

**THE LAW SOCIETY OF SCOTLAND
EXAMINATIONS**

PROPERTY LAW AND CONVEYANCING

Monday 25 July 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.

**LAW SOCIETY OF SCOTLAND
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SECTION A

Question 1

Barry's Builders Ltd borrowed £500,000 from Bank of Alba plc. The loan was secured by a floating charge over Barry's Builders Ltd's "whole property and undertaking". The charge was created on 30 July 2020 and contained a negative pledge clause. All the formalities necessary for the creation and preservation of the floating charge were fulfilled.

On 6 August 2020 Celia's Construction Ltd borrowed £2 million from Clydeglen Bank plc. In security of this loan, it granted a standard security over the warehouse on Amberside Road, Greenock which it had purchased with the borrowed money and a floating charge over its "whole property and undertaking" and including a negative pledge clause. Both the floating charge and the standard security were registered as required on 10 August 2020.

On 15 September 2020, Barry's Builders Ltd bought the warehouse on Amberside Road, Greenock from Celia's Construction Ltd. Neither the floating charge nor the standard security granted by Celia's Construction Ltd to Clydeglen Bank plc was discharged. The disposition was registered on 16 September 2020. A standard security over the warehouse, granted by Barry's Builders Ltd to NatEast Bank plc was also registered on 16 September 2020. On the same date Barry's Builders Ltd granted a floating charge to NatEast Bank plc but it has not been registered anywhere.

In May 2022, both Barry's Builders Ltd and Celia's Construction Ltd entered administration and the administrator of each company had made a paragraph 115(2) statement on 16 May 2022, causing any floating charges in effect over the two companies to attach.

Explain which of the rights in security mentioned above burden the warehouse and what their ranking is with regard to it.

Question 2

Ferdinand purchased a house, "Rowan Cottage", in Moray, 3 years ago. The property section of the title sheet described the property thus: 'Subjects to the north of the B9809, to the east of "The Mains" and to the west of "Hilton Farm", and to the south of "Smithton Farm" MOR63 edged in red on the title plan.' The access road which Ferdinand uses to get from the main road to the house is included within the area edged in red on the title plan.

The property is subject to real burdens created by a deed of conditions, first registered in 2007, which burdens are included in the title sheet. These burdens refer to the access road as the "common access road", describe it "as owned in common by the owners of Rowan Cottage and Smithton Farm" and impose obligations to maintain the road on the owners of Rowan Cottage and Smithton Farm in equal shares.

The proprietorship section in the title sheet for Smithton Farm describes the property thus: 'Subjects to the north of "Rowan Cottage" MOR62, to the east of "The Mains" to the west of "Hilton Farm" and to the south of the foreshore edged in red on the title plan together with a 50% *pro indiviso* share in the access road marked in yellow on the title plan.' The access road so marked is the one which runs across Ferdinand's property which was referred to above. The burdens are the same as those imposed on Rowan Cottage and arise from the same deed of conditions.

There is no other road giving vehicular access to the main road from Smithton Farm. Smithton Farm is owned by Isabella. She bought Smithton Farm 2 years ago. She uses the access road for a number of agricultural vehicles. Their weight is damaging the road surface.

Advise Ferdinand on the following matters:

- a) Does he have exclusive ownership of the access road?
- b) Can he stop Isabella from using the access road?
- c) Can he require Isabella to pay for the repair of the damage done by the agricultural vehicles?

END OF SECTION A

SECTION B

Question 3

Assess the adequacy of Scots laws' rules an assignment of standard securities.

Question 4

Does it make sense that a foundation writ is required for the prescriptive acquisition of land but not for the prescriptive acquisition of a servitude?

Question 5

Is it appropriate that Scots law disapplies the delivery requirement for transfer of moveables when the transfer is pursuant to a contract of sale?

Question 6

Critically analyse Scots law's approach to tacit relocation in commercial leases.

END OF SECTION B

END OF QUESTION PAPER