

# Conveyancing

Tuesday 13 May 2025

9.30am to 11.00am

**Candidates are required to answer TWO out of three questions.**

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### Question 1

Andrew runs a shop on Mull. When Andrew took the shop over, the property belonged to his aunt Bella, who had run the shop before him.

There was never any written document but, before Andrew took over the shop, he said to her, "Running this place will see me sorted for work until I retire." Bella replied, "It certainly will." They agreed that Andrew should pay Bella £2000 a month in rent. Since taking over, Andrew has spent a good deal on renovations and, on Bella's advice, has turned down an offer of work on the mainland. He is now 48 years old.

Bella spoke to Andrew recently and told him that he would need to move out of the shop as she needed to sell it and the prospective buyers wanted vacant possession. Andrew mentioned their agreement but Bella replied, "You can hardly expect to hold me to that."

Can Andrew hold Bella to their agreement? If Bella were to sell the land, would the purchaser be able to evict Andrew from the shop?

### Question 2

Cara recently purchased a house and garden in Skye from Mr and Mrs Dunlop. Her purchase of the property triggered a first registration in the land register. A private road runs along the western edge of her garden and continues from there down to the nearest beach. The public road runs along the eastern edge of the garden. A driveway runs from the house to the public road.

When Cara asked the Dunlops about the private road, they said that they had been using it to go down to the beach since they moved in 25 years ago and that they had resurfaced the portion of the road which ran along the edge of the garden.

The disposition transferring the property to Cara described the property conveyed by reference to an earlier disposition, granted by Thomas Fenwick, transferring the property to the Dunlops, registered in the General Register of Sasines in 1965. The boundary line on the accompanying deed plan was so thick that it is not clear it includes the section of private road running alongside the garden within the property. The 1965 disposition included a verbal description which described the property as being "bounded on the west by the road running from Bunlainn Farm to Sgurradh Beach".

The private road has recently been dug up by Thomas Fenwick, who still owns the

land on the other side of the private law. When Cara objected to Mr Fenwick digging up the road, he observed that it was his land and he could do what he liked with it. Cara checked her title sheet and found that it shows the private road as falling within her title. Mr Fenwick says the title sheet is wrong.

Advise Cara

### Question 3

Gretna Construction Ltd is a building and property development company. It is building a housing estate in the Scottish Borders. Gretna Construction Ltd registered a deed of conditions in respect of the estate on 26 March 2025.

The deed of conditions contained the following term:

“The burdens listed below are imposed on the Development as community burdens and are enforceable by the Proprietor of each Unit, each Unit being a benefited property in respect of the burdens. The community shall be all the Units in the development. The burdens shall not take effect with respect of any Unit until the date of registration in the Land Register of Scotland of a Disposition of that Unit in which the burdens set out in this Deed are expressly stated to apply.”

The deed of conditions defines units by reference to a development plan (incorporated into the deed of conditions) which shows each plot which Gretna Constructions Ltd intended to build.

One of the listed burdens is as follows:

“All the Burdened Units shall contribute to the maintenance of the play park in the Development. The costs shall be attributed in proportion to the Council Tax which is due in respect of each Unit or which would be due if that Unit were occupied as a principal dwelling.”

No definition is given of the term “Burdened Unit”.

Gretna Constructions Ltd have completed all of the 25 units in the development but only sold half of them. Harold Harper and his wife Helen recently bought one of the units.

The play park is at the other end of the development (a one-mile walk) and the Harpers have no children. A recent local authority inspection has found a number of elements in the playpark to be unsafe. Repair work will cost £5,000. One of the Harpers’ neighbours in the development, Iona Inglis is trying to arrange the and has been in touch with details of a quotation for the work and asking the Harpers for a contribution.

The Harpers object to paying on four grounds:

- a) They say that the burdens are not yet in force because the final unit has not been sold;
- b) They say that maintenance of the playpark is of no benefit to them or to their property;
- c) They say that the burden is ineffective because the amount payable cannot be determined by examination of the deed of conditions;
- d) They say that the contribution being asked of them is, in any case, too high because it has been calculated on the basis of splitting the cost between the units which have been sold and takes no account of the units still owned by Gretna Constructions Ltd.

**END OF PAPER**