THE LAW SOCIETY OF SCOTLAND
EXAMINATIONS

PROPERTY LAW AND CONVEYANCING

Monday 6 February 2023

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

Fiasco Financing Ltd recently purchased the portfolio of 50 secured loans from Lawrie’s Land Investments Ltd. The loans were all owed by Naylor Builders Ltd. In each case, a new standard security for “all sums due and to become due by the debtor to the creditor” was granted. The security documentation defined the creditor as “Lawrie’s Land Investments Ltd and its assignees”. The security subjects were all commercial properties. A single document was used for the assignation of all the loans and the securities. It was duly registered.

Naylor Builders Ltd has defaulted on a number of the loans and Fiasco Financing Ltd and Fiasco have served calling-up notices on Naylor Builders Ltd. Naylor Builders Ltd have contacted Fiasco Financing Ltd disputing Fiasco’s entitlement to enforce the standard securities. Naylor alleges that the form required by the Conveyancing and Feudal Reform (Scotland) Act 1970 was not followed because a) the assignations did not specify the sums outstanding and b) because a single document had been used for the assignation of both loans and the standard securities. Naylor further argued that Fiasco Financing could not enforce the securities because there had been no intimation of the assignment of the secured debts.

Advise Fiasco Financing Ltd.

Question 2

Anna has been granted the proper liferent of a flat in Glenrothes. After Anna had been living there for some months a leak developed in the roof above the common stair. She contacted the fiar, Bertie, who refused to get involved. Investigation of the titles of the flats in the building showed that they make no provision for maintenance of the roof. Anna has spoken to her neighbours but none of them have shown any inclination to address the problem.

Advise Anna on a) whether she can compel Bertie to arrange for repair of the leak; b) whether she is entitled to instruct the repair work herself; c) whether she can recover any part of the
cost of the repair from her neighbour; and d) whether she can recover any part of the cost from Bertie.

END OF SECTION A
SECTION B

Question 3

Should rectification of a deed of conditions under section 8(1)(b) of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 be capable of affecting the extent of properties conveyed by dispositions which make reference to that deed of conditions (as was the case in *PHG Developments Scot Ltd v Lothian Amusements Ltd* [2021] CSIH 12, 2021 SC 245)?

Question 4

Critically analyse the approach taken to the praediality requirement for servitudes and real burdens in Scots law.

Question 5

Does the Scottish system of land registration make it too difficult to obtain rectification of a mistake in a title sheet?

Question 6

Has Scots law done enough to facilitate e-conveyancing?

END OF SECTION B

END OF QUESTION PAPER