

GUERNSEY BAR EXAMINATION

09:30AM, 22 MAY 2023

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 – 10 MARKS**
- **QUESTION 5 – 15 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

You have been instructed by Isabelle who spends six months of the year in her villa in Portugal and the remaining six months flitting between Guernsey and England. She considers herself to be domiciled in Guernsey, having been born in Guernsey, of Guernsey parentage and having never established a long-term home elsewhere.

Isabelle was, until 2010, married to Frederick and then in 2010 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 30 years old and is estranged from his mother and father.

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 villa in Portugal, 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 1920's and Isabelle, as the only child of her late father, inherited it from her grandfather back in 1960, as her father had predeceased him.

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.

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)?**
- (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.**

Question 2

25 marks

Vera was the partner of Dave, who died on 16 January 2023. She has recently come to see you.

Dave had been separated from his wife, Wendy, for some time prior to his death. 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 "Green Pond " 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.

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 6 and 8 years old, and who have been living with Dave and Vera. Dave had been supporting Vera and the children during this time. Eric, the father of Vera's children, provided no financial support. Dave was planning on proposing marriage to Vera, but he died before he actually did so.

Vera tells you that Dave had the following assets:

- a) "Green Pond " which has just been rented to an elderly couple on a five year lease;
- b) the house in Portugal, which is in the joint names of Vera and Dave;
- c) a leasehold interest in an apartment at Ormer Woods, in the Castel, which is a sheltered accommodation complex, and in which Dave's elderly aunt resides;
- d) approximately £100,000 in a bank account in his sole name; and
- e) the benefit of a debt owed to him by a former work colleague, Steve, to the sum of £50,000, and which is secured by way of a bond registered against Steve's house in Guernsey.

Dave had 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 with her new husband. In addition, Olive had a child from a previous love affair. Both children live in America. Dave lost contact with Fred some time ago, and Vera therefore does not know whether or not he has remarried or has any children.

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 on the following matters:

- (a) who will be entitled to inherit Dave's Guernsey real and personal estate?**

- (b) whether Vera can do anything to protect the position of herself and her young children;**
- (c) how would your advice in (a) differ if Dave and Wendy had not been judicially separated when Dave died?**
- (d) how would your advice in (c) differ if Dave had died on 16 January 2008?**

Question 3

25 marks

- (a) Ophelia and Philippa are friends who wish to purchase property together so that they can afford the house that they want to purchase. They have heard that it is possible to acquire as joint owners and would like to do that rather than acquiring as owners in common, because “ownership in common is for married couples”.

Is this plan a good one? Give reasons for your answer (6 marks)

- (b) Ophelia and Philippa are “cash buyers” (so they are not borrowing to fund the purchase) but are not making equal contributions to the purchase price, and so will not be taking equal shares in the property. **Where would this be reflected in the conveyance?** (1 mark)

- (c) Quentin, the vendor of the property Ophelia and Philippa intend to buy, has indicated that he would like Ophelia and Philippa to pay, on completion of the contract of sale, a deposit of 20% of the purchase price.

Is this normal? If a 20% deposit were to be agreed, what would be the implications from the (i) the buyers’ perspective, and (ii) the seller’s perspective? (4 marks)

- (d) While going through the Guernsey Bar Conditions of Sale with Ophelia and Philippa, you explain the four circumstances in Condition G under which a purchaser can withdraw from the contract. **What are these and to what do they apply?** (9 marks)

- (e) In fact, Ophelia and Philippa are satisfied on all four of the circumstances in Condition G of the Guernsey Bar Conditions of Sale. **Can these be deleted from the contract? If so, how could this be achieved?** (3 marks)

- (f) Ophelia and Philippa, for their part as purchasers, and Quentin, as vendor, have now signed their contract of sale (based, as noted above, on the Guernsey Bar Conditions of Sale). **Is there now a concluded contract between them? Explain your answer.** (2 marks)

Question 4

10 marks

- (a) Andrea is building a house on part of her land. Once it is complete, she will be selling the new house and a modest garden to Martina. Access between the new house and the public road will be over Andrea's retained land. **What type of right would be best when creating Martina's right to take access over Andrea's land, and why?** (3 marks)
- (b) **How will this right be created?** (2 marks)
- (c) **When creating the right, what additional specifications should be made?** (5 marks)

Question 5

15 marks

Georges is selling two properties to Elodie (who is Guernsey born and raised). The first is *Lé Vent*, a cottage with garden, and the second is *La Née*, a flat in St Peter Port. Georges acquired *Lé Vent* in 1990, granting a bond to the Bank of Guernsey as part of the financing arrangements at the time of the purchase. In 1995, he took a loan in order to finance the publishing of a book of poems, and granted a bond as part of the loan arrangements to the Priaux Bank. The book of poems was a best-seller, and Georges' purchase of *La Née* in 2003 was funded entirely by the profits from the sale of his book.

- (a) Prior to the sale to Elodie, is *Lé Vent* affected in any way by: (a) the 1990 bond; (b) the 1995 bond? Is *La Née* burdened by: (a) the 1990 bond; (b) the 1995 bond? **Give reasons for your answers.** (7 marks)

- (b) **If *Lé Vent* and *La Née* were transferred to Elodie without interfering with the bonds, would your answers change, and if so, how? Give reasons.** (7 marks)

- (c) **If a bond is to be cancelled, how is this achieved?** (1 mark)