



THE LAW SOCIETY OF SCOTLAND

APTITUDE TEST FOR EU QUALIFIED LAWYERS

PAPER I

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

8 May 2017

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**.

All questions are marked out of 100 and are weighted equally

No marks will be awarded for copying out the text of materials which candidates are permitted to take into the exam.

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

SECTION A : LAW OF PROPERTY

Candidates should answer at least ONE question from this section.

Question 1

- a) The introduction of the Tenement Management Scheme was a major innovation of the Tenements (Scotland) Act 2004.

Explain how the 2004 Act has improved the position compared with the common law in relation to the instruction of repairs and the recovery of the costs thereof.

- b) The Title Conditions (Scotland) Act 2003 introduced a new regime in relation to the constitution and enforcement of real burdens.

Explain the requirements which an owner of property must satisfy to enforce real burdens under the Act as interpreted by subsequent case law.

Question 2

Shore House is a large detached building on Shore Road, Cocklemouth with open views across the road to the famed beach and the North Sea. It is not a listed building nor in a conservation area. It was divided into four flats in the 1980s and the titles to each flat refer to a deed of conditions. The main walls of each flat are owned exclusively by the proprietors of that flat.

- a) In terms of the deed of conditions the owners of any flat shall be entitled to erect television aerials or satellite dishes on the rear wall of the eastmost upper flat.

Jasmine who recently became the owner of this flat considers the dishes unsightly and quite inappropriate for the Georgian Building. She has asked you whether such a right can be valid and if she can require Keith the owner of the eastmost lower flat to remove his now rusty satellite dish.

Advise Jasmine.

b) Keith the owner of the eastmost lower flat owns two of the garages at the rear of the property. He has agreed with Lorna that she can use one of the garages for £100 per month. This is an informal oral agreement. Lorna initially used this for her car. However she is now using it instead to store wood for her wood burning stove. Since she started this use the garage has become infested with rats. Keith has had complaints from the other owners and seeks you advise about whether Lorna is entitled to change the use and what he needs to do to bring what he calls 'a lease' to an end.

Advise Keith.

[Answer both parts which carry equal weight]

END OF SECTION A

SECTION B : TRUSTS AND SUCCESSION

Question 3

Fergus wishes to create a trust under his will, and to direct his trustees to take the following steps:

- a) His house in Stonehaven is to be demolished and replaced with a large granite statue of him, which should be of artistic merit and in keeping with the surrounding architecture.
- b) £200 is to be paid annually towards the upkeep of his beloved budgie, Agnes until her death.
- c) £1000 is to be paid annually to his sister Gretel unless and until she marries or dies.
- d) £50,000 is to be devoted to “charitable purposes”.
- e) Once the annual sums to Agnes and Gretel cease to be payable, the whole of the estate is to be made over to “religious purposes”.

Advise Fergus on the validity of these purposes and how, if necessary, they might be re-worded to avoid challenges.

Question 4

Lizy Williams and her husband are involved in a car crash in England. Despite frequent visits to England they are both domiciled Scots. Two hours after the crash they are found. Unfortunately both are dead. There is some speculation that Lizy might have been killed instantly when the lorry ran over the car and her husband might have died a few moments later as his body is found a few

metres away in a field. Lizy and her husband have no children but each are survived by their parents. Lizy left a will leaving all her property (except for her dog “Rover”) to her husband provided he survived her. Her husband Jimmy died intestate. “Rover” has been left in Lizy’s will to Aberdeen University as a guard dog for the Special Collections Department.

Identify the beneficiaries in the estates of both Lizy and Jimmy.

END OF SECTION B

SECTION C : FAMILY LAW

Question 5

Identify the key features of an anti-nuptial marriage contract. Indicate how they would be applied in the following circumstances.

You client, Sir Angus O'Tipperty Smythe is aged 68 and is a bachelor. He lives with his sister Samatha who is dismayed that Angus has been frequenting public houses and cruises on French rivers and has been taken in by a girl Samantha suspects is a "gold digger". The girl is called Mindy O'Flagherty. Angus has now proposed marriage and the offer was snapped up. Samantha convinces Angus to secure his wealth by entering into an ante nuptial marriage contract. The assets of Angus include:

- (a) Three houses in Aberdeen collectively worth 5 Million Pounds.
- (b) Contents of the houses worth 1 Million Pounds.
- (c) Stocks and shares in English companies collectively worth 2 Million Pounds.
- (d) A time share in Spain worth nothing.
- (e) A large gold nugget inherited from Angus' father worth 500 Thousand Pounds.

Question 6

Critically examine the nature of a statutory matrimonial homes occupancy right and identify how it is dealt with in the course of a conveyancing transaction.

END OF SECTION C

END OF QUESTION PAPER