

THE LAW SOCIETY OF SCOTLAND
QUALIFIED LAWYERS ASSESSMENT

CONVEYANCING

7 November 2023

0830 – 1000
(90 minutes)

Candidates are required to answer TWO out of three questions.

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Question 1

Bella is a farmer in Ross-shire. Two months ago, she purchased Pitgorm Farm from Simon. All relevant formalities including registration were completed promptly. One of the fields which forms part of Pitgorm Farm is known as "The Lower Meadow". The Lower Meadow is separated from the main road by another field, known as "The Upper Meadow". At one time, The Upper Meadow also formed part of Pitgorm Farm but Simon sold the Upper Meadow to Prior. Prior to the sale, of the Upper Meadow, Simon discussed access to the Lower Meadow with Peter. Peter told Simon not to worry and that he could still use the track which leads from the public road to the Lower Meadow across the Upper Meadow. This was the access which Simon had always used. There is no other means of vehicular access to the Lower Meadow. After the sale of the Upper Meadow, Simon continued to use the track with his tractor, although no mention was made of his right to do so in the conveyancing documents relating to the sale of the Upper Meadow.

Since acquiring Pitgorm, Bella has obtained planning permission for construction of a visitor centre on Pitgorm Farm. She has converted the Lower Meadow into a car park. Peter has written to her objecting to visitors' use of the track across the Upper Meadow. He suggests that Bella herself has no right to use the track and, even if she does have such a right, it does not extend to allowing visitors to use it.

Advise Bella.

Question 2

The Victoria Arcade in Inverness was constructed in the late 19th century. Shortly after construction, the units in the arcade were transferred to their first owners. These initial dispositions imposed real burdens in identical terms, imposing on the disponees and their successors a duty to maintain the roof of the arcade and the common passageway in the centre of the arcade. The dispositions identified all of the burdened properties, the roof and the common passageway by reference to a plan, which was attached to the disposition. The terms of the burdens stated that the cost of maintenance was to be apportioned according to the rateable value of the burdened properties.

Quentin bought one of the units in the Victoria Arcade three months ago. The transfer to Quentin was a first registration and the first transfer of a unit in the arcade since the land register became operational for the County of Inverness in 2003. In the period between the initial dispositions and Quentin's acquisition, a number of the units have been combined and one of them has been extended onto part of the common passageway. As a result, the layout of the arcade no longer matches that on the plan precisely.

The roof of the arcade has developed a leak. When Quentin contacted the owners of the other units, a number of them objected that the real burden imposing maintenance obligations was no longer valid because the deed imposing the burdens did not allow identification of the burdened properties or of the extent of the burden and did not confer mutual rights of enforcement expressly.

Advise Quentin.

Question 3

Ronald invests in heritable property.

He recently registered a disposition to him of a plot of land in Aberdeenshire granted by Stuart. Stuart was shown as the owner of the plot on the land register. It has since emerged that the register was inaccurate in showing Stuart as the owner and that he was not in possession of it when he granted the disposition to Ronald.

Ronald also registered an assignation of a standard security over a property in Edinburgh. The standard security and the right to payment which it secures were assigned to Ronald by Bank of Alba plc. It has since emerged that the standard security was not granted by the owner of the property but by a fraudster who impersonated the owner of the property.

Ronald registered a further assignation, this time of a registered lease. The register was correct in showing the assignor as the tenant. However, it has since emerged that the assignor and the landlord had agreed, in writing, to vary the terms of the lease imposing more extensive obligations on the tenant regarding the maintenance of the property. These variations were not registered.

Advise Ronald.

END OF QUESTION PAPER