should answer THREE questions.**

Candidates are required to:

- Answer **one** question for **Section A** and **Section B**.
- Candidates **must answer** a third question chosen **from either** Section A **or** Section B.
- Candidates must answer **a total of 3** questions.
- All questions are of equal weight.

**LAW SOCIETY OF SCOTLAND  
EXAMINATIONS**

**LAW OF OBLIGATIONS**

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

**SECTION A: CONTRACT LAW**

**Question 1**

a) Explain and illustrate why it is important to distinguish between a contract being void and merely voidable.

(50 marks)

b) Explain the circumstances in which a contract will be voidable because of error induced by misrepresentation.

(50 marks)

**(Total 100 marks)**

**Question 2**

Discuss whether the contract terms referred to below are binding on Alice, Barry and Claire. For the purposes of this answer, you can assume that the terms have been validly incorporated into the contracts under common law. You should focus on Part 2 of the Consumer Rights Act 2015.

a. Alice recently broke her leg while on a roller coaster ride at a fair ground in Edinburgh. The injury occurred because the roller coaster developed a fault due to negligent installation. Alice wishes to sue the operator of the fairground. However, she is worried because one of the terms and conditions states: "no liability is accepted for injuries sustained by customers caused by negligent installation of equipment."

b. Barry recently entered a contract with a retail store to buy a leather three-piece suite which Barry had chosen from a catalogue. There was a choice of colours. Barry chose brown as it matched the colour scheme in his living room. It was arranged that the seller would deliver the suite to Barry's house. When the suite was delivered, Barry was surprised to note that the

leather was black rather than brown. He complained to the seller about this. The seller referred Barry to one of the terms and conditions of the contract, which states: "All suites delivered may vary in colour from that chosen by the customer."

- c. Claire, an Edinburgh resident, entered a contract with Wepaint4U, a firm of painters and decorators, to do up her flat in Edinburgh's New Town. Unwisely she paid the full price up front. Wepaint4U completed only half the agreed work and then walked off the job. Claire intends to sue the firm at Edinburgh Sheriff Court. However, a term of the contract states: "English law will apply to this contract. The English courts will have exclusive jurisdiction in the case of any dispute."

### **Question 3**

In relation to identifying the express terms of a contract, write notes on **three** of the following:

- a. Entire agreement clauses;
- b. Timing of incorporation;
- c. Incorporation of onerous and unusual terms;
- d. Rectification of defectively expressed documents

**END OF SECTION A**

## **SECTION B: DELICT**

### **Question 4**

Scots law recognises the fact that if one has the right to occupy land, for example by owning it, one has the right to enjoy that land free from external interference. However, on occasion the use to which that land is put may cause problems.

What are the main factors that the courts take in to account when deciding if there is a nuisance? What defences' might be available?

Discuss with reference to appropriate case law.

### **Question 5**

*Hedley Byrne v Heller* [1964] AC 465 is the leading case in relation to negligent statements. In this case, Lord Pearce stated that "words are more volatile than deeds. They travel fast and far afield. They are used without being expended".

Discuss the principles set out in this case and their application to negligent statements.

### **Question 6**

Jim works in a meat production factory as a forklift truck driver. The factory is owned and occupied by Bovem Ltd.

One day Willie, an apprentice butcher, is helping Charles who is cutting up a carcass with a power-saw. As Jim is driving his truck parallel to the production line he collides with Charles.

The power-saw is pushed forward by the impact and badly injures Willie. Charles suffers nervous shock. Betty, a cleaner, who is standing 50 metres away at the time, also witnesses the accident and suffers nervous shock.

Discuss the liability, if any, of Jim and Bovem Ltd. to Willie, Charles and Betty.

**END OF SECTION B**

**END OF PAPER**