

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 2011-2012, Meryl Thomas, Oxford University Press, August 2011.**
- 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. "Only such a covenant as can be complied with without the expenditure of money will be enforced against an assignee...."
Lindley J, *Haywood v Brunswick Permanent Building Society* (1881).

Critically assess the accuracy of the above statement with regard to freehold covenants.

(25 marks)

2. "By and large equity has protected mortgagors from grossly unfair contractual terms in the deed of mortgage but may not have been nearly so successful in safeguarding mortgagors from the oppressive exercise of mortgagee's remedies in the event of a default."
Gray, *Elements of Land Law*.

(a) In the light of this statement critically assess the protection afforded to mortgagors from "unfair" terms.

(11 marks)

(b) Critically assess the protection afforded to mortgagors from "oppressive exercise of mortgagee's remedies".

(14 marks)

(Total: 25 marks)

3. "If a plaintiff is to establish that she has a beneficial interest in the property, she must establish that the defendant holds the legal estate upon trust to give effect to that interest. That follows from *Gissing v Gissing* [1971]. For present purposes I think that such a trust can only arise:

- (a) by express declaration or agreement or
(b) by way of a resulting trust where the claimant has directly provided a part of the purchase price or
(c) from the common intention of the parties."

Fox LJ, *Burns v Burns* (1984)

In the light of this statement critically evaluate the approaches of the court to the determination of express and implied beneficial interests in estates in land.

(25 marks)

4. Critically evaluate the relevance of the doctrine of proprietary estoppel to both commercial and domestic cases following the decision of the House of Lords in *Cobbe v Yeoman's Row Management Ltd* (2008).

(25 marks)

SECTION B**(Answer at least one question from this section)****Question 1**

Nkwame was the owner of the registered freehold of a warehouse in Kerwen. He leased the warehouse to Oliver for a term of 20 years. The lease contains, amongst others, the following covenants on the part of the tenant:

- (i) not to use the premises for immoral purposes;
- (ii) to keep the premises in tenantable repair;
- (iii) to purchase all cleaning services from Nkwame's cleaning business; and
- (iv) to pay rent quarterly in advance.

The lease also contains an option for the lessee to purchase the freehold reversion at any time during the term of the lease.

Last year Nkwame sold the freehold to Patricia, and Oliver sold the lease to Quentin with the landlord's consent.

- (a) Advise Patricia against whom she might enforce the covenants and whether she is bound by the option if the lease was granted in 1995.

(13 marks)

- (b) Advise Patricia against whom she might enforce the covenants and whether she is bound by the option if the lease was granted in 2000.

(12 marks)

(Total: 25 marks)

Turn over

Question 2

Ralph, Soniya, Trevor, Ursula (who is 17) and Victor contributed equally to the purchase price of Blackacre, and after the freehold was transferred to them, they moved in. The transfer states that the estate was transferred to them as "beneficial joint tenants".

Ralph decided to go travelling, and sold his share in the property to Walter.

Two months later Trevor was declared bankrupt.

Not long after Trevor's bankruptcy both Soniya and Trevor were killed in a boating accident. Soniya's will purported to leave her estate to Ursula.

Victor, who was suffering from delusions, strangled and killed Ursula. He was convicted of her manslaughter by reason of diminished responsibility.

Walter wants to sell the property, but Victor objects. Victor, now released from prison, wants to move back into the property, but Walter refuses to let him.

- (a) Advise the parties regarding the devolution of the legal and beneficial estates in the above scenario.

(18 marks)

- (b) Advise Victor as to what steps might be taken to resolve the dispute about the sale and Victor's potential occupation of the property.

(7 marks)

(Total: 25 marks)

Question 3

Xavier purchases Redacre, a registered freehold, at auction without inspecting the estate. Redacre is a small estate comprising three cottages. Xavier is registered as proprietor.

The first cottage contains Zebun's possessions. Zebun has been working abroad for a number of years. She returns a few months after Xavier's purchase, and shows him a properly constituted 125 year lease by deed of the first cottage granted on 19th February 2005.

Alicia is living in the second cottage. She has an assured shorthold tenancy, with an original term of six months from 21st April 2011, and she has been paying rent monthly to Xavier's predecessor in title.

Barnaby is living in the third cottage. He shows Xavier a properly constituted lease by deed. The date of the lease is 28th May 2011. The lease states that the term commences on 28th November 2011.

Chris is the owner of the freehold of a neighbouring cottage, which, until Chris purchased the reversion of his lease in 2010, formed a part of Redacre. The lease contained rights of way over the estate roads on Redacre. No such rights are mentioned in the 2010 transfer.

Xavier gets an official copy of the register of his estate and sees that it makes no mention of any leases or rights of way.

Advise Xavier as to whether he is bound by the purported interests of Zebun, Alicia, Barnaby and Chris.

(25 marks)

Turn over

Question 4

Declan recently purchased a part of the freehold of Whiteacre, comprising a cottage and garden, from Edna. Until the sale, Edna lived in the cottage.

The cottage is bound on three sides by that part of Whiteacre retained by Edna. The fourth side is bordered by the sea at the bottom of a sheer cliff.

Access to the highway from the cottage is along a track passing across Whiteacre, under which run the mains water and sewers serving the cottage.

There is nowhere to park on the cottage estate. Prior to the sale to Declan, Edna parked her car on a hard-standing near the cottage. The hard-standing forms a part of Edna's retained estate.

The transfer of the cottage to Declan contains no easements.

Advise Declan whether he can lawfully use the track, mains water and sewer pipes, and the hard-standing to park his car.

(25 marks)

End of Examination Paper

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