

**THE LAW SOCIETY OF SCOTLAND
EXAMINATIONS**

SCOTS COMMERCIAL LAW

Friday 10 February 2023

**0900 - 1200
(Three hours)**

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

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Question 1

Explain the significance of each of the following in relation to the law of insurance, with reference to appropriate sources and using examples of your own devising:

- (a) the indemnity principle;
- (b) double insurance and contribution; and
- (c) proximate cause

Question 2

Critically discuss the remedies available to a consumer for a breach of contract of sale, where the goods are not of satisfactory quality. In doing so, cite relevant authority and outline circumstances in which a seller may seek to use particular remedies that you identify.

Question 3

Iris and Jill are sisters who live together in a house in Campbeltown, which they co-own. Their father, Kaleb, also lives nearby. The elder sister, Iris, wishes to establish a business specialising in scented candles, diffusers, and similar products. However, she does not have the money to do so and approaches a local financing company, Argyll Investments ("Argyll"), for funding. Argyll will only provide a loan if there is a suitable cautioner. Iris asks Jill whether she will act as cautioner and also grant a standard security over her share of the house to Argyll. Jill has always looked up to Iris but is not sure what being a cautioner involves and is concerned about losing the house. Iris says that becoming a cautioner will demonstrate that Jill supports her, that it is merely a formality in this situation as the business will succeed, and that the business will benefit both of them and the rest of their family. Jill is still somewhat hesitant and asks if she could be a cautioner along with Kaleb. Iris accepts this suggestion and asks Kaleb if he would be willing to act as co-cautioner with Jill. After informally chatting with a friend, who is a solicitor, at the local golf club, Kaleb agrees to be a co-cautioner. He does not, however, agree to grant a standard security over his own home.

Iris is nevertheless pleased and passes the information on to Argyll, who are happy to proceed and draft the appropriate documentation for signing. When the parties all attend in

person to sign the documents, the representative of Argyll asks them whether they have received legal advice and Kaleb answers “of course”. There is no further discussion of the matter and the documents are signed, with other formalities also completed.

The business is established and enjoys a strong start. However, after nearly a year, there is a significant downturn in trade and the business begins to fail. Iris is unable to repay the loan to Argyll and they are now seeking repayment from Jill and wish to enforce their security over the house in Campbeltown. Jill is greatly concerned by this and approaches you for advice. Advise Jill.

Question 4

With reference to relevant authorities and using your own examples, compare and contrast the diligences available over heritable property in Scots law, including details about how they are executed, their natures, and their effects.

Question 5

Akin is a sole trader and has run a local shop for many years. While at one time the business was thriving, in the last couple of years things have become more difficult. When one of the main employers in the area becomes insolvent, this leads to a further deterioration for Akin, as a number of the company’s employees are loyal customers of his but are struggling financially. Eventually, Akin’s own finances become so bad that he is no longer able to pay his creditors. He subsequently enters sequestration on 10 December 2022 and a trustee in sequestration is appointed.

Please answer whether each of the following vest in the trustee in sequestration, explaining your reasoning and citing appropriate authority:

- (a) funds held by Akin in trust for his niece;
- (b) income Akin receives after the date of sequestration;
- (c) furniture and computer equipment in Akin’s home;
- (d) Akin’s van; and
- (e) rights to payment against Akin’s debtors

Question 6

Art Lovers Ltd (“Art Lovers”) is a company that specialises in purchasing artwork from artists and sells it to customers. It owns a significant number of paintings and also owns a gallery in Ballater, which is subject to a standard security in favour of Braemar Bank (“Braemar”). Art Lovers wishes to expand and therefore seeks further finance. It consequently obtains a loan from Balmoral Bank (“Balmoral”), and grants Balmoral a floating charge with a negative pledge over its whole property and undertaking. Sometime later, Art Lovers has paid off the debt due to Braemar but acquires a new loan from them, which is secured by a floating charge with negative pledge over all of its property and undertaking. After being damaged by an unruly customer, one of Art Lovers’ expensive paintings is taken to Banchory Repairs Ltd (“Banchory”) for fixing. The repairs are carried out but Banchory remains unpaid.

After encountering financial problems, Art Lovers needs some emergency funds and pledges a valuable painting to Bon Accord Lending Ltd ("Bon Accord") in return for a loan. It also enters into a factoring arrangement with Bon Accord and assigns to that company some payment claims it has against customers. However, these attempts to raise finance are ultimately in vain, as Art Lovers defaults on its debts, the company enters liquidation and the floating charges attach. The creditors involved are confused as to their relative priorities in relation to the various assets. With reference to authority, please explain the ranking priorities of the parties as regards all of the following assets:

- (a) the gallery in Ballater;
- (b) the painting repaired by Banchory;
- (c) the painting pledged to Bon Accord; and
- (d) the payment claims assigned to Bon Accord

END OF QUESTION PAPER