

GUERNSEY BAR EXAMINATION

9.30AM, 25 APRIL 2018

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 – 25 MARKS**
- **Question 2 – 22 MARKS**
- **Question 3 – 12 MARKS**
- **Question 4 – 16 MARKS**
- **Question 5 – 7 MARKS**
- **Question 6 – 18 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 Egan Jones and Sophia Freda La Tocq (who, for the avoidance of doubt, are unmarried). They are purchasing the house known as "Dijabringabeer" at Perelle, St Saviours (the "**Property**") from Paul Greening who resides in Hong Kong and is unrepresented.

By way of background, Mr Jones and Miss Le Tocq are moving back to Guernsey. They currently live in Sussex and as the Property is rented and the lease does not expire until August 2018, they are taking a rental on premises known as "Memories" at Torteval until such time as they can move in.

Their offer to purchase "Dijabringabeer" has been accepted and they are paying a total sum of £575,000. The Estate Agent has allocated £546,250 for the Property and the remainder for the contents.

They have had a mortgage offer accepted for £400,000 and the balance is coming from Miss Le Tocq who has considerable savings.

As Miss Le Tocq is 5 months pregnant with their first child, Mr Jones will be paying the mortgage for the foreseeable future.

In carrying out your site visit, you note that access to the Property is over a gravel unmade road known as Rue des Sept Bouvees and in your searches you have been unable to identify any owner of this road. The Property also includes an open area of land directly between Rue des Sept Bouvees and the main road.

Title to the Property (the Conveyance to Paul Greening) includes a statement in the part of the Conveyance which deals with servitudes to the effect that the adjoining property, belonging to Mrs Nowell, has the benefit of a right of way through the Property in order to gain access to a field at the rear.

Further research carried out by your office cannot find the creation of this right.

Whilst the boundary with Mrs Nowell's property known as "Las Babas" refers to a gable wall, there is no reference to any other boundary feature. On site between the respective front gardens of the two properties is a ten feet high row of conifers. Your clients made reference to the fact that they found light having been pretty well restricted in two of the front rooms of the Property.

Your conveyancer has drafted the Conveyance in the attached form (Appendix 1) for your approval.

- 1.1 What will be the Document Duty payable in respect of this transaction?
- 1.2 What practical issues might there be with completion and how can these be addressed?
- 1.3 Identify and advise upon any issues you see with the draft Conveyance.

- 1.4 Then, supposing that the Conveyance has been completed in the form of the draft but the issues are subsequently identified, how can they then be dealt with?
- 1.5 Advise upon any potential issues you have identified from the facts described above and the plan. How can these be addressed?
- 1.6 Advise on the amount the Estate Agent has allocated to the Contents. Is there any issue with this?
- 1.7 Advise the clients regarding the conifers at the front of the Property.
- 1.8 Having read your draft Conveyance, the clients do not understand Clause 6.2. Explain.

Having now purchased "Dijabringabeer", time has now passed and your clients contact you again. Having moved into the Property, they have realised that they can no longer live with each other and wish to separate.

- 1.9 On the basis that the Conveyance was completed in the terms of the draft attached, advise as to the distribution of the proceeds of sale in the event that the Property is to be sold at arm's length to a third party.

Assume that, although your clients have decided to separate, rather than them looking to sell the Property to a third party, Mr Jones would like to buy Miss Le Tocq's interest in the Property for an agreed sum of £300,000

- 1.10 Advise on the way forward. Will document duty be payable and if so, how much will it be?

QUESTION 2 (22 marks)

You have been instructed by Freddie Morris who comes to see you with his second wife, Isabelle.

Freddie is domiciled in Guernsey and intends to remain here until he dies. He tells you that he married Isabelle six months ago. They have no children between them but Freddie has two children from his previous marriage, as does Isabelle. Freddie also has an illegitimate son, Henry.

Freddie is keen to make a will as soon as possible as he has been diagnosed with terminal cancer and has only 12 months left to live.

He explains that all of his assets are in his sole name and comprise shares in a property holding company called "ABC Limited" which owns three properties in Sausmarez Street, each of which is divided into flats, and is worth a total sum of £5,000,000. This asset provides him with an income of £100,000 per year.

Freddie is the sole director and ultimate beneficial owner of ABC Limited.

In addition, Freddie has three bank accounts in Guernsey with approximately £500,000 in each and he owns a house worth £350,000 which is let out.

Freddie and Isabelle currently live in a property which belongs to Freddie's father. Freddie's father occupies a wing at the property.

Isabelle has a bank account in her sole name with £50,000 in it, and she also owns a flat in Allez Street which provides an income of £500 per month.

Over the past 10 years, Freddie has given a lot of money to his two children, to the extent that each of them were able to buy a property which they have rented out and each of which produces an income of £1,300 per month and since then, both of them have married and have bought joint properties with their spouses in which they live. Freddie estimates that each child has had £500,000 from him.

Isabelle's younger child, Amy, lives with Freddie and Isabelle as she is 16 years old and is physically disabled.

Isabelle does not wish to make a will at the current time.

Freddie would like to do the following:

- a) During his lifetime, he wants to transfer all of his shares in ABC Limited to Isabelle so that she will have an income for herself and Amy for the rest of her life. He would then like Isabelle on her death to leave the shares in ABC Limited to his children.
- b) He wishes to make a will leaving half of his estate to Isabelle and the other half to Amy save for two gifts of £100,000 to each of his children.

- c) He would also like to leave his collection of occupation memorabilia to the States committee responsible for organising Liberation Day in trust for them to display the items each Liberation Day for the benefit of the people of Guernsey.

Advise as follows:

- 2.1 Are there any issues you see with meeting with Freddie and Isabelle together?
- 2.2 Advise Freddie as to any risks you perceive with his instructions. How can these risks be mitigated?
- 2.3 How can Freddie be sure that the terms of his gift to the States can be honoured and when (if at all) would it come to an end?
- 2.4 Advise Freddie as to how he can transfer the shares to Isabelle. Will Document Duty be payable and, if so, how will it be calculated?
- 2.5 What security (if any) can Isabelle be given regarding their home?

Before Freddie signs his new will, he discovers that he had made wills of real and personal estate from 1976 which left everything to his previous wife, Violet (from whom he is divorced and who now lives in Australia) or failing her, to his two children from his marriage to Violet in equal shares.

- 2.6 Advise Freddie as to the distribution of his estate if he dies without signing a new will but with the 1976 will remaining in place as his last will.
- 2.7 Advise Freddie as to his options regarding whether he signs the new will or not.
- 2.8 In relation to his personal estate, if Freddie's previous will was dated 1st June, 2009, what difference if any, would this make to the advice given at 2.6 above?

QUESTION 3 (12 marks)

You act for Riduna Mutual Limited (“**Riduna**”) which is a money lending business. In 2014, Riduna lent £65,000 to Richard Leaver (“**Richard**”) to pay for a conservatory to be erected at the side of his ground floor flat, which forms part of a property called “Leaveralone”. Whilst Richard initially paid the instalments due by him in respect of this loan, he has not paid anything for some time. A year ago, Riduna obtained judgment against Richard in the sum of £59,000. Riduna has had no success in trying to enforce this judgment through the medium of HM Sherriff, and now wants to consider enforcing the judgment against Richard’s real property. Your searches at the Greffe reveal the following:

- a) Richard originally owned all of Leaveralone. He acquired it by conveyance registered on 24th April, 2008.
- b) On the same day, he consented to a bond in favour of Floyds Bank (the “**Bank**”) in the sum of £380,000, which was registered at the Greffe on the following day.
- c) Richard divided Leaveralone into 2 flats and, on 6th May, 2010, he sold the upper flat to George Wingate. The conveyance of the upper flat contained the usual charged covenants. The Bank appeared as a party at the end of the conveyance to George Wingate and “released the premises hereby conveyed from all charge in favour of [the Bank] by virtue of the bond consented to by the Vendor in its favour”.
- d) On 3rd November, 2014, Richard consented to a bond in favour of Riduna in the sum of £65,000, which was registered on that day.
- e) Richard has retained ownership of the lower flat. The upper flat was sold by George Wingate to its current owner, Alfred Roussel, by a conveyance registered on 9th January, 2016.
- f) In April 2013 a former business partner of Richard, Henry Le Tissier, instituted proceedings against Richard for the sum of £300,000 in respect of alleged breaches of their partnership agreement. Richard defended these proceedings and the matter was placed on the pleading list. Henry Le Tissier obtained permission to register the Act of Court placing the matter on the pleading list, and that Act of Court was registered on 4th May, 2013. Richard continued to defend the proceedings, which eventually came to trial. On 30th November, 2016 Henry Le Tissier obtained judgment against Richard in the sum of £300,000.
- g) On 4th April, 2015 a creditor of Richard, Acme Distribution Limited, obtained judgment against him by default in the Royal Court in the sum of £50,000. The Act of Court was registered on the following day.
- h) On 27th February, 2017 Alfred Roussel, the current owner of the upper flat, obtained judgment (by default) against Richard in the sum of £126,000 in respect of his failure to contribute towards the cost of maintaining the roof of Leaveralone

in accordance with the provisions agreed in the conveyance whereby the upper flat was sold. On the same day, Alfred Roussel caused a note of the proceedings to be made in the *Livres des Hypothèques, Actes de Cour et Obligations*.

- i) Richard owns no real property other than the lower flat forming part of Leaveralone.
 - j) None of the charges referred to above has been released or vacated (except as set out in paragraph (c) above).
- 3.1 Advise Riduna as to the order of priority of the charges registered against Richard as disclosed by the information set out above.

QUESTION 4 (16 marks)

- a) You are instructed by Philip Martel ("**Philip**"). He is a nephew of the late Maurice Martel ("**Maurice**") who died recently.
- b) Maurice was, for many years, a successful tomato grower and owned a vinery called "Les Varendes Vinery" ("**Les Varendes**"). However, he stopped growing some twenty years ago, as there was no longer any money to be made from it, and since that time, Les Varendes has been disused.
- c) Les Varendes is in an area the zoning of which for planning purposes is (and has for some years been) such that it is highly probable that permission will be granted for the erection of a number of dwellings, although no planning permission has yet been sought.
- d) Last year, Maurice was approached by Rotfree Developments Limited ("**Rotfree**") with an offer to purchase Les Varendes. The offer was for £750,000, and Maurice accepted it.
- e) Conditions of Sale were drawn up (using the Bar Council standard Conditions of Sale) and were signed by Maurice, and on behalf of Rotfree. Rotfree paid the usual 10% deposit (to Maurice's Advocates, as stakeholders). Completion was set for 10th March, 2018. The Conditions of Sale were "unconditional".
- f) Maurice died on 5th March, 2018.
- g) Maurice left two wills, executed in 2004, one of real estate and one of personal estate. By his will of real estate he left all of his real estate to your client Philip, one of his nephews, and by his will of personal estate he left all of his personal estate to his other nephew, Herbert Martel ("**Herbert**") and appointed him as his executor.
- h) Maurice's only real estate when he died was Les Varendes. Whilst the administration of Maurice's personal estate has not been completed, it appears that the value of his personal property (net of funeral expenses and other debts, but not taking into account any claim arising as a result of the facts in this question) is approximately £60,000.
- i) Philip has received numerous requests from Rotfree to complete the sale of Les Varendes, but has refused to do so. He does not want to complete the transaction which his uncle agreed to unless there is a very good reason for doing so.
- j) Philip has recently received a letter from Rotfree's Advocate stating that, unless Philip, as heir to Maurice's real property and therefore successor to his obligations under the Conditions of Sale, indicates a willingness to convey Les Varendes in accordance with the Conditions of Sale (and for the consideration referred to in them) Rotfree intends to apply to the Royal Court for an order compelling him to do so or, in the alternative, for liquidated damages pursuant to

the provisions of the Conditions of Sale referred to in paragraph (e) above.

- k) Philip has also received a letter from Herbert's Advocate requesting that Philip should agree to indemnify Herbert in the event that Herbert suffers loss as a result of Philip refusing to convey Les Varendes to Rotfree.
- l) Philip does not wish to give such an indemnity. He does not get on with Herbert, his cousin. Philip believes that, morally, he should have received the whole of Maurice's estate, on the basis that, in the last years of Maurice's life, Philip looked after Maurice, while Herbert had very little contact with him.
- m) It is clear that Les Varendes is worth substantially more than £750,000, although its exact value is not clear. A competent valuer whom you have approached has indicated that, even without current planning permission, Les Varendes is worth "in the region of" £1,250,000.
- n) Whilst there is no suggestion that Maurice lacked mental capacity before his death, he was a very old man, and had not grasped the effects of inflation. He considered that £750,000 was a vast sum of money so, when offered that sum for Les Varendes, he snapped up the offer without seeking advice from anyone (including Philip) on it. Whilst Maurice did instruct an Advocate to act on his behalf in the sale of Les Varendes, he didn't request, or receive, any advice on the matter. He simply informed them that he had agreed the sale and asked them to prepare the Conditions of Sale and hold the deposit paid by Rotfree.

Advise Philip. In particular:

- 4.1 What are the prospects of Rotfree obtaining an order from the Court compelling Philip to convey Les Varendes to Rotfree for the consideration specified in the Conditions of Sale?
- 4.2 What liability might Herbert have in the circumstances set out above, so as to give rise to a claim on any indemnity given by Philip to Herbert, as referred to in paragraph (k) above?
- 4.3 How would your advice differ if the valuation, referred to in paragraph (n) above, was to the effect that the value of Les Varendes is "in the region of" £1,250,000?

QUESTION 5 (7 marks)

- a) You act for Michael Ogier ("**Michael**") the owner of a house called "Holly Lodge". Michael entered into Conditions of Sale (using the Bar Council standard Conditions of Sale) to sell Holly Lodge to Gordon and Reta Le Billon ("**Gordon and Reta**") for £750,000 with completion on or before 24th April, 2018. A 10% deposit was paid to the estate agents who negotiated the sale on Michael's behalf.
- b) The matter proceeded in the usual way except that, on 24th April, despite having been warned to do so, Michael failed to turn up to your office, or to the sitting of the Court at which it was intended that completion should take place, and could not be contacted. Gordon and Reta attended Court. However, because of Michael's absence, the sale of Holly Lodge could not be completed.
- c) It has transpired that Michael is an alcoholic, had been on a "bender" on the night of 23rd April and slept through both his alarm and your frantic attempts to call him on his mobile phone. At 4.30 in the afternoon of 24th April Michael telephoned apologetically, confirmed that he would be happy to attend the sitting of the Court on 26th April and promised to remain sober in the meantime.
- d) You e-mail Gordon and Reta's Advocate and inform her of this. The response which you receive from her is to the effect that Gordon and Reta treat Michael's failure to complete as a breach of the Conditions of Sale which entitles them to refuse to complete the purchase and to claim the refund of the deposit paid by them (in the sum of £75,000) and a further sum of £75,000 from Michael by way of liquidated damages.
- e) Alternatively, their Advocate tells you, Gordon and Reta would be willing to complete the purchase on 26th April, but on the basis that, in exchange for not claiming liquidated damages for Michael's breach, the amount which they would be willing to pay is reduced by £50,000 to £700,000.
- f) Michael qualified many years ago as an English solicitor, although he has not practiced for some time. He tells you that he believes that "time is not of the essence" in the context of contracts for the sale of real property, so his failure to complete on the date specified does not entitle Gordon and Reta to take the stance which they have taken.

5.1 Advise Michael.

QUESTION 6 (18 marks)

You are approached, and asked to advise, by members of the Tostevin family with the following set of facts. They also provide you with the family tree (Appendix 2).

- a) Ronald Tostevin owned a house called Mon Repos in which he lived with his wife, Hilda.
- b) Ronald had inherited Mon Repos under the terms of the *Partage* of the real estate of his father, Harold Tostevin. Harold died, intestate, and a widower, in 1965.
- c) Ronald died in 2003, intestate.
- d) Ronald never conveyed any interest in Mon Repos to Hilda during her lifetime.
- e) Following Ronald's death, Hilda continued to live in Mon Repos until her death, earlier this year.
- f) Ronald and Hilda had no children.
- g) Ronald had three siblings, namely two "full" brothers, Peter Tostevin and Henry Tostevin, and one "half" brother, Stephen Le Prevost. Stephen was the son of Ronald's mother, Doris, and Philip Le Prevost, who was her first husband. Philip died at a young age, and Doris re-married to Ronald's father, Harold. For the avoidance of doubt, all of Ronald's siblings were legitimate.
- h) Peter Tostevin, Henry Tostevin and Stephen Le Prevost all died before Ronald.
- i) Peter Tostevin had two children, Catherine, who is legitimate and Robert, who is illegitimate. Both Catherine and Robert are still living.
- j) Henry Tostevin had three children, Norman, Patricia and Simon, all of whom are legitimate and all of whom are still living.
- k) Stephen Le Prevost had one child, Marcus, who is legitimate, and still living.

Candidates should assume for the purposes of answering this question that the facts set out above are complete and, in particular, should ignore any possibility of any of the individuals referred to having had any children who are not mentioned.

- 6.1 Advise the Tostevin family as to the current ownership of Mon Repos.
- 6.2 How, if at all, would your answer be different if Harold, Ronald's father, had devised Mon Repos to him by Will?
- 6.3 How, if at all, would your answer be different if Ronald had died in 2009? Assume, for the purposes of this question that Harold died intestate.
- 6.4 How, if at all, would your answer be different if Ronald had died in 2014? Again, assume that Harold died intestate.

END OF PAPER

Rue des Septs Bouvees an unmade road known as "Rue des Septs Bouvees"

Vendor includes his heirs

2 Conveyance

The Vendor conveys the Property for an estate of inheritance to the Purchasers.

3 Vesting

The Purchasers accept the Property.

4 Enjoyments

Mr Jones grants to Miss Le Tocq an Enjoyment in the Property PROVIDED THAT such Enjoyment shall cease immediately and be extinguished upon the marriage of either of the Purchasers to anyone other than each other.

5 Boundaries

5.1 Item 1. of the Property is bounded on or towards the:

5.1.1 **north-west** by:

5.1.1.1 land and a house known as "West Winds" belonging to Ann Brown, nee Shackles, the boundary being an earthbank ("fossé"); and

5.1.1.2 the Field, the boundary being a wall which belongs with Item 1. of the Property; and

5.1.2 **east** by land and a house known as "Las Babas" belonging to Mrs Nowell, the boundary being the gable wall of Las Babas which belongs with Item 1. of the Property.

6 Existing Rights and Servitudes

The Purchasers as previously granted or reserved shall:

6.1 allow Mrs Nowell and her successors in title right of way on foot and with animals and vehicles over Item 1. of the Property in order to go to and fro at all times between the Field and Rue des Septs Bouvees; and

6.2 have and be subject to, as the case may be, all rights and all other servitudes in respect of the Property

the whole in so far as they continue to subsist.

7 Consideration

The Consideration for this Conveyance is the payment by the Purchasers to the Vendor of **FIVE HUNDRED AND FORTY SIX THOUSAND TWO HUNDRED AND FIFTY POUNDS** (£546,250.00).

8 Vendor's Indemnities

The Vendor covenants to indemnify the Purchasers against all:

- 8.1 defects in title; and
- 8.2 rentes and encumbrances, except chefrentes and manorial dues.

9 Possession

The Purchasers shall enter into possession of the Property today subject to the terms of a lease dated 13/2/17 with the right to receive the rent from today.

IN WITNESS OF WHICH the parties have appeared and consented to and confirmed and ratified this Conveyance today before the Lieutenant Bailiff and those Jurats of the Royal Court who have signed below.

Lieutenant Bailiff

Question 6 – Family Tree

