



**THE LAW SOCIETY OF SCOTLAND
EXAMINATIONS**

PROPERTY LAW AND CONVEYANCING

Monday 5 February 2018

**1330 – 1530
(Two Hours)
(+10 minute Oral examination)**

Candidates should answer THREE questions, including ONE from SECTION A, ONE from SECTION B and one other from EITHER SECTION.

All sections of a question must be answered.

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SECTION A

Question 1

Marcus is setting up a fish farm on the banks of the river Forth.

Advise Marcus on the following matters:

- a) He owns a stretch of the river bank. The river at this point is a little faster flowing than he would like and he would like to create a channel and pool inland, through which he would lead some river water before returning it to the main river and to breed his fish in the pool.

Can the other owners of sections of river bank object to this course of action?

- b) Marcus' brother Neil will supply the cages in which the fish will be kept. For accounting reasons, Neil would like to retain ownership of the cages. The cages will be fixed to the river bank and kept there for 15 years (their natural lifespan). Can Neil retain ownership of them when they are fixed to the bank?
- c) A delivery of salmon smolts intended for Marcus were erroneously delivered to his rival Olivia. Olivia did not realise the mistake until she had introduced the smolts into her farm. They have now developed into fully grown salmon. Who do they belong to?

[Each part is of equal value]

Question 2

Bank of Alba plc has a standard security over a house belonging to Frank and Geraldine Skinner. The security was granted by Frank and Geraldine in security for a loan to support Geraldine's business. The security secures "all sums due and to become due by Mrs Geraldine Skinner and/or Mr Frank Skinner to Bank of Alba plc". Frank did not receive independent legal advice prior to signing the security documentation.

Geraldine's business runs into trouble and she has fallen six months behind in her repayments. She receives a calling up notice from the bank in the statutory form.

Advise Frank as to what arguments are open to him to either delay or prevent the bank from selling the house.

END OF SECTION A

SECTION B

Question 3

Explain and analyse the difficulties which have faced the courts in the application of sections 52 and 53 of the Title Conditions (Scotland) Act 2003.

Question 4

Critically analyse the significance of the principle of specificity to the law of transfer in Scotland.

Question 5

Explain the relative merits of a standard security and a floating charge as security devices for a lender funding an office block to be built and run by a special purpose vehicle.

Question 6

Critically analyse the role of the concept of *res merae facultatis* in the law of prescription in Scotland?

END OF SECTION B

END OF QUESTION PAPER