



**THE LAW SOCIETY OF SCOTLAND
EXAMINATIONS**

**SCOTS PRIVATE LAW
PAPER TWO**

Tuesday 18 MAY 2004

**1330 – 1630
(Three Hours)**

Candidates should attempt FIVE questions

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Candidates are required to answer FIVE questions only.

1. Andrew invited Brian and his wife, Celia, for a sail on Andrew's private loch on board his yacht. After sailing for three hours, they had several large gins. Celia tripped over ropes which were lying on the deck. She broke her ankle and fell into the water. Brian jumped into the water to try to rescue her. He was attacked by a shark which Andrew kept in the loch as a pet. The shark bit off Brian's arm. Unfortunately Celia drowned.

Discuss the delictual issues which arise.

2. Derek, a stockbroker, told his friend, Edward, to invest in Fred's company. Unknown to Derek, Edward told his girlfriend, Gale, to buy shares in Fred's firm. Owing to difficult trading conditions, Fred's business has become unprofitable even though it had seemed to have good prospects at the time Derek gave Edward the advice. The shares are now worthless.

Discuss the delictual issues which arise. Would it make any difference if Derek had told Edward when he gave him the advice that he was not to tell anyone else to purchase shares in Fred's company?

3. Write notes on **TWO** of the following:-
(i) delictual liability for psychiatric injury;
(ii) vicarious liability;
(iii) defamation

4. George and his mother, Harriet, bought an estate in the Highlands. The title was taken in the joint names. They discovered that the sellers had removed glasshouses from the garden which Harriet had wanted in order to grow orchids. Their neighbours use the paths through the garden to get to a trout stream: they maintain that they have been doing so for more than thirty years and the previous owners did not complain. The neighbours also allow motorcyclists to use their land for race meetings:

this causes a lot of noise and keeps Harriet awake. When the neighbours refuse to stop the race meetings, Harriet has demanded that George should buy out her interest in the property so that she can return to live in Edinburgh.

Advise George.

5. A client has been invited to become a trustee of a public trust which is governed by Scots law. What advice would you give him as to his powers and duties on becoming a trustee?

6. Ian aged 35 and James aged 30 are a gay couple. They live together in a flat, title to which is taken in joint names and the survivor. Ian has a hand written will in which he leaves all his property to James. The will has not been witnessed. James has no will. The men were killed in an air crash. It is not possible to determine the times of their deaths.

At his death, apart from his share of the flat which is worth £150k, Ian has a country house valued at £300k. He has shares worth £90k. He is survived by Klara, his illegitimate daughter and Leona, her mother. Apart from his share of the flat which is worth £150k, James has a town house which is worth £250k. It is currently occupied by James' estranged wife, Moira. James had bought the house as an investment after he had met Ian and he has never lived in it with Moira. The house is unfurnished but the furniture he owns in the flat is worth £50k. He is also survived by his mother, Norma, and his brother, Oswald.

How will the estates be distributed?

7. Write notes on **TWO** of the following:-
 - (i) variation of trusts;
 - (ii) the Consumer Protection Act 1987, Part 1;
 - (iii) revocation of wills