

**THE LAW SOCIETY OF SCOTLAND  
EXAMINATIONS**

**PROPERTY LAW AND CONVEYANCING**

**Monday 6 August 2018**

**1330 – 1530  
(Two Hours)**

**(+10 minute Oral examination)**

**Assessment (a)**

**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 has recently purchased some land in the north-east of Scotland. It comprises a quay, a private road which leads from the pier to the public road and a triangular piece of ground between the private road and the foreshore. Local people have been leaving fishing boats on the triangle of land for many years, as well as walking or driving to the end of the pier for a wide range of leisure activities. Marcus is content with pedestrian access but would like the boats to be moved and to stop people taking cars onto the quay because he thinks it is dangerous. It is three years since Marcus acquired the property but he has not, as yet, done anything to indicate his unhappiness with what is going on.

When he speaks to some of the owners of the fishing boats and explains his plans, they tell him that he cannot for three reasons: (a) their use has established a public rights of vehicular access and parking on both the quay and the land next to the foreshore, which extends to boats; (b) he is personally barred from seeking to challenge the present use of the land and (c) their use is covered by the right of responsible access under the Land Reform (Scotland) Act 2003.

Advise Marcus.

**Question 2**

Sheila owns a house in a residential housing development in Dumbarton. The houses and their gardens are all in private ownership but there are a number of green spaces around the development which are owned and maintained by Blue Braces Ltd, a land management company. Sheila's title includes a real burden obliging her to pay a fee to the owner of the green spaces to cover the cost of cutting the grass, weeding and otherwise maintaining them. There is nothing in the title which gives Sheila a right to use or enter the green spaces. Her title does not contain any burden which entitles her to compel maintenance of the green spaces.

Sheila is unhappy with the arrangement. She feels that Blue Braces Ltd charge too much and do not maintain the green spaces adequately. She would like to contest the validity of the burden and has had the following ideas about grounds for challenge: (a) the

arrangement creates an unlawful monopoly; (b) the benefited property is not properly identified (because the extent of the green space was not known at the time when the burden on Sheila's property was registered) and (c) the burden is insufficiently praedial.

Advise Sheila.

**END OF SECTION A**

## **SECTION B**

### **Question 3**

Has legislation passed since 2000 done enough to facilitate the use of electronic communication in conveyancing in Scotland? Explain your answer.

### **Question 4**

Are the requirements for accession of moveable property to land (a) sufficiently clear and (b) suitable from a practical point of view? Explain your answer.

### **Question 5**

Critically analyse whether the Conveyancing and Feudal Reform (Scotland) Act 1970 does enough to encourage secured creditors to assist debtors who are in arrears before seeking to sell the property.

### **Question 6**

Discuss whether the requirement of intimation for a valid assignation presents an undue obstacle to the use of receivables as collateral in Scotland?

**END OF SECTION B**

**END OF QUESTION PAPER**