



**THE LAW SOCIETY OF SCOTLAND
EXAMINATIONS**

**SCOTS PRIVATE LAW
PAPER ONE**

Tuesday 6 MAY 2008

**0900 – 1200
(Three Hours)**

Candidates should attempt FIVE questions

LAW SOCIETY OF SCOTLAND EXAMINATIONS

**SCOTS PRIVATE LAW
Paper One**

**8 MAY 2008
(Three hours)**

Candidates should answer FIVE questions

1. Alastair and Bernard registered their civil partnership in 2006. Unknown to them, Charlie who was one of the witnesses was only 15 at the time of the registration. In 2006, Alastair discovered that Bernard was having a sexual relationship with Alastair's sister, Doris, who is married to Edward. Alastair had an argument with Bernard. When he thought that Bernard was going to strike him, Alastair left the flat and went to live with Doris and Edward. The title to the flat is in the joint names of Alastair and Bernard. Edward has begun to make sexual advances towards Alastair. Alastair is extremely upset and has nowhere to go.

Advise Alastair

- (i) on the validity of his civil partnership with Bernard;
 - (ii) on the assumption that the civil partnership is valid, whether he has grounds to have it dissolved;
 - (iii) on his rights, if any, to return to the flat and have Bernard expelled from the property.
2. Fred and Grace were married in 1985. They lived in a house which Grace had inherited from her mother in 1980 when she was engaged to Fred. In 1990, Grace gave up her job as a school teacher when she had twins. In 1995, Fred won £100 K on the lottery which he invested in shares. In 2005, Grace was injured in a car crash and awarded £300K in damages. In 2006, Fred left Grace in order to live with his secretary. At that time the house is worth £500K, the shares £400K and the damages have been used to purchase a cottage in the country title to which is in the joint names of Grace and Fred. Fred has an interest under a pension fund valued at £300K: he joined the pension scheme in 1990.

Advise Grace on the financial provision she is likely to obtain if she divorces Fred.

3. Henry and Isa went through a ceremony of marriage in 1995. At the time of the ceremony, Isa was six months pregnant. When the child was born Henry was registered as the child's father. Unknown to Henry, Isa was married to James at the time of the ceremony. In 2000, James divorced Isa. In 2005, Isa had a second child: Henry was registered as the child's father. In 2007, Isa

left Henry taking the children with her. She claims that James is the father of both children and has refused to let Henry see them. She and James are now living together. James has a serious drugs habit and is HIV positive.

Advise Henry

- (i) on whether or not he is married to Isa;
- (ii) on who is presumed to be the father of the children and who has parental responsibilities and rights in respect of them;
- (iii) on how their paternity can be established;
- (iv) on the likelihood of his obtaining a residence order or contact order.

4. Kenneth and Lorna have been living together for five years. Lorna's sister, Melanie, is a prostitute: she is married to Norman, her pimp and a drug addict. Melanie has given birth to Peter. She asked Kenneth and Lorna to look after him "while she sorts things out". The baby has been with Kenneth and Lorna for a year. During that period Melanie and Norman have only had contact with the child on six occasions. Kenneth and Lorna are anxious to adopt the baby.

Advise Kenneth and Lorna.

5. Oliver advertised in several arts magazines that he had a Picasso blue period print for sale at £12K. Peter wrote a letter to Oliver in which he said that he would be prepared to purchase the print for £10K. Oliver wrote back stating that Peter could have the print for £12K if Oliver did not receive a better offer within seven days. Three days later, Quinton posted a letter to Oliver stating that he would buy the print for £15K. The letter was delayed in the post. At the end of the week, Oliver telephoned Peter saying that the print was his for £12K: he left the message on Peter's answering machine. Peter heard that telephone message the next morning. Quinton's letter arrived the next day. Oliver has discovered that the print is very rare and is valued at £30K. He is not prepared to sell it to Peter or Quinton.

Advise Oliver.

6. "Because of the need to balance certainty and fairness, the effect of error on the validity of a contract is one of the most controversial issues in the law of contract".

Discuss and illustrate.

7. Robert entered into a contract in which he agreed to sell a van to Stuart for £5K. Stuart who is aged 17 intended to use the van in his grocery business. At the time Stuart signed the contract, Robert did not draw Stuart's attention to a clause printed on the front page of the document in which Robert stipulated that he undertook no liability for any defects in the van. A few days later

owing to a mechanical defect the engine began overheating. Stuart burned his hand when he tried to repair it. Stuart has been advised by a mechanic that it will cost £500 to have the van repaired and that he could have sold him a similar van for £3K. Robert has told Stuart that he is not liable because of the exemption clause.

Advise Stuart.

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