



THE LAW SOCIETY OF SCOTLAND EXAMINATIONS

CONVEYANCING

Monday 8 August 2016

**1330 – 1630
(Three Hours)**

**Candidates should answer FOUR questions, TWO from
SECTION A and TWO from SECTION B.
All sections of a question must be answered.**

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SECTION A

Question 1

Hamish bought a cottage near Peebles as a weekend retreat. This is a stone built property which is entirely surrounded by farm land sitting atop a small hill with steep sides. It has running water and an electricity supply is available but it has not been occupied for around 40 years. It was a very reasonable purchase at an auction where no warranties were given as to title etc. by the seller. She is the granddaughter of the last owner who died in 1989 and she has only recently come to realise her grandfather held the title.

- (a) Hamish rather belatedly seeks your assurances as to his right of access to the property as the title deeds are silent as is the disposition in his favour which he has now asked you to register in the Land Register on his behalf. Advise him as to whether he does have a right of access.

- (b) The prior titles to the property which are recorded in the Register of Sasines include a burden to the effect that the property shall be occupied by a worker in agriculture or arboriculture under threat of irritancy in favour of proprietor of the adjacent farm. Hamish is concerned that as he is a management accountant working for a building supplies company this may cause him some issues.

Advise Hamish as to whether this burden remains enforceable.

- (c) The prior titles do not include a plan but one has been attached to the disposition which Hamish has received. This appears to be for a smaller area than that which he saw when he visited the property.

Advise Hamish on what steps might have been taken to confirm the extent of the property prior to his acquisition and whether he has any claim against the seller.

[Answer all three parts which are of equal value]

Question 2

Ocean View is a purpose built block of flats erected at the seafront in Granton which was completed early in 2006. It is eight storeys tall. The flats are all privately owned with a mix of owner-occupiers and buy to let landlords. The flats were sold by the receivers of the developer and this was done without reference to the earlier deed of conditions which the developer had registered.

- (a) Aidan owns a penthouse flat which is on two levels – the top floor of the main building and a box like projection upwards from the roof which houses the

upper floor with the living /dining/kitchen space. This extends over one half of the lower floor. Aidan wishes to form a terrace over the flat roof over the remainder of the lower floor. Some of the lower owners object.

Advise Aidan if he can form the terrace.

- (b) In recent storms the zinc cladding which forms the roof and exterior wall surfaces of the penthouse box has been blown off. The entire roof of the penthouse box will require to be re-roofed at a cost of £35,000. Aidan considers that this should be shared by all the proprietors as the roof provides shelter to all the flats below. The lower owners are of the view that as the roof is flat and the damage is confined to the penthouse box the responsibility is entirely Aidan's.

Advise Aidan.

- (c) It becomes apparent that there are other defects in the rendering on the rear of the whole block and the main walls will require to be stripped off and re-rendered. There has often been a problem with collecting comparatively small amounts from the owners of flats which have been let out. The work to re-render the block will be a six figure sum.

Advise Aidan of steps they might take to ensure that the buy to let owners pay their shares and do not sell their flats without making payment.

[answer all three parts which are of equal value]

Question 3

Canmore Bank plc offers business finance to small and medium businesses. Where the business is constituted as a limited liability company the usual procedure of Canmore is to take a floating charge over the whole assets and undertaking of the company. Where the business is a sole trader or a partnership Canmore insist on taking a heritable security over the home(s) of the trader or the partners.

Barbara has recently been appointed as a director of Canmore but comes from a background of working in England for a rival company. She has asked your firm for an explanation of these procedures, what these terms mean and the legal significance of (a) floating charges and (b) a heritable security. She also recalls that there were issues in England where spouses made claims that they were not liable for their spouses' debts and (c) whether the same might be true in Scotland.

Write a note to Barbara covering these three issues
[Each part is of equal value]

END OF SECTION A

SECTION B

Question 4

A disposition of heritable property will contain a number of clauses, one of which is the warrandice clause.

Explain the purpose and effects of the warrandice clause and explain what steps a purchaser who is affected by an alleged breach of warrandice is required to undertake prior to making a successful claim.

Question 5

(a) Explain the duties of a landlord in relation to the condition of premises at the commencement and throughout the currency of a tenancy of non-residential subjects at common law.

(b) Explain the circumstances in which concept of *damnum fatale* would apply and its impact on the duties of the landlord.

Question 6

In May 2014, Scottish ministers invited the Keeper of the Registers of Scotland to complete the land register by 2024. All public land is to be registered within five years, by 2019.

Explain how the shared plot/sharing plot system introduced by the Land Registration (Scotland) Act 2012 will contribute to this aim and how this system differs from that which applied to registration under the Land Registration (Scotland) Act 1979.

END OF QUESTION PAPER