



THE UNIVERSITY OF THE WEST INDIES

EXAMINATIONS OF APRIL/MAY 2006

CODE AND NAME OF COURSE: LAW2220 (LA22B) - REAL PROPERTY II

DATE AND TIME:

DURATION: 2 HOURS

INSTRUCTIONS TO CANDIDATES: This paper has 4 pages and 6 questions.

Answer any **THREE (3)** questions. Answers may be confined to the law of any jurisdiction in the Commonwealth Caribbean unless the context indicates otherwise.

1. In 1985, Redacre, a 20,000 sq. ft. area of land bordering the Sunnyland Golf Course, was sold by Gonsalves to Mitchell. In the conveyance of Redacre, Mitchell covenanted "with Gonsalves and his successors-in-title"
- (i) not to erect more than one dwelling house on the land,
 - (ii) not to use the land for any trade or business other than for a doctor's surgery; and
 - (iii) to keep in a good state of repair the walls and fences surrounding the plot.

In 1995, Mitchell sold a part of Redacre, comprising an area of 8,000 sq. ft., to Patterson, expressly subject to the above-mentioned covenants, and three years later Mitchell sold the remaining portion to Christie expressly subject to the first two, but not to the third of these covenants.

In 2003, the Sunnyland Golf Course, also owned by Gonsalves, was sold by him to Fairview Resorts Ltd. which proceeded to develop the golf course land into a holiday village with a water park, amusement arcades and a 200 bedroom hotel with adjacent casino. The conveyance of the land to Fairview Resorts Ltd made no mention of the covenants.

Advise Patterson and Christie:

- (a) as to whether they are bound by all or any of the covenants; and
- (b) if they are so bound, whether they may obtain a discharge or modification of all or any of the covenants, so as to enable them to build apartment blocks on their respective plots for the purpose of renting to tourists.

PLEASE TURN OVER

2. In 1996, Brownacre was owned in fee simple by Dorothy. At one end of Brownacre, adjacent to the highway, there was a dwellinghouse and a garden, and at the other end there was an area of land, 'The Flower Forest', in which Dorothy had planted some rare species of tropical flowers and shrubs. In the center, next to three tennis courts, stood a small wooden shed. Dorothy and her house guests would frequently enter 'The Flower Forest' to search for tennis balls struck out of the courts.

In 1997, Dorothy entered into a contract to sell the house and garden to Stephen and allowed him to go into immediate possession. She also gave him permission to park his motor-cycle in the shed, which Dorothy hardly ever used. The subsequent conveyance to Stephen contained a reservation of a right of way from the highway across the garden to the tennis courts, but made no mention of any right to use the shed.

In 1999, Dorothy sold and conveyed the central portion of Brownacre (containing the tennis courts and the shed) to Tracy, who began hiring out the tennis courts to tourists. Since then, the frequency of such hirings-out has increased considerably. Dorothy, who is still the owner of 'The Flower Forest', is concerned that, because of the increased number of persons searching for lost tennis balls in the area, her rare plants are being irreparably damaged.

Moreover, whereas in the past visitors to the tennis courts had crossed the garden on foot, they have recently started to drive their cars across it. When Stephen complained about this to Tracy, she retaliated by demanding that Stephen remove his motor-cycle from the shed.

Advise Dorothy and Stephen.

3. Five years ago, Michael entered into a mortgage agreement with the Bank of Narnia, whereby the latter agreed to lend Michael the sum of \$200,000 (US) to enable him to purchase 'Neverland', a two-storied dwelling house, and a legal charge by deed over 'Neverland' was executed in favour of the Bank. The loan was to be repayable by equal monthly instalments over a period of 20 years, and it was also a term of the agreement that the mortgagor would not grant leases of the property or any part thereof without the prior written consent of the mortgagee.

In September 2005, Michael granted a two year lease of the ground floor area of 'Neverland' to Caulkin without seeking the Bank's consent. Michael has also fallen into arrears with his monthly payments, and two instalments are now overdue.

PLEASE TURN OVER

Advise the Bank:

- (a) as to whether it may be able to obtain possession of 'Neverland';
 - (b) as to whether, in the event that it has power to sell 'Neverland', it may immediately accept an offer from Latoya, the wife of an employee of the Bank, or whether it must advertise the property for sale to the general public; and
 - (c) as to its legal obligations generally with respect to the exercise of any power of sale it may have.
4. In January 2004, Lee granted a 21 year lease of commercial premises to Troy at a monthly rent of \$3,000 (US). The lease contains a clause entitling the lessor to forfeit the lease in the event of a breach of any covenant by the lessee. In the lease, the lessee covenanted:
- (i) to keep the premises in 'good and substantial repair, fair wear and tear excepted';
 - (ii) not to assign, sublet or part with the possession of the premises without the lessor's written consent; and
 - (iii) not to use the premises or any part thereof for any purpose otherwise than as a hardware store.

In October 2005, Troy sublet the basement area of the premises to Seunath without seeking Lee's consent. Since the beginning of this year, Seunath has been using the basement area as a bar and pool room. Also, the roof of the premises is now in a bad state of repair, and as a consequence the outer walls have become damp and mildewed.

Since November 2005, Lee has refused to accept any rent from Troy, but on April 3, 2006 Lee's secretary mistakenly opened an envelope containing Troy's rent cheque and immediately paid the cheque into Lee's bank account.

Advise Lee.

5. "Restrictive covenants are closely related to easements both in terminology and in substance, so much so that it has been said that restrictive covenants are in essence negative easements." (Gray).

Discuss.

PLEASE TURN OVER

6. You are consulted by Maurice Malmaison, a French property developer who wishes to establish a condominium scheme in The Bahamas or Barbados.

Write a memorandum to M. Malmaison outlining the principal provisions of the condominium legislation in those jurisdictions, with particular reference to case-law on the interpretation of the relevant sections of the legislation..

END OF PAPER