

Scottish Private Law  
Paper Two

Candidates should answer FIVE questions

1. Maureen, a stock broker, was approached by a friend, Ray, who asked whether she could advise him on whether to invest in a company owned by one of her clients, John. Owing to her carelessness, Maureen has overestimated the company's profits. Maureen told Ray that the company was a sound investment. In reliance on her advice, Ray invested in the company. Unknown to Maureen, Ray told his girlfriend, Ellen, also to invest in the company. A month later the company crashed leaving Ray and Ellen with substantial losses. They have threatened to sue Maureen.

Advise Maureen.

2. Stair, who is employed by the Eastern Welding Company, is hired with consent from Eastern Welding as a welder by Titanic Shipbuilders. It is agreed in the contract of hire that Stair is to be treated as an employee of Titanic Shipbuilders. Bell is an employee of Titanic. Stair fools around with the welding equipment in front of Bell, and Bell is struck by a piece of molten metal. This causes a burn on Bell's lower lip.

Bell is taken to hospital by ambulance. In the course of the journey, the ambulance is driven at 60 mph in a built up area and hits a lamp-post, resulting in Bell suffering a broken leg. It is subsequently discovered that the burn on Bell's lip is the promoting agent of cancer, which develops at the sight of the burn, in tissues which already have a pre-malignant condition.

Advise the parties.

3. Write notes on TWO of the following:-  
(i) Defamation;  
(ii) Causation in negligence;  
(iii) Contributory negligence

4. Company A owns amongst other assets a scrap metal yard. In order to finance its business, Company A obtains a loan of £250,000 from Bank X which registers a floating charge over all the assets of Company A as security for the repayment of the loan. When company A needed new equipment for the yard, it arranged with Finance Company Y to

finance the purchase of a 40 meter long machine weighing 150 tonnes. As security for financing the machine, Finance Company Y retained title in the machine until the last instalment on the purchase price of £100,000 had been paid. The machine was designed to shred motor vehicles and large metal objects and was described as movable. The parts of the machine were assembled on the site and firmly attached to various steel tangs to minimise the effects of vibration. Once assembled, the machine sunk into the soil on account of its sheer weight. The machine was installed at great cost and the installation took over 3 months to complete. This type of machine was occasionally but infrequently sold second hand. A director of Company A made a statement at the conclusion of the hire purchase agreement that he intended to trade the machine for a bigger machine after 5 years.

Discuss the legal position if Company A went into receivership before the last 5 instalments on the shredding machine had been paid. Would it have made any difference if the loan with Bank X was arranged after the shredding machine was installed?

5. Dereck has set up a trust for the benefit of Alzheimer's patients in the West of Scotland. He asks Robert to become a trustee.

Advise Robert on the powers and obligations he will incur in the event that he accepts Dereck's invitation to become a trustee.

6. Janice aged 32 and Berty, aged 33 are married. They live in a family home which Berty purchased five years prior to meeting Janice. The home is valued at £300,000. As they were going on a long air flight together, Berty had signed a will in which he stipulated that in the event of his death, his share of the family home was to go to his mistress, Sasha. However, the will was not witnessed before he left the country. The plane that they were both travelling in crashed. Berty died and Janice survived him by an hour. Janice did not have a will. Berty is survived by his son, Tony: Berty had an affair with Tony's mother, Mandy, before he met Janice. Janice is survived by her sister, Rita, and her nephews, Peter and James, whose mother, Bridgid, Rita's sister, died three years ago. Title to the family home is in the name of Berty. Other than the family home, Berty had investments on his death worth £80K. Janice had shares valued at £100K.

How will the estate be distributed?

7. Write notes on TWO of the following:-

- (i) Advances and *collation inter liberos*
- (ii) Vesting of legacies.
- (iii) Accretion.

