



**THE LAW SOCIETY OF SCOTLAND  
EXAMINATIONS**

**CONVEYANCING**

**Monday 2 FEBRUARY 2009**

**1330 – 1630  
(Three Hours)**

**Candidates should answer FOUR questions, TWO from PART  
A and TWO from PART B.  
All sections of a question must be answered.**

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**PART A**

**Candidates should answer TWO questions from PART A. All sections of a question must be answered.**

1. **(A)** The burdens section of the title sheet of the house at 4 Main Street, Beith lists the following rights and obligations:
- (a) a prohibition on keeping pigs on the property;
  - (b) a prohibition on selling the property;
  - (c) a right, in favour of a neighbour, to use the garden of the property for playing croquet.

In each case, explain whether the right or obligation is (i) a real burden (ii) a servitude (iii) both or (iv) neither.

**and**

**(B)** In 1862 Matthew divided his land (on the edge of Edinburgh) into 20 plots and sold each plot to a different person. In each case the purchasers proceeded to build a house. The disposition of each plot contained identical real burdens. Among those burdens was

- a prohibition on the use of the plot for business purposes;
- an obligation to contribute a 1/20 share of the cost of maintenance of a private lane at the back of the plots.

Today Anne owns a house built on one of the original plots. She consults you. The lane is in a bad state and she fears that she may receive a large bill for its maintenance. In addition, she wants to use her house to run a computer business. She has been told by a friend that the burdens are unenforceable except in the unlikely event that one or more of her neighbours has title to enforce. Advise Anne as to whether there is title to enforce –

- (a) the prohibition on business use;
- (b) the obligation of maintenance.

2. Annabel wants to open an art gallery and enters a written agreement under which she is given use and occupation of premises for 10 years at an initial rent of £400 per month. Upon taking up occupancy of the premises she discovers that the central heating does not work, and that there is rising damp in one of the rooms. One of the floors gives way when she places a life size marble replica of Rodin's *The Kiss* on it.

- (a) Advise Anna on what she can do about the central heating, the rising damp, and the collapsed floor.

Bob wants to lease premises from which to trade as an architect. The subjects and term of the lease (5 years) are agreed, but the exact rent is still to be fixed by a surveyor when Bob moves in. Bob agrees that in addition to the rent which he is to pay, he will also walk his landlord's dog every morning.

- (b) Does Bob have a valid lease? If so, for how long and at what rent? Will Bob have to walk all dogs (however numerous) owned by his current landlord or any future landlord?

Cindy moves into an office which she agrees to rent for £350 a month for use as a recruitment business, but no exact ish is agreed. She bolts a heavy, intricate sign on to the wall outside the window advertising her business. She also converts one of the back rooms into a bedroom, as she suspects she will often have to work late.

- (c) Does Cindy have a lease over her office? If so, what is its term? Is she allowed to erect the sign or use the back room as a bedroom?

David and Frances jointly sign a 25 year lease of a café on 15th September, the entry date being 1st October. They are allowed to enter the property several times before the entry date to decorate the premises. The landlord sells the property on 29th September, and the disposition is registered in the Land Register on 30th September. David and Frances register their lease in the Land Register on 1st October, but then arrive at the café to find that the new landlord is denying them the right to move in.

- (d) Is the lease binding on the new landlord? Would it make any difference if the new landlord had known about the lease when he bought the premises?

3. Colinton University (incorporated by Royal Charter in 1995) own the house known as Ten Grange Street, Edinburgh. Their title is registered in the Land

Register of Scotland. The University grant a two year lease of the house to Simon Wilson Jones and Hannah Smith, two students at the University.

The lease is executed by Simon and Hannah on 10 August 2007. Simon subscribes "Simon W Jones" and Hannah subscribes "H Smith". Their signatures are witnessed by a fellow student, Kevin Finlay Christie, who having just enjoyed a rather good fast food meal, signs "K F C". Mr Christie's full name and address are, however, stated in the testing clause.

The lease is executed by the University on 12 August 2007. It is subscribed by Sir Kenneth Roberts, the Principal of the University and by Mr John Reid, the Secretary to the University. Both gentlemen subscribe their full names and their designations are given in the testing clause.

- (a) Is the lease validly executed by Simon and Hannah? Is the execution probative under s 3 of the Requirements of Writing (Scotland) Act 1995?
- (b) Is the lease validly executed by Colinton University? Is the execution probative under s 3 of the Requirements of Writing (Scotland) Act 1995?

It is two years later. Simon and Hannah fell in love while at Colinton and have now married. They like the house so much that they agree to buy it from the University. Missives are concluded. When, however, the title deeds are sent to the couple's solicitors it transpires that the University does not have title to the minerals under the property.

- (c) Would this allow Simon and Hannah to rescind the missives? Or could they proceed with the purchase, but claim damages? (Assume that the missives are silent on these matters).

Assume that Simon and Hannah proceed with the transaction. On the night before the couple are due to take entry an electrical fault causes a fire which completely destroys the property.

- (d) Are Simon and Hannah still bound to make payment of the price the next day? (Again, assume that the missives are silent on the matter).

## **PART B**

**Candidates should answer TWO questions from PART B.**

4. What rights and obligations are implied by law in relation to a servitude?
5. What difficulties are there with the Land Registration (Scotland) Act 1979?
6. Discuss the role and importance of the various clauses in a disposition.