

SUMMER EXAMINATIONS 1998/99

LL.B. - SECOND, THIRD & FOURTH YEAR
OCCASIONAL STUDENTS

REAL PROPERTY (LW309)

Professor R.A. Pearce
Mr. R. Murphy

Time Allowed: **THREE** Hours.

Answer **FOUR** Questions. ERASMUS students answer **three** questions.
All questions and parts thereof carry equal marks.

1. Answer (a) and (b).

- (a) *"The basic form of fee simple is known as a 'fee simple absolute'.....It should be contrasted with a modified fee simple, which by virtue of the terms of the grant creating it, may end or be brought to an end in certain circumstances."* Discuss.
- (b) Outline and discuss the impact and significance of the the Statue of Uses (Ireland), 1634.

2. Answer (a) and (b).

- (a) Outline and discuss the powers of the tenant for life under the Settled Land Acts, 1880-1890.
- (b) Analyse and discuss any three ways in which a joint tenancy may be severed and converted into a tenancy in common.

3. Answer (a) and (b).

- (a) O Reilly and Regan were both builders and developers. By an agreement in writing, O Reilly sold land to Regan for development and retained other land situated adjacent to the sold lands which O Reilly intended to develop himself. After O Reilly found some of his property landlocked as a result of the transfer to Regan, a dispute arose between the parties regarding a right of way. O Reilly then instituted proceedings that his property was landlocked and he sought, *inter alia*, a declaration that he was entitled to enjoy a right of way over Regan's lands. O Reilly alleged that under the agreement a right of way and other easements were accepted and reserved out of Regan's lands. He submitted that the Court had to look at the agreement, the transfer and all the surrounding circumstances, and that if the Court failed to find an express grant under the transfer or the agreement, then there was an implied grant by way of necessity. Advise O Reilly.
- (b) Analyse and discuss the ways an easement may be extinguished.

p.t.o.

4. In 1975 Dublin Corporation acquired a plot of land in the city of Dublin with the intention of eventually incorporating it as part of a road widening scheme. The plot adjoined a garage owned by Nash who had started to park cars on it in 1974. He later placed a chain link fence along the outer boundaries and a wire fence along the internal boundary between the plot and his garage, and he had part of the plot surfaced with chipping and tarmac. No one other than Nash used the plot of land. The Corporation has recently received the long awaited funds to complete the road widening as planned. Nash has to this proposal on the basis that he has acquired possessory title having extinguished the title of Dublin Corporation pursuant to the Statute of Limitations, 1957. Advise Dublin Corporation.
5. John Doe died on 2 January 1999. At the time of his death his wife Mary was comatose and had not been conscious for some years. They had lived apart for over ten years. Mary died some twelve hours after her husband John. Both John and Mary died testate and without any children. John made no provision for Mary in his will. She had not renounced her legal right share in an ante nuptial contract or in writing after her marriage and during the life of her husband as she was entitled to do under the Succession Act, 1965. The executor of John's estate was approached by the residuary legatee under Mary's will. She claims that on the death of John, Mary, as his wife, was automatically entitled to one half of John's estate by virtue of the Succession Act, 1965. This would have the effect of significantly enhancing the value of Mary's estate. Advise the executor of John Doe's estate.
6. In 1985, Mrs. O Leary 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. O Leary 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 would 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. O Leary 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. O Leary.
7. Mrs. O Donnell, a widow, was advised by a neighbour with whom she was friends that when making a will she should ensure she dealt with the house and its contents, as otherwise the contents did not form part of the devise of the house itself. A short time later she made her will leaving the contents of her house to her nephew. She made no devise in relation to the house itself. Mrs. O Donnell told this neighbour friend that she made the will leaving the house and its contents to her nephew, and the evidence indicated that this was her intention. The will contained a residuary clause in favour of the local hospice but was silent on the specific devise of the house itself. Advise the nephew.