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APTITUDE TEST FOR EU QUALIFIED LAWYERS

PAPER I

THE LAW OF PROPERTY, INCLUDING TRUSTS & SUCCESSION AND FAMILY LAW

31 OCTOBER 2016

0900 – 1200

Candidates should answer **FOUR** questions, including at least **one** from Section A, **one** from Section B, **one** from Section C and **one other**.

All questions are marked out of 100 and are weighted equally

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 : LAW OF PROPERTY

Candidates should answer at least ONE question from this section.

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's flat lies on the west side of the close.

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 use 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

Sibelius and Wagner were the trustees under the continuing trust established by the will of their friend, Toscanini. The trust estate consisted of shares of substantial value and a flourishing music publishing business. Express authority was given in the trust to retain the shares and the business as trust assets.

Sibelius and Wagner divided responsibility between them so that Sibelius had sole responsibility for the shareholdings while Wagner assumed sole responsibility for the business. When Wagner died some years later, Sibelius assumed Mozart as a trustee and they agreed to the same division of responsibilities. In managing the business, Mozart was delighted to find that the profits in his first year were double those achieved by the business in any of the years when Wagner was in charge.

A crisis has now arisen. Sibelius has absconded with the whole proceeds of the investments under his control. A full audit of the accounts of the computer business has shown that Wagner had been embezzling a third of each year's profits of the business while he was in charge.

Advise the beneficiaries of their rights against Mozart and of any protection which Mozart may be entitled to claim.

Question 4

Annie aged 45 and Henry, aged 43 are married. They live in a family home which Henry purchased five years prior to meeting Annie. The home is valued at £350,000. As they were going on a round the world trip together, Henry had signed a will in which he stipulated that in the event of his death, his share of the family home was to go to his

mistress, Lisa. However, the will was not witnessed before he left the country. The plane that they were both travelling in crashed. Henry died and Annie survived him by an hour.

Annie did not have a will. Henry is survived by his son, Ted: Frank had an affair with Ted's mother, Mandy, before he met Annie. Annie is survived by her brother, Ringo, and her nephews, Paul and John, whose mother, Jaqueline, Ringo's sister, died three years ago. Title to the family home is in the name of Henry. Other than the family home, Henry had investments on his death worth £ 100 K. Annie had shares valued at £120K.

How will the estate be distributed?

END OF SECTION B

SECTION C : FAMILY LAW

Question 5

Donald and Ivana married in 1996. They lived in a house, title to which was in Donald's name and which he had bought in 1994 when he was living with Ivana with the intention that it should be a family home for both of them. In 1999, Ivana gave up her job as a fashion model when she discovered that she was pregnant. Twins were born in later that year. In 2009, Ivana inherited her mother's jewellery and £70K from her mother's estate. She invested the money in 2 paintings. In 2015, Ivana was diagnosed as suffering from multiple sclerosis, and has difficulty with her mobility.

In 2016, the couple separated. At that time the house is worth £500K, the jewellery £100K and the paintings £250,000. In addition, Donald has investments made from income worth £200K. His interest under a pension scheme of which he has been a member for thirty years is valued at £300K.

Advise Ivana on the financial provision she is likely to obtain if she divorces Donald.

Question 6

In 2016, Tony aged 16 registered a civil partnership with Adrian aged 48. Unknown to Tony, Adrian was married to Sandra at the time. Sandra divorced Adrian four months later. Tony and Adrian live in a flat owned by Adrian. With encouragement, Tony has embarked on a course of further education. Recently, Adrian has started to inject himself with cocaine and has attacked Tony physically on at least three occasions when Tony refused to have sex with him. Tony is in a state of fear but has no place to go.

Advise Tony;

- (i) on the validity of the civil partnership;
- (ii) on whether he has a right to be alimented by Tony; and
- (iii) on whether Adrian can be compelled to leave the flat.

END OF SECTION C

END OF QUESTION PAPER