



EXAMINATIONS OF _____ APRIL/MAY 2005

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

DATE AND TIME:

DURATION: 2 HOURS

INSTRUCTIONS TO CANDIDATES: This paper has 3 pages and 6 questions.

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

1. Five years ago, Usher executed a mortgage in favour of BET Bank to secure a loan of \$200,000 (US) for the purchase of a two-storey dwelling house in which Usher currently lives. The loan is repayable by monthly instalments of \$2,000 (US) over a period of 20 years, the whole capital sum being immediately repayable in the event of a failure to pay any instalment within two weeks of its becoming due. Last year, contrary to a clause in the mortgage agreement whereby the "mortgagor shall not grant leases of the property without the prior consent of the mortgagee", Usher granted a 5-year lease of the ground floor area of the house to Beyonce. Usher is now in arrears as to 2 months' instalments.

Advise BET Bank:

- (a) whether and, if so, by what method, it may recover possession of the house;
- (b) whether it is under a duty to seek a valuation of the property; and
- (c) whether it may sell the house to Alicia, an accountant employed by the Bank, without advertising it for sale to the general public.

PLEASE TURN OVER

2. Gordon originally owned the freeholds of Nos. 53 and 55 Engineer Close. Ten years ago, Gordon sold No. 55 to Henry, the conveyance containing the following covenant:

"The Purchaser hereby covenants with the Vendor that he (the Purchaser) will not at *any* time cause or permit the property hereby conveyed to be used otherwise than as a single private dwelling house."

Subsequently, Gordon sold No. 53 Engineer Close to Edward on the same terms. In common with most of the other owners of houses in Engineer Close, Edward converted his house into student apartments. Last year, Edward resold No. 53 to Loco Properties Inc.

Percy has recently purchased No. 55 and has obtained planning permission to convert the property into office accommodation. Two students, Thomas and William, who are tenants in No. 53, seek injunctions to prevent the conversion.

Advise Percy as to what defences may be available to him, and whether there are any other steps he might profitably take.

3. Island Safaris Inc. purchased Gibbons Plantation from Sir Monty Mildew two years ago, and have since spent a considerable sum of money in restoring the property. Access is along a narrow lane that also gives access to eight cottages and to Moon Farm, which is still owned by the Mildew Family Trust. The conveyance of Gibbons Plantation granted "a right of way over and along the lane in common with all others similarly entitled."

Since the renovation, Gibbons Plantation has been opened to the public, and increasing numbers of visitors are being attracted to the property. Island Safaris Inc. has recently obtained planning permission to develop an amusement park and garden center in the grounds. Enid and Fiona, the elderly occupants of two of the cottages, and Jason Mildew, who occupies the farm, complain of a considerable increase in the traffic using the lane, with the attendant noise and pollution. They seek your advice as to whether they may be able to obtain a court order restricting traffic along the lane to a level consistent with the use of Gibbons Plantation as a private estate.

4. Answer **BOTH** (a) **AND** (b)

(a) To what extent is it true to say that "an agreement for a lease is as good as a lease"?

AND

(b) With reference to decided cases, distinguish between a licence and a tenancy at will, explaining the importance of the distinction.

PLEASE TURN OVER

5. "Both easements and restrictive covenants are based on the notion of `dominancy and serviency' ."

Discuss this statement with reference to decided cases.

6. In 2000, Larry, a Bahamian property developer, purchased a beach-front area of land on which he erected a large apartment block, Bella Vista Condos. Larry executed a declaration of condominium with respect to the property. One of the condominium by-laws stipulates that no unit owner shall affix any structure to the outer wall of her unit.

In 2001, Larry purchased a house, Greenacre, which he let to Trixie on a 7-year lease containing, inter alia, covenants:

- (i) that Trixie would keep the interior of Greenacre "in good tenantable repair, fair wear and tear excepted", and
- (ii) that Trixie would not sublet the house or any part thereof without the written consent of Larry.

The lease also contains a clause entitling Larry to forfeit the lease in the event of breach of any covenant by Trixie.

Larry has now discovered:

- (a) that Phyllis, a unit owner in Bella Vista Condos, has fixed a satellite dish on the outer wall of her unit;
- (b) that Trixie has sublet a room in Greenacre to Rusty, a student, without his (Larry's) knowledge; and
- (c) that much of the interior woodwork in Greenacre has been destroyed by termites.

Advise Larry as to what steps may be taken to remedy these three states of affairs.

END OF PAPER

