

GUERNSEY BAR EXAMINATION

9.30AM, 28 APRIL 2016

PAPER THREE

PROPERTY LAW

THREE HOURS

CANDIDATES ARE REQUIRED TO ANSWER ALL QUESTIONS

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

- Question 1 – 33 MARKS
- Question 2 – 24 MARKS
- Question 3 – 12 MARKS
- Question 4 – 31 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

(total marks - 33)

You have been instructed by Annabelle and Bruno who are brother and sister. Their parents, Paul and Jenny Goasdoue, died on 29 January 2013 in a train crash in Switzerland. Paul and Jenny had made mirror wills leaving the whole of their real estate to the survivor of them provided that he or she shall have survived them by 28 days. The wills then went on to provide that Annabelle and Bruno would share their estate in equal shares as being their only children but subject to Jenny's mother, Violetine Gaudion, having life enjoyment in their home Marigold Villa as shown outlined in green on the Plan attached [Appendix A]. Following Paul and Jenny's death Violetine has been living at Marigold Villa and is quite fit but she is starting to suffer from short term memory loss.

Marigold Villa comprises of a Victorian villa with a wing on the side. Whilst Marigold Villa is a two storey property the wing is one storey and is completely self-contained. The wing has never been lived in but Bruno and Annabelle have recently obtained planning permission for it to be treated as a completely separate unit of residential accommodation in order that it can be renovated and possibly used to house Violetine, enabling Annabelle and Bruno to sell the main property, Marigold Villa.

Annabelle and Bruno have now placed Marigold Villa (but not the wing) on the market for sale and they have now agreed a sale price of £500,000.

Whilst it was their initial intention for Annabelle and Bruno to retain the wing and for Violetine to occupy it, Annabelle has recently decided to go on a one year safari and therefore wants as much money as possible to cover her costs. Therefore she has agreed with Bruno that he will purchase her share in the wing so that it will become his subject only to Violetine's enjoyment. He is hoping to use his share of the sale proceeds of Marigold Villa to achieve this.

Whilst the purchasers' advocates are carrying out their investigations, it comes to light that the title to Marigold Villa and the land surrounding it, stems from a conveyance when Paul and Jenny bought the property by conveyance from Violetine's late husband and Jenny's father, Bill. An area of garden which is shown hatched in black on the Plan and which is to be sold with Marigold Villa did not form part of that conveyance, and therefore when Bill died, as he did not leave a will, passed to Jenny and her three brothers and two sisters subject only to Violetine's spousal right of enjoyment. Two of Jenny's brothers have now died each leaving a surviving spouse and two and three children respectively. In addition the family has had no contact with one of Jenny's sisters for over twenty years and indeed they are not sure where she now lives of the other sister is not willing to be involved in anything to do with her late father's estate as she has mental health issues.

Advise Annabelle and Bruno on the following:-

- (a) What points need to be considered for drafting in relation to the Conditions of Sale and the necessary special conditions for the sale of Marigold Villa (excluding the wing)?
- (b) How should Annabelle and Bruno be dealing with Violetine? If Violetine's short term memory loss meant that she was unable to understand the nature of the transaction and what she is being asked to do how should Annabelle and Bruno deal with this? Advise them as to what will be involved.
- (c) How should we deal with Bruno acquiring Annabelle's interest in the wing?
- (d) What searches should be carried out by you in acting for Annabelle and Bruno?
- (e) How do you propose Annabelle and Bruno deal with the area of land hatched in black on the Plan and its sale to the prospective purchasers?
- (f) Advise Annabelle and Bruno on the distribution of the proceeds of sale of Marigold Villa.

QUESTION 2

(total marks - 24)

Vera comes to see you. She is the partner of Dave who has just died on 16 January 2016. Her instructions are as follows:

- 1 Dave had in the last six months separated from his wife, Wendy. Dave and Wendy were judicially separated but not divorced as they were going to proceed with a divorce once they had been separated for two years. At the time of the judicial separation, the Royal Court had made a vesting order vesting the former matrimonial home "Muddy Waters" into the sole name of Dave. Dave had paid to his wife a significant lump sum and the judicial separation contained standard renunciations by each spouse in respect of their inheritance rights.
- 2 For the last eighteen months Dave had been living in Southern Portugal with Vera. Vera has two children from her previous relationship, who are aged 3 and 6 years old and who have been living with them and Dave had been supporting Vera and the children during this time with no financial support from Eric, the father of Vera's children. Dave was planning on proposing marriage to Vera but that had not as yet happened. Vera is aware of the following assets that Dave had:-
 - 2.1 "Muddy Waters" which has just been rented to an elderly couple on a five year lease;
 - 2.2 the house in Portugal which is in joint names;
 - 2.3 a leasehold interest in an apartment at Ormer Woods which is a sheltered accommodation complex and in which Dave's elderly aunt resides;
 - 2.4 approximately £100,000 in a bank account in his sole name; and
 - 2.5 the benefit of a debt owed to him by a former work colleague, Steve, in the sum of £50,000 and which debt is secured by way of a bond registered against Steve's house in Guernsey.
- 3 In terms of family Dave has no children and he was an only child. His parents, Fred and Olive, are still alive but divorced. Fred and Olive divorced when Dave was fairly young and Olive then remarried and has one child now aged 15 with her new husband. In addition Olive has a child from a previous love affair aged 17. Both children live in America. With regard to Fred, Dave lost contact with him some time ago and Vera therefore does not know where he lives and whether or not he has remarried or has any children.
- 4 Vera tells you that despite extensive searches she cannot find Dave's will. Your firm

has already carried out a will circular amongst other Advocates offices in Guernsey and again a will cannot be located.

Advise Vera as to:

- (a) who will be entitled to inherit Dave's Guernsey real and personal estate?
- (b) advise Vera as to if there is anything she can do to protect the position of herself and her young children;
- (c) advise Vera of the practical steps that should now be taken with regard to dealing with the Guernsey real estate (as it is intended that it should be sold) and the personal estate;
- (d) how would your advice in (a) differ if Dave and Wendy had not been judicially separated when Dave died?
- (e) how would your advice in (d) differ if Dave had died on 16 January 2008?

QUESTION 3

(total marks - 12)

You act for Goodly Finance Limited ("**Goodly**") which is a money lending business. Late in 2007, Goodly lent £50,000 to John Martel ("**John**") to pay for a conservatory to be erected at the side of his ground floor flat, which forms part of a property called "Holly Lodge". Whilst John initially paid the instalments due by him in respect of this loan, he has not paid anything for approximately 3 years. Some 2½ years ago, Goodly obtained judgment against John in the sum of £52,000, which represented capital outstanding of £49,000 and accrued interest of £3,000. Statutory interest has continued to accrue since that date. Goodly has had no success in trying to enforce this judgment through the medium of HM Sherriff, and now wants to consider enforcing the judgment against John's real property. Your searches at the Greffe reveal the following:

- 1 John originally owned all of Holly Lodge. He acquired it by conveyance registered on 24th April, 2003.
- 2 On the same day, he consented to a bond in favour of Binclewest Bank (the "**Bank**") in the sum of £170,000, which was registered at the Greffe on the following day.
- 3 John divided Holly Lodge into 2 flats and, on 6th May, 2006, he sold the upper flat to Jonathan Livingstone. The conveyance of the upper flat contained the usual charged covenants. The Bank appeared as a party at the end of the conveyance to Jonathan Livingstone and "released the premises hereby conveyed from all charge in favour of [the Bank] by virtue of the bond consented to by the Vendor in its favour".
- 4 On 3rd November, 2007, John consented to a bond in favour of Goodly in the sum of £50,000, which was registered on that day.
- 5 John has retained ownership of the lower flat. The upper flat was sold by Jonathan Livingstone to its current owner, Ronald McDonal, by a conveyance registered on 9th January, 2011.
- 6 In April 2012 a former business partner of John, James Le Billon, instituted proceedings against John for the sum of £185,000 in respect of alleged breaches of their partnership agreement. John defended these proceedings and the matter was placed on the pleading list. James Le Billon obtained permission to register the Act of Court placing the matter on the pleading list, and that Act of Court was registered on 1st June, 2012. John continued to defend the proceedings, which eventually came to trial. On 30th November, 2013 James Le Billon obtained judgment against John in the sum of £185,000.

- 7 On 4th April, 2013 a creditor of John, Ogier Plumbing Services Limited, obtained judgment against him by default in the Royal Court in the sum of £50,000. The Act of Court was registered on the following day.
- 8 On 27th February, 2015 Ronald McDonal, the current owner of the upper flat, obtained judgment (by default) against John in the sum of £66,000 in respect of his failure to contribute towards the cost of maintaining the roof of Holly Lodge in accordance with the provisions of a charged covenant contained in the conveyance whereby the upper flat was sold. On the same day, Ronald McDonal caused a note of the proceedings to be made in the *Livres des Hypothèques, Actes de Cour et Obligations*.
- 9 John owns no real property other than the lower flat forming part of Holly Lodge.
- 10 None of the charges referred to above has been released or vacated (except as set out in numbered paragraph 3 above).
- (a) Advise Goodly as to the order of priority of the charges registered against John as disclosed by the information set out above.
- (b) If saisie proceedings were instituted and John's real property was taken by a creditor of John with a charge ranking below Goodly's charge, what, if any, restrictions would there be on the amount which Goodly could claim from the creditor who took the property?

QUESTION 4

(total marks - 31)

- 1 George Wingate and his wife, Winifred (respectively “**George**” and “**Winifred**”) came from England to live in Guernsey in 1935. George was a middle aged man at that time and, having previously been widowed, had married Winifred, who was some 20 years younger than him, shortly before they came to Guernsey.
- 2 In 1936, George and Winifred bought a plot of land in the Town (“La Ville”) of St. Peter Port (the “**Plot**”) with a view to having a bungalow built on it for them to live in. Neither of them ever owned any other real property in Guernsey.
- 3 By the terms of the conveyance whereby they acquired the Plot, it was vested in George and Winifred “*pour eux, à qui plus vivra plus tiendra et après le décès du survivant des deux, aux héritiers du dit George Wingate reviendra*”.
- 4 Before any building work ever commenced, later in 1936, George died of a heart attack. Shortly before that, Winifred had given birth to a baby boy, Frank Wingate.
- 5 Winifred returned to live in England, with baby Frank, in 1937. She never returned to Guernsey, and never had any further dealings with the Plot.
- 6 For many years after Winifred left Guernsey, the Plot was unused. However, three years ago RW Tourtel Developments Limited (the “**Developer**”) obtained planning permission to undertake a residential development of 8 houses on an area of open land adjoining the Plot.
- 7 The only possible vehicular access to the Developer’s land was via the Plot. The Developer undertook research into its ownership. Having established that no-one had claimed ownership of it for many years, the Developer asked HM Procureur to become involved, which he did.
- 8 HM Procureur made an application to the Royal Court for an administration order under section 4 of the Law Reform (Inheritance and Miscellaneous Provisions) (Guernsey) Law, 2006 (the “**2006 Law**”). The Court granted the order and, at the request of HM Procureur, appointed you as administrator.
- 9 Following your appointment as administrator, and after some negotiation, you sold the Plot to the Developer for £400,000. You now have the task of distributing this sum (net of expenses, and your charges) to the entitled heirs, in accordance with section 9 of the 2006 Law.
- 10 You instructed a genealogical research company in England to undertake research in relation to George and Winifred and their respective families. They have supplied you with a family tree [Appendix B] and reported to you as follows:

- 10.1 George had been married before his marriage to Winifred, and that marriage produced one daughter, Esme Wingate ("**Esme**") who was born in 1910.
- 10.2 Winifred went to live with her parents, on the outskirts of London, on her return to England in 1937. In 1942 Frank was evacuated to live with a family in Wales, but Winifred remained living with her parents. In 1944 she was killed by a doodlebug bomb which hit her parents' house.
- 10.3 Esme**
- 10.3.1 In 1940 Esme married Arthur Ramsbotham ("**Arthur**") and they had one child together, Helen Ramsbotham ("**Helen**") who was born in 1942. On their marriage, in 1940, Esme and Arthur both made wills (in the usual English form, and in accordance with the formalities then required by English law) where each left the whole of his or her estate to the other. Each will provided that, should the testator's spouse have pre-deceased the testator then he or she gave the whole of his or her estate to "any children I may have and if more than one in equal shares".
- 10.3.2 Both Arthur and Helen pre-deceased Esme. Arthur died in 1970. Esme died in 1976 not having revoked or altered her 1940 Will.
- 10.3.3 In 1973 Helen married Herbert Jones ("**Herbert**") and they had one child together, William Jones ("**William**") who was born in 1974. Late in 1974, shortly after William's birth, Helen was killed in a car crash. By her Will (made in the usual English form, and in accordance with the formalities then required by English law) made shortly after her marriage in 1973, she left the whole of her estate to her husband, Herbert Jones, or, should he have pre-deceased her, to any children she might have in equal shares.
- 10.3.4 William Jones is still living.
- 10.3.5 Herbert Jones survived his wife, Helen. He died in 2014. He never re-married following Helen's death. However, he had a long term partnership with Dierdre Bonham, and they had a child together (Herbert is named as the father on the birth certificate) called Roger Bonham ("**Roger**").
- 10.3.6 Herbert died in 2014. Dierdre had died some years before him, and he was not, for some years before the end of his life, on good terms with either of his sons, William and Roger. In January 2012 he made a Will (in the usual English form, and in accordance with the formalities then

required by English law) whereby he left the whole of his estate to “Batty for Bats”, a registered charity for the care of sick bats.

10.4 Frank

10.4.1 In 1958 Frank married Ruth Smith. Shortly before their marriage, Ruth gave birth to their only child (Frank is recorded as the father on the birth certificate) Edgar Wingate (“**Edgar**”).

10.4.2 Frank and Ruth did not have a happy marriage. They separated in 1965 and divorced shortly afterwards. Whilst Frank never re-married, there is convincing evidence to the effect that he fathered another child, Francis Rogers (“**Francis**”) following his separation from Ruth.

10.4.3 In 1975 Frank commenced a same sex relationship with Steven Roberts (“**Steven**”) and they lived together as a couple until Frank’s death in 2013.

10.4.4 Frank had no contact with either of his children for many years before his death. By his Will, made in 2006 (in the usual English form, and in accordance with the formalities then required by English law) he left his entire estate to Steven.

10.4.5 Edgar, Francis and Steven are all still living.

11 You are now satisfied that you have identified all of the potential heirs to the net proceeds of sale of the Plot. Even though the default period of six years (following the sale of John’s plot) during which an administrator should hold the proceeds of sale (provided for in section 9(8)(a) of the 2006 Law) has not expired, you intend to apply to the Court (under section 9(9) of the 2006 Law) for an order that the net proceeds of sale be distributed prior to the end of that six year period.

- 1) To whom will you propose to the Court that the net proceeds of sale should be distributed, and in what shares?
- 2) What difference, if any, would it make to your answer if:
 - (a) in 10.3.1 above, Esme and Arthur married in 1938, and made the Wills described in 10.3.1 above in that year?
 - (b) in 10.3.6 above, Herbert made his Will in December, 2012?
 - (c) in 10.4.4 above, Frank made his Will in 2011?

Candidates should note that:

- (a) no marks will be awarded for outlining the procedure to be followed before the Court;

- (b) any potential claim by any individual under the provisions of the Inheritance (Guernsey) Law, 2011 which relate to provision for family and dependents should be ignored;
- (c) none of the Wills referred to above was made in the Bailiwick of Guernsey; and
- (d) it should be assumed that, where reference is made to a Will, the Will contains no relevant provision except as set out in the text above.

