

THE LAW SOCIETY OF SCOTLAND
INTRA UK TRANSFER TEST

PAPER I
CONVEYANCING WITH TRUSTS & SUCCESSION

31 OCTOBER 2016

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

William McGonnagal owns a maisonette flat at 76 Montrose Road, Dundee in the registration County of Angus. The block was built in the 1870s on a sloping site. There are two ground floor flats which access directly from the street. Access to the common close and stair is by a platform from the street which is the same method used to access the ground floor flats. There are two basement flats and two maisonette flats, one each side of the close occupying the first and second floors. There was an internal stair in each maisonette flat. The sunken areas between the street and the basement flats are owned by the basement flats. There is a common drying green to the rear used by all the flats including the ground floor flats.

William has owned his flat for thirty years and consequently his title is registered in the Register of Sasines for the county of Angus on 31st October 1986. This was the first time the property had been conveyed as a separate unit. The disposition was by the Trustees of Robert Ferguson in his favour and is dated 24th October 1986. William obtained planning permission and a building warrant in 2015 to convert his property into two flats, one on the first floor and one on second floor. The upper flat already had an independent access from the common stair. The internal stair has been removed and the two flats now have entirely independent services.

The original title is remarkably silent on any common property rights or common repairing obligations. A title plan outlining the boundaries of the whole block including

garden ground has been prepared and the whole site is outlined red.

William has agreed a sale of the second floor flat to Walter Scott, 1 Keats Way, Dundee at a price of £175000 with entry on 1st December. His agents have asked for sight of a draft disposition prior to concluding the contract to ensure that terms are agreeable to Walter.

Required:

Draft a disposition from the basis of the information supplied above which incorporates what you consider appropriate rights in relation to common parts of the tenement block and suitable burdens allocating the shares of repairing costs for which William is currently responsible.

Question 2

Robert Adam owns a townhouse in the New Town in Edinburgh. At the end of his garden accessing on the lane to the North is a former garage which he no longer uses having joined a car pool club. The garage has power and water and drainage. He agrees to allow William Playfair to occupy the garage at a rent of £500 per month. The arrangement is entirely oral. William uses the property to store old manuscripts and drawings.

After a few months William discovers that some of his precious drawings have been damaged by water ingress through the roof slates. He refuses to pay rent and asks Robert for damages of £10,000 for the damage to his valuable drawings. Robert considers that this is merely a diversion from William's failure to pay rent for the past six months.

- (a) What are the obligations of a landlord such as Robert in relation to a lease entered into in this informal manner in relation to urban subjects?
- (b) What are obligations of a tenant such as William in relation to a lease entered into in this informal manner in relation to urban subjects?

[Each part is of equal value]

END OF SECTION A

SECTION B : TRUSTS AND SUCCESSION

Question 3

Giovanni and Leporello are wealthy businessmen, each of whom has drawn up a trust deed.

In his trust deed, Giovanni, appointed Masetto to be a trustee, with the power under the trust deed to purchase land "for the benefit of the trust". Masetto purchased two plots of land in central Edinburgh, in a speculative scheme designed to earn much profit for the trust. One plot was later sold at a loss of £400,000, and the other plot at a profit of £500,000.

In the other trust deed, Leporello appointed Anna, a director of a telecommunications company as a trustee in a private trust which holds a large number of shares in that company. Anna 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 Giovanni and Leporello.

Question 4

Rachel aged 35 and Jenny aged 32 are a lesbian couple. They live together in a flat title to which is in joint names "and the survivor". Rachel typed a note in which she stated that on her death everything was to go to Jenny whom failing to Rachel's mother. Rachel signed the note but did not have the signature witnessed. Jenny telephoned her solicitor telling him that she wanted to

draw up a will leaving all her property to Rachel but she never went to his office to sign it.

Rachel and Jenny were killed in a road accident. It was not possible to determine who the survivor was. At the time of her death, Rachel had her share of the house worth £250K, a house in the country worth £380K and money and investments worth £230K. Apart from her mother she is survived by her divorced husband and their five year old son. Jenny had her share of the house and savings worth £50K. She also owned the furniture in the house valued at £100K. She is survived by her father, his illegitimate son and her deceased brother's daughter.

How will the estates be distributed?

END OF SECTION B

END OF PAPER