

**THE LAW SOCIETY OF SCOTLAND  
EXAMINATIONS**

**BUSINESS ORGANISATIONS**

**Friday 16 August 2019**

**1330 – 1530  
(Two Hours)**

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

**Each question has 100 marks.**

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**Question 1**

Smartwear Ltd is a prosperous holding company which operates various subsidiary companies providing uniforms for nurses, catering staff, bus drivers etc. The uniforms are well-known and well-made, and there is a steady market for them.

60% of the shares in the holding company are held by the directors, but the remaining shares are held by various small investors (“the small investors”). There are restrictions within the company’s articles on the easy transferability of their shares.

The small investors nevertheless wonder whether or not they are receiving as good a return on their investment as they might. They are concerned that the directors appear to have very large expense accounts, apparently on company business. The company has a light aircraft to ferry the directors between its various factories and subsidiaries. The payments in the accounts for catering and hospitality are high. While there is no suggestion of fraud, there is a suggestion that the directors and their families are benefitting unduly at the expense of the company.

The small investors consider that if the company were managed more efficiently they would get a better return on their capital. The difficulty for the small investors is that they do not command a majority of the shares and cannot readily persuade the directors to change their ways.

In terms of company law, what could the small investors do? If there are legal remedies open to them, what would they need to prove in order to exercise those remedies?

**Question 2**

Two of the more difficult areas of the law relating to agency are where there is doubt about the extent of the agent’s authority to act on behalf of the principal, and the extent to which, if at all, an agent should be liable if the principal turns out either not to exist or not be the person the third party thought he was. This is particularly a problem for solicitors carrying out conveyancing. What is the law in Scotland relating to these two matters?

### Question 3

Cupido is a dating agency run on a partnership basis by four friends, Juno, Pallas, Vesta and Ceres. They do not have a partnership agreement, mainly because it is to them an amusing hobby rather than a business. Nevertheless, each partner receives one quarter of the profits of the business and all four partners contribute equally to any capital expenditure required for the business.

Juno is using the Cupido client-list to offer the clients, through a website her husband has set up, cheap cosmetics. Leaving aside data protection issues, the clients are unaware that the website has anything to do with Juno. Her fellow partners are also unaware of this, and Juno sees no reason to tell them.

On behalf of Cupido, Pallas accepts a fee from a client, Atlas, who is hoping that Cupido will find him a partner. Pallas alters the photograph of Atlas's face to make him look younger and more attractive, something Atlas is impressed by. Another client, Hera, seeing Atlas's touched up photograph, pays to make an arrangement to meet him, but is not impressed by the reality of Atlas's visage. Hera sues Cupido for the return of her own fee. The other partners in Cupido say that Cupido is not responsible for the unauthorised acts of a fellow partner, and that Hera should reasonably have expected that a dating agency would naturally try to present its clients in their best light and that the refund should be sought from Atlas.

Vesta is asked to write a reference for young man she knows. He is applying to work as a chef in a restaurant. Being in a hurry, Vesta sends the reference from the Cupido office and on a Cupido-headed email. The restaurant finds the young man unsatisfactory. It wants to sue Cupido for the money wasted hiring the young man.

Ceres accepts a bribe from one client to get hold of the personal details of another client. The police are called in and Cupido is successfully prosecuted.

*Explain the law as it relates to partnership pertaining to these four matters. You should ignore the potential remedies under consumer law.*

### Question 4

(a) Explain the law relating to the execution of contracts by (i) a company in Scotland and (ii) a partnership in Scotland.

(b) Explain the law relating to the register of people with significant control, and the purpose of this register.

(c) Explain the procedure for the registration of both a standard security and a floating charge at the Registrar of Companies.

(d) Why is registration of the charges in (c) so important, and what are the consequences of not carrying out the procedure correctly?

### Question 5

Explain what is meant by the term “inability to pay its debts” in terms of a Scottish company’s liquidation, taking account of the relevant case law applicable to this phrase.

**Question 6**

What is the law relating to the interpretation of the articles of association of a company? What restrictions are there on the terms incorporated in the articles?

**Question 7**

To what extent is a director protected by the law from being personally liable for the debts of his or her company?

**END OF PAPER**