

GUERNSEY BAR EXAMINATION

9.30AM, 17 MAY 2022

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 – 18 MARKS**
- **QUESTION 4 – 15 MARKS**
- **QUESTION 5 – 17 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)

Louis Le Boeuf is a client of yours. He comes to see you about making new wills.

Louis is a widower with two children, Hector and Otto. Louis made wills with your firm in 2003 leaving his whole estate equally between Hector and Otto. Louis owns a house in Guernsey, some stocks and shares, to the value of three million pounds and cash in a Guernsey bank. Hector has now had a massive fall-out with his father and as a result Louis wishes to cut Hector out of his wills. He wishes to leave everything to Otto. Louis is particularly aggrieved with Hector, since he had provided much of the finance for Hector's business ventures over the years.

Louis has heard that the new inheritance law enables children to bring a claim against the estate for financial provision. He is worried that Hector will make a claim as Hector has just lost his fortune by investing in mint flavoured dog biscuits, which proved to be a poor choice of investment. Louis does not want Hector to make a claim against his estate as he feels that his wishes expressed in the will should stand.

Louis has also recently discovered that he has another son, Paul, who was born as a result of a tempestuous relationship that Louis had with Paul's mother, Claudine, back in the 1970s. Paul is sleeping rough in a cardboard box in Cow Lane and does not have a penny to his name. Louis is extremely sceptical as to whether Paul is his son.

- 1.1** Advise Louis as to what options he may have to protect his estate from any claim made by Hector and to ensure that his wishes are upheld?
- 1.2** Advise Louis as to what are his options in relation to Paul. Advise him as to how he can ensure that Paul does not claim a share of his estate.
- 1.3** How would your answer be different if Louis's wife were still alive, and the Wills of 2003 left everything to Hector?
- 1.4** How would your answer be different if the existing Wills had been made in 2010 and the Wills left everything to Hector?
- 1.5** What other issues should you consider if Louis were 80 years of age and in poor physical and mental health?

QUESTION 2 (total 24 marks)

You are asked to advise members of the Smith family, who wish to know who owns Highfield House, which is situated in Guernsey.

You are given the following information:

- (a) Sam Smith inherited Highfield House by means of the intestacy of his father. Sam is the only child, and his father died a widower in 1952. Highfield House has not been sold and was the only real property which Sam owned during his lifetime.
- (b) Sam died in 1974. His wife had predeceased him, and he did not remarry. Sam left a will of his real property, which was registered after his death. By the will he left a right of enjoyment to Eric his son, and, subject to that right, the whole of his real property he left to his children, in equal shares.
- (c) Sam had five children, Anne, Bernice, Claude, Dion and Eric. All are legitimate and all survive Sam.
- (d) Anne had four children, Mark, Nia, Owen and Peter, all of whom are alive, and all of whom are legitimate.
- (e) Bernice had one child, Jacob. Bernice never married. Jacob is alive.
- (f) Claude had one child, Martine, who is alive and legitimate.
- (g) Dion and Eric never married and never had any children.
- (h) Bernice died in 2002, intestate.
- (i) Claude died in 2003, intestate. He is not survived by his spouse.
- (j) Dion died in 2006 intestate.
- (k) Anne died in 2008, intestate. She is not survived by her spouse.
- (l) Eric died earlier this year.

2.1 Advise the Smith family as to who now owns Highfield House, and in what shares. You should assume that the only persons you need to consider in your answer are described and referred to in the set of facts above.

2.2 How would your answer be different if Sam had not left a will and was not an only child, and was survived only by his brother's children, Sarah and Sadie (his brother predeceasing Sam), and his sister's child, Sophie (his sister predeceasing Sam). Sarah, Sam and Sophie are all legitimate and all are still alive?

- 2.3** How would your answer to 2.2 be different if Sam's sister was only a half-sister – the child of Sam's mother and her new husband subsequent to her divorce from Sam's father?
- 2.4** How would your answer to 2.2 be different if Sam had purchased Highfield House?

QUESTION 3 (total 18 marks)

You have been approached by Alan. He is a member of a bowls club, which is an unincorporated association. He tells you that the bowls club would like to purchase a plot of land for a new bowling green.

- 3.1** What additional information or documents (as compared with a simple purchase for a private individual or individuals) should you ask Alan to provide? How should title to the plot be held and how will this affect the drafting of the conveyance?

The plot is owned by Bertie and Caroline Drummond (who are brother and sister). Examination of the title shows that the habendum clause in the conveyance to them read as follows:

“... to the Purchasers accepting for themselves the survivor of them and the heirs of such survivor”

Bertie is currently in Barbados and unable to return to Guernsey because of work commitments. He has not been consulted about the sale. Caroline assured Alan that this does not matter since she is entitled to use the plot and she is able to sell them her share.

- 3.2** Is Caroline correct? (Please explain your answer)
- 3.3** Assuming that Bertie's involvement is needed, will he need to return to Guernsey to effect the sale? (Please explain your answer)
- 3.4** Again, assuming that Bertie's involvement is needed, would this mean that he can force Caroline to remain as a co-owner with him? (Please explain your answer)

QUESTION 4 (total 15 marks)

You have been approached by Edwina. She was born and brought up in Guernsey and belongs to an old St Peter Port family. She would like to buy a house which belongs to Freddy. Edwina is keen to secure her purchase as soon as possible. They have met and agreed a price of £600,000 but nothing has been put in writing yet.

4.1 Is there a contract for the sale of the house yet? (Please explain your answer)

Freddy mentioned something about the payment of a deposit and Edwina asks you about it.

4.2 Explain the significance of the deposit and how much it is likely to be.

Examination of the title shows that the house is served by pipes and cables running through the garden of the neighbouring property. There is no mention of any servitudes or other rights in respect of them in the prior conveyances. Investigations reveal that the pipes were installed in 2010 and the cables in 2019.

4.3 Explain whether the absence of mention of rights in respect of the pipes and cables in the title presents a problem and whether anything can be done about it.

Investigation of the title further shows that the property was conveyed to Freddy by Georgia four years ago. Georgia had consented to the transfer of the same property to Harry one week prior to the conveyance to Freddy. However, the conveyance to Freddy was deposited with the Greffe before the conveyance to Harry. Georgia acquired the property by succession on intestacy 30 years before her grants to Freddy and Harry.

4.4 Who owns the house? (Please explain your answer)

QUESTION 5 (total 17 marks)

You act for a lender. The lender has agreed in principle to fund the purchase of a house in St Peter Port by Isla, to be secured by bond.

- 5.1** Explain what search(es) you would undertake against Isla and how far they would go back.

The current owner of the house (Julia) acquired the property from Kevin. Kevin had granted a bond to Channel Islands Bank Ltd before acquiring it. On acquiring the property, Kevin granted a further bond to the Nat-East Bank plc. Neither bond was cancelled or restricted

- 5.2** Explain whether or not these bonds affect Julia.

The lender has some questions about the formalities for the constitution of the bond:

- 5.3** Does the bond need to pass before the Royal Court?

- 5.4** Does the lender or its representative need to appear?

Isla is selling the house that she lives in at the moment as well as buying a new one.

- 5.5** Should the bond granted by Isla be registered before or after the conveyance of the house which Isla is selling? (Please explain your answer)

The house which Isla is proposing to buy is part of a housing development and is subject to charged covenants imposing obligations regarding the maintenance of common areas under the Real Property (Reform) Guernsey Law, 1987. Kevin is currently in dispute with his neighbours who allege that he is in breach of one of the charged covenants.

- 5.6** What implications does this have for the lender?

END OF PAPER