

Conveyancing

Tuesday 14th May 2024

9.30am to 11.00am

Candidates are required to answer TWO out of three questions.

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Question 1

Alice recently donated to Fearnlee Nature Reserve. The nature reserve, which consists of natural woodland, is owned by a company limited by guarantee called Fearnlee Nature Reserve Holdings.

In response to her donation, she received a document which purported to transfer a 1m square of the land in the nature reserve. The document identifies the square by referring to an entry in the Fearnlee Nature Reserve Donors Database, which is freely accessible online. It was signed at the bottom by "Bert Blossom, Director". There are no other signatures on the document.

Alice's friend, Cedric has told Alice that she would need to register the document in order to become the owner but that there are "multiple reasons why the document cannot be registered".

Is Cedric correct and, if so, why?

Question 2

Declan lives in a terraced house in Dundee. He bought his house 4 years ago. The houses on Declan's Street were built on land owned by Angus Construction Ltd in 1987. When Angus Construction Ltd transferred the houses to the first buyers, they imposed identical real burdens, among these burdens was a prohibition on keeping pets.

Over the past 10 years, the owners of a number of the houses on the street have acquired dogs or cats. The most recent person to do so was Declan's neighbour, Edith, who acquired a cat (called Ginger) 2 years ago. At first, Declan did not feel he could object since the keeping of cats was so widespread. In fact, he helped Edith to build a "cat-run" in her garden for Ginger to exercise on. Edith spent £200 on materials for the cat run.

In recent months, Declan has noticed a significant increase the amount of cat faeces in his garden. He believes that Ginger is the culprit.

Can Declan use the real burden against keeping pets to force Edith to get rid of Ginger?

Question 3

Scotsdale Land Investments Ltd owns an industrial estate in Lanarkshire. Scotsdale granted a standard security over the industrial estate to Forthdale Bank plc and a floating charge over its “whole property and undertaking” to Bank of Alba plc. The floating charge includes a negative pledge clause. Both the standard security and the floating charge were granted in security of “all sums due and to become due” by Scotsdale to Forthdale and Bank of Alba respectively. At present, Scotsdale does not owe anything to either bank.

Scotsdale anticipates two transactions in the near future. (a) It intends to sell part of the industrial estate to Telford Trading Ltd. Telford wish to take the land free of all rights in security. Telford are not in a position to proceed with the acquisition at present. Telford are willing to pay for an option to purchase on condition that their option can be protected against third parties. (b) Scotsdale intends to borrow from Forthdale, Forthdale have made clear that the loan requires to be secured by a standard security but they are content that the part of the industrial estate which Scotsdale will retain after the sale will be sufficient collateral.

What is the most efficient way for Scotsdale to facilitate these plans?

Outline any legal issues and your advice, including legal remedies, to James. Cite case law as appropriate to support your advice.

END OF PAPER