



**THE LAW SOCIETY OF SCOTLAND
EXAMINATIONS**

**SCOTS PRIVATE LAW
PAPER TWO**

Tuesday 6 MAY 2008

**1330 – 1630
(Three Hours)**

Candidates should attempt FIVE questions

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1. Andrew was invited by Bert to a party in Bert's house. When he arrived, Andrew was greeted by Andrew's pet Irish hound. The dog bounded up to Andrew and knocked him over. Andrew twisted his ankle as a result of the fall. But he also panicked and began to scream: as a result the dog bit him. Andrew was taken to hospital. He was given an injection. Owing to a manufacturing defect the serum was contaminated and Andrew is now paralysed.

Advise Andrew

2. Bert took Catherine, a successful solicitor, for a drive in his sports car. Showing off, he took a bend too quickly and the car went off the road. Catherine was killed. When she was told by Bert that her daughter had died, her mother, Doris, became hysterical and later depressed. She has now been diagnosed as having a psychiatric illness. At the time of her death, Catherine had a daughter, Elsa, who lived with her and Doris. She is also survived by her estranged husband, Fred, whom she has not divorced, and her sister, Gale, whom Catherine was supporting while she was at university.

Discuss the delictual issues which arise.

3. Harry is an accountant. He told his best friend, Ian, that he should lend £500K to James who was setting up a new business. James was one of Harry's clients. Harry assured Ian that his money was safe as James' previous businesses had been very successful. Ian lent the money to James at 15% interest per annum. A few weeks later, Kenneth, a business rival of James, spread rumours that James was bankrupt. As a consequence, James' business has failed and Ian has lost the principal of the loan. The rumours were untrue. Harry knew that Kenneth was a ruthless rival of James.

Advise Ian.

4. Leo and Malcolm are gay guys who have decided that they will live together. They purchased a house in the country, title to which was taken in joint names. As Leo had paid 75% more than Malcolm, they agreed that if the house was ever sold, the proceeds would be divided 25% to Malcolm and 75% to Leo. When they took entry, they discovered that the previous owners had removed the frescoes which had been painted in the dining room, the tapestries which had been hung in the drawing room and the goldfish from the ornamental

fountain in the garden. The neighbours' cattle and goats graze in the orchard: when they complained, Leo and Malcolm were told that the animals have always grazed there and that no owners of the house had objected in fifty years. At weekends, the neighbours host parties which last all night : as a result Leo who is a light sleeper cannot asleep. Leo is now anxious to sell the house but Malcolm refuses arguing that their difficulties with the house can be sorted out.

Advise Leo.

5. Norman is the owner of a block of offices which he rents out. He decided that he would set up a trust under which his wife, Oona, would receive the rents from the offices for her life. On her death, the rental income was to be accumulated for the lives of their children and on the death of the last child the offices were to be sold and the money raised and the accumulated rental income to be distributed among the grandchildren living at that time. Norman appointed himself and his brothers, Peter and Paul, as trustees. While a disposition was drawn up disposing the property to Norman, Peter and Paul, it has not been registered in the Land Register. Norman has now been offered a large sum for the offices. He is anxious to sell but does not want the proceeds to be subject to the trust.

Advise Norman

6. Quinton and Rose began to live together in 2005. Quinton was 30 and Rose was 25. Rose wrote to her solicitor instructing him to prepare a will in which Quinton was to be the sole legatee whom failing the local dogs' and cats' home. After the will had been drawn up, Rose decided that she would delay signing it until she and Quinton returned from holiday. During the holiday, Quinton and Rose were killed in a car crash. It was not possible to determine who had died first. Quinton has not left any will. At the time of his death, Quinton owned a house valued at £300K in which he lived with Rose. He also had investments valued at £120K. At the time of her death, Rose owned a house valued at £350K in which her estranged husband, Stuart, lived with his girlfriend. She also has investments worth £90K. Apart from her husband, Rose is survived by her illegitimate child, Tom, who was adopted by her friend, Ursualla, six months after he was born. At the time of his death, Quinton is survived by his mother and brother and his estranged civil partner, William.

How will the estates be distributed?

7. Write notes on TWO of the following:-
 - (i) auctor in rem suam;
 - (ii) liferent and fee;
 - (iii) variation of trusts.

END