GUERNSEY BAR EXAMINATION

09:30AM, WEDNESDAY 20 MAY 2026

PAPER THREE

PROPERTY LAW

THREE HOURS

CANDIDATES ARE REQUIRED TO ANSWER ALL QUESTIONS.

THE TOTAL MARKS AVAILABLE FOR EACH QUESTION ARE SHOWN BELOW.

- **QUESTION 1 – 25 MARKS**
- **QUESTION 2 – 25 MARKS**
- **QUESTION 3 – 25 MARKS**
- **QUESTION 4 – 25 MARKS**

PLEASE ENSURE THAT THE FOLLOWING IS CLEARLY MARKED ON EACH PAGE OF YOUR ANSWER SCRIPT:

- **NAME OF PAPER**
- **CANDIDATE LETTER**
- **QUESTION NUMBER**
- **PART NUMBER OF QUESTIONS (if applicable)**

Question 1 [25 marks]

Maison aux Comtes is an apartment building of six apartments: two on the ground floor, two on the first floor, and two on the second floor. It was constructed in 2007. Each of the six apartments was sold off by the developer that same year.

Between 2010 and 2012, each apartment was sold again, so that, by the end of 2012, none of the original owners remained. There have since been subsequent sales also.

A schedule to the first conveyance set out various servitudes and covenants.

I. How would you determine whether these are charged covenants or not?

The owners of both of the second-floor apartments have decided that they would like to replace the current roof with thatch.

II. Considering this from a purely property-law perspective, can the second-floor-apartment owners go ahead, or would they need agreement from anyone else?

Assume for the rest of this paper that the covenants are charged covenants.

The covenants include the following:

> "Not to use the apartment save as residential accommodation."
>
> "To contribute towards the expenses incurred in maintenance and decoration of common parts. The owner or owners of any one apartment will be liable for a one-sixth share of these expenses."

In fact, the common entry-hall was redecorated last year. The owners of one of the first-floor apartments – apartment number 3 – have not paid their contribution; the owners of the other five apartments paid the full cost between them but have been investigating what they can do to recover the one-sixth share that is due from the owners of apartment number 3.

III. What could the owners of the other apartments do to strengthen their position if the owners of apartment number 3 do not pay?

IV. If apartment number 3 were sold while the debt was still outstanding, would this be of any significance to the purchasers (that is, the new owners)?

V. One of the ground-floor owners wants to convert part of her apartment into a bookshop. What are the property-law implications of this?

Maison de Lys is a neighbouring apartment block, which is identical to Maison aux Comtes. Maison de Lys was constructed in 2008, and the apartments were sold off in 2008 and 2009, subject to a schedule containing servitudes and covenants. The covenants included a restriction on using each apartment as anything other than residential accommodation.

Apartment number 3, Maison de Lys, is being used as a dog grooming parlour by the owner, Mr Pourchien. The owner of apartment number 4, Maison aux Comtes – a Mr Contrechien – is unhappy with this and wishes to enforce the covenant against Pourchien.

VI. **What would your advice to Pourchien be on this point?**

<u>Question 2</u> [25 marks]

Jacquina and Maud are going to purchase Orvieux Manor, an ageing house with substantial garden ground, from Thomas. They wish to enter into a contract, using the wording of the Guernsey Bar Conditions of Sale, but without the four circumstances under which a purchaser can withdraw from the contract, because they are satisfied on all these points.

I. **What needs to be done to make the contract effective, and effective without including the four circumstances?**

During your review of the boundaries, you discover that the fence between Thomas's land and that of his neighbour does not follow the line of the boundary as stated in the conveyances. The fence was erected anew ten years ago. Thomas and the neighbour chose the company who carried out the installation of the fence together, and each paid an equal share of the costs. At some points, the discrepancy between the line of the fence and the line of the boundary between the two properties is nearing three feet.

II. **What could be done to address this?**

III. **Jacquina and Maud are aware that there are different ways that they can take title to Orvieux Manor. What are these, what are the advantages and disadvantages of each?**

IV. **What needs to be done to make sure that they take title in the way that they choose to? If this step is missed, what is the outcome?**

Jacquina and Maud will be taking a loan from Priaulx Bank in order to the fund the purchase of Orvieux Manor. Your bond search reveals that Thomas did the same when he and his wife (since deceased) bought Orvieux Manor and the hypothec is yet to be cancelled.

V. **Do you need to search the *Livres des Hypotheques* under Thomas's wife's name?**

Jacquina is keeping the small apartment where she currently lives, which she purchased with a loan (secured by a bond) from Bank of Guernsey.

VI. **Will Bank of Guernsey's hypothec in respect of Jacquina's flat have any impact on Orvieux Manor? What about if Jacquina sells the flat, while remaining owner of Orvieux Manor? Or if Jacquina and Maud sell Orvieux Manor while Jacquina still owns the flat?**

VII. **Will the flat be affected by the hypothec created in favour of Priaulx Bank upon the purchase by Jacquina and Maud of Orvieux Manor?**

Question 3 [25 marks]

Part A

Horatio is 70 years of age, and he is not in the best of health. He retired to Guernsey from England many years ago and has no intention of returning to England. He has assets of £10 million in Guernsey, a house in Malta and some shares in an English private company, Waterbrooks Limited. The assets in Guernsey comprise cash, shares and bonds. The house in which he lives, La Noisette, is owned by a Guernsey company, Noisette Noire Limited, the issued share capital of which is owned by Horatio.

Horatio has never married, but he has lived for many years with Penelope. Horatio and Penelope have two sons together, Paris and Paul, both grown up with families of their own. Horatio gets on well with Paris but not Paul, and Horatio has, over the years, financially helped Paris with several of his business ventures. Penelope died in 2019.

In December 2007, having never previously made a will, Horatio made a will, in which he appointed Penelope his executrix, and were she to predecease him or not wish to take on the role, Paris was to be appointed to fulfil the task. Horatio gave all his property to Penelope, and in the event of her predeceasing him the entire estate, both movables and immovables, he gave to Paris.

On Penelope's death Horatio is comforted by his friend, Leonard. They have formed a relationship and have been co-habiting since late 2021. Leonard does not work as he spends all his time taking in stray dogs and looking after them. Leonard is completely dependant on Horatio for his financial needs.

Horatio has recently died.

I. **Discuss to whom the property will devolve.**

II. **How would your answer be different if the will had been executed in 2011?**

Part B

The facts are as above but Horatio has not yet died, and is seeking your advice as to whether he can revoke his previous will and make another in which he leaves nothing to Paul, £1 million to Paris, £4 million to Leonard, together with the right to live in Noisette Noire and the Maltese house for the rest of his (Leonard's) life, and the remainder of his estate on trust to maintain dogs which have been abandoned and abused.

I. **Advise Horatio as to how he can best achieve his wishes, and whether there are any potential problems.**

Part C

I. **Discuss the form that will of December 2007 (Part A) must take, and also the form that any will which were executed now (Part B) must take.**

<u>Question 4</u> [25 marks]

You have been instructed by Bibi Jordan, who is domiciled in Guernsey. Bibi was, until 2008, married to Hubert and then in 2008 they divorced.

Prior to the divorce, Bibi and Hubert made reciprocal wills leaving their entire real and personal estate to each other. There is one child, Ben, born of the union. Ben is estranged from his mother and father. The last that Bibi heard was Ben was living in Brazil.

Hubert is unable to work, and Bibi has been sending him money since their divorce.

At the time of making the wills in 2004, Bibi and Hubert decided to form a discretionary trust to hold the substantial portfolio of shares that Bibi had accumulated. All of the assets contributed to the trust were beneficially owned by Bibi and she was named as its sole settlor. It is now worth 4 million pounds. The trust is in fairly standard terms, and provides for Bibi and Hubert to be the primary beneficiaries, but thereafter, the beneficiaries are all charities. The trustees are ABC Trust Ltd. The trust was set up in order that Bibi and Hubert avoid leaving property to Ben. It was also their intention to transfer other assets into the trust, but this has not happened.

Notwithstanding the divorce, both Bibi and Hubert unintentionally remain the beneficiaries of the trust, and no distributions of the assets have ever been made.

Part A

I. What advice would you give Bibi with regard to the trust and the fact that Hubert still has an interest in it?

Bibi has recently entered into a civil partnership in England with her new partner, Janet. While Bibi and Janet have a joint account, Bibi's remaining assets are all in her sole name, and comprise a bank account in Guernsey with 3 million pounds, a villa in Spain, an apartment in Alderney and her home in Guernsey.

Part B

I. If Bibi does not make a new will how will her estate be distributed?

II. If Bibi revokes her previous will, and does not make another, how will her estate be distributed? Advise her of the risk inherent in this situation.

Bibi decides to make a new will, but before she can give you instructions to do so she suffers a stroke. She is on medication, and at times she does not seem to know who she is and where she is, but when she is lucid she indicates her wish to provide for Janet.

Part C

I. **Discuss the issues that arise in these circumstances.**