

LEGAL PROFESSION ADMISSION BOARD

MARCH 2009

REAL PROPERTY

TIME: Three Hours

This paper consists of **five** questions.

Candidates are required to attempt **all five** questions.

All questions are of equal value.

There is no internal choice.

All questions may be answered in one examination booklet.

Each page of each answer must be numbered with the appropriate question number.

Candidates must indicate which questions they have answered on the front cover of the first examination booklet.

Candidates must write their answers clearly. Lack of legibility may lead to a delay in the candidate's results being given.

Permitted Material:

This is an open book exam. Candidates may refer to any books and any printed or handwritten material they have brought with them.

As some instances of cheating and of bringing unauthorised material into the examination room have come to the attention of the Admission Board, candidates are warned that such conduct will result in instant expulsion from the examination and may result in exclusion from all further examinations.

This examination should not be relied on as a guide to the form or content of future examinations in this subject.

Question 1

Cameron was the registered proprietor of land under the Real Property Act. He borrowed money to invest in an emu farm at Bathurst from Peter. Cameron completed a memorandum of mortgage (which he gave to Peter) but he had mislaid his certificate of title. Cameron told Peter that he would find it as soon as possible and give it to Peter. In the meantime Peter did not lodge a caveat.

Cameron also sought to borrow money from Nerida for the emu farm. Cameron did not mention the mortgage agreement to Peter. Nerida agreed to lend the requested sum. Given that the certificate of title was missing, Nerida was happy to evidence their agreement in a deed. She advanced the money and then lodged a caveat over the property.

Two days later, the certificate of title was found by Cameron's son, Max. Max had a gambling problem and decided that he would use the certificate to raise some much needed funds. He sold the land to his bookie, Penny. Penny made no search of the register. Penny received the certificate of title and a transfer dealing reputedly from Cameron but which had been forged by Max.

Penny was also in need of quick cash and before she registered her ownership she onsold the property to Ken. At settlement, Ken received the certificate of title, the forged transfer from Cameron to Penny, and the transfer from Penny. When the documents were presented to the Land and Property Information Office they could not be lodged because of Nerida's caveat.

Discuss the respective property rights of:

- (a) What is the nature of Peter's and Nerida's interests in the property?;**
- (b) What is the nature of Ken's interest in the land?;**
- (c) Can Cameron prevent the registration of the forged transfer dealing?;**
- (d) If Cameron remains as registered proprietor, will Peter or Nerida's interest have priority?**

(20 marks)

(Question 2 follows)

Question 2

Nugget and Robert bought a shopfront on Torrens title land containing a 24-7 convenience store with monies secured by a mortgage over the land from Shark Investment Ltd. The mortgage was registered. Two years later, Nugget and Robert ran into financial difficulties. Shark Investment Ltd sent the proper notices, which were not complied with and then set about exercising the power of sale. Shark Investments decided that it would sell for any price that it could get that would return its investment and costs. After advertising in a local newspaper it received two offers, one from Terry for \$500,000 and the other from Matt for \$650,000. For reasons which are unclear Shark decided to accept Terry's offer even though it was significantly less than Matt's. The parties aim to exchange contracts in two days time. Terry is anxious as he has found out about Matt's offer and wants to seal the deal before Shark Investments changes its mind.

- 1. Explain the requirements for the exercise of the power of sale under a registered mortgage in Torrens system.**
- 2. What duties are owed by a mortgagee when exercising the power of sale?**
- 3. What can Nugget and Robert do to prevent the sale?**
- 4. What if the contract has been exchanged already but not yet completed?**

(20 marks)

Question 3

- 1. Describe the doctrine of tenure that exists in New South Wales.
(6 marks)**
- 2. Describe the doctrine of estates and the different kinds of estates that exist in New South Wales.
(6 marks)**
- 3. Describe how the recognition of native title has changed the concept of tenures and estates in New South Wales. In doing so outline the concept of native title and whether it is an estate of real property.
(8 marks)**

(20 marks)

(Question 4 follows)

Question 4

Denise was seized for an estate in Blackacre, a country property under the old system of title. She had lived there for forty years and had good relationships with her neighbour Grubby, who had for, at least 22 years, moved his cattle up and down a track across her property.

As she was getting older and finding the farm harder to manage, Denise agreed to lease the property to Iain for a period of 4 years. They entered into an agreement to lease but never formalized the lease in a deed. Iain went into possession of the property and paid his rent monthly.

After two years Denise contracted to sell the property to Malcolm. They entered into a deed of purchase and Malcolm paid the deposit of 5%. Malcolm inspected the property and met Iain but assumed he was just Denise's friend, staying over for a visit.

Two days later Denise was contacted by Lawrence (a friend of Malcolm's). Lawrence had heard of the agreement and wanted to purchase Blackacre for \$100,000 more than the agreed price with Malcolm. Denise accepted the offer and the contract was completed in 7 days. Lawrence received the title deeds to the property at settlement. At no time did Lawrence inspect the property.

Soon after, Malcolm discovered what had happened. He registered his contract with Denise in the General Register of Deeds. The next day Lawrence registered his deed of conveyance in the General Register.

Meanwhile Denise has just been given notice from her next door neighbour Grubby that he intends to claim an easement over the back part of her property.

- (a) Who has priority between Malcolm and Lawrence?
(8 marks)**

- (b) How are either of Lawrence and Malcolm affected by Iain's lease?
(6 marks)**

- (c) Can Grubby claim an easement if he has used a track for more than 22 years? If the property is later converted into Torrens title will he be able to continue to use the easement?
(6 marks)**

(20 marks)

(Question 5 follows)

Question 5

Fred owns a property, 22 Peter Pde, under old system title. Fred, was a big fan of Jamie Durie, and decided to create an 'entire look' for his backyard. He imported valuable statues which rest on their own weight in the grounds, and which enhance the beauty of their surroundings. He has also furnished the house with antique furniture and a collection of fine old paintings mounted on special frames which are screwed to the walls.

Fred leased the property for two years to Pat, who installed a washing machine in the laundry. The machine is attached by pipes to two taps on the wall, and by a cord plugged into an electrical fitting which Pat has specially installed. Pat put down rugs which were attached to the floor by adhesive strips. These strips are removable, although their removal may cause some damage to the polished floors beneath.

Fred then executes a conveyance of the property by way of mortgage to John. Shortly thereafter Fred defaulted, and John sold 22 Peter Pde to Steve. The contract of sale does not mention the statues, the pictures, the washing machine or the rugs.

Meanwhile the vacant land next door has started to be used by the owner to launch air balloon joyflights. The positioning of the blocks means that the balloons often taken off at a low speed straight over 22 Peter Pde. They make quite a deal of noise as they pass over.

- (a) Is Fred is entitled to remove the statues and the pictures before Steve becomes the owner?
(6 marks)**

- (b) Is Pat entitled to remove the washing machine and the rugs or do they now belong to Steve?
(7 marks)**

- (c) What rights does Pat have to prevent the balloons from disturbing his possession?
(7 marks)**

(20 marks)

END OF PAPER