

GUERNSEY BAR EXAMINATION

9.30AM, 27 APRIL 2017

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 – 30 MARKS
- Question 2 – 25 MARKS
- Question 3 – 13 MARKS
- Question 4 – 12 MARKS
- Question 5 – 20 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 - 30 marks)

You have been instructed by Peter and Andrea Le Tocq who are first time buyers and who have recently had an offer accepted to purchase a house known as "Cinkona" at the Oberlands, St Peter Port.

The agreed purchase price is £255,000 as the property is in a poor state of repair, having been empty for many years.

Peter and Andrea's aim is to refurbish the property and then divide it into two flats, one in which they will live and the other which they will let Andrea's elderly mother, Frida occupy.

You have been instructed to deal with the acquisition for them.

Your Conveyancer has carried out initial searches for you and has provided you with the most recent title which is a Conveyance registered 29 August 1961 when the property was acquired by Harold Walter Mollett and Doris May Mollett, née Sangan, his wife (See attached).

Searches at the Greffe confirm that Harold died on 16 June 1977 and Doris died on 30 April 2008.

No Will has been registered at the Greffe for Doris and you are informed that her executor is selling the property and he is James Collenette, a solicitor practicing in England. It is unclear whether or not James is related to Doris.

Further enquiries reveal that Harold and Doris had three children, Bennie, Bjorn and Agnetha.

Advise Peter and Andrea on the following:

- (a) Describe, according to title, the nature of the boundary features and advise as to ownership.**
- (b) Advise Peter and Andrea as to the rights contained in title.**
- (c) Explain to Peter and Andrea the effect of any provision in the Conveyance which can be described as a general rights and servitudes provision.**

- (d) **Advise as to any issues there may be with Peter and Andrea subdividing the property into two units of accommodation.**
- (e) **What should be done in order for good title to be conveyed to Peter and Andrea by the executor?**

Following your Conveyancer carrying out further searches and going on site, the western boundary feature of Cinkona appears to conflict with the neighbour's title which refers to the boundary as being "*a shrub hedge between*".

On site, there is no obvious boundary feature visible at all.

- (f) **Advise Peter and Andrea as to how they should proceed.**

Further searches at the Greffe do not reveal the creation of drainage rights. The Le Tocqs' survey makes it clear that the drain that serves the property (which has been in situ for many years) runs through four adjoining premises.

- (g) **Advise Peter and Andrea.**

On further discussion with the Estate Agent, James Collenette produces a Will made by an English solicitor but executed in Guernsey by Doris two days before her death (in accordance with the usual formalities required by English law) which leaves all of her worldwide estate to James as executor UPON TRUST to sell it and to distribute the net proceeds of sale to various charities working with sick and disabled dogs.

James believes that he can convey good title to Peter and Andrea.

- (h) **Advise Peter and Andrea as to the validity of the terms of the Will, and if it is not valid, what action needs to be taken.**
- (i) **How would your advice differ (i) if Doris had died on 30 December 2008, and (ii) if Doris had died on 30 December 2012 rather than 30 April 2008?**
- (j) **Advise Peter and Andrea as to how they can give some form of security to Frida who is prepared to advance to them her life savings to fund (in part) the purchase and the creation of an independent unit of accommodation for her to live in until she dies. Frida has made it clear**

that on her death she wishes her life savings to be shared equally between her three children.

QUESTION 2

(total - 25 marks)

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

Isabelle was, until 2008, married to Frederick and then in 2008 they were divorced.

Prior to the divorce, in 2004 both Frederick and Isabelle made reciprocal Wills leaving their entire real and personal estate to each other. There is one child born of the union of Frederick and Isabelle namely Zac who is now 25 years old and is estranged from his mother and father. The last that Isabelle heard from him, Zac was living on a Kibbutz in Nigeria.

Frederick is unable to work and so Isabelle has been sending him money since the divorce to support him.

At the time of making the Wills in 2004, Isabelle and Frederick decided to form a discretionary trust to hold a fairly substantial portfolio of shares that Isabelle had accumulated herself with her money. It is now worth £4million. The trust which is in fairly standard terms provided for Isabelle and Frederick 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 Isabelle and Frederick having to leave the substantial portfolio to Zac. 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 Frederick and Isabelle remain beneficiaries of the Trust and no distributions of the assets have been made from it.

Isabelle has recently entered into a civil partnership in England with her new partner, Jasmine. Whilst Jasmine and Isabelle have one joint account, Isabelle's remaining assets are all in her sole name and comprise of a bank account with £3million, the Spanish 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, Clarity Gardens.

Clarity Gardens has been in the family since the early 1920s and Isabelle, as the only child of her late father, believes that she inherited it from her grandfather back in 1953 as her father had predeceased him. It was the only real property in Guernsey which her grandfather owned, is in St. Sampson's, and comprises a relatively large house but with only a small garden.

Isabelle tells you that her father's two younger brothers, who are still living, have also claimed to have some form of interest in Clarity Gardens but the position has never been formally dealt with. She has heard on the 'Guernsey grapevine' that the brothers want cash for their share in the property.

Advise Isabelle on the following:

- (a) If Isabelle does not make a new Will, how will her estate be distributed and according to what principles?**
- (b) If she leaves everything to Jasmine, explain how she can achieve that and advise her of any risks that there may be with this strategy;**
- (c) What advice would you give Isabelle with regard to the Trust and the fact that Frederick still has an interest in it?**
- (d) If Isabelle had not been divorced from Frederick but only judicially separated what difference does that make to your answer in (a). How would your advice differ if they had only been informally separated?**
- (e) If Isabelle does not make a new Will and revokes the previous Will, how will her estate be distributed? Advise her of any risks.**
- (f) What action, if any, can the two brothers take in relation to Clarity Gardens and what action should she take to protect her position?**

QUESTION 3

(total - 13 marks)

"... there appears to be little understanding by the general public of, firstly, who guarantees title and, secondly, whether the current position is acceptable."

Report on the establishment of a Land Registry in Guernsey – Billet D'Etat No V of 2012

Comment on:

- (a) the extent to which a person acquiring Guernsey real property can be satisfied (both in practice and theoretically) that he has acquired title to that property, and who provides a guarantee that he has; and**
- (b) whether the current position in this respect is acceptable and how it could be improved.**

QUESTION 4

(total - 12 marks)

PART 1

You are asked to advise Ronald Le Tissier. He is the owner of a house called "Mon Repos" and land.

Alfred and Alice Roussel are the owners of a house called "Le Grand Douit" and land. Your client has provisionally agreed with Mr and Mrs Roussel that they will exchange their respective properties.

The values of the properties, exclusive of the value of the personal property to be included in the sales, are as follows:

Mon Repos – £875,000

Le Grand Douit – £1,100,000

In addition to the exchange of the properties, your client will therefore pay to Mr and Mrs Roussel £225,000.

Assuming that the matter is dealt with by means of a Conveyance by way of Exchange, calculate the amount of document duty payable by:

- (a) your client in respect of his acquisition of Le Grand Douit; and
- (b) Mr and Mrs Roussel in respect of their acquisition of Mon Repos.

PART 2

The exchange referred to above "falls through" due to an unsatisfactory survey in respect of Le Grand Douit. A couple of months later Ronald Le Tissier approaches you again. He has found another property which he wants to buy, namely "La Charruee". The property is the sole asset of a Guernsey incorporated company called "La Charruee Holdings Limited". All of the issued share capital of this company is owned by George Wingate, who currently lives there. Your client has been informed that the company has no material liabilities.

There is no suggestion of an exchange in this case. Your client has not yet found a buyer for Mon Repos. He will ultimately need to sell Mon Repos and use the

proceeds of sale to fund the purchase. However, he is confident that he will be able to sell it within a year or that, if he doesn't, he will be able to obtain bridging finance, although he'd prefer to avoid this if possible.

Ronald, your client, has therefore provisionally agreed (subject to contract) with George Wingate that:

1. George will sell to Ronald the shares in La Charruee Holdings Limited for £1,250,000. Ronald has been informed that there will be a document duty saving if the shares of the company are purchased as an alternative to him acquiring the property by Conveyance directly from the company.
2. Whilst the parties will sign up to a binding agreement for the sale and purchase of the shares shortly, completion of the sale and purchase will not take place until 1st May, 2018. This will give your client sufficient time to market Mon Repos (or to arrange bridging finance if he cannot find a buyer at a satisfactory price) and George is happy with the arrangement, as he is in no great hurry to sell.

Advise Ronald Le Tissier:

- (a) **as to the amount of document duty which he will save by acquiring the shares in La Charruee Holding Limited rather than by acquiring the property by Conveyance assuming that there are no material changes in legislation between now and the date of completion; and**
- (b) **as to any current legislative proposals which could alter his decision as to how the purchase is structured.**

QUESTION 5

(total - 20 marks)

PART 1

You are consulted by members of the Bougourd family. You are given the following information:

1. Roland Tourtel and his wife Hilda (née Bougourd) bought a house called "Les Varendes" for themselves, the survivor of them and the heirs of the survivor in 1948.
2. Roland Tourtel died in 1956.
3. His widow, Hilda, re-married, in 1960, to Adolphus Ogier.
4. Adolphus had one son, John Ogier, from a previous marriage.
5. Adolphus died in 1966,
6. Following Adolphus's death, John Ogier moved into "Les Varendes" to look after his step-mother, Hilda, who was by then quite elderly.
7. Hilda died in 1971, having not re-married following the death of Adolphus. Her Will of real property, which was registered that year, bequeathed a right of enjoyment ("*usufruit*") of all of her real property to her step-son, John, during his lifetime. The Will contained no other provisions.
8. Hilda had no children of her own. She had two brothers (both legitimate), Albert Bougourd and Peter Bougourd. Both of them died before Hilda.
9. Albert had two children (both legitimate), Stephen Bougourd and Avril Gallienne (née Bougourd). Both of them are still living.
10. Peter Bougourd had one (legitimate) child, Paul Bougourd.
11. Paul Bougourd died in 2005, intestate as to real property and unmarried (having previously been widowed). He had two children, Philip Bougourd, who is legitimate and Percy Langlois, who is illegitimate.
12. On Hilda's death in 1971, her niece and nephews were told by John Ogier that "Les Varendes" had been left to him. The Bougourd family believed that they had no interest in "Les Varendes". However, John Ogier died earlier this year. Following his death, a member of the Bougourd family was contacted by John's neighbours, with whom he was very friendly, and told that John had said to them that the Bougourd family would inherit the house from John on his death.

Advise the Bougourd family as to who now owns “Les Varendes”, and in what shares. You can assume that no relevant individual had any child or other relative except as identified above.

PART 2

Assume the same facts as above, but that you have never acted for the Bougourd family. Instead, you act for Friendly Finance Limited, a consumer credit company, which lent X, one of the heirs to “Les Varendes” in the circumstances set out in Part 1, the sum of £30,000 in 2012. X defaulted in repayment of this sum, and the accrued interest on it, so in 2015, on the instructions of Friendly Finance Limited, you instituted proceedings against X and obtained judgment against him for the capital outstanding and accrued interest.

Until recently, all attempts at enforcing the judgment had proved unsuccessful, as X appeared to be impecunious. However, following the death of John Ogier, your client received information, which it passed on to you, that X had inherited a share in “Les Varendes”. You registered the judgment obtained in 2015 in the *Livre des Hypothèques, Actes de Cour et Obligations*.

It appears that the members of the Bougourd family who have inherited are looking to sell “Les Varendes”. One of the heirs (not X) is seeking to apply to the Court for an administration order in accordance with the provisions of the Law Reform (Inheritance and Miscellaneous Provisions) (Guernsey) Law, 2006 and notice to that effect, specifying the time and date of the proposed application to the Court, has recently been published in *La Gazette Officielle*.

Advise Friendly Finance Limited as to any effect which the making of an administration order might have in the context of its interests and as to what, if any, steps it (or you, on its behalf) should be taking.

REGISTERED AT THE GREFFE, GUERNSEY

29th August 1961 NO. 1162

Le

vingt-neuf août

mil neuf cent soixante et un par

devant Monsieur le Baillif et Messieurs les Jurés de la Cour Royale de cette Ile de Guernesey soussignés a comparu personnellement Monsieur ROYDON JOHN LE HURAY, fils de Thomas John, de "Cinkona", Oberlands en la paroisse de Saint Pierre Port lequel de sa libre et franche volonté a reconnu et confessé avoir fieffé et baillé à rente de lui et de ses hoirs en fin et perpétuité d'héritage à Monsieur HAROLD WALTER MOLLET, fils d'Edwin, de No. 3 Oberlands susdits et à Dame DORIS MAY SANGAN, sa femme, présents et acceptant pour eux le survivant des deux et les hoirs de tel survivant à jamais SAVOIR EST:- UNE MAISONNETTE appelée "CINKONA" mais que les dits preneurs se proposent d'appeler "Grasmere" avec garage à côté et jardin en derrière (l'assiette des dites prémisses autrefois formant partie d'un courtill appelé "le Bordel") le tout joignant ensemble situé à la route de la Corbinerie autrement dite Oberlands en la paroisse de Saint Pierre Port sur le Fief le Roi; les dites prémisses de ce bail indiquées en teint rouge sur le plan numéroté 2738 logé au Greffe et GISANT:- Au nord ou environ de et bordant la dite route de la Corbinerie; à l'est ou environ d'une maison avec parquet en devant édifice serre et jardin en derrière appartenant à Monsieur Sidney John Bougourd et femme, la muraille pour partie entre deux appartenant aux dits Bougourd et femme mais la défense en fer pour le reste entre deux appartenant de ce bail; au sud ou environ d'une serre et terrain appartenant à Monsieur De Vic Le Huray, la muraille entre deux appartenant de ce bail; à l'ouest ou environ de terrain aussi appartenant au dit De Vic Le Huray, la muraille entre deux appartenant de ce bail; et aussi à l'ouest ou environ et joignant à un garage appartenant au dit De Vic Le Huray; Et est la division entre le dit garage de ce bail et celui du dit De Vic Le Huray mitoyenne entre les dites parties. Et auront les dits preneurs les hoirs du survivant des deux et ayants cause (1) droit de passage de pied et de brouette par la porte et pardessus partie du chemin accoutumé dans le dit terrain du dit De Vic Le Huray pour aller et venir toutes fois et quantes des prémisses de ce bail à la dite Route de la Corbinerie; (2) le droit de se servir de la partie de l'égout qui traverse les prémisses du dit De Vic Le Huray et celles appartenant à Monsieur Wilfred Charles Le Huray, à la Société dite "Ruelle Bray Motors Limited" et aux héritiers de feu Monsieur George Torode respectivement et ce en contribuant une juste proportion des frais du maintien et entretien du dit égout, le tout comme par le passé. Et auront de plus les dits preneurs les hoirs du survivant des deux et ayants cause tous et tels autres droits et privilèges dont les prémisses de ce bail ont

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ont de fait joui dans le passé et seront assujettis et astreints à toutes et telles servitudes auxquelles les dites prémisses ont de fait été tenues et ce notamment par rapport aux systèmes d'égouttage et de drainage et au service d'eau, c'est à dire que l'état et le régime actuels de choses par rapport aux dites prémisses de ce bail et les prémisses appartenant au dit De Vio Le Huray continueront à exister de plein droit dorénavant. LE DIT BAIL tel qu'il se pourporte avec ses issues et entrées fossés et reliefs murailles libertés franchises et servitudes tout et autant comme en peut compéter et appartenir au dit bailleur - tant comme héritier en partie de feu Dame Emily Woodhard sa mère en son vivant veuve de Monsieur Thomas John Le Huray que comme cessionnaire de ses co-héritiers en la succession de la dite feu Emily Woodhard leur mère suivant contrat enregistré le douze décembre mil neuf cent quarante-sept. FAIT pour le prix et somme de CENT TRENTE-QUATRE QUARTIERS TROIS BOISSEAUX de froment de rente que le dit bailleur a reconnu avoir présentement vendu aliéné et totalement transporté de lui et de ses hoirs en fin et perpétuité d'héritage aux dits preneurs acceptant pour eux et les hoirs du survivant des deux à jamais. LA DITE VENTE faite pour le prix et somme de DEUX MILLE SEPT CENT CINQUANTE LIVRES sterling que le dit bailleur vendeur a reconnu avoir présentement reçu en bon argent comptant des dits preneurs acquéreurs entre les mains desquels et des hoirs du survivant des deux la dite somme de rente demeurera amortie en fin et pour jamais. Auxquels dits preneurs et aux hoirs du survivant des deux le dit bailleur a promis et s'est obligé de fournir et de garantir le dit bail et la dite vente et amortissement et de leur tenir le dit bail quitte et exempt de toutes rentes quelconques sauf cheffrentes à Sieurs et Droits Seigneuriaux sur l'obligation de tous ses biens meubles et héritages présents et futurs et de ses hoirs. Et entreront les dits preneurs en jouissance de la présente prise à rente le vingt-trois septembre prochain lesquels ont produit un congé de Monsieur le Receveur Général de la Reine pour faire le dit acquêt quitte du treizième. Et à ce a été présent Alick Vavasour Hooley, écuyer, gérant en cette Ile de la société dite "Midland Bank Limited", la dite société créancière hypothécaire du dit bailleur; lequel dit gérant a déclaré décharger les prémisses de ce bail de toute hypothèque et garantie comme la dite société a sur icelles.

C. J. P. P.

W. J. P.
A. B. P.

M. J. P.

