

PROPERTY LAW

MODEL EXAM



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IRAC method of completing exams

- 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.

Question One

Bruce owns a parcel of land on the south coast of Clacton called "Bruceville", which has views of the ocean. He uses the land to rear goats. 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 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;
- That Bruce purchased his land in 1989 and planted trees along the fences erected by Shelley to protect his stock and privacy;
- That in 1997 many fences were destroyed by large storms and winds which caused much of Bruce’s windbreak to fall and destroy Shelley’s fences. Bruce’s goats wandered across the boundaries into Shelley’s land. Similarly, animals Shelley was rearing on an adjoining paddock wandered into Bruce’s greener pastures. The fences were repaired along the same lines as they were repaired in 1988.

About twelve months later Bruce and Shelley received notices from the Government outlining the purported acquisitions. The Government was acquiring 16000 square metres along the boundary between the two properties; 14000 square metres coming from “Bruceville” and 2000 square metres from “Ocean Grape Wine Estate”. They each were to be paid £100 per square metre.

- (a) Bruce instructs you that the original solicitor's investigations revealed that in fact the Government was acquiring the total 16000 square metres from "Bruceville" and effectively no land from Shelley. He seeks your advice on whether he is entitled to £1.4 million or £1.6 million in compensation.

Question Two

Bernadette was the registered proprietor of a winery and bed and breakfast in 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 families seeking a country escape.

Bernadette managed to keep on top of the monthly mortgage repayments and also met the costs for the upkeep 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 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, South Wales. 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.

Question Three

a) Five years ago, Michael purchased a property in Brighton which was divided into two flats. He occupied the ground floor flat. Three years ago, Michael invited his friend Richard, a student at the local university, to live in the other flat. There was no formal agreement between them, but they did agree that Richard would pay Michael £100 a month for his use of the flat and that Richard could live in the flat during term-time until he graduated from university in 2008. Michael kept a key to the flat occupied by Richard and reserved the right to enter it to ascertain that the flat was being kept in good condition. He also informed Richard that during the university holidays, he required the flat to be vacated so that he could rent the flat to holidaymakers.

In practice, Michael only used the key to enter the flat in which Richard resides on two occasions. He did not rent the flat to holidaymakers and Richard has had sole occupation of the flat for three years. Michael has decided that he wishes to sell the property and has advised Richard that he should find alternative accommodation. Richard has one more year of his degree and wishes to remain in the flat until he has finished his degree.

Richard seeks your advice as to the nature of his interest and whether or not Michael can sell the property.

b) Jake and Stacey, an engaged couple, moved into a house owned by Kirsty just over a year ago. Before they moved into the house, Kirsty, who was aware that the couple was engaged, requested that they each sign a separate 'Licence Agreement'. Recently, Kirsty decided to move back into the property and told Jake and Stacey (who plan to marry next month) that they have to move out within a week.

Advise Jake and Stacey as to the nature of their interest and whether or not they will have to move out.



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