



**LAW SOCIETY OF SCOTLAND
EXAMINATIONS**

SCOTS COMMERCIAL LAW

Friday 16 February 2024

**0900 - 1200
(Three hours)**

**Candidates should answer THREE questions.
All sections of a question must be answered.**

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Question 1

Eric is keen to start up a sole trader business giving one-on-one sailing lessons to people. He decides to purchase a yacht so that he can take his family and friends sailing recreationally, alongside the lessons he would give to paying clients.

On 14 January 2023, Eric looks online to see if there are any yachts for sale near him. He is aware of a type of sailing yacht called the Seeker 5000. This particular type of boat has an outboard motor, which is a small engine that can be used to drive the boat if the sails are down. The boat is to be kept on a trailer out of the water when not in use. This Seeker 5000, called *The Pride of Edinburgh*, is for sale on a boat retailer's website called *Sail with the Wind Ltd* which is located in a town near his.

The advertisement for the boat reads:

“For sale: £15,000. Built in 1991, *The Pride of Edinburgh* is a Seeker 5000 sailboat that can be driven at 10 knots with its 50 horsepower outboard motor without compromising sailing performance. Complete with comfortable seating in the saloon, a recently refurbished kitchen, and lightweight aluminium trailer, you can launch and sail anywhere. View today at *Sail with the Wind Ltd!*”

Eric decides to go to *Sail with the Wind Ltd* that day, 14 January 2023, and have a look at *The Pride of Edinburgh*, which he finds on display in the warehouse. The sails are rolled up and tied down. Eric has a look inside and around the outside of the yacht. He likes it but is concerned about the condition of the trailer which looks damaged. A representative of *Sail with the Wind Ltd* tells him that if he buys the yacht for £14,500, *Sail with the Wind Ltd* would supply a replacement trailer. They tell Eric that it will take two weeks to receive the new trailer and two days to install it.

Eric knows that the price is good as boat trailers are expensive. He agrees to the deal and says that there is no rush anyway because he does not plan to start teaching sailing until May 2023 anyway. *Sail with the Wind Ltd* asks for a deposit of £2,000 which Eric pays.

On 1 March 2023, a representative from *Sail with the Wind Ltd* calls Eric and tells him that the trailer has arrived and that he must now pay the balance. The same day, Eric goes to *Sail with the Wind Ltd* and sees *The Pride of Edinburgh* with what looks like a new trailer. It is shiny silver and the tyres look new. Eric pays the balance of £12,500 to *Sail with the Wind Ltd*, decides to keep the yacht at their boatyard, and pays £100 for store for the month of March.

On 25 March 2023, the weather is beautiful in Scotland and Eric decides to take his sister sailing. When launching, the trailer sinks into the mud and gets stuck. On inspection, Eric finds that it is not a lightweight, brand new aluminium trailer but it is made of steel and has been sprayed silver, making it very heavy.

On 5 April 2023, Eric arranges to have the yacht inspected by a professional to make sure it is safe to provide sailing lessons to clients. The inspector notices that the sails have holes in them, the anchor chain is rusted and therefore cannot be used, and the 50 horsepower outboard motor is, in fact, a 25 horsepower outboard motor. The 25 horsepower motor is strong enough to drive the boat if only one person is onboard.

The costs to replace the sails, the anchor chain, and the outboard motor is over £12,000. Eric complains to *Sail with the Wind Ltd* but their representative said that he has purchased the yacht “as seen” on display and that it is a term of the contract that *Sail with the Wind Ltd* does not warrant the quality of second-hand yachts. This, however, does not appear in any of the paperwork that he has received.

Eric comes to you seeking advice.

Answer the following questions:

- (a) From a legal perspective, is Eric to be considered a consumer? Why, or why not?
- (b) If the facts were different and the sails were damaged by a storm on 2 March 2023, who would be responsible for repairing or replacing them?

Question 2

Following up on the scenario above, answer the following questions:

- (a) Did *Sail with the Wind Ltd* breach any of their duties under Sale of Goods law? If so, which ones?
- (b) Assuming that *Sail of the Wind Ltd* did, in fact, breach their duties under Sale of Goods law, what are Eric’s remedies?

Question 3

Referring to legal authorities and sources and using your own examples, explain the following concepts:

a contract of insurance;

a warranty and the consequences of breach of warranty;

the indemnity principle;

“insurable interest”.

Question 4

Mary and Lucy are a cohabiting couple. They have cohabitated since 2016 and intend to marry in the summer. They co-own a house in Dunfermline which they bought in 2018. The house was purchased outright, with no security.

Lucy runs a small business as a sole trader which decorates cakes (*Lucy's Creations*). This business has a business account with Beta Bank plc. The account is overdrawn to the extent of £25,000. The account has a £30,000 overdraft limit. *Lucy's Creations* is in financial difficulties. Beta Bank plc. is happy to lend Lucy £100,000 but only on condition that Lucy can give the bank a standard security over the house in Dunfermline covering the loan, and all other sums owed by *Lucy's Creations*. In addition, Lucy tells the bank that Mary has received a substantial inheritance from her late father, George. This amounts to £1,000,000. The bank asks Mary to guarantee Lucy's debts.

In February 2021, Lucy tells Mary that she needs her to sign a couple of documents. She hands Mary a cautionary obligation and a standard security. Lucy tells Mary that she needs her signature or the bank will stop funding her business. She assures Mary that the business is now doing very well. Lucy is very upset and Mary signs the document to appease her without asking too many questions. The cautionary obligation is limited to the £100,000 loan plus the sums due on the overdrawn current account. The standard security is registered in March 2021.

In March 2024, the bank increases the amount of the overdraft from £30,000 to £60,000. Lucy attempts to withdraw the money but to no avail. Her business is failing and she stops repaying the bank. Beta Bank plc. decides to enforce the standard security and the cautionary obligation. Mary receives the letter from the bank indicating that it intends to enforce both. She had no idea that she could lose her house and would have to pay so much money to the bank. She is angry and wishes to defend the action because she feels that she was duped.

Advise Mary.

Question 5

Sam is 60 years old. He works as a sole trader in the construction industry and lives in Dundee. Due to the COVID-19 pandemic and the cost of living crisis, on 10 February 2024, he becomes insolvent and some of his creditors take legal action to recover some of the debts due that he has failed to pay. As his debts continue to increase and more and more of his creditors are attempting to recover their money, Sam is now very worried and looks for advice on the Internet. He comes across information regarding the process of sequestration but does not understand everything. Not understanding much, he worries that he will lose all of his possessions in the process and therefore, on 14 February 2024, he decides to gift his brand-new car (which is fully paid for) and the little amount of money he has left to his daughter, Mary.

Advise Sam with regard to the following:

- (1) Sam consults you to ask what may be done against his estate, by whom, and within what time limits?

(2) If any of the actions you listed above is exercised, what would happen to his property?

(3) If a sequestration procedure was to commence, when would Sam be able to obtain a discharge of debts?

(4) If a sequestration procedure is opened, what legal advice should you give Sam and Mary about the gift made on 14 February 2024? Would your advice be different if, instead of gifting the assets to Mary, he had sold his car to her for £5? Provide legal sources for your answers.

Question 6

Explain the advantages for a creditor of executing diligence over heritable property. You are expected to compare and contrast the different diligences available under Scots law, and explain their natures, execution, and effects. Provide short examples for each diligence.

END OF QUESTION PAPER