Law Society of Scotland

Scots Commercial Law

Thursday 24 July 2025

09.00 – 12.00

(three hours)

Candidates should answer **THREE** QUESTIONS.

All sections of a question must be answered.

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Question 1

Stefan operates a bespoke home cinema installation business and frequently provides high-end projectors to private clients. In January 2025, Stefan comes across an online advertisement for the "CineMax Pro Projector", sold by AV Solutions Ltd, a company specialising in audiovisual technology.

The advertisement states:

> *The CineMax Pro delivers uninterrupted 20-hour projection without overheating, features military-grade lens housing, and achieves true 4K Ultra HD resolution. Perfect for professional continuous use.*

Stefan visits AV Solutions Ltd's showroom and is assured by the sales representative, Louisa, that the projector has a sapphire glass lens, is currently in stock, and is used by "top-tier commercial cinemas." Stefan explains that he is purchasing the unit for an upcoming commercial installation where the projector must operate continuously for long periods.

Encouraged by these representations, Stefan agrees to purchase the projector for £7,000 plus VAT. The contract is signed in-store, and the machine is delivered to his workshop three days later. The invoice and order confirmation are silent on inspection or limitation clauses.

On 3 February 2025, Stefan installs the projector in a client's private screening room and launches a test screening. After six hours, the projector begins to overheat, and image quality deteriorates. The event must be stopped. A follow-up inspection by Stefan and an independent technician reveals the following:

i. The lens housing is plastic, not sapphire glass.

ii. The projector reaches only 2.5K resolution, not true 4K.

iii. The fan and cooling system are insufficient for extended use and require rest cycles every 4–5 hours.

Stefan contacts AV Solutions Ltd and demands a replacement or refund. The company refuses, arguing that:

1. The projector was "fit for purpose as seen in store."

2. No representations were part of the contract.

3. The overheating was due to "abnormal use."

Stefan sues for breach of contract and misrepresentation.

Answer the following:

a. Assess whether AV Solutions Ltd has breached any terms under the *Sale of Goods Act 1979* (as amended), including implied terms on quality, fitness for purpose, or correspondence with description.

b. Discuss whether Stefan may have a valid claim in misrepresentation, distinguishing between fraudulent, negligent, and innocent misrepresentation. Consider the impact of Louisa's statements and the advertisement.

c. Would your analysis differ if Stefan were acting as a *consumer* rather than in the course of a business? Refer to relevant statutory protections under the *Consumer Rights Act 2015.*

d. What remedies may be available to Stefan under Scots law in both contract and delict, assuming his loss includes reputational harm from the failed installation?

Question 2

Critically examine the role of the creditor's conduct in determining the enforceability of cautionary obligations in Scots law.

Your answer should:

a. Explain how lack of disclosure or changes in the debtor's situation can affect a cautioner's liability.

b. Discuss the relevance of the *Royal Bank of Scotland v Greenshields* and *Braithwaite v Bank of Scotland* cases.

c. Provide examples to illustrate when a cautionary obligation may be reduced or discharged due to the creditor's actions or omissions.

Question 3

In the context of Scots commercial insurance law, answer the following:

a. Discuss the distinction between a condition and a warranty in insurance contracts and the implications of breach.

b. Explain the purpose of the principle of subrogation and how it operates.

c. Evaluate the adequacy of current Scots law in protecting policyholders in complex, multi-cause loss scenarios, referring to relevant case law.

d. Would your analysis differ for consumer insurance under the Insurance Act 2015?

Question 4

Highland Coffee Ltd is a company specialising in coffee roasting and distribution across Scotland. Its principal asset is a roasting facility located in Pitlochry, which it owns and has used as its main premises since 2017. In 2020, the company granted a standard security over the facility to Capital Bank to secure a loan of £400,000. This standard security was duly registered in the Land Register of Scotland.

In 2023, seeking to expand its operations, Highland Coffee Ltd obtained an additional £300,000 loan from Thistle Finance Ltd, secured by a floating charge over the whole property and undertaking of the company. The floating charge includes a negative pledge clause and was registered in accordance with the Companies Act 2006.

In early 2024, Highland Coffee sold two industrial coffee roasters to Moray Machines Ltd under a hire-purchase agreement. The contract stipulated that ownership would not pass until the final instalment was paid. However, the company retained possession of the machines and continued to use them in its production facility.

To address cash flow issues, the company also entered into a factoring agreement with Alba Factors Ltd, assigning its unpaid invoices and receivables. The assignment was intimated to the relevant debtors.

In January 2025, Highland Coffee secured a short-term loan of £50,000 from Granite Lending Ltd, granting a pledge over its only delivery van. The van was physically delivered to Granite's secure compound.

In April 2025, the company was placed into administration following financial distress. Several creditors now assert conflicting claims over various assets of the company.

Answer the following, with reference to statutory provisions and case law where relevant:

a. Discuss the relative priority of Capital Bank and Thistle Finance Ltd in relation to the roasting facility, considering the type and timing of securities held.

b. Discuss the legal effect of the factoring agreement with Alba Factors Ltd on the company's receivables, and explain whether these are protected from claims by the company's general creditors or Thistle Finance Ltd (whose floating charge has now crystallised).

c. Assess the legal position of Moray Machines Ltd in respect of the two coffee roasters still held by Highland Coffee Ltd, including whether the goods are protected from the administrator and any floating charge holder.

d. Evaluate the effectiveness and ranking of Granite Lending Ltd's pledge over the delivery van. Consider whether the pledge survives the onset of administration and how it ranks against the floating charge.

Question 5

Cameron, a 42-year-old self-employed joiner, has faced mounting financial difficulties due to a combination of personal illness and loss of key contracts. He is declared bankrupt (sequestrated) on 3 March 2025, on the petition of a trade creditor. The trustee in sequestration is conducting an investigation into certain pre-bankruptcy transactions, which may have diminished the estate available to creditors.

The trustee has identified the following events:

a. On 20 February 2025, just 12 days before sequestration, Cameron transferred £7,000 to his sister, Morag. He states this was not a loan repayment, but a "gift of appreciation" for her emotional and financial support during a difficult period. The transfer was made by bank transfer and recorded as a "thank you."

b. On 10 January 2024, Cameron granted a standard security in favour of a private lender, Mr. Findlay, for a debt of £12,000 originally incurred in 2020. The loan had previously been unsecured and had not been pursued by Mr. Findlay until Cameron approached him offering security in lieu of repayment.

c. On 1 December 2023, Cameron told his friend Gavin that he no longer needed to repay a loan of £4,000 Cameron had made to him in 2021. Gavin gave Cameron two VIP tickets worth approximately £300 for a concert in return. No written documentation of the cancellation was made, but there are text messages confirming the arrangement.

d. On 15 June 2022, Cameron sold a one-bedroom flat in Dundee (valued at £115,000 at the time) to his cousin, Angela, for £85,000. The property was not advertised on the open market. The sale proceeds were used partly to pay off a credit card and partly to fund a short holiday abroad.

Question 6

You act for Craigstone Finance Ltd, a commercial lender that has obtained a decree for payment of £35,000 against Heather MacInnes, a freelance management consultant based in Inverness.

Heather has not challenged the decree and has failed to respond to reminders for payment. Your client now wishes to proceed with diligence. Heather has the following assets:

1. A flat in Inverness jointly owned with her husband, Colin. The flat is valued at £280,000 and is subject to a standard security for £150,000 in favour of their mortgage lender. Ownership is in equal shares. There are no dependants residing in the property, and Heather has a contractual right of occupancy.

2. A luxury wristwatch worth approximately £15,000, stored in a secure safety deposit box with Northern Vaults Ltd in Glasgow. It was a gift from Heather's mother and is insured in her name.

3. A personal bank account in credit by approximately £8,000, held with Bank of Scotland.

4. Outstanding business invoices owed to Heather by three clients. One is due for payment; two are in dispute. The total potential value is £18,000.

5. An office set-up comprising leased equipment, including a laptop, printer, and monitor. The lease is in Heather's name and is non-transferable. Title is not with her.

6. A personal pension plan to which Heather contributes £150 per month. The fund's value is modest and currently around £12,000. Heather is 42 years old and has not accessed any funds.

Advise Craigstone Finance Ltd on the following:

a. What forms of diligence under Scots law may be available to enforce the debt against each of these assets?
b. Which diligences are likely to be the most effective, taking into account value, speed, legal limits, and likelihood of success?
c. What legal protections or objections may be available to Heather to resist or mitigate these diligences? Consider procedural requirements, exemption rules, and personal circumstances.

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