



**THE LAW SOCIETY OF SCOTLAND  
EXAMINATIONS**

**SCOTS PRIVATE LAW  
PAPER ONE**

**Tuesday 5 AUGUST 2008**

**0900 – 1200  
(Three Hours)**

**Candidates should attempt FIVE questions**

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1. Alan and Bella went through a ceremony of marriage in 2000. Because she had been sexually abused as a child, Bella was unable to consummate the marriage. In spite of seeking psychiatric help, the couple have never had sexual intercourse. Alan told Bella that he did not mind the absence of sex provided that she agreed that he could have sexual relationships with other women. Bella agreed and Alan has had several affairs. However, Bella was outraged when Alan had sexual intercourse with Bella's sister, Carol. She has told Alan to leave the flat in which they live and which is owned by Bella.

Advise Alan

- (i) on the validity of his marriage;
  - (ii) on whether Bella has grounds for divorce;
  - (iii) on whether he is obliged to leave the flat.
2. David and Eddie are a gay couple. When they met in 1995, they moved into a house which Eddie had bought in 1990. The title is in Eddie's name. At the time he bought it Eddie intended the house to be a family home when he met the man of his dreams. In 2000, Eddie inherited £500K. He invested the money in the stock market. In 2005, David and Eddie registered their civil partnership. Eddie realised £200K of the investments to purchase a cottage in the country, title to which was taken in Eddie's name. In 2006, in order to reduce taxation, David restructured his interior design business and set up a company of which he is the sole shareholder. In 2007, Eddie won £100K on the lottery. That year, David left to live with Fred, his personal trainer. At the time they separated the house is worth £750K, the cottage £300K and the shares £500K (but the shares have now dropped to £50K). David's company was valued at £1000K. Eddie also has an interest in a life insurance valued at £100K. He took out the insurance when they registered their civil partnership.

Advise Eddie on the financial provision he is likely to receive or have to make if their civil partnership is dissolved.

3. George and Hilary married in 1998 when she was three months pregnant. When the baby, Isa, was born George was registered as the child's father. In 2000 George went abroad on business for three years. During this period, Hilary had an affair with James and gave birth to Ken. When he found out, George forgave her and George was registered as the child's father. In 2007, Hilary left George in order to live with James. She has had another baby, Len, and James has been registered as the child's father. Hilary has now taken Isa and Ken from their home with George and they are living with her and James. She has refused to allow George to see the children. Isa has said that she wants to live with George.

Advise George

- (i) on who is presumed to be the father of the children and who has parental responsibilities and rights in respect of them;
  - (ii) on how their paternity can be established;
  - (iii) on the likelihood of obtaining a residential order in respect of Isa and Ken;
  - (iv) on the likelihood of obtaining a contact order in respect of Len.
4. Write notes on TWO of the following:-
- (i) the legal consequences of cohabitation;
  - (ii) aliment;
  - (iii) adoption.

5. Malcolm advertised that his vintage Rolls Royce was for sale at £20K. Norman telephoned Malcolm and told him he would buy the car for £15K. Malcolm said the price was too low but that Norman could have the car for £17K if it had not been sold by the end of the week. Norman said that if he had not heard from Malcolm by Monday he would assume that the car was his. Meanwhile, Oliver posted a letter to Malcolm in which he wrote that he would buy the car for £20K. The letter was delayed in the post. When he had not heard from Malcolm, Norman assumed the car was his and sold it to Peter for £25K. The letter arrived on Tuesday and Malcolm told Oliver that he could have the car. Malcolm has refused to deliver the car to Norman although Norman is happy to pay £17K.

Advise Malcolm.

6. Quinton entered into a contract with Robert under which he agreed to sell a painting to Robert for £5K. During the negotiations, Quinton told Robert that the picture was old. Robert thought it was a painting from the 13<sup>th</sup> century Italian school worth around £30K: in fact it was a nineteenth century copy of such a painting and worth only £500. When he discovered that the painting was a copy, Robert asked Quinton for the return of the price. Quinton has refused.

Advise Robert. Would it make any difference to your answer if the painting was accidentally destroyed after Robert had asked Quinton for his money back?

7. Write notes on TWO of the following:-
- (i) Frustration;
  - (ii) The control of unfair contract terms;
  - (iii) Implied terms

**END**