

LAW SOCIETY OF SCOTLAND EXAMINATIONS

CONVEYANCING

Candidates should answer FOUR questions, TWO from Section A and TWO from Section B

Section A

1. Eva, a fine art dealer, agrees to rent unfurnished shop premises from Wally for £500 per month. They have not yet agreed a term for the lease, but Wally lets Eva move in to the shop while they are still negotiating the term. They commit their agreement to writing and both sign the agreement. Eva moves in to the premises on 1 December and starts trading from them. The agreement obliges Eva to “keep open the premises and trade from them as a fine arts dealer during normal business hours on all weekdays, public holidays excepted”.

Eva immediately discovers that the central heating boiler only works intermittently and informs Wally about this one week after she has moved in. He agrees to fix it. However, before he gets round to doing this, during the weekend before Christmas the boiler completely fails. The pipes freeze and burst, and the shop is flooded causing £2,000 of damage to Eva’s stock. The following week Eva discovers that a heavy chandelier is beginning to come away from the ceiling in the front room of the shop. Before she has time to telephone Wally to ask him to repair it, the chandelier comes crashing to the shop floor, destroying £500 worth of Eva’s stock. She remembers that the ceiling around the chandelier fixture was cracked when she moved in.

Two months after Eva moves in, she finally agrees with Wally that the term of the lease will be ten years. Their written agreement is altered to reflect this.

Eva’s fine arts business is suffering because of the depression. Without asking Wally’s permission, she sub-lets part of the shop to Debbie, who specialises in the sale of Russian icons.

- (a) Is there a valid lease between Wally and Eva? If so when does it come in to being? If there is a valid lease, does Eva have a real right under it?
- (b) Is Wally liable for any of the damage caused to Eva’s stock?
- (c) Is Eva allowed to sub-let part of the premises to Debbie without Wally’s permission?
- (d) Could Eva assign her lease to Debbie without Wally’s permission?

2. Michael lives at 34 South Road, Edinburgh. He bought the property two years ago. It consists of a detached house, garage and garden. He returns from his annual month long holiday in France to three unwelcome developments.

First, he has received a letter from solicitors acting for his neighbour Paul. Michael and Paul do not like each other. The letter asserts that Michael's garage is built partially on Paul's ground. It demands that the garage is either relocated immediately or that compensation of £20,000 is paid to Paul. You check Michael's title deeds and discover that the garage does indeed cross the boundary. Michael, however, points out that the garage was there when he bought the property and his surveyor's report states that it was built with the house around 10 years ago.

- (a) Advise Michael in relation to how to respond to the solicitor's letter.

Secondly, Michael is angry that during his absence on holiday, Paul has added a conservatory to his (Paul's) house. The conservatory overshadows Michael's patio area. Michael complains to Paul, who responds that it is too late to object because the conservatory is complete. You check Michael's title deeds and discover that there was a deed of conditions registered by the builder of South Road in 1999. It contains a real burden prohibiting external alterations, but does not expressly say who can enforce it.

- (b) Advise Michael as to whether he can enforce the burden against Paul.

Thirdly, Michael discovers that Paul has attached a sign to the front wall of Michael's garden advertising Paul's fish and chip shop.

- (c) Advise Michael as to any remedies which he may have.

3. Caledonian Castle Holidays Ltd is a new company which is acquiring large country houses in Scotland and turning them into luxury hotels. It requires loan finance to acquire Mantelbruecke Castle.

- (a) Advise the company as to what types of security it could grant in favour of its bank.

The castle is successfully acquired and refurbished. It opens as a hotel. The company acquires a herd of Highland cattle. But the cattle stray onto a neighbouring estate owned by Tarquin.

- (b) Advise Tarquin as to his remedies.

The company agrees to pay Tarquin £15,000 in return for permission for the cattle to graze on his land. It is agreed that a formal deed will be drawn up and the company wants to ensure that Tarquin's successors as owners will also be bound.

- (c) Advise the company as to what type of deed should be used and how it would be possible to bind successors.
- (d) What would be the execution requirements in respect of the deed?

Section B

- 4. What specialities are to be observed in a conveyancing transaction involving a tenement flat?
- 5. Compare and contrast the Register of Sasines and the Land Register.
- 6. Outline the steps which the steps which must be taken by the solicitor acting for the buyer in a conveyancing transaction from the conclusion of missives through to the registration of the disposition.