

THE LAW SOCIETY OF SCOTLAND
INTRA UK TRANSFER TEST

PAPER I
CONVEYANCING WITH TRUSTS & SUCCESSION

8 May 2017

1000 – 1200

Candidates must answer QUESTION ONE and two other questions.

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 – CONVEYANCING

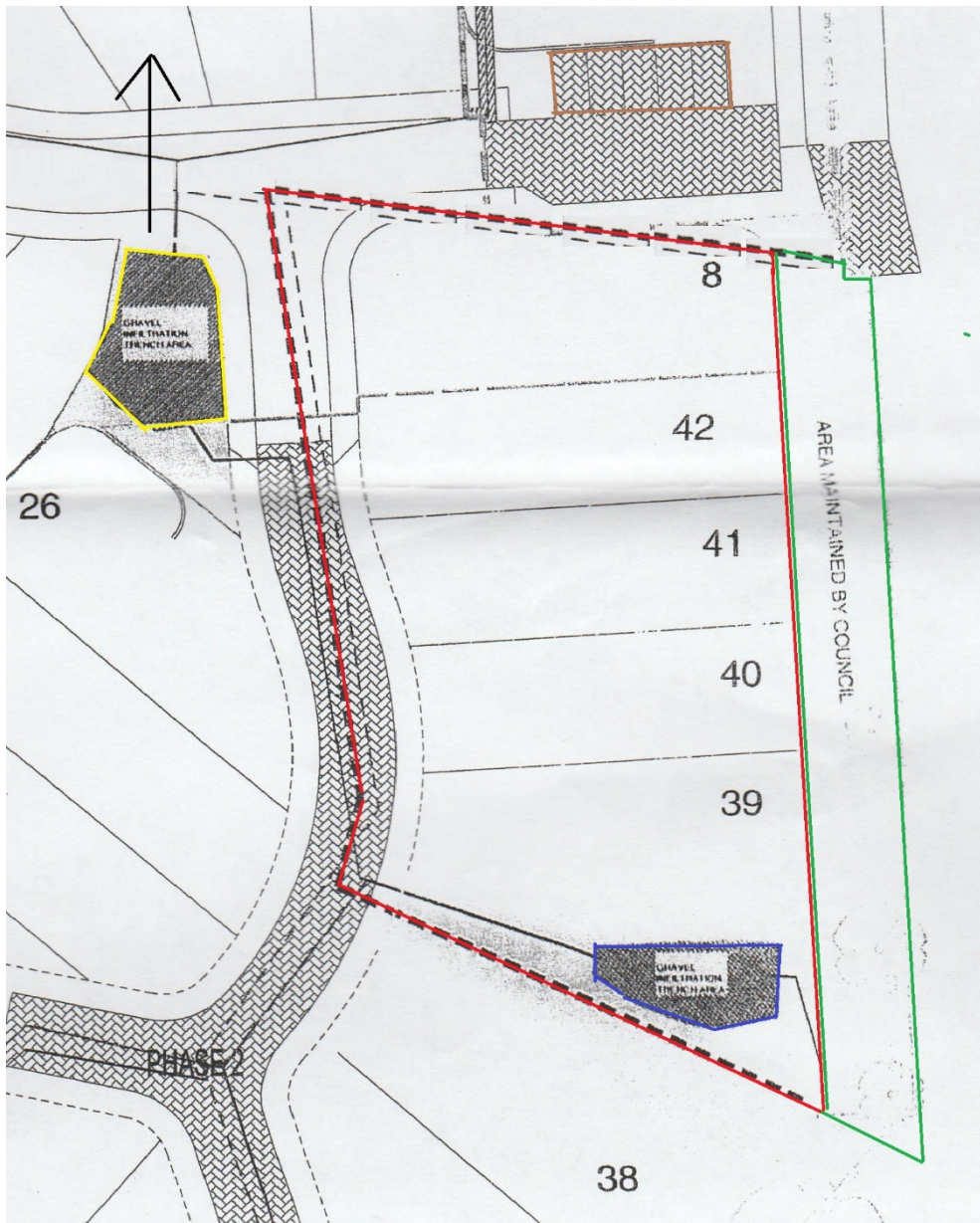
Candidates must answer Question One.

Question 1

Strathmore Investments Ltd SC123456 whose registered office is 5 Castle Way, Forfar have agreed to purchase five completed dwelling houses forming part of the larger development at Heather Muir, Angus from Lumley Developments Ltd SC987654, whose registered office is at 1 Barrie Court Kirriemuir. The price agreed is £1.1m and entry is scheduled for 13th May 2017. Lumley's title is registered under title number ANG789101 and they are very anxious to settle as they are under pressure from their lenders.

The plan for annexation to the disposition is reproduced below. The plots are shown outlined in red. In addition the area outline green is included. This is to be laid out as amenity ground and it is envisaged that the local authority will take over maintenance in due course but the obligations to lay out and maintain until then will pass to the purchasers. The electricity substation outlined blue is excluded. The plots will benefit from a right to park cars on the five parking spaces outlined brown.

In addition the purchasers will be liable to pay a 5/26 share of the costs of maintaining that part of the sustainable urban drainage scheme within the larger development which is shown outlined yellow on the plan.



You are required to draft a suitable disposition.

Question 2

Albert Court is a 19th century tenement in the centre of Dundee.

There is a public house which occupies the whole of the ground floor and extends into what was once the backcourt yard of the tenement with six flats above all

accessed by a close on the east side of the block and an external stair tower. The public house makes no use of the close and stair. The title deeds make no provisions for repairs nor is there any reference to common property.

- (a) There is a large hanging sign on the front elevation which advertises 'The Albert' pub. Blair owns northmost first floor flat. The brackets for the sign are attached to the wall of his flat. This swings in the wind and keeps Blair awake.

Can Blair require Albert, who owns the pub, to remove the sign?

- (b) Fraser owns the southmost top flat. Water is penetrating the roof above his flat and roof repairs are urgently required. Fraser has got agreement to go ahead from the other five flat owners but Albert has not agreed.

Can Fraser go ahead without getting Albert's consent and in the absence of any provision in the titles how are repairs costs to be shared?

- (c) Dawn owns southmost second floor flat. She is concerned about the use of the close. Her neighbour Ewan is a keen cyclist who owns a mountain bike, a mountain bike and a touring bike which are all chained in the close and stair. She has asked Ewan to keep his bikes in his flat but Ewan says he has no space in the flat and after all the close is common so he is entitled to use it. Dawn finds negotiating her child's buggy past the bikes very awkward. She asks for advice about the ownership and use of the close.

[All parts should be answered and are of equal value]

END OF SECTION A

SECTION B : TRUSTS AND SUCCESSION

Question 3

Comment critically upon the operation of the doctrine of conflict of interest as it applies to the role of a trustee in a Scottish trust. In your answer you should also set out the defences available to a trustee against whom an allegation of acting with a conflict of interest has been made.

Question 4

The date is 1st March 2014. You read in the paper that your client Milo Clancy has just died from natural causes. Although born in Ireland, he had been resident in Aberdeen for years and had drawn up a will in Scottish form which dealt with all of his estate. He had purchased a grave plot here. You telephone his lawyers in Ireland and discover he did not leave a will there. At the date of his death he was not married and was survived by one child Jimmy (aged 18). The will (which extends to 3 pages) was not drawn up by you. It was executed properly on 30th June 1998. It contains a number of clauses upon which you are asked to comment:-

- (a) The will contains a bequest of £10,000 for the setting up of an institute “to foster free thought” in Northern Ireland.
- (b) The will contains a bequest of £3,000 to the Mrs. Murray’s Cat and Dog Home in Aberdeen and later on in the same will there is an identical bequest of £3,000 to the same beneficiary. When you turn over the page there is a bequest of £1,000 to the Aberdeen Royal Infirmary and a second bequest of

£3,000 to “the cancer research department at Aberdeen Royal Infirmary”.

- (c) The will contains a bequest of £1,000 “payable out of my bank account in the bank of Ireland, O’Connell Street, Dublin to Milo’s cousin in Belfast, Northern Ireland but there is only £500 in the account.
- (d) There is a bequest of £5,000 to James Stewart, lawyer in Inverness but it turns out there is no such person. There is a James Stewart, lawyer in Ellon and a Stewart James, court official in Inverness.
- (e) There is a bequest to a friend named Sally Smith of “my house at 50 Tomatin Road, Inverness”. It turns out that Milo never owned this house but rented it for a few months every summer.
- (f) There is a bequest to a certain Sue Gimlet of £1,000 on condition that she does not marry a certain named individual.
- (g) As an answer to this question comment on the efficacy of the various bequests and the terms thereof.

END OF SECTION B

END OF PAPER