



**THE LAW SOCIETY OF SCOTLAND
EXAMINATIONS**

**SCOTS PRIVATE LAW
PAPER TWO**

Tuesday 9 August 2016

**1330 – 1630
(Three Hours)**

Candidates should attempt FIVE questions

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Question 1

Balti F.C. contract with Orangerie Ltd to build a new stand at their football ground, to be ready for their game against their rivals, Burgers F.C. on 2 September. The contract states that Balti can choose their own sub-contractors to carry out sections of the work and that Orangerie Ltd will not be liable in tort to Balti F.C. for the negligence of any sub-contractor. Balti F.C. appoints Lemon Ltd as sub-contractors for installing the girders in the stand. The girders are incorrectly installed by Lemon Ltd and the stand's structure is now weakened. As a result of the defects, Balti F.C. has had to delay the opening of the new stand in their match against Burgers F.C. on 2 September, in order that it can be strengthened. Balti F.C. has also had to refund those ticket holders who would have been attending the match in the new stand.

Advise Balti FC.

Question 2

Pigtrough plc employs David as a driver and Joe as a sales representative. One day Joe has to call on a customer but as his car is being serviced he asks David if he can drive him to the customer's premises. David agrees, but when they are in the car he tells Joe that he must first call at his home to collect a jacket to take to the dry cleaners. On the way to David's home, David sees a patch of oil that has been spilt on the road and says to Joe: "see that oil-I'll show you

how to do a controlled skid". David then drives onto the patch of oil but cannot control the skid and hits a nearby fence, injuring Joe.

Advise the parties.

Question 3

Write notes on TWO of the following:-

- a) Defamation;
- b) Causation in negligence;
- c) Product Liability

Question 4

Arbuckle Ltd owns amongst other assets a scrap metal yard. In order to finance its business, Arbuckle Ltd obtains a loan of £250,000 from Bank of Zetland which registers a floating charge over all the assets of Arbuckle Ltd as security for the repayment of the loan. When Arbuckle needed new equipment for the yard, it arranged with Yalta Finance Company to finance the purchase of a 40 meter long machine weighing 150 tonnes. As security for financing the machine, Yalta Finance Company retained title in the machine until the last instalment on the purchase price of £100,000 had been paid. The machine was designed to shred motor vehicles and large metal objects and was described as movable. The parts of the machine were assembled on the site and firmly attached to various steel tangs to minimise the effects of vibration. Once assembled, the machine sunk into the soil on account of its sheer weight. The machine was installed at great cost and the installation took over 3 months to complete. This type of machine was occasionally but infrequently sold second hand. A director of Arbuckle Ltd made a statement at the conclusion of the hire purchase agreement that he intended to trade the machine for a bigger machine after 5 years.

Discuss the legal position if Arbuckle Ltd went into receivership before the last 5 instalments on the shredding machine had been paid.

Question 5

Ernie has set up a trust for the benefit of Downs Syndrome patients in the West of Scotland. He asks Richard to become a trustee.

Advise Richard on the powers and obligations he will incur in the event that he accepts Ernie's invitation to become a trustee.

Question 6

Saul aged 30 and Alan aged 25 are a gay couple. They live together in a flat title to which is in joint names "and the survivor". Saul typed a note in which he stated that on his death everything was to go to Alan whom failing to Saul's mother. Saul signed the note but did not have the signature witnessed. Alan emailed his solicitor telling her that he wanted to draw up a will leaving all his property to Saul but he never went to her office to sign it.

Saul and Alan were killed in terrorist attack. It was not possible to determine who the survivor was. At the time of his death, Saul had his share of the house worth £290K, a house in the country worth £240K and money and shares worth £190K. Apart from his mother, Phyllis, he is survived by his divorced wife, Lesley, and their five year old son, Calum. Alan had his share of the house and savings worth £50K. He also owned the furniture in the house valued at £80K. He is survived by his mother, Marion, her illegitimate daughter, Rosie, and his deceased brother's son, Mark.

How will the estates be distributed?

Question 7

Write notes on TWO of the following:-

- (i) Construction of wills;
- (ii) Vesting of legacies;
- (iii) *Conditio si institutus sine liberis decesserit.*

END OF PAPER