THE LAW SOCIETY OF SCOTLAND
EXAMINATIONS

PROPERTY LAW AND CONVEYANCING

Monday 7 February 2022

1300 – 1600
(Three 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 parts of a question must be answered.
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SECTION A

Question 1

Henry owns a house in a suburban street in Carnoustie. Thirty years ago, his neighbour (Isla) built a large shed along the boundary between their gardens. Over that period, she had entered Henry’s garden for the purpose of maintenance such as painting and replacing roofing felt. She always asked Henry’s permission before coming into his garden for this purpose.

Henry would like to build his own shed next to Isla’s but Isla claims that this is not lawful: she claims to have acquired a servitude of access either “by necessity” since without the access, she would have no means of maintaining her shed or by positive prescription.

Can Isla stop Henry from building his shed and can Henry to Isla from entering his garden to maintain her shed in the meantime?

Question 2

Jenny borrowed £300,000 from Bank of Alba plc and, in return, granted a standard security (Standard Security 1) over her house for “all sums due and to become due” to Bank of Alba plc. Three years later, she granted a further standard security (Standard Security 2) (with Bank of Alba’s consent) to Strathtay Bank plc in security of a loan of £100,000. Once Strathtay Bank had registered the security, they notified Bank of Alba plc. In the period prior to the notification, Jenny had repaid £50,000 of the loan. Since the notification, Bank of Alba has advanced a further £100,000 to Jenny.

Bank of Alba have recently sold their claim against Jenny (along with a large number of other borrowers) to Blackcraig LLP. The documents assigning the standard security were in accordance with Form B in Schedule 4 to the Conveyancing and Feudal Reform (Scotland) Act 1970 except that the amount which was outstanding under the loan was not stated. They were submitted to the Keeper for registration.
Since the grant of the deed of assignation, Bank of Alba had advanced a further £5,000 to Jenny

a) Who holds Standard Security 1?
b) How much does it secure?
c) Does Standard Security 1’s priority over Standard Security 2 extend to the full amount which Standard Security 1 secures?

END OF SECTION A
SECTION B

Question 3
Does Scots law make adequate provision for the use of electronic documents in conveyancing?

Question 4
How coherent is the distinction between leases and licences in Scots law?

Question 5
Does Scots law’s approach to encroaching buildings strike the right balance?

Question 6
Is it too difficult to acquire ownership of land whose owner cannot be traced or identified?

END OF SECTION B

END OF QUESTION PAPER