



**THE LAW SOCIETY OF SCOTLAND
EXAMINATIONS**

CONVEYANCING

Monday 6 August 2018

**1330 – 1630
(Three Hours)**

**Candidates should answer FOUR questions, TWO from SECTION
A and TWO from SECTION B.
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.

Question 3

David has just bought a house at 147 Hendry Street, Motherwell. After he had submitted his initial offer but before the conclusion of missives, David learned (as a result of overhearing a conversation in a pub) that the seller was in dispute with Ethel, who alleged that she had a contract to buy the property. He asked the seller about this and was assured that the contract with Ethel had been terminated for material breach because Ethel had not paid the price, even after being given an ultimatum. David took no steps to confirm this.

David's purchase settled on 13 July 2018 and application was made for registration on 16 July 2018. The application was accepted but Ethel has since contacted David asking him to move out of the property. In support of her request, she produced a disposition from the seller (as yet unregistered) granted on 12 July 2018 and an advance notice which covered such a disposition registered on 10 July 2018. She also asserted that David's title was reducible as "an offside goal".

Advise David.

END OF SECTION A

SECTION B

Question 4

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

Question 5

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 6

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.

END OF SECTION B

END OF QUESTION PAPER