



**THE LAW SOCIETY OF SCOTLAND
EXAMINATIONS**

SCOTS COMMERCIAL LAW

Friday 16 August 2019

**1000 - 1200
(Two Hours)**

**Candidates should answer THREE questions
All sections of a question must be answered.**

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Question 1

Critically discuss the significance of section 3 of the Insurance Act 2015 for insurance contracts.

Question 2

Andrew is a keen vintage board games collector. He is also a sole trader and trades under the name Board Meetings, which is a business that organises and hosts meetings of board game enthusiasts.

Upon visiting a local antiques shop, Andrew notices an original Victorian military-themed board game called "Napoleon and Wellington". The game is priced at £100, which Andrew considers to be a bargain. Andrew is keen to purchase the game but is unsure as to whether he will buy it for his own private collection or whether he will use it as part of his business. Rather than examining the contents of the box containing the game, Andrew asks the manager of the shop what condition the game is in. The manager tells him: "it is in an acceptable condition, all things considered". Andrew mentions that he runs a business organising board game meetings and says that he is considering using "Napoleon and Wellington" in that context. He adds that his customers can often be demanding. Andrew then proceeds to buy the game.

Later the same day, Andrew opens the box and discovers that the condition of the game is poorer than he expected. The hat of the Napoleon figurine has been knocked off and cannot be reattached, while the Wellington figurine has been replaced by a Wellington boot from another board game. The board itself is largely unscathed, except for a few scratches, and the other game pieces are undamaged and are all present within the box. Nevertheless, Andrew is angry and approaches you for advice.

Advise Andrew as to his remedies with reference to relevant legal authority.

Question 3

Heather has been having money difficulties for some time. After various unsuccessful attempts to address these difficulties, one of Heather's creditors decides to seek her sequestration. It is proved that Heather is insolvent. The court awards sequestration and a trustee in sequestration is appointed. The date of sequestration is 1 June 2019.

The trustee in sequestration is, however, unsure about whether certain property items will vest in him as part of Heather's estate. In particular, there are doubts about the following property:

- (a) Heather's house in Kilmarnock. Prior to the sequestration, Heather had sought to sell the house and had delivered a disposition to the purchaser on 15 May 2019.
- (b) Company shares held by Heather in trust for her nieces Isabel and Jenna. The trust has been in existence for a number of years.
- (c) A valuable jewellery collection inherited by Heather from her uncle Kyle, who died on 30 June 2019.
- (d) Salary payments received by Heather since 1 June 2019 from her job as a museum assistant.

The trustee approaches you for legal advice about the status of each of these. Advise the trustee.

Question 4

With reference to the Bills of Exchange Act 1882, discuss what is meant by a "bearer" bill and an "order" bill and critically discuss the differences between these types of bills of exchange including with respect to their "negotiation".

Question 5

Discuss the significance of *Smith v Bank of Scotland* 1997 SC (HL) 111 and subsequent case law as regards the ability of a creditor to enforce a cautionary obligation.

Question 6

Bright Boating Ltd ("Bright") is a Stonehaven-based company that sells boating equipment. For a while the business is successful, but market conditions deteriorate and Bright encounters debt problems. There are various creditors who are owed money by Bright.

However, Bright does have a number of assets. It has a bank account with Clear Credit Bank which is in credit to the amount of £10,000. Bright also owns a shop at Stonehaven harbour as well as the contents of the shop, including £3,000 in cash and unsold boating equipment worth £15,000. The shop, excluding contents, is valued at £100,000 but is already subject to a security right that secures a debt of £80,000 owed to Delta Bank.

One of Bright's suppliers, Echo Boats Ltd ("Echo"), is owed £30,000 by Bright and has a court decree to this effect. Echo is keen to enforce its debt against Bright and approaches you for advice.

Explain to Echo why executing diligence is advisable and provide details of the forms of diligence that could be used in relation to particular items of Bright's property, including the effect(s) of such diligence.

END OF QUESTION PAPER