



**THE LAW SOCIETY OF SCOTLAND
EXAMINATIONS**

**SCOTS PRIVATE LAW
PAPER ONE**

Tuesday 18 MAY 2004

**0900 – 1200
(Three Hours)**

Candidates should attempt FIVE questions

THE LAW SOCIETY OF SCOTLAND EXAMINATIONS
SCOTS PRIVATE LAW
Paper ONE

Tuesday 18 MAY 2004
(Three hours)

Candidates should attempt FIVE questions.

1. Andrew aged 20 and Brenda aged 16 went through a ceremony of marriage in 1994. Unknown to Brenda, at the time of the ceremony Andrew was still married to Chloe. Chloe divorced Andrew in 1998. Brenda had a daughter, Dora, in 1996 and a son, Edward, in 2001. The couple live in a house which Andrew inherited from his grandmother, title to which was taken in Andrew's name. Recently Andrew has told Brenda that God has told him that she is a witch and that the children are devils. She is terrified that Andrew might harm the children and herself.

Advise Brenda:-

- (i) on whether she is validly married to Andrew;
 - (ii) on the assumption that they are married, whether she has grounds to divorce him;
 - (iii) on whether Andrew can be made to leave the house.
2. Fiona and George were married in 1980. They live in a house which Fiona bought before she met George. Title is in Fiona's name. They have one child, Henry, who was born in 1990. When Henry went to school, they took out a loan to help with the school fees. The bank insisted on a standard security over the house. George has his own business. When she gave up her job as a librarian after she had Henry, Fiona used to do unpaid secretarial work for George. In 2000, George won £500k on the lottery. He used the money to buy a farm, title to which is in his name. George left in January 2004 to live with his secretary. On that date, the house is worth £400k subject to a mortgage of £150k; the farm is worth £700k; George's business is worth £900k. There are savings in George's bank account worth £50k. Fiona has a life policy valued at £100k and jewellery she inherited from her grandmother worth £60k. George earns around £100k a year. Fiona does not wish to retrain as a librarian preferring to stay at home looking after Henry.

Advise Fiona on the financial provision she is likely to be awarded should she divorce George.

3. Underlying the law on parental responsibilities and rights is the principle that the paramount consideration is always the welfare of the child.

Discuss and illustrate.

4. Write notes on **TWO** of the following:-

- (i) the obligation of aliment;
- (ii) the presumption of paternity;
- (iii) the grounds of referral

5. Iain promised James aged 17 that he would give James £10k on his 18th birthday. In reliance of that promise, James entered into a contract with Ken under which he agreed to buy Ken's sports car for £5k. Unknown to James, he could have purchased the same model for only £3k. James also agreed to take a lease of a cottage owned by Ken for a period of five years. Before James had signed the lease, Iain informed him that he had changed his mind and that he could no longer expect the £10k on his birthday. James has also discovered the market value of the car.

Advise James.

6. Liam told Malcolm that he had a drawing for sale which he thought might be by Picasso. In fact, Liam believed that the drawing was by one of Picasso's pupils. Malcolm examined the drawing and said that he was prepared to buy it for £30k. Liam insisted that the price was £35k. Malcolm asked for a few days to think it over. He then said that if Liam did not hear from him by the end of the week, he could assume that Malcolm had bought it. By the end of the week, Liam had not heard from Malcolm. Malcolm came to collect the drawing with his friend, Norman, an expert in 20th Century art. Norman examined the drawing and declared it to be a long lost Picasso worth £300k. Liam has refused to give Malcolm the drawing.

Advise Malcolm.

7. Write notes on **TWO** of the following:-

- (i) the Unfair Contract Terms Act 1977;
- (ii) contracts in restraint of trade;
- (iii) remedies for breach of contract