



**THE LAW SOCIETY OF SCOTLAND
EXAMINATIONS**

**SCOTS PRIVATE LAW
PAPER TWO**

Tuesday 17 MAY 2005

**1330 – 1630
(Three Hours)**

Candidates should attempt FIVE questions

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1. Andrew was driving his motor car. Owing to a mechanical defect, the car went out of control. There was an accident and Andrew and Bill, a pedestrian, were injured. When he was taken to hospital with a broken arm, Bill was given an overdose of drugs which rendered him paralysed from the waist down. Andrew, who had concussion, attacked a nurse who was trying to give him an injection. As a result of the attack, the nurse slipped on the floor and died of the head injuries she sustained. She is survived by her boyfriend and her mother whom she supports financially.

Discuss the delictual issues which arise.

2. Charles was walking along the street when he saw a van run over his son, David. The van was being driven by Eric who was employed by Fred as a van driver. At the time of the accident, Eric was helping a friend move house. David was seriously injured. Charles is suffering psychiatric illness as a result of witnessing the accident. Fiona, David's mother, was abroad at the time of the accident but has been seriously depressed since she was told about it. David has recovered from his personal injuries but the accident brought on a recurrence of an asthmatic condition he had had as a baby.

Discuss the delictual issues which arise.

3. Write notes on *two* of the following:-
(i) the Occupiers' Liability (Scotland) Act 1960;
(ii) the Animals (Scotland) Act 1987;
(iii) the Law Reform (Contributory Negligence) Act 1945

4. George and Harry bought a house title to which was taken in their joint names and the survivor. On entry, they discovered that the previous owners had removed all the fireplaces and the carpets and curtains.

There is a path in the garden which the owners of the neighbouring house maintain they have used for ten years to reach a loch at the bottom of the garden. The previous owners have informed George and Harry that they are not entitled to fish for salmon in the loch as the fishing rights were retained by them when they sold the property. There is a dreadful smell from a pigsty on their neighbours' land. Harry is so upset that he wants to sell the house.

Discuss the property issues which arise.

5. Ian set up a trust for the benefit of his children until they reach the age of 25. He appointed James and Kenneth as trustees. Their first act as trustees was to give themselves an honorarium of £10k. They then borrowed £100k from the trust fund to speculate in the stock market. The speculations were successful and they made £1000k. They returned £100k to the trust fund and kept the rest of their profits. They then bought a house from James' wife to be used as a holiday home for the children but in fact James and his wife continue to live in it. Ian has demanded the return of the trust fund but the trustees have refused. The children are 22, 18 and 16.

Discuss.

6. In what circumstances does Scots law recognise liability in delict for pure economic loss?
7. Lily, aged 48, and Milly, aged 38, have lived together for five years. They have a flat title to which is in their joint names and survivor. Lily has a will in which she leaves all her property to Milly, whom failing, the local hospice. Milly does not have a will. They were both injured in a car crash. Lily died. Milly told the doctors that she wished all her property to go to the local hospice but she was too weak to sign a document to that effect. She died two hours after Lily. On her death, Lily has her share of the house worth £100k and furniture and paintings valued at £100k. She has shares worth £200k. On her death, apart from her share in the flat, Milly has a country cottage worth £150k and savings valued at £120k. Lily is survived by her husband, Norman, from whom she has lived apart but never divorced. Milly is survived by her brother and the illegitimate daughter of her sister who died two years ago.

How will the estates be distributed?