

UNIVERSITY COLLEGE LONDON

University of London

EXAMINATION FOR INTERNAL STUDENTS

For the following qualifications :-

B.A.

Laws C11: Property II

COURSE CODE : LAWSC011

UNIT VALUE : 1.00

DATE : 16-MAY-02

TIME : 10.00

TIME ALLOWED : 3 hours 15 minutes

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TURN OVER

PROPERTY II

Answer **FOUR** questions including at least one question from **PART A** and at least one question from **PART B**.

PART A

1. Olga bought a plot of land on which she built a house and an adjoining shed. Her title to the plot of land was registered at the Land Registry, and she lived in the house and ran her printing business from the shed. Most of the money for buying the land and building the house and shed was provided by her friend Frank, who worked as an airline steward but was thinking of going into business with her at some time in the future. Frank always stayed in the house with her when he was in England, and when he did so he would usually help out in the business, working with Olga in the shed.

During Frank's last visit in 2001 Olga borrowed £100,000 from her sister Marina to pay for improvements to the shed, and granted Marina a charge by way of legal mortgage over the shed to secure repayment. Marina registered the mortgage at the Land Registry. The terms of the loan were that Olga would repay the £100,000 by instalments over ten years, with interest at a rate from time to time specified by Marina. The interest rate was 5% initially, but Marina is now in severe financial difficulties and last month she notified Olga that it was to be increased to 20%, to enable Marina to keep up the payments on loans she has had to take out to pay off some of her own creditors. In order to pay for this, Olga is going to have to rent out the house and so she has now moved into the shed and is living there.

Marina has now told Olga that she will have to move herself and all her equipment out of the shed because she, Marina, wants to take possession so that she can sell it to a rival printing business for £200,000 by exercising her mortgagee's power of sale.

Advise (a) Olga and (b) Frank.

TURN OVER

2. You are consulted by Rachman, who is Landlord to several properties which he lets out to tenants. He asks your advice regarding two of these.
- (a) A residential flat is let on a 99-year lease to Cynthia. In the lease she has covenanted to use the flat only for residential purposes and not to use it for any illegal or immoral purpose. She has in fact been running an "escort agency" from the flat, by arranging over the telephone for men to meet women, ostensibly for social purposes but actually for prostitution. Neither the men nor the women ever visit the flat.
 - (b) A small lock-up shop is let on a 7-year lease to Albert, at a monthly rent. Albert's business has not done well, and he is in arrears with his rent. He now appears to have left the premises, taking the remainder of his stock with him. Rachman, who has a key to the shop, has another prospective tenant, who is anxious to move in right away, and who is willing to pay a higher rent than Albert.

Advise Rachman on his best course of action in each case.

3. Rodney was the registered proprietor of a house in Islington which he divided into two flats, leasing the top one to Paul and the bottom one to Alison each for a term of fifteen years. Rodney granted Paul an option to purchase the freehold reversion in the house. The following year Paul decided to visit Tibet in order to "find himself". He gave the keys of his flat to Alison and asked her to keep an eye on it "until, *or if*, I return". The following month Rodney sold the freehold to Dawn, who was registered as proprietor. Two weeks later Paul returned from Tibet and is now anxious to exercise his option whilst Dawn claims she is not bound by any rights that Paul or Alison might have.
- (a) Advise Dawn.
 - (b) How, if at all, would your advice differ if title to the house had been unregistered?

CONTINUED

4. Tabatha is the sole beneficiary of a family trust, of which her uncle, Pablo, is the sole trustee. Pablo decides to transfer some of funds of the trust to his son, Devious and instructs Sly, a family friend and manager of the bank where the trust funds are held, to transfer £10,000 from the trust account into the account of Devious. Pablo tells Sly that he is exercising a power of appointment under the trust, which surprises Sly who has seen the trust instrument and does not recall any such provision. Sly questions Pablo about the power of appointment but Pablo simply tells him to do as instructed "or I shall move the account to another branch". Sly immediately transfers the money into Devious' account, raising the balance to £13,000. Pablo tells Devious it is a birthday present and encourages him to go out and spend it on something nice. Devious is surprised by this, as he knows his father is very hard up and, until now, has always preached the benefits of frugality. However, to keep his father happy, Devious withdraws £5,000 and uses it to buy a painting now worth £10,000 and withdraws a further £4,000 which he spends on a round-the-world cruise. Devious then discovers that the money was transferred out of the trust fund and spends a further £3,000 to pay that month's mortgage, leaving a balance of £1,000 in the account.
- (a) Advise Tabatha.
- (b) How, if at all, would your advice differ if the £10,000 Devious received had been mixed in his safe rather than his bank account?

PART B

5. "Whilst leases are necessarily proprietary, bailments are not."
Discuss.
6. "The correct classification of an interest of a seller under a retention of title clause is charge not ownership."
Discuss.
7. "Carrots and sticks are critical to the workings of a registration scheme."
Discuss.
8. "The rules governing the co-ownership of land are unnecessarily complex and problematic."
Discuss.
9. "A fiduciary relationship is the foundation on which tracing in equity is built."
Discuss.

END OF PAPER