



**THE LAW SOCIETY OF SCOTLAND
EXAMINATIONS**

**SCOTS PRIVATE LAW
PAPER TWO**

Tuesday 9 AUGUST 2005

**1330 – 1630
(Three Hours)**

Candidates should attempt FIVE questions

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Candidates are required to answer FIVE questions ONLY.

1. Alice invited Brian to stay on her estate for the weekend. When he arrived at the house he tripped over a rug in the hall and twisted his ankle. At dinner, Alice's maid spilt gravy over Brian staining his suit. The next day when they were out for a stroll in the grounds, Brian was pecked by a goose which Alice used to guard her collection of orchids which she kept in a greenhouse. Brian was so upset that he went into the greenhouse and destroyed the orchids.

Discuss the delictual issues which arise.

2. Charles was given a present of a motor cycle by his parents for his 18th birthday. Owing to a design fault, the brakes failed and the motor cycle went off the road. The motor cycle hit Doris who was out walking her dog. She was killed instantly. Doris is survived by her lesbian partner, Edna, and her mother, Flora. Charles broke his neck. He requires constant nursing by his wife, Greta, who has given up her job to do so.

Discuss the delictual issues which arise.

3. Write notes on TWO of the following:-
 - (i) Delictual liability for pure economic loss;
 - (ii) Delictual liability for mental harm;
 - (iii) Defamation

4. Harry and Ian bought a house title to which was taken in joint names. They discovered that the previous owner had removed the conservatory and the gold fish from the ornamental pond. The next door neighbours have blocked a path over their land which the previous owners had used as a short cut to the local church. The neighbours also play Wagner operas late into the night: when Harry and Ian complain they are told that the previous owners did not mind the music. They have discovered that the roof has dry rot and that it will cost £30k to repair. Ian now wants to sell the house as soon as possible.

Discuss the legal issues which arise.

5. Write notes on TWO of the following:-

- (i) Auctor in rem suam;
- (ii) The investment powers of trustees;
- (iii) Cy Prés

6. James, aged 40, and Ian, aged 35, have lived together for the last five years. In 2004, James wrote out a will in which he left all his property to Ian. James signed the will at the end but his signature was not witnessed. Ian wrote a letter to his friend, Kenneth, that should James predecease him, Kenneth would be his heir. Ian has never got round to instructing a formal will. James and Ian were killed in a road accident. It cannot be established when either of them died. James' estate consists of a house valued at £350k, title to which was taken in the joint names of James and Lily "and the survivor". Lily is James' former wife whom he divorced in 1998. There is also money and investments worth £500k. Ian's estate consists of a flat valued at £250k and savings worth £100k. James is survived by Lily and their son, Norman. Ian is survived by his mother and his sisters, Mary and Miriam.

How will the estates be distributed?

7. Write notes on TWO of the following

- (i) Special, general and residuary legacies;
- (ii) Prior rights of a surviving spouse;
- (iii) *Conditio si institutus sine liberis decesserit*

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