

GUERNSEY BAR EXAMINATION

9.30AM, 22 MAY 2019

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 – 10 MARKS**
- **Question 2 – 26 MARKS**
- **Question 3 – 26 MARKS**
- **Question 4 – 20 MARKS**
- **Question 5 – 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 (total 10 marks)

Lendem Finance Limited ('Lendem') is a money lending business. In 2009 Erik borrowed £100,000 to pay for the erection of a music room to his ground floor flat, which forms part of Satie Manor. Erik initially paid the repayments to Lendem, but has failed to do so for the past three years, due to a decline in popularity of his music compositions, which is his main source of income. Two years ago Lendem obtained judgment against Erik for the sum of £104,000, which represents the outstanding capital owed of £98,000 and accrued interest of £6,000. Statutory interest has continued to accrue since that date. Lendem has tried to enforce this judgment by means of HM Sheriff, but has failed to do so. Lendem now wishes to enforce the judgment against Erik's immovable property.

Lendem is seeking your advice on the matter.

You have carried out searches at the Greffe, and you have discovered the following:

- a) Erik originally owned the entirety of Satie Manor. He acquired it by means of a conveyance, which was registered on 1 July 2005.
- b) On the same day, he consented to a bond in favour of Honfleur Bank ('Honfleur') for the sum of £270,000. This bond was registered with the Greffe on the following day.
- c) On 31 July 2008 Erik divided Satie Manor into two flats. He sold the upper floor flat to his friend, Claude. The conveyance to Claude contained the usual charged covenants. Honfleur Bank was a party to the conveyance to Claude and *'released the premises hereby conveyed from all charge in favour of [Honfleur Bank] by virtue of the bond consented to by the Vendor in its favour.'*
- d) Erik retained ownership of the ground floor flat. The upper floor flat was sold by Claude to Igor, its current owner, by a conveyance which was registered on 2 September 2009.
- e) On 1 December 2011 Erik consented to a bond in favour of Lendem for the sum of £100,000, and the bond was registered the next day.
- f) Erik and Camille had formed a business partnership offering, amongst other things, tuition in music. In August 2017 Camille brought proceedings against Erik for alleged breaches of the partnership agreement. Erik defended these proceedings and the matter was placed on the pleading list. Camille obtained permission to register the Act of Court placing the matter on the pleading list. That Act of Court was registered on 26 September 2017. Erik continued to defend the

proceedings, which eventually came to trial. On 3 December 2018 Camille obtained judgment against Erik and was awarded the sum of £200,000.

- g) Igor, the owner of the upper floor flat, obtained judgment in default against Erik on 2 February 2018 for the sum of £75,000 for failure to contribute towards the cost of maintaining the roof of Satie Manor in accordance with the provisions contained in the charged covenant in the conveyance dated 31 July 2008. Igor caused a note of the proceedings to be made in the Livres des Hypotheques, Actes de Cour et Obligations on the same day as the judgment was handed down.
- h) Erik also owns a property, Gymnopedie Grange, in Guernsey.
- i) None of the charges above have been released or vacated, other than that in paragraph c).

- 1.1 Advise Lendem as to the order of priority of the charges registered against Erik. **(8 marks)**
- 1.2 If saisie proceedings were instituted and Erik's immovable property were taken by a creditor, with a charge ranking below Lendem's charge, what, if any, restrictions would there be on the amount which Lendem could claim from the creditor who took the property? **(2 marks)**

QUESTION 2 (total 26 marks)

Part A

George and Mildred buy a house, Roper Range, in 1958. The house is vested in them '*pour eux le survivant des deux et les hoirs de tel survivant.*' George and Mildred have a son, Robin. Mildred died when Robin was 3 years of age in 1961. George subsequently remarried (Susan), and together George and Susan had a child, James, who is Robin's half brother. George has never conveyed any interest in Roper Range to his second wife, Susan. In 2003 George died.

George made a will of real property and by the terms of this will he devised to Susan "*the enjoyment during her lifetime of all of my real property*". Subject to that provision in the will he devised "*the whole of my real property to my children in equal shares*".

Robin and James are legitimate.

Robin does not get along with his half-brother nor his step-mother. Susan, his step-mother, no longer lives at Roper Range; she suffers from senile dementia and is cared for at a nursing home. She is under guardianship, and her guardian is James, Robin's half-brother. Robin is not, and never has been, a member of Susan's family council.

James lives at Roper Range, and Robin believes that he pays no rent in respect of his occupation of the property. Robin is deeply concerned about the state of repair of Roper Range, although it was in good repair when George died.

Advise Robin on the following matters:

- 2.1 Whether James can be evicted from the property, and the property sold; **(5 marks)**
- 2.2 Whether his step-mother and half-brother can be made to pay to put the property back into good repair and, whether he can force his half-brother to pay rent in respect of his occupation of the property. Moreover, Robin believes that he should be the recipient of such rent; **(5 marks)**
- 2.3 Whether the property can be divided into two properties, with Robin owning one of the properties and James owning the other, neither property being burdened by Susan's enjoyment. **(5 marks)**

Part B

Susan has now died, and Robin and James agree that the property shall be divided into two separate properties, the West Wing and the East Wing and that Robin shall own the former and James the latter.

- 2.4 Advise Robin as to how such a division may take place, and what legal issues you will need to address. **(6 marks)**

Part C

James has now decided that he does not want to live in the East Wing and that it should be sold directly to Eric and Ernie, a married couple.

- 2.5 Advise Eric and Ernie what searches should be carried out in relation to the property. **(5 marks)**

QUESTION 3 (total 26 marks)

Part A

Horatio is 70 years of age. 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 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 lived for many years with Penelope. Horatio and Penelope have two sons together, Paris and Paul, both of them now 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 2015.

In December 2010, 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 realty and personalty, he gave to Paris. Paul is not mentioned in the Will.

On Penelope's death Horatio is comforted by his friend, Leonard. They have formed a relationship and have been co-habiting since late 2016. 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.

- 3.1 Discuss to whom the property will devolve and who might have a claim in relation to it. **(8 marks)**
- 3.2 How, if at all, would your answer be different if the will had been executed in January 2008? **(2 marks)**

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 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.

3.3 Advise Horatio as to how he can best achieve his wishes, and whether there are any potential problems. **(7 marks)**

3.4 Discuss how the property would have devolved if Horatio had executed a will which reflected his wishes in Part B in 2010. (*You are to assume that Penelope is dead for the purposes of this part of the question.*)

(9 marks)

QUESTION 4 (total 20 marks)

Kevin died intestate, and without issue, in 2011 domiciled in Guernsey. He was survived by his brother Nigel and his half-sister, Mandy, who is the daughter of his mother, Gill, and her second husband, Morris. He is also survived by his father's brothers, Reg and Ron, his deceased paternal Uncle Harry's son, Rob, his mother's sisters, Meg and Veronica and his mother's second husband, Morris, who has since remarried. Kevin's father and mother and his maternal and paternal grandparents, together with his wife, Kim, have all predeceased Kevin. Kevin's death was caused by Nigel, driving under the influence of cocaine. Nigel was convicted of manslaughter in connection with Kevin's death. Shortly after commencing a five year prison sentence Nigel, being so distraught by what he had done, killed himself, leaving no wife nor issue.

Kevin's estate comprised the following:

- Money in a bank account to the extent of £250,000;
- Property in Guernsey known as Chevaux des Chiens, which Kevin inherited on the intestacy of his mother, who had inherited it on the intestate death of her mother;
- A joint bank account with Mandy in a Guernsey bank which contained the sum of £150,000;
- Ashwood House, a property which Kevin had inherited from his paternal grandmother, under the terms of her will, on her death;
- 25 Bolton Street, St Peter Port, which was given to Kevin by his mother during her lifetime; and
- A half interest in 7 Maison Verte, a house in the Vale which he had acquired under his father's will, and the other half of which had been inherited by his brother, Nigel, under the same will.

4.1 Advise on the devolution of the property. **(13 marks)**

4.2 How would your answer be different if Kevin's wife had not predeceased him? **(2 marks)**

4.3 How would your answer be different if Kevin had died on 5 April 2012? **(2 marks)**

4.4 How would your answer be different if Kevin had died on 5 April 2012, and been survived by his wife? **(3 marks)**

QUESTION 5 (total 18 marks)

You are acting for Ophelia and Polonius in connection with the purchase of a house, Denmark Lodge. As part of the purchase, you inform them that you intend to apply for an Immunity Certificate in relation to the property, and that this will incur a small extra charge for them. They question the need for the Immunity Certificate.

- 5.1 Explain to Ophelia and Polonius why you consider it appropriate to apply for an Immunity Certificate, and the risks that are involved in not obtaining one. **(5 marks)**

Vehicular access to the property can be gained directly from the main road. The property has a large garden at the rear, and there is a driveway (the “**rear driveway**”) which is over-grown and which does not form part of the property which Ophelia and Polonius are purchasing, at the rear behind the large garden. The rear driveway leads directly onto the main road. The rear driveway forms part of a property, which was at one time used as a market garden. Ophelia and Polonius want to know whether they can use this driveway, as they believe that they can obtain planning permission to erect a house in the garden of Denmark Lodge. If such a house were built, then the means to access it would be by means of the rear driveway. Denmark Lodge is currently owned by Claudius, who inherited it in 1968. It was last conveyed in 1917 to Claudius’ grandfather, Yorick le Danois. The conveyance to Yorick le Danois contains the following referring to the driveway, “*Et auront le dit preneur ses hoirs et ayants causes droit de passage de pied de cheval de charrue et de charrette par dessus le dit chemin particulier pour aller et venir toutes fois et quants des premisses de ce bail à La Grande Rue comme le passé*”.

Claudius tells you, when you enquire of him, that he is not aware of anyone ever having driven a car along the rear driveway to get to the garden of Denmark Lodge, but he has frequently walked along it, sometimes with a wheelbarrow, as it is the most convenient way of accessing his garden.

- 5.2 Advise Ophelia and Polonius. **(13 marks)**

END OF PAPER