

**THE LAW SOCIETY OF SCOTLAND
EXAMINATIONS**

SCOTS COMMERCIAL LAW

Friday 11 February 2022

**0900 - 1200
(Three hours)**

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

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Question 1

Jon is fifty years old, gregarious and popular. He works as a sole trader in the construction industry and lives in Motherwell. Unfortunately, due to a downturn in the industry, he suffers financial problems. He fails to pay a number of debts, and creditors take legal action against him to recover debts due. Sadly, Jon's debts continue to increase, as do claims from creditors. He hears that sequestration could be of assistance to him and approaches you for advice. Please advise him of the following (citing relevant sources):

- (a) Under what circumstances could Jon's estate be sequestrated?
- (b) What will happen to Jon's property in a sequestration?
- (c) When will Jon be able to obtain a discharge after the sequestration commences?

Question 2

Critically discuss the duty of fair presentation in relation to non-consumer insurance contracts, with reference to appropriate sources and using examples of your own devising.

Question 3

Scot Robotics Ltd ("Scot Robotics") is a company that specialises in the manufacture and repair of robotic equipment. It has a ten-year lease of a warehouse and workshop complex in Livingston and owns a considerable amount of robotics products and other equipment, which are mainly located at the Livingston complex. Scot Robotics also holds three patents in robotics technology and has a 30% shareholding in another technology company, Big Time Tech Ltd. After some early difficulties, Scot Robotics has built up a strong customer base and is now owed money by a number of customers, following the supply of robotic equipment. In order to grow the business further, Scot Robotics seeks a loan of £2 million from Lothian Bank. The bank believes that the prospects of the business are good but wishes to obtain security to protect its loan.

- (a) Explain what types of security Lothian Bank could seek over the assets of Scot Robotics;
and

- (b) Advise Lothian Bank which type(s) of security would be most advantageous and specify what further information may be required to make a conclusive assessment regarding this matter.

Question 4

Olga runs a business organising parties for children, including supplying food and drinks, and providing games and equipment. She has been tasked with organising the tenth birthday party of the son of Lord and Lady Ness. Olga orders various items for the birthday celebrations. One of these items is a large and expensive cake costing £300, which is purchased from The Cake People. When the cake arrives, a few words on the icing cannot be read and one side of the cake is very slightly squashed. Olga also ordered 50 bottles of homemade lemonade for the party, from Homely Products ("Homely"). She explained to Homely in advance that the lemonade was for a party and there would be children in attendance, but the lemonade provided contains alcohol. In addition, Olga bought cricket bats and hockey sticks for the party, from SportStars, but upon their arrival, it is apparent that they are liable to break when used with traditional cricket and hockey balls. The party is only days away and Olga is very concerned.

Referring to appropriate authorities, please advise Olga whether the goods are of satisfactory quality and also what remedies are available to her against The Cake People, Homely, and/or SportStars.

Question 5

Using your own examples, and referring to relevant authorities, explain and discuss the circumstances in which a cautionary obligation may be terminated by the actions of the creditor.

Question 6

Daisy is a famous writer who lives in a large house in Aboyne with her two young children. As well as owning the house in Aboyne, which is worth £500,000 and is subject to a security for debt amounting to £470,000, she owns a flat in Edinburgh, worth £280,000, which she rents out, and which is subject to a security securing debt of £250,000. The furniture and other items in Daisy's home amount to £40,000, and the furniture belonging to Daisy in the Edinburgh flat has a value of around £10,000. Daisy has an expensive SUV car, worth £40,000 and an account with Aberdeen Bank that has around £20,000 in it. In recent times, Daisy has been struggling to obtain sufficient income to pay off her debts. One of her unpaid creditors, Lochnagar Finance ("Lochnagar"), is owed £80,000 and wishes to carry out diligence against Daisy's property.

Please explain to Lochnagar what forms of diligence can be used over Daisy's property and which diligences you would recommend that it executes and over which property it should do this.

END OF QUESTION PAPER