Law Society of Scotland

Scots Commercial Law

Tuesday 18 February 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

Alan runs a small business manufacturing custom furniture. On 1 May 2024, Alan purchases a state-of-the-art woodcutting machine from Tools4Trade Ltd for £20,000. The advertisement claimed that the machine could cut wood up to 10 cm thick, with a precision of 0.01 mm. Alan, excited about the potential of increasing production efficiency, decides to purchase the machine after being assured by the salesperson that it is ideal for high-quality, precision work. The contract specifies that Alan would pay a deposit of £5,000 and settle the balance upon delivery.

The machine is delivered to Alan's workshop on 15 May 2024. At first glance, everything seems in order, and the delivery personnel quickly assemble the machine. However, when Alan begins using it, he notices discrepancies; the machine struggles to cut wood thicker than 8 cm and lacks the advertised precision, operating at a far lower standard of 0.1 mm accuracy. Alan contacts Tools4Trade Ltd immediately to express his concerns.

The representatives at Tools4Trade Ltd argue that Alan had ample opportunity to inspect the machine during delivery and that the terms of sale included an "as seen" clause—although this clause is not explicitly mentioned in the written contract. Furthermore, Alan had relied heavily on the advertisement and the verbal assurances of the salesperson when making his decision. Frustrated, Alan claims that the product does not meet the contractual description or his reasonable expectations based on the pre-sale information.

In the following days, Alan hires an independent technician to evaluate the machine. The technician's report confirms that the machine's capabilities fall short of the specifications in the advertisement. Alan estimates that upgrading the machine to meet the promised standards would cost an additional £5,000. This expense would severely impact his business operations and planned product delivery schedules.

Answer the following questions:

1. Did Tools4Trade Ltd breach their obligations under the Sale of Goods Act 1979? If so, which obligations?
2. If they did breach their obligations, what remedies are available to Alan under Scots law?
3. If Alan was a consumer, how might this situation differ in terms of legal protection and remedies?

Question 2

Discuss the role and significance of the duty of good faith in cautionary obligations under Scots law. In your answer:

1. Identify the conditions required for the duty of good faith to arise.

2. Explain circumstances that could constitute a breach of the duty of good faith.

3. Provide examples from case law to illustrate how the courts have interpreted and applied this duty.

Question 3

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

a) a contract of insurance;

b) a warranty and the consequences of breach of warranty;

c) the indemnity principle;

d) “insurable interest”.

Question 4

Orion Ltd is a small business operating in the wholesale distribution sector, supplying goods to retailers across Scotland. The company's assets include:

i. A warehouse valued at £500,000, subject to a standard security for a £300,000 loan from Alpha Bank. The warehouse is central to Orion's operations, serving as the storage hub for its inventory and dispatch centre for deliveries.

ii. Inventory worth £75,000, held in the warehouse. This stock includes a mixture of perishable goods and high-value items, with contracts requiring Orion to maintain minimum inventory levels to meet client demands.

iii. A delivery van worth £20,000, unencumbered by any security, which is vital for fulfilling orders to local retailers.

In early 2024, Orion faces significant cash flow problems due to delayed payments from major clients and an increase in operating costs. Unable to meet its obligations, two creditors, Beta Bank and Gamma Supplies Ltd, obtain decrees for payment against Orion for debts of £100,000 each. Beta Bank executes diligence over the van, as it is one of the few unencumbered assets, while Gamma Supplies Ltd initiates diligence over the inventory, citing its high value and easy liquidatability.

Shortly thereafter, Delta Finance Ltd agrees to provide Orion with a loan to stabilise its operations. This loan is secured by a floating charge over all of Orion's property and undertaking. However, by the time the floating charge attaches, Beta Bank and Gamma Supplies Ltd have already initiated their diligences, leading to disputes over the ranking and enforceability of claims.

Answer the following questions:

1. Discuss the advantages and limitations of executing diligence over heritable and moveable property for creditors.

2. Evaluate the relative priorities of Beta Bank, Gamma Supplies Ltd, and Delta Finance Ltd in relation to the above assets.

3. What legal advice would you provide to Delta Finance Ltd to protect its interests?

Question 5

On 1 March 2024, Fiona becomes apparently insolvent under the Bankruptcy (Scotland) Act 2016. She owes debts to multiple creditors and has the following assets and liabilities:

i. A house jointly owned with her spouse, valued at £200,000, subject to a standard security for £150,000. This house is their primary residence and has been jointly owned since 2015.

ii. A car valued at £10,000. Fiona uses this car for both personal and business purposes, and it is one of the few unencumbered assets in her name.

iii. A bank account in credit by £3,000. The account is a personal account used for daily expenses and minor business transactions.

In the weeks leading up to her apparent insolvency, Fiona made several transactions that have raised concerns among her creditors. Most notably, on 15 February 2024, Fiona transferred £5,000 from her business account to her brother, claiming it was repayment of a loan he had provided to help her during a financial emergency in 2021. However, there is no formal documentation of this loan, and the timing of the repayment has led to suspicions that it was intended to shield assets from creditors.

Additionally, Fiona has unpaid utility bills, credit card debts, and an outstanding business loan with a local bank, which together amount to over £60,000. Her creditors are now considering various legal options to recover their debts, including initiating sequestration proceedings and investigating recent transactions to determine whether they can be challenged or reversed under insolvency laws.

1. What steps can Fiona's creditors take to recover their debts, and what are the relevant time limits for such actions?

2. If sequestration proceedings commence, how would this affect Fiona's property and income?

3. Discuss the implications of the transfer to Fiona's brother and whether it could be challenged.

Question 6

Scot Robotics Ltd ("Scot Robotics") is a company that specialises in the manufacture and repair of robotic equipment. It has a ten-year lease of a warehouse and workshop complex in Livingston and owns a considerable amount of robotics products and other equipment, which are mainly located at the Livingston complex. Scot Robotics also holds three patents in robotics technology and has a 30% shareholding in another technology company, Big Time Tech Ltd. After some early difficulties, Scot Robotics has built up a strong customer base and is now owed money by a number of customers, following the supply of robotic equipment. In order to grow the business further, Scot Robotics seeks a loan of £2 million from Lothian Bank. The bank believes that the prospects of the business are good but wishes to obtain security to protect its loan.

1. Explain what types of security Lothian Bank could seek over the assets of Scot Robotics; and
2. Advise Lothian Bank which type(s) of security would be most advantageous and specify what further information may be required to make a conclusive assessment regarding this matter.

END OF PAPER