

THE LAW SOCIETY OF SCOTLAND
INTRA UK TRANSFER TEST

PAPER I
CONVEYANCING WITH TRUSTS & SUCCESSION

9 November 2015

1000 – 1200

Candidates must answer QUESTION ONE and two other questions.

No marks will be awarded for copying out the text of materials which candidates are permitted to take into the exam.

Answers to each SECTION should be written in a separate answer book

SECTION A – CONVEYANCING

Candidates must answer Question One.

Question 1

Alexander Buchanan owns 114 Crieff Road, Aberkeld. This is a detached property bounded on the south by Crieff Road with a generous rectangular plot. The title to the property is registered under title number PTH12345. Alexander is getting on in years. His daughter Claire Buchanan has recently returned from Australia and is presently living with him.

He plans to divide the house into upper and lower flats and make over the upper floor to Claire without payment. He will retain the front garden and the rear garden will go with the upper flat. The drive on the east side of the house will be mutual and the garage, which is in rear garden, will go with the upper flat – Alexander has recently had to give up driving.

A new plan has been prepared. The entire site is outlined in red on the plan. The building is outlined in black and hatched. The back garden is shown coloured blue and the drive is shown green. The front garden has been coloured yellow. The access to both flats will be directly from the drive.

There are no further instructions from Alexander and Claire is unrepresented.

Required

Draft a suitable disposition making provisions which you consider appropriate in order that you can submit this to Alexander to take instructions to finalise matters.

Question 2

- a) Hamish owns an arable farm. The hill above is owned by Gregor, a sheep farmer. Gregor accesses his land by way of a track through Hamish's farm. He uses a quad bike every day and once a year large trucks use the track to take sheep to the market. Hamish has no problem with this as this does not cause any real damage to the track. This arrangement has gone on for 30 years. Gregor recently obtained planning consent for the erection of six large wind turbines on his farm. This will involve a considerable amount of construction traffic with heavy earth moving equipment and exceptionally long loads for the delivery of the turbines themselves.

Hamish has a number of concerns. Firstly all this traffic may obstruct his normal farming operations and may disturb his cattle. Further it is almost certain that the construction traffic will damage the track and the long vehicles will be unable to take the corners on the track.

Provide advice to Hamish.

- b) In 2000 Hamish sold an old farm steading building to Fiona who converted the building into a home for herself and an adjacent unit which she let out as holiday accommodation. Fiona now has a new partner Darren who has moved in with her. The holiday home is now being used by Darren for his business as glass blower. This has required the installation of an electric furnace and there is an accumulation of raw materials in the courtyard adjacent to the steading. The section of courtyard adjacent to Fiona's property was included in the sale to her but Hamish retains the remainder. Some of the

raw materials might be damaging to Hamish's cattle if eaten.

When Hamish sold the steading to Fiona the disposition included the following title conditions:

- (i) My disponee and her successors in title shall use the subjects hereby disposed for the occupation of one family only in all time coming and shall not be used for any business purposes.
- (ii) My disponee and her successors shall use that area of courtyard (coloured blue on the plan) which comprises part of the subjects hereby disposed for the parking of private motor vehicles and the said area shall be maintained in a neat and tidy condition in all time coming.

Advise Hamish as to whether he can prevent the use of the former holiday cottage for glass blowing and if he can have the courtyard restored. Your answer should include consideration of title and interest to enforce.

(both parts are of equal value)

END OF SECTION A

SECTION B : TRUSTS AND SUCCESSION

Question 3

Fasolt and Faffner are wealthy businessmen, each of whom has drawn up a trust deed.

In his trust deed, Fasolt appointed Mime to be a trustee, with the power under the trust deed to purchase land "for the benefit of the trust". Mime purchased two plots of land in central London, in a speculative scheme designed to earn much profit for the trust. One plot was later sold at a loss of £300,000, and the other plot at a profit of £400,000.

In the other trust deed, Faffner appointed Fricka, a director of a manufacturing company as a trustee in a private trust which holds a large number of shares in that company. Fricka came into possession of information which indicates that the company shares are about to diminish very substantially in value. If she used this information she would be guilty of an offence of insider dealing, and so she did not tell her co-trustees. Later the value of the shares diminished, and the trust estate diminished accordingly.

Advise Fasolt and Faffner.

Question 4

Percy aged 40 and Sledge aged 35 are a gay couple. They live together in a flat title to which is in joint names "and the survivor". Percy typed a note in which he stated that on his death everything was to go to Sledge whom failing to Percy's mother. Percy signed the note but did not have the signature witnessed. Sledge telephoned his solicitor telling her that he wanted to draw up a will leaving

all his property to Percy but he never went to her office to sign it.

Percy and Sledge were killed in a car crash on the M8. It was not possible to determine who the survivor was. At the time of his death, Percy had his share of the house worth £250K, a house in the country worth £200K and money and shares worth £150K. Apart from his mother he is survived by his divorced wife and their five year old son. Sledge had his share of the house and savings worth £50K. He also owned the furniture in the house valued at £50K. He is survived by his mother, her illegitimate son and his deceased brother's daughter.

How will the estates be distributed?

END OF SECTION B

END OF PAPER