

GUERNSEY BAR EXAMINATION

9.30AM, 13 MAY 2020

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 – 18 MARKS**
- **QUESTION 2 – 12 MARKS**
- **QUESTION 3 – 22 MARKS**
- **QUESTION 4 – 27 MARKS**
- **QUESTION 5 – 21 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 18 marks)

You act for John Balan, who instructs you as follows:

- a) His father and mother, Harry and Jan Balan, bought a house which they called "Harjan" in 1956 for themselves, the survivor of them and the heirs of such survivor.
- b) In 1959 Jan Balan died when John was only 3 years old. His father later re-married Susan Durand (who became Susan Balan on her marriage) and they had one child, John's half-sister, Sophie Balan.
- c) Harry Balan never conveyed any interest in Harjan to his second wife. He died in 2000. By the terms of his will of realty he devised to Susan Balan "*the enjoyment during her lifetime of all of my real property*". Subject to that gift, he devised "*the whole of my real property to my children in equal shares*".
- d) Both John and Sophie are legitimate.
- e) John does not get on with his half-sister or step-mother. Susan, his step-mother, no longer lives at Harjan. She suffers from senile dementia, and is cared for in a nursing home. She is under guardianship, and her guardian is Sophie, John's half-sister. John is not, and never has been, a member of Susan's family council.
- f) Sophie lives at Harjan. John believes that she pays no rent in respect of her occupation.
- g) Harjan has fallen into a state of disrepair, both cosmetically and structurally. It was in good repair when Harry Balan died.
- h) John wants to know what he can do about this situation, which he considers to be very unfair, particularly as a large part of the original purchase price of Harjan was provided by his mother, Jan, from an inheritance which she had received. Ideally, he would like Sophie to be evicted from the property and for it to be sold.
- i) If this is not possible, he would like to make his step-mother and half-sister pay to have the property put into good repair and/or to force his sister to pay rent in respect of her occupation of the property, preferably to him. He feels that it would be fair if she were to pay him half of the market rent (he concedes that she should be given credit as to one half to take account of the fact that she owns half of the property).
- j) As an alternative, John, who himself lives in rented accommodation, would like to move into Harjan himself. Since the property includes a "wing", which is currently used for storage, John says that he could occupy the wing, and Sophie could live in the main part of the house.

1.1 Advise John. (18 marks)

Note: Because of the relationship between John and his step-mother and half-sister, there is no chance of their agreeing to any of his proposals.

QUESTION 2 (total 12 marks)

- a) Phillippe Le Perroquet recently died. For many years he ran a bird sanctuary called 'A Bird in the Hand' at Oiseau Point. About 10 years ago, however, he stopped as times were tough, and the cost of running the sanctuary had become prohibitive, and Oiseau Point has since been disused.
- b) Oiseau Point is in an area of zoning for planning purposes, for which it is highly likely that planning permission will be granted to develop the land and erect domestic dwellings on the land. No planning permission had been sought.
- c) Last year Phillippe was approached by Gacher La Terre Developers (Gacher) who offered to buy Oiseau Point for 1 million pounds. Phillippe accepted this offer.
- d) Conditions of Sale were drawn up and the Bar Council Standard Conditions of Sale were used. They were signed by Phillippe and on behalf of Gacher, who paid a 10% deposit to Phillippe's Advocates, as stakeholders.
- e) Completion was due to take place on 25 March 2020. Phillippe died on 20 March 2020.
- f) Phillippe died testate, and had made two valid wills, one of personal property and one of real property, which had been validly executed in 2004. By his will of realty he left all his real property to Sally, his niece. By his will of personalty he left all his personal property to Stephen, his nephew, and Stephen was named as executor.
- g) Phillippe's real estate comprises Oiseau Point (and nothing else).
- h) Phillippe's personal estate, administration of which has not yet been completed, is valued at 70,000 pounds (net of funeral expenses and other debts).
- i) Sally has received a number of requests from Gacher, asking that the sale of Oiseau Point be completed, but she has refused to do so, since she hopes to resume the work of her uncle.
- j) Sally has recently received a letter from Gacher's Advocate stating that, unless Sally conveys Oiseau Point to them under the terms of the Conditions of Sale, Gacher intends to apply to the Royal Court for an order compelling her to do so, or, alternatively, for liquidated damages in accordance with the Conditions of Sale.
- k) Sally has also received a letter from Stephen's Advocate requesting that Sally should agree to indemnify Stephen in the event that Stephen suffers any loss as a result of Sally refusing to convey Oiseau Point to Gacher. Sally does not wish to give such an indemnity.
- l) Oiseau Point is worth more than the agreed sum of 1 million pounds, and a competent valuer, whom Sally approached to value it, has indicated that it is worth double the sum agreed.

Sally is seeking your advice on the following matters:

- 2.1 Can Gacher obtain an order from the Court compelling Sally to sell Oiseau Point to Gacher for the sum agreed in the Conditions of Sale? **(4 marks)**
- 2.2 What liability might Stephen incur? **(4 marks)**
- 2.3 What financial liability might Sally incur? **(4 marks)**

QUESTION 3 (total 22 marks)

- a) Marie La Maison wishes to purchase a house, Mon Repos. She has asked you to act for her.
- b) Vehicular access can be gained to Mon Repos directly from the public highway. It has a large garden at the rear. Behind the garden there is an over-grown driveway, which does not form part of Mon Repos, but which leads to the public highway. This driveway forms part of a disused vinery.
- c) Marie wishes to apply for planning permission to build a house in the garden of Mon Repos, and is hoping that access to this house will be by means of the driveway at the rear of the garden of Mon Repos.
- d) Marie is purchasing Mon Repos from Henry Le Grand, who inherited it in 1977. It was last conveyed in 1927 to Henry's grandfather, Pierre Le Grand. The conveyance to Pierre Le Grand contains the following provision concerning the driveway in question:

'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 dans le passé.'

- e) Henry informs you that he is not aware of anyone ever having driven a car along the driveway to get to the back garden of Mon Repos, but he has frequently walked up and down it, sometimes with a wheel barrow, as it is the most convenient way to access the rear of his garden for gardening purposes.
- f) The last Conveyance of Mon Repos in 1927 makes no reference to there being any rights of neighbours over or in respect of Mon Repos.

Please answer the following questions:

- 3.1 You are intending to apply for an Immunity Certificate. Explain to Marie why you consider this is appropriate and what may be the risks of not obtaining one. **(6 marks)**
- 3.2 Advise Marie of the likelihood that she will be able to use the over-grown driveway at the rear of the property to access any proposed development at the rear of Mon Repos. **(8 marks)**
- 3.3 What searches and enquiries should you carry out in relation to Mon Repos? **(8 marks)**

QUESTION 4 (total 27 marks)

You are asked to advise members of the Le Patourel family who wish to know who owns Brickfield House. They provide you with the following information:

- a) Peter Le Patourel inherited a house called “Brickfield House” as the only child of his father on the death of his father, who was a widower, in 1951. The property has not been sold, and was the only real property which Peter owned during his lifetime.
- b) Peter (who was widowed in 1970 and did not subsequently remarry) died in August 1974, and his will of real property was registered shortly after his death. By his will he left a right of enjoyment of the whole of his real property to his son Colin and, subject to that right, left the whole of his real property to his children in equal shares.
- c) Peter had 5 children, namely Adolphus, Brenda, Colin, Derek and Edward. All of them were legitimate and all survived their father.
- d) Adolphus had three children, namely Frederick, Gertrude and Harold, all of whom are alive and all of whom are legitimate.
- e) Brenda had one child, Ingrid. Brenda never married, and Ingrid, who is alive, is illegitimate.
- f) Edward had one child, James, who is alive and is legitimate.
- g) Neither Colin nor Derek had any children.
- h) Brenda died in 2001, intestate.
- i) Edward died in 2003, intestate.
- j) Derek died in 2005, intestate.
- k) Adolphus died in 2009, intestate.
- l) Finally, Colin, who lived at Brickfield House until his death, died earlier this year, also intestate.

Please answer the following questions:

- 4.1 Advise the Le Patourel family as to who now owns Brickfield House, and in what shares. You should assume that there is no question of any of the persons identified in the facts set out above as having died or as having had children who are not identified in the facts set out above. **(15 marks)**

How would your answer be different if:

- 4.2.1 If Peter had not left a will, and was survived only by his cousins, Karen, Leonard and Mary, who are the only children (all of them legitimate) of his maternal aunt, Naomi, who had predeceased him; and by his paternal cousin, Ophelia (who is legitimate, and whose father, Peter’s uncle, predeceased Peter)? **(6 marks)**

- 4.2.2 If Peter had not left a will and was survived only by his brother’s two children, Peter and Quinn (his brother having predeceased him) and his

sister's child, Robin (his sister also having predeceased him)? Peter, Quinn and Robin are all legitimate, and are all still alive. **(6 marks)**

QUESTION 5 (total 21 marks)

- a) Rex and June Goasdoue come to see you about their wills. They own 'Little Gueŕ' at Le Giffarderie in their joint names (i.e. "*for themselves, the survivor of them and the heirs of such survivor*"). They have joint bank accounts and some jointly owned shares. June has just inherited her late aunt's house in St Saviour's together with her personal estate which amounts to in excess of £1million. This money is in a bank account in June's sole name.
- b) The combined wills they made in 2009 leave everything to each other and thereafter to their son, Robert.
- c) Since making these wills Rex and June have had another child, Joyce.
- d) Rex and June feel they need to review their wills given June's now increased wealth, the birth of Joyce and also because Rex has recently found out that he has another son, Reggie who has traced him to Guernsey.
- e) Reggie is the result of a one-night stand that Rex had when he was very young, before he met June. He had no idea there was a child from this liaison until he was contacted by Reggie who was looking for money. Following DNA tests, it has been confirmed that Reggie is Rex's child although Rex wants nothing to do with him and wants to ensure Reggie does not receive anything from the estate. Reggie is an adult, has no job and lives off State benefits. From what Rex can tell, he has never had a job and from time to time has been homeless. He is currently living in a hostel in Newcastle. Rex does not want Reggie to inherit anything if this is possible.

Please answer the following questions:

5.1 Advise Rex and June. **(10 marks)**

5.2 How would your advice be different if:

5.2.1 their current wills had been made in 1999? **(6 marks)**

5.2.2 Rex had been diagnosed with Motor Neurone Disease and the medication that he has been prescribed caused him to be confused at times? **(5 marks)**

END OF PAPER