

## INSTITUTE OF LEGAL EXECUTIVES

### UNIT 9 – Land Law\*

**Time allowed: 3 hours plus 15 minutes reading time**

#### Instructions to Candidates

- You have **FIFTEEN** minutes to read through this question paper before the start of the examination.
- **It is strongly recommended that you use the reading time to read the question paper fully.** However, you may make notes on the question paper or in your answer booklet during this time, if you wish.
- **All questions carry 25 marks. Answer FOUR only of the following EIGHT questions. The question paper is divided into TWO sections. You MUST answer at least ONE question from Section A and at least ONE question from Section B.**
- Write in full sentences – a yes or no answer will earn no marks.
- **Candidates may use in the examination their own unmarked copy of the designated statute book: Blackstone's Statutes on Property Law 2010-2011 by M Thomas, Oxford University Press.**
- Candidates must comply with the ILEX Examination Regulations.
- Full reasoning must be shown in answers. Statutory authorities, decided cases and examples should be used where appropriate.

#### Information for Candidates

- The mark allocation for each question and part question is given and you are advised to take this into account in planning your work.
- Write in blue or black ink or ball point pen.
- Attention should be paid to clear, neat handwriting and tidy alterations.
- Complete all rough work in your answer booklet. Cross through any work you do not want marked.

**Do not turn over this page until instructed by the Invigilator.**

\* This unit is a component of the following ILEX qualifications: **LEVEL 6 CERTIFICATE IN LAW, LEVEL 6 PROFESSIONAL HIGHER DIPLOMA IN LAW AND PRACTICE** and the **LEVEL 6 DIPLOMA IN LEGAL PRACTICE**

**SECTION A**  
**(Answer at least one question from this section)**

1. (a) Does the Trusts of Land and Appointment of Trustees Act 1996 finally recognise that home-owners' equitable interests go beyond the proceeds of sale?

**(14 marks)**

- (b) Is the destruction of one or more of the unities the only thing that can sever an equitable joint tenancy? Give reasons for your answer.

**(11 marks)**

**(Total: 25 marks)**

2. (a) Does the number of ways in which the Austerberry rule can be circumvented make the distinction between positive and restrictive covenants in freehold land irrelevant?

**(18 marks)**

- (b) Whilst restrictive covenants are an efficient way of controlling the use of land could it be said that the law is not effective in ensuring that redundant or obsolete covenants are extinguished and/or modified?

**(7 marks)**

**(Total: 25 marks)**

3. It was not expected that the passing of the Human Rights Act 1998 would result in the virtual abolition of adverse possession. But this seems to be the outcome of the decision in *Pye v UK*.

Discuss.

**(25 marks)**

4. "The consultation paper ... contains a number of detailed provisional proposals including abolition of the existing methods of prescriptive acquisition of easements and the creation of a single new method of prescriptive acquisition [of easements]."

Source: The Law Commission, 2010

Should the three methods for prescriptive acquisition be replaced by one? Give reasons for your answer.

**(25 marks)**

**SECTION B**  
**(Answer at least one question from this section)**

**Question 1**

Hamilton Manor, a registered freehold, is the home of the registered proprietor, Andrei, and his friend Darren.

On 30 January 2006, Andrei, agreed with Barrowminster Bank plc to deposit his title deeds as security for a loan. The parties intended to complete a mortgage by deed, but this never happened.

On 16 May 2007, Andrei executed a mortgage by deed in favour of Consumer Finance Ltd as security for a loan, which mortgage was registered on 17 August 2007.

On 28 May 2007, Darren wrote to Andrei agreeing to lend Andrei money in return for a charge over the property. Andrei counter-signed the letter to show his agreement. There is no mention of the letter on the register.

On 30 August 2008, Andrei executed a mortgage by deed in favour of Elektra Creations Ltd. The charge remains to be registered.

On 19 September 2008, Andrei executed a further charge by deed in favour of Felixstowe Bank Ltd, which charge was registered on 30 September 2008.

1. (a) Explain whether each of the purported charges takes effect as a legal or equitable charge.

**(14 marks)**

- (b) Explain the priority of the charges which affect the estate.

**(11 marks)**

**(Total: 25 marks)**

*Turn over*

**Question 2**

For many years, Fiona farmed Grange Farm with her husband, George. George died in 1989, leaving the farm to Fiona. Unable to work the farm on her own because her sons, Hector, Inigo and Jasper, had moved out, Fiona said that her sons should help her to work the farm as they would be left it in her will.

Hector duly gave up his job as a highly paid city broker and became a farmer. In 2003, Fiona invited Hector to build a house in one of the farm's fields. She said, "You might as well, the land will be yours in the end anyway". Hector duly built a large house on one of the fields.

Inigo helped run the farm for two years, until his wife was grievously injured in a threshing accident. Inigo gave up farming to become his wife's full-time carer. Fiona told him, "Not to worry – you'll always have a place to live on this farm."

Jasper moved into the farmhouse, which he shared with his mother. He decided to go into the farming business on his own account, and bought a number of arable fields nearby. He has farmed them since.

Recently Fiona died after a short illness. Her will leaves the entirety of her estate to a number of named charities.

Advise Hector, Inigo and Jasper.

**(25 marks)**

**Question 3**

Kiran is the registered proprietor of the freehold of two office buildings.

In 2005 she leased both buildings. Both leases are for twenty-five years and contain the following tenants' covenants:

- a repairing covenant;
- a covenant not to use the demised premises as a sex shop or for the sale of pornographic material of any kind;
- a covenant not to assign or sublet without the written consent of the landlord; and
- a covenant to enter into an authorised guarantee agreement on any assignment.

The first building was leased to Lewis. Lewis subsequently assigned his interest to Marie. Marie, in turn, assigned to Nguyen. Both assignments were made in accordance with the lease and the assignee completed an Authorised Guaranteed Agreement (AGA).

Nguyen sublet a part of the building to Oliver with Kiran's consent. Oliver has allowed that part of the building to fall into disrepair.

The second building was leased to Phoebe. Phoebe assigned her lease to Quentin, without seeking Kiran's consent. Quentin sublet the building to Ralph. Ralph is using the building to run a shop selling pornographic material.

3. (a) Explain who Kiran might enforce the user and repair covenants against.

**(13 marks)**

- (b) Explain how your answer would differ if the leases were granted in 1995 and contained only those covenants referred to in the first three bullet points above.

**(12 marks)**

**(Total: 25 marks)**

*Turn over*

**Question 4**

Soniya purchases, at auction, the remainder of a long lease of Holchapel from Terence, having inspected it the day before.

On taking possession of the property, she finds that Terence has left a large skip containing rubbish in the farmyard. She asks Terence to remove it, and he replies, "You bought the place: it's yours now."

On further inspection, she finds that Terence has removed a number of items from the premises, including all of the potatoes growing in the farm's fields and a number of specimens of rare orchids growing in the hedges on the farm.

She notices that the dry-stone wall surrounding the farm-house garden has been removed, as has the valuable Victorian bath from the bathroom, and a number of internal doors (which the auction catalogue stated were rare and valuable antiques).

None of these matters are referred to in the contract for sale, and no fittings and contents form was completed.

As her new herd of cows is being delivered, a private jet owned by Ulysses flies over the farm at very low altitude. This causes several of the cows to die of shock.

Advise Soniya.

**(25 marks)**

**End of Examination Paper**

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