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APTITUDE TEST FOR EU QUALIFIED LAWYERS

PAPER I

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

9 November 2015

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) Hamish owns an arable farm. The hill above is owned by Gregor, a sheep farmer. Gregor accesses his land by way of a track through Hamish's farm. He uses a quad bike every day and once a year large trucks use the track to take sheep to the market. Hamish has no problem with this as this does not cause any real damage to the track. This arrangement has gone on for 30 years. Gregor recently obtained planning consent for the erection of six large wind turbines on his farm. This will involve a considerable amount of construction traffic with heavy earth moving equipment and exceptionally long loads for the delivery of the turbines themselves.

Hamish has a number of concerns. Firstly all this traffic may obstruct his normal farming operations and may disturb his cattle. Further it is almost certain that the construction traffic will damage the track and the long vehicles will be unable to take the corners on the track.

Provide advice to Hamish.

b) In 2000 Hamish sold an old farm steading building to Fiona who converted the building into a home for herself and an adjacent unit which she let out as holiday accommodation. Fiona now has a new partner Darren who has moved in with her. The holiday home is now being used by Darren for his business as glass blower. This has required the

installation of an electric furnace and there is an accumulation of raw materials in the courtyard adjacent to the steading. The section of courtyard adjacent to Fiona's property was included in the sale to her but Hamish retains the remainder. Some of the raw materials might be damaging to Hamish's cattle if eaten.

When Hamish sold the steading to Fiona the disposition included the following title conditions:

- (i) My disponee and her successors in title shall use the subjects hereby disposed for the occupation of one family only in all time coming and shall not be used for any business purposes.
- (ii) My disponee and her successors shall use that area of courtyard (coloured blue on the plan) which comprises part of the subjects hereby disposed for the parking or private motor vehicles and the said area shall be maintained in a neat and tidy condition in all time coming.

Advise Hamish as to whether he can prevent the use of the former holiday cottage for glass blowing and if he can have the courtyard restored. Your answer should include consideration of title and interest to enforce.

[each part is of equal weight]

Question 2

Alice bought a flat in a new build block in 2010. At the time she considered this was a bargain as the developer offered her £40,000 discount. However shortly after she purchased her flat the developer became insolvent and

the remainder of the block was repossessed by the heritable creditor. The remaining flats have been sold off by the heritable creditor over the last few years and each flat is now owned separately. When Alice bought her flat the disposition in her favour made reference to common property and contained new real burdens in relation to the maintenance of the block. However the dispositions by the heritable creditor made no reference to common property nor contained any reference to maintenance of the block.

Alice now requires advice on a number of issues which have arisen.

- a) There is an area of garden ground to the rear of the block which is laid out as a lawn with shrubs. Alice uses this to sunbathe during the summer. Her title provides that she will have a right in common to the landscaped areas to the rear of the property. Brian who has recently bought the ground floor flat adjacent to the lawn asserts that the garden ground is his and has recently dug up part of the lawn to plant carrots.

Advise Alice as to the ownership of the landscaped areas and whether Brian can use part of the area to grow vegetables.

- b) Alice has a penthouse flat located on two floors. She has had issues with water penetrating her flat for the last three years. She has now discovered that there are serious structural defects with the roof and its covering which is going to cost £40,000 to repair. This would work out at £5000 for each of the eight flats in the block. The owners of five of the flats are unwilling to agree to the works going ahead or to pay their share of the costs. They point out that their titles

are silent and suggest that Alice should pay those costs herself as they are not liable.

Advise Alice as to who may instruct repairs and the liabilities of all the owners in relation to the costs.

- c) The basement of the block contains two large areas which were shown on the original plans as a laundry room and a fitness room. However no washing and drying machines were installed and there is no gym equipment. All of the titles to the flats confer rights to these two areas and the majority of owners would like to use them as originally intended. Alice would like to know if equipment is purchased whether the costs can be recovered from all of the owners.

[each part is of equal weight]

END OF SECTION A

SECTION B : TRUSTS AND SUCCESSION

Question 3

In his trust deed, Monostratos appointed Pamina and Papageno to be trustees and transferred £550K into an account in their names. The purpose of the trust was to provide educational support for young people who were born in Montrose, Monostratos' home town. The deed provided that the support should take the form of a bursary or "any other form of help which the trustees consider suitable". Pamina and Papageno have agreed to take an honorarium of £20K a year for the time they take in administering the trust: the trust deed does not state that the trustees should be remunerated. They have also "borrowed" £280K which they have used in speculation in the stock market: the shares they have bought with the money are currently worth £500K. Pamina's son, Tamino, was born in Montrose and is studying accountancy in Glasgow. When he applied to the trust, Pamina and Papageno agreed to buy him a flat in the city out of the trust fund. They also agreed that Papageno's son, Sarastro, who is training as a car mechanic, should receive £10K: Sarastro lives in Montrose but was born in Arbroath. Sarastro used the money to buy a necklace for his girlfriend, Anna.

Advise Monostratos.

Question 4

Brian, aged 33 and Wendy, aged 32 are married. Before going on a cruise, Wendy wrote out a document which she subscribed in which she stipulated that in the event of her death all her estate was to go to the girl guides. On holiday, the couple was injured in a train crash. Wendy died and Brian survived her by two hours. Brian did not

have a will. Wendy survived by her daughter, Laura, who was born three years before she met Brian. Brian is survived by his brother, Andy, and his nieces, Sandra and Joy, whose mother, Gertrude, Andy's sister, died two years ago. Title to the matrimonial home is in the names of Brian and Wendy and the survivor. On her death Wendy had shares valued at £90K. Other than his interest in the house, Brian had shares valued at £110K.

How will the estates be distributed?

END OF SECTION B

SECTION C : FAMILY LAW

Question 5

Flavio and Norma married in 1995. Flavio bought a house for £20K in 1990, with the intention that it should be used as a family home for both of them. Flavio paid a down payment of £11K and raised the rest of the price by a loan secured by a standard security over the house. Title to the house was taken in Flavio's name. In 2001, Norma gave up her job as a model when she discovered she was pregnant. A girl was born later that year. During the marriage, Flavio bought furniture, a car and golf clubs: these were worth £17K, £10K and £2K respectively at the time when he left Norma. During the marriage Norma bought designer handbags and jewellery: these were worth £5K each at the time Flavio left her. She also inherited a fur worth £10K at the time Flavio left her. Flavio had shares that he bought before the marriage worth £65K.

When Flavio left Norma in 2015, the house was worth £150K, with an outstanding loan of £2K. Flavio has a flat which he bought after he left Norma worth £50K, in which he is now living with and supporting his girlfriend and her daughter of 6. Norma's savings made from her earnings during her marriage were worth £10K. Flavio had contributed to an occupational scheme which he joined five years before he married. His interest under this pension scheme is valued at £250K. After Flavio left Norma, Norma won £3K at a casino.

Advise Norma on the financial provision she is likely to obtain if she divorces Flavio.

Question 6

Brenda and Andrew are married. Brenda had been having an affair with Tom for a year, before she became pregnant, with Ian. She then had Ian. Brenda has met Tom again and has left Andrew to live with Tom taking Ian with her. She has refused to let Andrew see Ian, maintaining that Tom is Ian's father. Tom is a drug addict with a history of violent behaviour towards women, but has never been violent to Brenda.

Advise Andrew:

- (i) on the paternity of Ian;
- (ii) on whether he has any right to see Ian; and
- (iii) on the likelihood of having Ian live with him.

END OF SECTION C

END OF QUESTION PAPER