



**THE LAW SOCIETY OF SCOTLAND
EXAMINATIONS**

BUSINESS ORGANISATIONS

Friday 15 February 2019

**1330 – 1530
(Two Hours)**

**Candidates should answer any THREE questions. Give
authority for all answers.**

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Question 1

Jan is in partnership with Karl, Luke and Mike. They work in public relations. They each have 25% of the equity in the partnership. Despite being encouraged to do so, they never have written down their partnership agreement, though they have verbally agreed various matters. Jan has fewer clients than the others. Each partner's share of the profits (after allowing for the firm's overheads) is proportionate to each partner's fee income relative to the total fee income of the firm. Jan feels herself to be the poor relation in the partnership. Using a variety of false web-addresses and emails, she engineers an untrue scandal featuring one of her clients, with just enough apparent veracity in it to make it plausible. Having set up the scandal, in her capacity as partner of her firm, she then approaches the client and satisfactorily manages to close the scandal down. She thus is able to charge her client very highly and the firm's fee-income is noticeably higher that year. A little later, the company secretary of the client wonders if Jan's success was just a little too good to be true.

Karl used to run his own business and is not very used to having to deal with people with different views. His hasty decision-making, which is how he successfully ran his own business, is not so well received by his fellow partners. The other partners tell him on more than one occasion that he has to think about his fellow partners and not to take on new business with new clients without consulting them. He says that he will do this. Nevertheless, when an opportunity to be involved in a new high-profile project, run by a new client called Norman, comes in, he thinks it so good that he immediately signs the firm up to it and sends off some publicity material, in order to make sure the firm gets all the future business. Karl is unaware that Norman has been recently released from prison abroad and is well known in the business world for his unreliability. The remaining partners try to withdraw the material but Norman is already using it. The remaining partners tell Norman that Karl is not authorised to send in the material and propose to obtain an interdict against Norman to prevent its use.

Luke is asked by a client to find out about a whistleblower in the client's business. Then client has asked for the utmost discretion. Luke's investigations do reveal who the whistleblower is, and the information is passed onto the client. Due to carelessness by one of Luke's staff, in the process Luke is identified as the person investigating the whistleblower. Luke refuses to say what he was doing and no-one can get any information out of him. The whistleblower is now suing the firm for breach of privacy.

[Please turn over]

Mike concealed the fact that he had made a substantial gain from the sale of a work of art which he personally owned. He did not disclose this to HMRC. HMRC are now trying to arrest the firm's bank account on the dependence of an action against Mike for the outstanding capital gains tax.

Explain the law relating to these four matters.

Question 2

Alice runs an antique shop in Dunkeld. She has an assistant, James. James quite often manages the shop when Alice is out, but James has been expressly told by Alice never to buy any antiques over £500 in value or to sell any antiques above that value without Alice's approval. Sometimes James's sister, Kate, helps Alice on the same basis.

Betty comes in one day to ask Alice to value a Scottish silver teapot. Alice and James are out but Kate is present. Betty agrees with Kate to leave the teapot for Alice to value. Alice comes in later, reads Kate's instruction to value the teapot, and puts a piece of paper on it saying "£400", the idea being that when Betty next comes in someone can tell Betty the teapot's worth. Kate leaves the shop to take her son swimming while Alice has to go to the doctor's. James comes back to the empty shop. Tom comes in, asking to buy a silver teapot. James sells him Betty's teapot, unaware that it is Betty's, thinking instead that it is part of the stock of the shop. Betty comes back later asking for valuation figure and the teapot. James cannot produce the teapot, and Tom cannot give the teapot back as he has already given it away as wedding present to a friend. The friend has since left the country with the teapot.

Because of this mishap, James has been told that he may not accept for sale any goods at all. Max comes in with an antique pocket watch to sell. James explains that he cannot accept the watch but is willing to look at it for insurance purposes if that would help. He thinks it would be worth £500. On the basis of this statement, Max insures the watch for that amount. The watch is subsequently stolen and the insurers, having been given details of the watch, ascertain that it is only worth £200, which is all they are willing to pay to settle the insurance claim. When James is confronted with this, James says that Max knew he was not authorised to conduct business and that he did not charge Max for the valuation.

Paul comes into the shop with some rare stamps, left to him by his great-uncle. Paul is unaware that Kate is not the proprietor of the shop. Kate recognises the stamps as being very usual and offers to buy the lot for £400. Paul accepts, but later on realises that the stamps are worth a great deal more and that Kate is not the owner of the shop. He returns to the shop and asks for the stamps back. He says that Kate had no right to buy the stamps from him.

Alice thinks the shop would look better if there was a fine old-fashioned till on the counter. James says he will see if he can find one in Perth for her. He actually has one himself and he produces it for her. She asks where it came from and he says that he obtained it from an old tobacconist's – which is true, but he acquired it ten years ago for very little. Old-fashioned tills have subsequently gained in value. Having checked the internet for comparable prices, she pays him the market price for the till. She then discovers that it was James's till.

Explain the law relating to these four matters.

Question 3

- a) In the light of recent case law, explain the extent to which a director may be liable for any of his company's activities while his company is solvent.
- b) In the light of recent case law, to what extent is a holding company liable for the acts and omissions of any of its subsidiaries?

Answer both (a) and (b). They are of equal value.

Question 4

Bloxen Ltd is subject to compulsory liquidation following the expiry of the *induciae* of a charge. Bloxen Ltd was originally set up as a corporate vehicle to hold the performance rights of various recordings. There is only one shareholder and director, Kiren. The liquidator is appointed at a court hearing in January 2019. The liquidator discovers the following matters:

- (a) Emma, Kiren's mother, lent Bloxen Ltd £30,000 in January 2016. In September 2018 Bloxen Ltd assigned in favour of Emma the performance rights over a substantial number of the recordings owned by Bloxen Ltd. On the occasion of the assignation, Emma lent Bloxen Ltd a further £10,000.
- (b) In the run-up to the appointment of the liquidator, Kiren had been approached by various creditors concerned at the delay in payment of their invoices. Kiren had told them that she was on the brink of negotiating a very important deal with a major retail outlet for her recordings. The liquidator establishes that Kiren had had one meeting with a representative from this outlet. There is no minute of the meeting and no evidence of any deal.
- (c) Ten days before the appointment of the liquidator, one of Bloxen Ltd's creditors arrested funds sitting in a high yield bank account operated by Bloxen Ltd. Kiren claims that the account contains some of her personal money which had merely been sitting in the account in trust for her, and that any of her personal money should not be subject either to arrestment or seizure by the liquidator. She offers to prove that she made the payments into the account from her own funds.
- (d) The liquidator, when examining the records of Bloxen Ltd, notices that Bloxen Ltd appears during Spring 2018 to have paid for a skiing holiday for Kiren's daughter and for hotel bills for Kiren in a resort in Sardinia. There is no written evidence of a board meeting of Bloxen Ltd approving such expenditure. Kiren does produce a video recording of herself having a board meeting in February 2018 (the date is confirmed by a note on the recording). She is sitting at a table, on her own, with the recording device switched on. When asked about this, Kiren says she has done nothing wrong as she, as sole shareholder, can approve whatever she likes.

Explain the points of law arising in each of these four matters.

Question 5

Explain the following four matters.

- (a) Explain why might a company wish to buy back its own shares, and having done so, explain why the law has made provisions for a capital maintenance reserve.
- (b) Recently there have been concerns about the ability of auditors to carry out the task of auditing large companies. What exactly is the role of the auditors, and should they prove incompetent in their auditing, to whom are they liable?
- (c) Private companies are not obliged to have general meetings but public companies must do so. Explain what important company activities may only be carried out at general meetings of public companies and explain the rationale behind these activities being only possible at a general meeting.
- (d) Explain the practice of and the purpose of the register of people of significant control within a UK company.

Question 6

- a) Explain how a company records (where appropriate) and registers a standard security and a floating charge. To what extent is it possible to vary the normal order of priority between a standard security-holder and a floating charge-holder?
- b) If an administrator is appointed by a floating charge holder, what task does the administrator have to do?

END OF QUESTION PAPER