

**THE LAW SOCIETY OF SCOTLAND
EXAMINATIONS**

SCOTS COMMERCIAL LAW

Friday 29 July 2022

**0900 - 1200
(Three hours)**

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

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Question 1

Due to a combination of poor financial decisions and bad luck, Rose struggles to pay her debts and this ultimately leads to her sequestration on 30 March 2022. The trustee in sequestration believes that the following transactions may be challengeable:

- (a) On 21 May 2018, Rose transferred ownership of a flat in Elgin to her half-brother Felix. The property had been valued at £130,000 the previous year but Rose only received £100,000 from Felix as part of the sale transaction.
- (b) On 12 January 2020, Rose gifted an expensive sports car to her friend Monique, as a birthday present.
- (c) On 7 October 2020, Rose agreed that her neighbour Terry no longer needed to pay back the £3,000 loan that Rose had given him, as Terry had carried out some gardening work for Rose earlier in the year.
- (d) On 14 November 2021, Rose granted a standard security over her home in Findhorn in favour of Loans for Life Ltd, who had loaned Rose £30,000 in June 2021.

Advise the trustee in sequestration in relation to each of these transactions.

Question 2

Critically discuss the significance of insurable interest in relation to the law of insurance, citing appropriate authority and using examples of your own devising.

Question 3

David has recently purchased a new home and is keen to buy various items for the house. He therefore visits a furniture store and seeks to buy a wardrobe. He describes the type of wardrobe he would like, and a contract is concluded. However, it is agreed that David will make payment when he receives the wardrobe. David has a large double garage and decides to buy a pool table to put in there. He orders the pool table from an online catalogue but also requests that the table is engraved with his name. David is a keen gardener and wants to purchase a ride-on lawnmower. He pays for the lawnmower and collects it from the shop, but the seller stipulates in a written agreement with David that ownership of the lawnmower will only pass once he makes payment of all sums due by him to the seller. David wishes to buy a pizza oven and concludes a sale to do so; however, when the pizza oven arrives, it does not conform to his expectations, and he seeks to reject it and asks for the seller to uplift it. Please advise whether David currently owns the items mentioned above.

Question 4

With reference to relevant authorities, and using your own examples, discuss whether Scots law adequately protects cautioners who may have been the subject of undue influence or misrepresentation by a principal debtor.

Question 5

Compare and contrast the different diligences available in Scots law in relation to moveable property, with reference to the property affected and the nature and effects of the diligences, and in doing so, provide specific examples.

Question 6

Cosmic Comics Ltd ("Cosmic") is a retail company that specialises in comic books and related materials. A number of years ago, and in order to obtain funding, Cosmic granted a floating charge with negative pledge over all of its assets in favour of Motherwell Bank. However, Cosmic now wishes to raise further finance and approaches Paisley Investments ("Paisley"). Paisley may be willing to lend around £60,000 but would like security over Cosmic's assets. Cosmic leases its two comic bookstores from Lucid Leasing and owns around £50,000 of stock in total across the two premises. It also owns around £20,000 of shares in another company and has two vans worth around £25,000 in total. The company has also begun to make and print its own comic books; however, the equipment, worth around £10,000, has been sent away to Print with Pride Ltd for repairs and the bill has not yet been paid.

Advise Paisley regarding the types of security they could take over Cosmic's assets and explain the ranking relationships between such security and the types of security that other parties in this scenario may have.

END OF QUESTION PAPER