

GUERNSEY BAR EXAMINATION

09:30AM, THURSDAY 16 MAY 2024

PAPER THREE

PROPERTY LAW

THREE HOURS

CANDIDATES ARE REQUIRED TO ANSWER ALL QUESTIONS.

**THE TOTAL MARKS AVAILABLE FOR EACH QUESTION ARE SHOWN BELOW.
NOT ALL QUESTIONS CARRY EQUAL MARKS.**

- **QUESTION 1 – 25 MARKS**
- **QUESTION 2 – 25 MARKS**
- **QUESTION 3 – 25 MARKS**
- **QUESTION 4 – 25 MARKS**

**PLEASE WRITE LEGIBLY AND ENSURE THAT YOU ANSWER EACH QUESTION
ON A SEPARATE SHEET OF PAPER. PLEASE WRITE ON ONE SIDE OF THE
PAPER ONLY AND LABEL EACH SHEET CLEARLY WITH:**

- **NAME OF PAPER**
- **CANDIDATE LETTER**
- **QUESTION NUMBER**
- **PART NUMBER OF QUESTIONS (if applicable)**

Question 1 (25 marks)

Mr Smith, who was originally from Birmingham, met and married a divorcee, Charlotte, who was originally from Guernsey. Charlotte had very young children from her previous marriage. The marriage to Mr Smith was celebrated in Birmingham in June 1980 and the whole family lived together in England at 1 Acacia Avenue, Leamington Spa.

In 1985 the family relocated to Guernsey to help look after Charlotte's parents. Mr Smith made efforts to sever all links with the UK. He sold 1 Acacia Avenue and his business in England and made Guernsey his permanent settled home. He bought an open market house in his own name, where he and Charlotte and her children lived, and he purchased a hotel in the name of a company. He was the sole director and shareholder of the hotel company. The company secretary is a local fiduciary company.

Charlotte died in 1990.

In 2001 Mr Smith married his second wife, Louise, and had a child with her. Unfortunately, Louise died in childbirth in 2004. Charlotte's children and Louise never really got on well together.

In 2020 Mr Smith marries Polly, his third wife.

Relations between Charlotte's children and Louise's child and Polly were not good.

Mr Smith died in 2024. He had been a member of his parish douzaine, a deputy and a church warden of his local parish church for twenty years. There is no doubt that he is domiciled in Guernsey at the time of his death. His child is studying at a University in England and his two stepchildren (i.e. Charlotte's children) still work in the hotel business. Mr Smith had been paying for residential care for Charlotte's mother, who has just celebrated her 100th birthday, for the past twenty years.

An enquiry is made of local advocates as to whether any of them made a Will for Mr Smith. None did. A grant of letters of administration is applied for on the grounds that he died intestate. The grant is issued to you as Attorney Administrator for Polly.

- (a) Advise Polly as to the intestate succession to Mr Smith's estate.
- (b) How would your advice differ if Mr Smith had married Polly in 2010 and then died in 2011?

Whilst going through Mr Smith's papers in his office at the hotel you have just found, amongst the title deeds to the hotel, a very old Will made by a solicitor's firm in England in May 1980. The Will is clearly prepared under English law. The Will leaves Mr Smith's house, "1, Acacia Avenue or such other property I might own at the time of my death" and 80% of his personal estate to Charlotte and 10% of his personal estate to each of his stepchildren. Under the Will if Charlotte predeceased him then the whole estate, realty and personalty, was left all "to such of my stepchildren as shall survive me and if more than one in equal shares between them".

- (c) Advise Polly as to the succession to Mr Smith's estate now that the Will has been found.

Question 2 (25 marks)

Richard comes to see you about making new wills.

Richard is a widower, who has two children, Roger and Mary. Richard made wills with your firm in 2003, leaving the whole of his estate equally to Roger and Mary. Richard owns his own house in Guernsey, some stocks and shares and cash in two bank accounts in Guernsey. Recently Roger has fallen out with his father, and Richard now wants to cut Roger out of the wills. He now wishes everything to pass to Mary.

Richard has heard that the new inheritance law enables children to bring a claim against the estate for financial provision. He is worried that Roger will make a claim if he receives nothing under his (Richard's) wills. He does not want this to happen and he feels that the provisions of any will he makes should not be challenged.

Furthermore, Richard has recently discovered that he has another child, Penelope, who was born as a result of a tempestuous relationship that Richard had with Penelope's mother, back in the 1960s. Penelope is sleeping rough in a cardboard box and does not have a penny to her name. Richard is sceptical as to whether Penelope is his daughter.

- (a) Advise Richard what options are available to him to protect his estate from any claim made by Roger and to ensure that his wishes are upheld.
- (b) Advise Richard as to his options in relation to Penelope and to ensure that Penelope does not claim a share of his estate.
- (c) If Richard were resident and domiciled in Alderney, and the house that he owns were situated in Alderney, how would your advice differ?

Question 3 (25 marks)

Alf and Bet are married, of full capacity, and live at "Bian V'nue" which is a house with surrounding garden.

- (a) Where would you look for information about who owns Bian V'nue and to check whether any hypothecs affect it?

You discover that Alf purchased Bian V'nue in 2002. Bet is not an owner.

- (b) Do you need to check any further back in date when seeking to establish ownership of Property? Why?

Bet tells you that Alf wishes to take out a loan and secure the loan with a hypothec.

- (c) In respect of the loan and hypothec, who is your client? Explain your answer.

Two hypothecs are registered against Bian V'nue.

The first hypothec was created when Alf purchased Bian V'nue, as part of the financing for the purchase; the second hypothec was created in 2015 when Alf took out a loan to pay for some renovations.

The proposed new loan would fund the division of Bian V'nue so that part of the house would become a second, self-contained, dwelling which Alf and Bet plan to sell.

- (d) If A and B go ahead with this plan, would any of the three hypothecs affect the part to be sold off (without taking some action to stop that from happening)? Why?

- (e) If so, what would need to be done to make sure that the part to be sold off is not affected after the sale by any of the three hypothecs?

It turns out that the loan in respect of the first hypothec has been fully repaid.

- (f) How is the hypothec extinguished?

Recently, a notice was served on Alf under the High Hedges (Guernsey) Law, 2016.

- (g) Should this be of any concern to a prospective purchaser? Why?

Question 4 (25 marks)

Gemma wishes to sell her flat to Del. Del is keen to buy it. Gemma and Del are friends and don't see any point in instructing separate advocates.

(a) Can the same advocate act for both Gemma and Del?

Given that they have been friends for a long time, Gemma and Del would rather not bother with a contract of sale at all, and instead wish to proceed straight to the court.

(b) Do they need a contract of sale? If they are able to proceed without one, would there be any disadvantage to their proposed approach of not having a contract of sale?

(c) Can they vary the deposit to 20%, and if they can, should they? Give reasons for your answer.

(d) Do their wishes about the deposit give rise to any concerns if the same advocate is acting for both parties? If so, what are the concerns?

The flat is subject to various charged covenants.

(e) What are the three statutory conditions that must be satisfied in order to create a charged covenant? Please cite the appropriate authority.

(f) Do charged covenants last forever? Is there any way of modifying them or extinguishing them?

Del will be borrowing money in order to finance the purchase of the flat.

(g) What is the significance to the lender of the existence of the charged covenants?

The transaction progresses and the parties are assembled at court in order to pass contract. Just before court begins, Del's advocate runs through the main features of the contract with Del: parties, *habendum*, purchase price, and so on.

(h) What is the habendum?