

PROPERTY LAW

MODEL EXAM



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IRAC method of completing exams

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| Issues | - Outline the issues that you are going to discuss. |
| Rules | - Define the legal rules that are relevant to the question. |
| Application | - Apply the legal rules to the facts of the question (this is the hard part!). |
| Conclusion | - Tie things up, usually in the form of an advice to your hypothetical client. |

Always use your reading time wisely to **PLAN YOUR ANSWER** before writing. This is of utmost importance as it will help you clarify your thoughts and ensure that you avoid following desperate exam strategies that unprepared students commonly resort to, such as:

- i) 'the kitchen sink' i.e. spilling all of your knowledge that is vaguely related to the topic onto the exam paper and hoping for the best.
- ii) 'the garden path' i.e. going off on an irrelevant tangent

Remember that the **APPLICATION IS THE MOST IMPORTANT SECTION** of your answer and should take up the bulk of your time. The actual conclusions you reach are often superfluous. Rather, your marker will be most interested in *how you arrived at* your conclusion.

If you are sitting an open book exam, be sure to have concise notes with only the main points for each topic. Too much time will be wasted searching through thick textbooks.

Try to answer the question yourself first before looking at the answer. Do not worry if you do not come up with the same amount of text as is in the answer below. The student who wrote this answer had a considerable amount of time in which to write.

Good luck!

Question One

Bruce owns a parcel of rural land on the south coast of New South Wales called "Bruceville", which has views of the ocean. He uses the land to rear alpacas. Adjoining "Bruceville" is another parcel of rural land belonging to "Ocean Grape Wine Estate", owned by Shelley. Recently, Bruce and Shelley attended a town meeting about a proposed road by-pass which, according to the NSW Government, will cut into their parcels of land. Bruce and Shelley were concerned about this and sought initial legal advice (not from you) about the legality of the acquisition should the planned road go ahead. The solicitor advised them that the Government could compulsorily purchase the required land from them to construct the road, but that it would need to issue notices in advance of their intention to acquire the land and the amount to be paid (do not be concerned about the details of the acquisition).

Subsequently, Bruce and Shelley learned that the boundaries between the two blocks were inaccurate as a result of prior dealings with the land before they both acquired it.

The solicitor discovered:

- That the original line dividing the properties, set down in 1927, gave "Bruceville" a greater land holding which includes a lot of Shelley's vineyard;
- That when Shelley acquired her property in 1989, the fences had been renovated (in 1988) due to disrepair of the original 1927 fences. The fencing contractor did not follow the original dividing line, as the fences had fallen into disrepair and were hard to locate, effectively granting a greater proportion of land to what would become "Ocean Wine Grape Estate". Subsequently Shelley planted vines on the extra land.....

Question Two

Bernadette was the registered proprietor of a winery and bed and breakfast in South East New South Wales. There was a registered mortgage to Seachanger Bank which included both the bed and breakfast and the winery cellar door. Bernadette had established the land and winery as a successful boutique business attracting affluent Sydney-siders seeking a country escape.

Bernadette managed to keep on top of the monthly mortgage repayments and also met the costs for the up keep of the property. Recently, Bernadette has struggled to make ends meet and has failed to meet some mortgage payments as a result of a failure of the latest grape harvest from a late frost and the effects of the drought. In October 2006 Seachanger Bank sent Bernadette a notice under s57 of *Real Property Act* (NSW) stating that if the outstanding payments are not met within one month the Bank would sell her property.

Bernadette was shocked to have received such a notice considering she had always paid on time and paid extra towards her mortgage repayments. She has missed two payments and the next one is soon due. Bernadette was expecting to be in a position to repay all payments owed in six weeks as she was expecting a large conference and fully booked accommodation at the Bed and Breakfast. Bernadette wrote to the Bank to explain that she will meet all payments in six weeks and request the Bank not take any further action until then.

Bernadette heard nothing from the Bank. One month later, Bernadette's close friend, Ange, called Bernadette asking why she had seen her Bed and Breakfast advertised in the local property guide. Bernadette was confused and distressed and immediately went to town to buy a copy of the paper. She found the following advertisement in the property section:

Boutique Bed and Breakfast and Winery Cellar Door. 10 hectares of land with vine plantings. Mortgagee Sale – this property must sell and is the perfect sea change opportunity! Would require some investment to replant vines as a result of disease to existing vines. Auction on site 15 November 2006 at 11am. [Seachange Realty, Sydney. Enquiries phone Amber on (02) 97242643].

Bernadette called the Bank to complain about the advertisement and the timing of the sale. She pointed out that in her previous letter she asked that the Bank delay any movement on sale for a further two weeks to give her time to repay the money. Furthermore she complained that the Bank had no intention of allowing her to repay the money and wanted a quick sale. She explained that the allegation her vines were diseased were false and that it was due to natural causes (frost and drought) that the grapes failed. She also explained that they did not need replanting. The Bank explained

that it had acted in an appropriate way and that they were under no obligation to extend to her more time to pay. They disagreed with her assertion that they misrepresented the property.

The auction went ahead on 15 November. The property was sold to a Sydney couple, the only bidders, who were looking for a sea change and found the auction price of \$1.1 million to be a bargain. Contracts were exchanged and a deposit paid at the conclusion of the auction. Brianna, a rival Sydney real estate agent, who was experienced in the business, was at the auction and mentioned to Bernadette that she had been duped and that the land itself was worth more than that; not to mention the cellar door and Bed and Breakfast. She thought that the property was worth at least \$2.5 million, possibly even \$3 million.....

Question Three

Brandon is the registered proprietor of commercial premises in Sydney, which is registered under the *Real Property Act (NSW)*. On this premises he operates a bookshop called 'Brandon's Books'. At the rear of the store there was a space which had potential for expansion of his business. In 2000 Philip, a long time friend of Brandon's, proposed to Brandon that he use the space to establish a coffee counter. Philip was a successful Barista and wanted to run his own business but could not afford the cost of establishing a café. Brandon accepted Philip's offer and said that he could use the space rent free until June 2002 to get the business established and then they would look at its progress and make a further decision about the arrangement.

Philip began running his small coffee counter in the rear space of the store. He brought in some vintage furniture from home for customers to use. Philip's space was separated from the rest of the book store by an existing banister and decorative drapes which hung from the ceiling.....

Question 4

Jim has three women in his life, his wife and two other mistresses. Although his mistresses know of his wife, his wife has only recently found out that he has been cheating on her with not only one but two other women and that he has been financially

supporting them over the past couple of years. Recently, all hell has broken loose and all three women are giving him strife.

Jim has not been coping well financially with the economic crisis, his business has been running at a loss and he is having much trouble supporting all three women whilst keeping it a secret from his wife. On Monday night he went to the local pub with his best mate Mike to catch up. Jim asked Mike for financial support and Mike agreed to lend Jim the sum of \$100 000 provided that Jim executed a memorandum of mortgage in Mike's favour. Jim could not find the certificate of title and told Mike "not to worry, we go way back, I'll give it to you as soon as I find it". Having personal problems himself, Mike decided to trust his best mate Jim and not worry about the certificate of title. Because he was waiting for Jim to find the certificate of title, Mike did not register his mortgage nor did he lodge a caveat.....

QUESTION 5

Kimberley and Ryan are registered as tenants in common of Heaven House, located in Bondi. Heaven House is a three-storey mansion with 15 rooms, five bathrooms and three kitchens. Ryan has lived overseas for the past five years with his fiancée Michelle whilst Kimberley stayed in the mansion and carried out maintenance work where necessary.

For the last two years Kimberley has operated her own school called "I am a Lady", where she has used the mansion as a school for training "traditional lady like manners". The well kept, "royal" mansion attracted many girls and parents across the state and Kimberley's business has become quite successful.

Recently Ryan has come back to Australia with his fiancée Michelle and is jealous at how successful Kimberley's school has become. He argues that as co-owners of the property he should be entitled to half the profits from the business and rent for Kimberley's exclusive occupation of the mansion over the past five years.....



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