

THE LAW SOCIETY OF SCOTLAND EXAMINATIONS

BUSINESS ORGANISATIONS

Friday 10 February 2023

**1300 – 1600
(Three hours)**

You are required to answer **THREE** questions.

You are expected to provide legal authority for all your assertions.

You are expected to write your own answers, and you must neither share your answers with any other candidate nor copy another candidate's work. Use your own words in your answers, not merely transcribing what you may find in textbooks, solicitors' blogs or other law-related websites.

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Question One

1. Donald is the current manager and sole director of a UK-registered shipping company, which operates from a Mediterranean island. His company, Gallowglass Ltd, is a wholly owned subsidiary of the Islay Shipping Company Ltd, registered in Bowmore in Scotland. Islay Shipping Company Ltd not only owns all the shares in Gallowglass Ltd, but lent the company £1 million, secured by means of a floating charge over Gallowglass Ltd's assets and undertaking dated 1 March 2015. Donald is a qualified ship surveyor, ship-broker and shipping agent. He is given considerable latitude in how he manages Gallowglass Ltd.
 - (a) Donald, representing Gallowglass Ltd, is invited by an acquaintance to be involved in the transport of some goods out to the Middle East. Although Gallowglass Ltd could perfectly well perform the contract, Donald, without consulting anyone at Islay Shipping Company Ltd, recommends his own son, Percy, to the acquaintance. Percy has his own shipping business, and is happy to take the contract. The contract is duly given to Percy's company.
 - (b) Donald, again representing Gallowglass Ltd, is consulted about the necessity of repairs to a new ship recently acquired by a client. Donald inspects the ship and provides a report making various recommendations. When the time for payment of the fee has come, Donald gives the client the details of the bank account for a company privately owned by Donald and registered on the island, rather than Gallowglass Ltd's account. Because of lax banking practice on the island this matter is overlooked at the time and the fee is duly paid to Donald's private company's account. The fee is then forwarded to an account in another jurisdiction from which it may not be recovered by anyone other than Donald. On top of that, the advice given by Donald was very poor advice, as result of which the client lost a great deal of money.
 - (c) Donald's girlfriend has taken Donald to court for failure to pay aliment for their daughter together. She knows that his private company receives rent from a house owned by the company on the island. The company has owned the house for many years predating the relationship between Donald and his girlfriend, though there is a mortgage over the house in favour of a local bank. Since Donald will not pay her any aliment (he does not believe the child is his,

but will not take a DNA test) she wants to get her hands on the rent paid to the company or on the house itself.

- (d) Donald fails to take out adequate insurance for a contract in which Gallowglass Ltd is involved. The contract goes disastrously wrong and Gallowglass Ltd is found liable, but lacking insurance cover, is unable to meet the claims against it. The contracting party successfully petitions the court to appoint a liquidator over Gallowglass Ltd.

The liquidator is reluctant to do much because he is not sure who is going to pay his fees. Nevertheless, the liquidator discovers the events in (a), (b) and (d). He hears about (c) from the girlfriend directly.

Islay Shipping Company Ltd in (a), (b) and (d) wants to know about its rights against Donald and its rights over the assets of Gallowglass Ltd.

The client in (b) wishes to know what its rights are against Donald, Donald's private company and Gallowglass Ltd.

The liquidator in (c) is under no obligation to help Donald's girlfriend but as an act of kindness offers to see what remedies, if any, she may have against Donald or his private company.

The contracting party in (d) wants to know what rights it has as a creditor against Gallowglass Ltd and Islay Shipping Company Ltd.

You are the legal adviser to the liquidator, and payment of your fees has been assured, including for (c). Explain the law relating to all these matters.

Question Two

A principal may ratify a transaction set up for the principal by his agent.

- (a) Explain what is required before successful ratification may take place.
- (b) Furthermore, explain when ratification is not possible, and in that event what remedies and liabilities there may be for the principal, the agent and the third party.

Question Three

Beetle plc, a non-listed public limited company, is having its annual general meeting in eight weeks' time. The directors collectively only have 20% of the voting rights in the company. The company has only two classes of shares, being ordinary shares with voting rights and non-voting redeemable preference shares.

One of its main shareholders, Stagg, wishes to dismiss a director, Chafer, from the board of directors at the forthcoming annual general meeting. This is because Chafer was responsible for managing a particular project which lost, through his incompetence, Beetle plc a great

deal of money. Chafer, however, believes that he was merely following his fellow directors' instructions.

Another director of Beetle plc, Scarab, has patented a new invention which he thinks Beetle plc would be well placed to exploit. Scarab is proposing to sell the patent to the company in exchange for a small and new class of deferred shares in the company, a proposition that is likely to be approved by the shareholders. The company has not issued any shares at all within the previous six years.

The owner of the non-voting redeemable preference shares, Weevil, wishes to redeem her shares, and the voting shareholders are willing to accept this. The payment for Weevil's shares is to be made out of distributable profits, with no premium being paid on redemption.

Longhorn, resident in Scotland, wishes to borrow money from his bank in Scotland, using his shares in Beetle plc as security for the loan. Given that Beetle plc is a profitable company, his bank is in principle willing to accept this.

Explain the law relating to these four matters, and what needs to take place for each of these matters to be accomplished.

Question Four

It is commonly thought that a limited company is always a better trading vehicle than a partnership, mainly because of the benefit of the separate legal personality of the company. However, this is not always the case. Explain the commercial, legal and any other benefits of running a business as a partnership in preference to a limited company.

Question Five

The law relating to derivative proceedings is by no means easy to follow or apply. Explain

- (a) the purpose of the law relating to derivative proceedings,
- (b) what hurdles stand in the way of an applicant seeking to raise derivative proceedings, and
- (c) on the basis of the existing case law, what factors the courts will take into consideration in allowing derivative proceedings to continue.

Candidates must do more than repeat the statutory requirements for derivative proceedings. They must demonstrate a genuine understanding of the relevant procedure, case law, and the overall point of derivative proceedings.

Question Six

When a company goes into administration, the administrator is given considerable latitude as part of his attempts to rescue the company as a going concern or to perform any of the other duties incumbent upon him. Once appointed, in addition to finding a potential purchaser for the assets of the company in administration, he may try to swell the assets of the company

by other means for the benefit of the company's creditors. Explain what the administrator may do to achieve this end, and what points of law should be born in mind while he tries to do this.

END OF QUESTION PAPER