

THE LAW SOCIETY OF SCOTLAND
APTITUDE TEST FOR EU QUALIFIED LAWYERS

PAPER I
THE LAW OF PROPERTY, INCLUDING TRUSTS &
SUCCESSION AND FAMILY LAW

5th March 2007

0900 – 1200

Candidates should answer FOUR questions, including at least one from Section A, one from Section B, one from Section C and one other.

Answers to each SECTION should be written in a separate answer book

SECTION A : THE LAW OF PROPERTY

1. Robert Fraser buys a brand new house in the suburbs of Edinburgh from Hearsay plc. The company grants a disposition in favour of Robert, which Robert registers in the Land Register. Robert moves into his house. He is very happy. Then the house next door is sold. The buyer is Geraldine Harrison. She too receives a disposition from Hearsay plc, which she registers in the Land Register.

Geraldine advertises in the local paper offering singing lessons at £20 per hour. She conducts these lessons in her back garden. This annoys Robert. He checks Geraldine's and his title deeds. There is an identical real burden in both dispositions prohibiting "any trade, business or profession from being carried on anywhere within the subjects".

- (a) Is Geraldine breaching the terms of this burden? If so, can Robert enforce it against her?
 - (b) In what ways could Geraldine have the burden extinguished?
 - (c) When Hearsay plc granted the dispositions what execution requirements required to be satisfied in order that the dispositions could be registered?
 - (d) It transpires that the disposition in favour of Geraldine was forged. Does she have a good title? Could Hearsay plc have the Register rectified?
- 2 Ann owns three properties, Numbers 1 to 3 Strathclyde Street, Edinburgh:

- (a) Ann leases Number 1 to Bernard. Bernard is not a good tenant. He moves in only a few possessions, and is frequently absent from the property for long periods. Ann is worried that Bernard may not be able to make the next rental payment when it falls due.

Advise Ann on Bernard's absences, and what Ann can do to protect her interest in payment of the rent.

- (b) Ann leases Number 2 to Constance, unfurnished for use as office space. After being in occupancy for six months, Constance tells Ann that she wants to assign her interest as tenant to her friend Eugene.

Can Constance assign her interest to Eugene?

- (c) Ann grants a lease of Number 3 to George. George discovers that three months prior to his being granted the lease, Ann had granted a standard security over the property to the Lothian Bank Ltd. George was unaware of this standard security, and is unsure about how this affects his position as tenant.

Advise George.

Would the position be different if the lease had been granted prior to the standard security?

SECTION B : TRUSTS AND SUCCESSION

3. Write notes on the following:-

- (a) auctor in rem suam;
- (b) variation of trusts;
- (c) investment of trust funds

4. Alan aged 30 lives with his girlfriend, Brenda, aged 35. The title to the flat in which they live has been taken in the names of Alan and Brenda and the survivor. The flat is valued at £500K. Alan wrote a letter to his solicitor instructing him to draw up a will leaving all his property to Brenda: the will has been drawn up but Alan has not signed it. Brenda wrote a letter to her sister, Gail, in which she said that Gail was to have all her property "if anything were to happen to her". Alan and Brenda have been in a car accident in which both were killed; it is not possible to determine who died first.

When he died, apart from his share of the flat, Alan has investments worth £300K. He is survived by his wife, Celia, whom he left a year ago in order to live with Brenda; his mother, Doris, and his nephew, Edward, whose mother, Alan's sister, Fiona, died in childbirth. When she died, apart from her share of the flat, Brenda owned land valued at £800K and investments worth £600K. As well as Gail, she is survived by her illegitimate daughter, Iona, who has been adopted by Gail.

How will the estates be distributed?

SECTION C : FAMILY LAW

5. Archie and Bella went through a ceremony of marriage in 1995. Unknown to Archie Bella was married to Charlie at the time. Charlie divorced Bella in 1997. While they were living together Archie believed he was married to Bella and all their friends thought that they were a married couple. Because he was sexually assaulted as a child, Archie finds sexual intercourse repulsive and his relationship with Bella has never been sexually consummated. Bella was longing for a child. They agreed that she could have sexual intercourse with Archie's brother, David. Bella recently gave birth to David's child. David does not wish to see Bella or the baby. Archie has told her that he has no intention of maintaining her and her bastard.

Advise Bella on

- (i) her status;
- (ii) on whether she can seek a declarator of nullity of marriage or a divorce; and
- (iii) on whether Archie or David have an obligation to aliment her or the baby.