

**NATIONAL UNIVERSITY OF IRELAND, GALWAY
FACULTY OF LAW**

SEMESTER 1 EXAMINATIONS 2002/2003

**THIRD BACHELOR OF CIVIL LAW
SECOND, THIRD AND FOURTH LL.B
OCCASIONAL/ERASMUS STUDENTS**

EQUITY 1 (LW360)

**Professor R.A. Pearce
Ms. L.A. Buckley
Mr. P. Kenna**

Time allowed: **TWO (2) hours**. Erasmus students have 2½ Hours
Answer **THREE (3)** questions. All questions carry equal marks.

1. In 1980, Property Ltd. leased a large unit in its Galway shopping centre to Megastore for 99 years. Among other conditions, the lease specified that Megastore was to operate a supermarket and department store in the shopping centre for the duration of the lease. In return for acting as an 'anchor tenant' in this way, Megastore was able to obtain a slightly reduced rent on the property. Megastore was also to ensure that the unit it rented was maintained in good order, and to provide an adequate number of shopping trolleys for customers at the shopping centre. For the first few years, the arrangement worked very well. Megastore made high annual profits and the other shops in the centre were able to take advantage of the large number of customers visiting Megastore. Recently, however, things have not been going well. Local hoodlums repeatedly stole the shopping trolleys from the centre and dumped them in the river. Two years ago, Megastore gave up replacing the trolleys, as it felt that it was a wasted expenditure. The building is also showing its age, and Megastore's unit needs repairs to the roof, which has begun to leak. Megastore has ignored several requests from Property Ltd. to carry out the repairs. Worst of all, due to the economic downturn, business has greatly fallen off in the last year, with the result that Megastore is now barely breaking even on its store. Megastore plans to cease trading at the centre, move its business to another shopping centre with a better location and assign the rest of its lease to a DIY store. Property Ltd. fears that this would greatly reduce the number of customers visiting the shopping centre, leading to losses to the other traders and ultimately to the failure of the shopping centre. Advise Property Ltd.

2. Claire, a trustee, 'borrowed' €80,000 from the trust fund she held for Tom, then a minor. She lodged the money to her own bank account, which had previously had a balance of €5,000. She later inherited the sum of €20,000 from her aunt, and lodged this to her account as well. She used €40,000 to buy a new Mercedes sports car, but this was later written off in an accident. Unfortunately, Claire had forgotten to pay her insurance premium, and therefore received no compensation. Claire later began to go out with Mike, a well-known local D.J. Mike was eager to set up his own nightclub, and Claire gave him €60,000 towards buying suitable premises in Galway. The property cost €100,000 in total, but is now worth €200,000 due to a huge rise in property prices. Tom recently came of age, and discovered the unauthorised 'loan' to Claire. His solicitor wrote to Claire at once, demanding an explanation and immediate reimbursement, and threatening legal proceedings. Alarmed, Claire fled the jurisdiction, taking with her €1,000 in cash. Advise Tom.

PTO

3. *'While the approach in the Irish cases reduces the risk of abuses of the Mareva jurisdiction, it is unrealistic and unfair, especially on an ex parte application, to require plaintiffs to show that the defendant intends by the disposal of assets to defeat any judgment the plaintiff may obtain.'*

- Capper, 'Mareva Injunctions: A Distinctively Irish Doctrine?' (1995) 17 *DULJ* 110, 117.

Do you agree? Discuss critically, supporting your answer by reference to appropriate legal authority.

4. John has a fish farming business in Connemara. Recently the cash flow situation became tight, and John asked the bank to extend his overdraft facility. The bank manager prepared a document which he asked John to take home and complete with both his and his wife's Síle's signatures. John had always dealt with the couple's business concerns. When Síle was reluctant to take his advice and sign the document, John told her that if she no longer trusted him, there was no point in staying married. Síle capitulated and signed, and John returned the document to the bank. The following month his fish developed a virus and all the stock had to be destroyed. He defaulted on his overdraft repayments, and the bank manager called him in to explain that the bank would have to repossess his house and sell it to recover its money. John rushed home to tell Síle of the bank's plans. Advise Síle in relation to her position.

5. *'The distinction between equitable interests and mere equities has important consequences in the law of equity'.*

Discuss with reference to appropriate legal authority.

6. *'The courts' treatment of the equitable doctrine of estoppel has moved from a consideration of principle to a consideration of unconscionability'.*

Do you agree? Discuss with reference to appropriate legal authority.

END