



THE LAW SOCIETY OF SCOTLAND  
QUALIFIED LAWYERS ASSESSMENT

**OBLIGATIONS**

3 November 2021

1030 – 1200  
(90 minutes)

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**

BoomBoom Club operate a live music venue called “Liquid Dance” at Tollcross, Edinburgh. They also owned, through an associate company, a discotheque called “Heaven’s Gate” on Lothian Road, Edinburgh. In November 2020, BoomBoom Club advertised “Heaven’s Gate” for sale. In the advertisement, they indicated that they would not sell it to a nightclub or pub operator.

In March 2021, BoomBoom Club contracted to sell Heaven’s Gate, on Lothian Road, to Pump it Up, who intended to run the premises as a discotheque. In the missives for the sale of Heaven’s Gate to Pump it Up the parties agreed a “non-compete agreement”. In Clause 5.1 it provided that Pump it Up would not use the premises “for late night entertainment in direct competition on a like for like basis” with BoomBoom Club’s business, Liquid Dance at Tollcross, Edinburgh.

When it first opened its operations at Heaven’s Gate, Pump it Up ran it as a discotheque. Then in July 2021, Pump it Up announced their intentions to operate the premises as a live music venue/discotheque on Thursday, Friday and Saturday evenings.

Advise BoomBoom Club.

## Question 2

Grant owned fishing rights and sea fishing rights on and at the mouth of the River Tyne. The Whitekirk Fishing Club leased the fishings from Grant. After long discussions, it was agreed that the Whitekirk Fishing Club would buy the fishing from Grant. A price of £60,000 was agreed.

A formal offer was made by the Whitekirk Fishing Club. The offer included the following clause:

“We hereby offer to purchase from your client...all and whole sole and exclusive right to fish for salmon, sea trout and brown trout over the lands and water presently enjoyed by your client, together with the whole other fishings.”

Whitekirk Fishing Club maintained that this was intended to include all the fishings owned by Grant.

Grant sent a qualified acceptance which, he averred, was intended to be an acceptance of the club's offer to purchase the river fishings. The acceptance included the following:

“We hereby accept your offer...to purchase all the whole certain fishings rights in the River Tyne and that at the price of £60,000 and on the terms and conditions set forth in your said offer”.

Missives were concluded and the disposition registered in the Land Register. The disposition specifically disposed the sea fishing as well as the river fishing.

Grant is challenging this on the grounds of defective expression.

Advise Whitekirk Fishing Club.

**END OF SECTION A**

## **SECTION B: DELICT**

### **Question 3**

Lesley-Anne invited her friends Clare Frances, James, Duncan and Ken to her house for afternoon tea. She provided sandwiches, cakes and small savoury and sweet pies for her guests.

Clare Frances broke one of her front teeth on a piece of gravel while eating a cake made by Lesley-Anne. Lesley-Anne had stored the flour she used to make the cakes in an open container in her garage. The container had been situated next to the gravel container from which the gravel in question fell into the flour.

While pouring tea for James, Lesley-Anne stumbled on the corner of the hearth rug and scalded James with the contents of the teapot.

Startled by James's cry of pain, Lesley-Anne dropped the heavy ceramic teapot on Ken's right foot. Ken was wearing canvas shoes and the heavy teapot fractured the big toe of his right foot and the two toes adjacent.

During this mayhem, Duncan ate several small meat pies and became ill later the same day because Lesley-Anne had not refrigerated the pies that she had made several days before her friends' visit.

Advise Lesley-Anne on her possible legal liability to her friends.

### **Question 4**

Odd Job Clearances had been emptying an old country house in East Lothian of its contents before renovation work began. They hired a skip in which to place the rubbish. When they had finished work for the day, they left the skip and its contents on the side of the narrow country lane in front of the property. It was unguarded and unlit.

That evening some boys, Tom aged 10 and Kegan aged 12 came along and decided to investigate the skip. They climbed into the skip and set fire to the skip's contents. An old petrol can buried among the rubbish exploded causing serious burns to Tom. The petrol can had been dropped in the skip by Jeff who lived in the vicinity and had taken the opportunity to dump some of his own rubbish after the workmen had left. Jeff knew about the skip because he been helping the workmen during the day and they had given him £40 to thank him for his help.

Later that evening Derek, an elderly driver, crashed into the back of the skip in the unlit lane. The workmen discovered Derek still strapped in the driver's seat of his car when they return to begin work the following morning. Derek had died from a heart attack.

Advise Odd Job Clearances of the legal implications of the scenario above and their potential legal liability.

**END OF SECTION B**

**END OF QUESTION PAPER**