



THE LAW SOCIETY
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APTITUDE TEST FOR EU QUALIFIED LAWYERS

PAPER I

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

9 May 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

Harbour Point is a small development of five detached houses erected by Harbour Point Development Ltd. The land forms a small natural promontory which has a former lighthouse at the end. The houses all lie on the east side of a private access road which leads to the lighthouse. The owners of the lighthouse reserved a right of pedestrian and vehicular access over the roadway which was reconstructed by Harbour Point Developments to a higher standard when Harbour Point acquired the site. The title sheets to each of houses 1 to 5 include a servitude right of pedestrian and vehicular access. The title sheets to each house make reference to a deed of conditions by Harbour Developments which provide that each house shall be used as a private dwelling house only for the occupation of a single family and for no other purpose. Furthermore the title sheets provide that each detached house shall not exceed one storey in height and that no alterations to the exterior shall be permitted and the external appearance shall be maintained in all time coming. The houses are built to a uniform design and feature porthole windows and stainless steel and timber exterior features which provide a nautical motif to the design which is appropriate to its location. The houses were all completed in early 2008 but as a result of the recession the sale of the final house was only completed in 2013.

- a) Adam owns house 1. He has recently been made redundant and has set up a business consultancy working from home. Clients often come to his house.

Parking is fairly restricted and they park across the end of the roadway at the padlocked gate leading to the lighthouse. Barbara in house 2 and Colin in house 3 are concerned about the parked vehicles detracting from the area and they would make access to the lighthouse difficult. They are however more concerned that the value of their own homes will be reduced because of the business use by Adam.

Advise Barbara and Colin as to whether they can take any action against Adam and whether they are likely to be successful.

b) Colin has recently constructed a conservatory at the rear of his house. This is a uPVC construction and because of the slope of the ground is set at a lower level than the main house with a link passage up to the house. Dave who owns house 4 does not like the appearance of the conservatory which is not in keeping in his view with the high quality nautical finishes and appearance of the houses themselves. His view is not obstructed and he really can't see more than the roof of the conservatory but it is quite prominent when he walks along the shore line. Dave wonders if he can object to this and enforce its removal.

Advise Dave.

c) Harbour Point Developments Ltd was a single purpose vehicle set up for this development and after the sale of the last house was removed from the Register of Companies. Prior to its removal it continued to own the solum of the roadway. All of the owners are concerned in relation to future maintenance and control of the roadway.

Advise the house owners as to current ownership and whether they can use the Land Registration (Scotland) Act 2012 in relation to provisional registration.

[Each part is of equal value. All three should be attempted]

Question 2

- a) Robert set up a business repairing computers in 2015. To start with he worked from home but as the business has expanded and he has starting holding stock he recently has taken a lease of a workshop. This is a detached building at the back of Tahir's shop. The lease was agreed orally and Robert is paying £200 per week.

In recent storms part of the roof was blown off the building. Robert has asked Tahir to carry out repairs but Tahir has said that as it is a commercial arrangement and it is Robert's responsibility.

Advise Robert as to responsibility for repairs

- b) Vanessa took a lease of a shop from Steven which she used for an aroma therapy centre. This was for a period of a year and Vanessa has now given up occupation at the end of the year and moved to other premises nearer the town centre. As the lease was at an end she did not give any notice. Steven has now claimed rent for a period after she vacated. She left all the booths she had erected in the shop and has asked for your advice as to her liability and whether she can charge Steven for the fittings that she has left behind. The lease was agreed orally.

c) William owns a row of lock ups and lets them out to local flat owners. He uses a short form of lease which details the lockup, the rent which is paid monthly and the term which is usually six monthly. The use is stated as for the garaging of a single motor car or storage of domestic items. Ursula takes a lease of lock-up 4 and pays two months' rent in advance. However she makes no further payments and at the end of the six months is still in occupation.

Advise William on the remedies available to him.

END OF SECTION A

SECTION B : TRUSTS AND SUCCESSION

Question 3

In his trust deed, Bill appointed Mandy and Henry to be trustees. Bill transferred £500K into an account in their names. The purpose of the trust was to provide educational support for young people who were born in Motherwell, Bill's home town. The deed provided that the support should take the form of a bursary or "any other form of help which the trustees consider suitable". Mandy and Henry has agreed to take an honorarium of £30K a year for the time they take in administering the trust: the trust deed does not state that the trustees should be remunerated. They have also "borrowed" £270K which they have used in speculation in the stock market: the shares they have bought with the money are currently worth £550K. Mandy's son, Daniel, was born in Motherwell and is studying law at Stirling. When he applied to the trust, Mandy and Henry agreed to buy him a flat in the city out of the trust fund. They also agreed that Henry' son, Adrian, who is training as a chiropractor, should receive £12K: Adrian lives in Motherwell but was born in Edinburgh. Adrian used the money to buy an engagement ring for his girlfriend, Sandra.

Advise Bill.

Question 4

Peter aged 30 and Tony aged 25 are a gay couple. They live together in a flat title to which is in joint names "and the survivor". Peter typed a note in which he stated that on his death everything was to go to Tony whom failing to Peter's mother. Peter signed the note but did not have the signature witnessed. Tony telephoned his solicitor telling her that he wanted to draw up a will leaving all his

property to Peter but he never went to her office to sign it.

Peter and Tony were killed in a train crash. It was not possible to determine who the survivor was. At the time of his death, Peter had his share of the house worth £350K, a house in the highlands 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. Tony 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 daughter and his deceased brother's son.

How will the estates be distributed?

END OF SECTION B

SECTION C : FAMILY LAW

Question 5

Ian and Belinda married in 1996. Ian bought a house for £20K in 1989, with the intention that it should be used as a family home for both of them. Ian paid a down payment of £11K and raised the rest of the price by a loan secured by a standard security over the house. Title to the house was taken in Ian's name. In 2002, Belinda gave up her job as a secretary when she discovered she was pregnant. A girl was born later that year. During the marriage, Ian bought furniture, a car and golf clubs: these were worth £17K, £10K and £2K respectively at the time when he left Barbara. During the marriage Belinda bought designer handbags and jewellery: these were worth £5K each at the time Ian left her. She also inherited a fur worth £10K at the time Ian left her. Ian has shares that he bought before the marriage worth £65K.

When Ian left Belinda in 2016, the house was worth £150K, with an outstanding loan of £2K. Ian has a flat which he bought after he left Belinda worth £50K, in which he is now living with and supporting his girlfriend and her child of 4. Belinda's savings made from her earnings during her marriage were worth £10K. Ian had contributed to an occupational scheme which he joined five years before he married. His interest under this pension scheme is valued at £250K. After Ian left Belinda, Belinda won £2K at the casino.

Advise Barbara on the financial provision she is likely to obtain if she divorces Ian.

Question 6

In 2015, Dan aged 16 registered a civil partnership with Chris aged 46. Unknown to Dan, Chris was married to Audrey at the time. Audrey divorced Chris four months later. Dan and Chris live in a flat owned by Chris. With encouragement, Dan has embarked on a course of further education. Recently, Chris has started to take drugs and has attacked him physically on at least three occasions when Dan refused to have sex with him. Dan is in a state of fear but has no place to go.

Advise Dan:

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

END OF SECTION C

END OF QUESTION PAPER