

GX 1846

Ollscoil na hÉireann, Gallimh
National University of Ireland, Galway

Semester II Examinations, 2002/2003

Exam Code(s)	2BL1, 2BL2, 3BL1, 3BL2, 4BL2.
Exams(s)	3rd 3 rd & 4 th LL.B.
Module Codes(s)	LW309
Module(s)	Real Property Law
Paper No.	1
Repeat Paper	Repeat Students Only
External Examiner(s)	Mr. R. Pearse
Internal Examiner(s)	Mr. R. Murphy
<u>Instructions</u>	Answer FIVE Questions
Duration	THREE Hours
No. of AnswerBooks	
<u>Requirements:</u>	
Materials Permissible	NOTHING
Department(s)	LAW

1. **Answer (a) and (b)**

- (a) "Joint tenancy and tenancy in common are the two forms of co-ownership which predominate in the modern law. In both of them, two or more co-owners share the possession of land, or the rental income from it, if it has been let, and if the land is sold, they will share the purchase price". (Pearce and Mee, 2 edn. p. 109). Discuss, with particular reference to the distinguishing characteristics of both forms of co-ownership.

and

- (b) Ten years ago, Peter and his sister Julia bought an office block in Galway. This was an informal family arrangement that was not intended to involve a joint business venture. Although Julia paid 60% of the purchase price and Peter the remaining 40%, the deed of conveyance reads that the land was conveyed to "Julia and Peter in fee simple". Julia has recently died having made a will in which she left all her property to her nephew. Peter, however, is claiming to be entitled to the entire ownership of the office block in Galway. Advise Peter.

2. In 1985, Mrs. Murphy gave her consent pursuant to the Family Home Protection Act, 1976, to a charge created by her husband in favour of Allied Irish Bank plc over property of which he was the registered owner. The property in question included the family home. The purpose of the charge was to secure all liabilities present and future of her husband to the bank. Mrs. Murphy gave her consent as a result of a 10 to 15 minute interview with the bank manager. It was not explained to her that she could lose her home and that of her children if payments were not made, nor was it suggested to her that she should get independent legal advice. There was no undue influence or misrepresentation by any party. In recent months Mr. Murphy has fallen into arrears in loan repayments and the bank have issued a summary summons under the Registration of Title Act, 1964, seeking an order for possession of the lands charged along with the family home. Advise Mrs. Murphy.

3. **Answer (a) and (b)**

- (a) Easements can be created in many ways but must always have four essential characteristics. Discuss with reference to appropriate legal principles.

and

- (b) Angela has been using a path near her house since 1982, which gets her to work 20 minutes quicker than using the road. However, she is the only person

PTO

using this path and she does so during the Summer months only as it is too wet in Winter. She has recently seen a sign being placed at the front of the path advertising new homes for sale. At the edge of the site, there is a sign showing a five storey block of flats which will overlook her own garden and obscure her view of Galway Bay. There also seems to be a plan to remove the house adjoining hers to create an entrance to this new estate. Advise Angela.

4. Analyse and discuss the powers and rights of a mortgagor/borrower under a mortgage of land.

Or

“The common law and equity have developed various rules concerning the extent to which covenants pertaining to freehold land can bind those who subsequently acquire the covenantor’s land and benefit those who subsequently acquire that of the covenantee”. Discuss. (Coughlan, *Property Law*, 2 edn. p.270)

5. Answer (a) and (b)

- (a) “Section 72 interests, or ‘overriding interests’ as they are often known in systems of land registration, constitute the single most important qualification to the ‘mirror’ principle, i.e. that a purchaser need only concern himself or herself with entries on the register and can ignore interests that do not appear there.” Lyall. Discuss.

and

- (b) A couple, Tom and Mary, lived together for number of years and had two children from the relationship. They occupied a house, and it can be accepted that Mary acquired an equitable interest in the house as a result of direct contribution to its purchase. The relationship broke down in recent months and Mary often slept in her sister’s home nearby. When her former partner was away, which was frequently, Mary always slept in the house. In fact, she kept many personal items and clothes in the “spare bedroom”. This would have been obvious to someone who merely opened the door of the room and looked in. Tom recently borrowed money and created a legal mortgage over the property. He declared that no one else had any interest in the property. His business has since got into difficulties, and the bank is proposing to sell the house. Advise Mary.

PTO

6. "In the feudal period many freehold tenants wanted to ensure that their land remained within their own immediate family: they wanted an estate which their descendants could not sell or otherwise alienate. In a sense, this demand contradicted another demand: the right to alienate freely.....landowners achieved what they wanted by the Statute *De Donis*, 1285". (Lyall, *Land Law in Ireland*, 2 nd. Ed., p. 221). Discuss this statement with reference to Irish law.

7. John went to work on his uncle's farm in 1994. This had been at the request of his uncle Tom. John's uncle had indicated that he found work on the farm hard due to his age, and he needed someone "to give me a hand with the cows and things around the place". In 2000, Tom told John that he would have the farm and lands some day, as up until then the subject of remuneration had not been discussed. John was happy to work on the farm on the basis of this understanding, and he also worked part-time at the local creamery. Uncle Tom died in October 2002, and in his will he has left everything to the local priest. This will was executed in 1992 and Tom had often said to John that he was going to put everything in writing, in order to "make it all right and legal between them". John is anxious to know if he has any claim to the farm and lands that were promised to him. Advise John.

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