



THE LAW SOCIETY OF SCOTLAND
QUALIFIED LAWYERS ASSESSMENT

OBLIGATIONS

12 May 2021

1030 – 1200
(One hour)

Candidates are required to answer TWO out of four questions.

The question paper is divided into Section A (Contract) and Section B (Delict) and candidates are required to answer ONE question from Section A, and ONE question from Section B.

No marks will be awarded for copying out the text of materials which candidates are permitted to take into the exam.

SECTION A: CONTRACT

Question 1

Andrew is a highly regarded fitness instructor. He organised a two-day conference in Edinburgh for fitness instructors from around the world to share knowledge about the latest developments in fitness programmes. 150 delegates booked to attend.

The venue was the Eliot hotel in the centre of Edinburgh. Andrew booked this several months in advance. The fee was £5,000, payable on the first day of the conference. Three days before the conference was due to start, the manager of the Eliot informed Andrew that he was unable to fulfil the booking because another conference had been booked for the same dates. Andrew flew into a panic. He googled conference venues in Edinburgh and found an alternative venue called the Childers hotel, which was less than a mile from the Eliot. Debbie, the manageress of the Childers said that she could take the booking but, because it was at such short notice, the fee would be £20,000. Andrew decided he was in no position to negotiate a lower fee and accepted straightaway.

The conference went ahead and was regarded as a success by all those that attended. Nevertheless, because Andrew had to pay £20,000 for the venue rather than £5,000 as he had anticipated, he made a loss on the event. This caused him a great deal of stress and anxiety. So much so that his GP prescribed medication to alleviate the symptoms.

Andrew now wishes to sue the Eliot hotel for damages. He wishes to claim for both financial losses and for the upset, distress and anxiety caused by their breach of contract.

Advise Andrew as to his prospects of success, paying particular regard to any defences that the Eliot might put forward.

Question 2

Provide advice to the following two clients:

- a) Gordon works as a manager of a pub in Edinburgh. He has a written contract of employment that sets out, among other things, his annual salary, but says nothing about bonuses. Gordon claims, however, that, during negotiations, it was verbally agreed with the owner that Gordon would also receive a bonus of £5,000 if bar takings exceeded a certain target in 2018. Bar takings did exceed the target and Gordon is claiming his bonus. The owner refuses to pay it on the basis that it is not provided for in the written contract of employment.

Discuss whether Gordon is legally entitled to the bonus.

- b) Diana runs a business buying flats, doing them up and selling them on. She entered a written contract with Brian for refurbishment works to one of the flats. The contract contained Brian's standard terms. Diana did not bother to read the terms before signing the contract document. Later that day she read the standard terms and found that one of the terms stated that Brian would be entitled to an extra payment of £1000 if he completed the work more than 7 days head of the agreed deadline. This had never been discussed with Brian.

Advise Diana if this term forms part of the contract.

END OF SECTION A

SECTION B: DELICT

Question 3

Rowan is a young music journalist. She often listens to new releases on her state of the art sound system in her second floor flat. Her neighbours, above and below, frequently complain about the volume of the music. John lives immediately next door to Rowan. John works nights as an intensive care nurse at the Edinburgh Royal Infirmary and is unable to sleep during the day due to the music being played loudly by Rowan. This is impacting on his physical and mental health. Despite asking her repeatedly to turn it down, Rowan has not listened to him. John has recently started to use drills and other tools when she is playing music.

One afternoon, as she put on a new release by Years and Years very loudly, to get the full effect, John began drilling. Furious that she could not focus on the music, Rowan banged on John's door. John opened the door. Rowan immediately began to berate him and told him to stop drilling. John replied that he would stop provide she turned the music down so that he was able to sleep. She turned it down but when she heard John leaving his flat, she immediately turned the volume up full.

In the mixed-use building opposite the block of flats where Rowan and John live, a restaurant reopened after Lock Down. It originally opened in January 2020 just before the pandemic. Now it is popular and the staff after closing bring out the recycling and rubbish for collection in the morning. Rowan hears them moving the bottles every night between 12 and 1 am. This disturbs her sleep.

Behind the block of flats is one of the few agricultural fields still used by the last remaining farm. The farmer has always raised cows and their manure is piled up in the field. The smell of the manure occasionally drifts into the flats. Recently, the smell has become very noticeable, and Rowan believes she can smell it in her clothes. This is making her very self-conscious when she attends music promotions to cover them for her online music review.

Advise John and Rowan of what remedies may be open to them in delict.

Question 4

Dr Nick Jones has arrived to meet with you (a civil court trainee) and your partner, Mr Reith.

Dr Jones works in a medical and pharmaceutical testing laboratory. He is one of the main researchers. Dr Jones is an experienced driver. One icy morning driving to work along a quiet country road in East Lothian he suddenly encountered a sharp bend on the road. Unable to brake, his car began to spin and collided with a tree. The car burst into flames with Dr Jones trapped in the car.

James, a jogger, nearing the vehicle saw the flames and Dr Jones. James rushed to the car to free Dr Jones. James sustained burns to his arms as he pulled Dr Jones from the car. James left Dr Jones lying unconscious by the roadside and set out running back to town to seek attention for his burns. James has served an initial writ on Dr Jones claiming compensation for the injuries he sustained.

Peter was driving the next vehicle to pass the scene of the accident. Peter was on his way to Edinburgh airport to fly to London to sign a major contract for his employer. Turning the corner Peter could not stop his car in time and crashed into Dr Jones' car, part of which protruded on to the road. Peter was seriously injured. As a result of his injuries, Peter was unable to fly to London and sign the contract. The potentially lucrative contract was lost, and Peter's employer closed the business. Peter's health deteriorated as a result of the injuries and he is unable to work to support his family.

Advised Dr Jones.

END OF SECTION B

END OF QUESTION PAPER