GUERNSEY BAR EXAMINATION

9.30AM, 13 MAY 2021

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 – 26 MARKS**
- **QUESTION 2 – 24 MARKS**
- **QUESTION 3 – 50 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 26 marks)

You have been instructed by Camille Guilbert who spends six months of the year in her villa in Malta and the remaining six months flitting between Guernsey and England. She considers herself to be domiciled in Guernsey.

Camille was, until 2012, married to Guy and then in 2012 they were divorced.

Prior to the divorce, in 2004 both Camille and Guy executed reciprocal wills, in which they left their entire real and personal estate to each other. There is one child born of the union of Guy and Camille, Claudette who is now 23 years old and is estranged from her mother and father. The last that Camille heard was that Claudette was living in a native American reserve in Canada.

Guy is unable to work due to ill health, and Claudette has been sending him money since the divorce in order to help him out.

At the time of making the wills in 2004, Camille and Guy decided to set up a discretionary trust to hold a fairly substantial portfolio of shares that Camille had accumulated herself with her money. It is now worth £3 million. The trust, which is in fairly standard terms, provided for Guy and Camille to be the primary beneficiaries but thereafter, the beneficiaries are all charities. The Trustees are ABC Trust Ltd.

The trust was set up to avoid Guy and Camille having to leave the substantial portfolio to Claudette. It was also their intention over time to transfer other assets to the trust, but this has not happened.

Notwithstanding their divorce, it would appear that unintentionally both Guy and Camille have remained beneficiaries of the Trust, and no distributions of the assets have been made from it.

Camille has recently entered into a civil partnership in England with her new partner, Zada. Zada and Camille have a joint account with a small credit balance, but all other assets have remained in Camille’s name. These assets comprise a bank account with £2 million, the Maltese villa, an undivided 1/54th share in a field at St Pierre du Bois which she inherited from her mother, an apartment in Alderney, and her home in Guernsey, Meadow Garden.

Meadow Garden has been in the family since the early 1920s and Camille, as only child of her late father, inherited it from her grandfather back in 1960 as her father had predeceased him.

Camille tells you that her father's two younger brothers, who are still living, have also claimed to have some form of interest in Meadow Garden, but the position has never been formally dealt with.

Advise Camille on the following:

1.1 If Camille does not make a new will, how will her estate be distributed and according to what principles? **[8 marks]**

1.2 Can she leave everything to Zada, and what risks may this involve? **[6 marks]**

1.3 What advice would you give Camille with regard to the Trust and the fact that Guy still has an interest in it? **[5 marks]**

1.4 If Camille had not been divorced from Guy but only judicially separated what difference does that make to your answer in 1.1. How would your advice differ if they had only been informally separated? **[3 marks]**

1.5 What action, if any can be taken by the two brothers in relation to Meadow Garden, and what action should she take to protect her position? **[4 marks]**

QUESTION 2 (total 24 marks)

Horatio was a retired old naval commander, who had been bedridden for five years. His mind tended to wander from time to time and when this occurred he thought that he was the reincarnation of Lord Nelson, but generally he was able to cope with his business affairs quite adequately. He was very dependent for all personal services on his housekeeper, Emma, a large woman of strong personality with whom he would often discuss business matters. He was a widower and his only living relative was his grandson Peter, who had married a French girl and was living in France.

A week after Peter's wedding Horatio had a heart attack and his condition deteriorated sharply. As he lay dying, Emma reminded him that he had never made a will. She arranged for his lawyer to come to see him. Realising the end was near the lawyer drew up a will for him on the spot, entering on his instructions a legacy of £1,000 for the lawyer and leaving everything else to Emma's daughter, Alice. The lawyer asked Horatio if he had any relatives whom he would like to benefit instead but Horatio replied *'Only one, my grandson, but he's gone to the Froggies. He's not getting anything from me'*. Horatio executed the will and died the next day. His estate when he died was worth about £200,000.

2.1 Peter asks you whether there is any way he can upset the will. Advise him.

[10 marks]

Ken died intestate and without issue in 2011, domiciled in Guernsey. He was survived by his brother Nigel and his half-sister, Mandy, who is the daughter of his mother, Gill, and her second husband, Morris. He is also survived by his father's brothers, Reg and Ron, his deceased paternal Uncle Harry's son, Rob, his mother's sisters, Meg and Veronica and his mother's second husband, Morris, who has since remarried. Ken's father and mother and his maternal and paternal grandparents, together with his wife, Kim, have all predeceased Ken. Ken's death was caused by Nigel, driving under the influence of cocaine. Nigel was convicted of manslaughter in connection with Ken's death. Shortly after commencing a five-year prison sentence, Nigel, being so distraught by what he had done, killed himself, leaving no wife nor issue.

Ken's estate comprised the following:

- Money in a bank account to the extent of £250,000;
- Property in Guernsey known as Chevaux des Chiens, which Ken inherited on the intestacy of his mother, who had inherited it on the intestate death of her mother;
- A joint bank account with Mandy in a Guernsey bank which contained the sum of £150,000;

- Ashwood House, a property which Ken had inherited from his paternal grandmother, under the terms of her will, on her death; and
- A half interest in 7 Maison Verte, a house in the Vale which he had acquired under his father's will, and the other half of which had been inherited by his brother, Nigel, under the same will.

2.2 Advise on the devolution of the property. **[14 marks]**

QUESTION 3 (total 50 marks)

You have been approached by Bob. He tells you that he and his friend Celia have decided to buy an apartment block. The whole plot is currently owned by Sinclair. Bob informs you that he and Celia want to acquire it in equal shares, which they could pass on to their respective children.

3.1 Explain whether and how the results Bob envisages can be achieved **[6 marks]** and whether it is possible for you to act for them both without direct contact with Celia. **[4 marks]**

When investigating the property, you come across the following matters:

- The current owner acquired the property through a *contrat de prise à rente* but you can find no evidence of *rente* ever being paid;
- The current owner's title to a strip of garden ground at the edge overlaps with a neighbour's title. It has not proved possible to determine who owns the strip;
- The building is serviced by pipes and electrical cables which run under the neighbour's property. They were installed in March 2015. Your searches have not identified any servitude benefiting the property to be acquired which relates to these cables and pipes;
- The surveyor instructed on behalf of your client has questions about whether an outhouse, which had been built on the site, is in compliance with planning requirements but an immunity certificate has been obtained from the Development and Planning Authority;
- Access is sometimes taken to the rear of the property along a road which runs across the neighbour's property. A servitude of access which corresponds to this access has been found in the chain of title but it was omitted from the most recent conveyance.

3.2 Explain whether they are grounds for concern and, if so, what should be done about them. **[10 marks]**

The vendor will retain ownership of a plot next to the one being purchased. He would like a servitude allowing vehicular access across part of the plot which is being purchased. Bob and Celia are content with this but would like to prevent commercial vehicles using the access and use of the servitude after 10pm.

3.3 Explain whether it is possible for the vendor to reserve a right of access subject to these restrictions? **[3 marks]**

Bob and Celia would like to install further services across the plot which the vendor will retain and to build a wall, which they will maintain along the boundary with the plot which the vendor will retain.

3.4 Explain what rights they should require the vendor to grant them in order to do these things. **[4 marks]**

The plot which Bob and Celia want to acquire is burdened by two bonds both of which are expressed to be over all of the vendor's property present and future, one in favour of Nat East Bank plc and one in favour of Henrietta, a creditor of the vendor. The vendor has indicated that the purchase price is to be applied to discharging the whole of the debt owed to Nat East Bank plc and part of the debt owed to Henrietta.

3.5 Explain how matters should be arranged to ensure that Bob and Celia acquire free of these charges? **[8 marks]**

3.6 Bob would like to pay for the property by personal cheque. Is this likely to be acceptable to the vendor or his creditors? If not, what alternative can you suggest? **[2 marks]**

In the future, Bob and Celia may wish to sell the apartments in the block individually.

3.7 Is this possible? If they were to do so, what approaches might be taken to the ownership, management and maintenance of the roof of the building and common facilities such as the stairway? What steps would be necessary to establish these approaches? **[6 marks]**

Bob has previously granted a bond to Jason, for a sum which is still outstanding. He and Celia intend to fund the purchase with a loan from Upland Bank Plc, to be secured by a bond granted by both Bob and Celia.

3.8 Would both or either of these bonds burden the property (or any interest in it) in the event of *saisie* proceedings being taken against Bob assuming that, at that time, Bob and Celia still owned the whole apartment block? Would it make any difference if some of the apartments had been sold on (without the Bond in favour of Jason being discharged or released)? Would Upland Bank's bond burden other property on Guernsey which Celia already owns? **[6 marks]**

You have negotiated the contract on behalf of Bob and Celia. A number of additional warranties were negotiated regarding the state of the property and included in the contract. There is a substantial gap between conclusion of the contract and completion of the transaction. Bob and Celia are concerned that some of the warranted facts no longer obtain.

3.9 Do they have any protection against such changes? **[1 mark]**

END OF PAPER