

COMMONWEALTH OF AUSTRALIA

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Family Name	
Given Names	
Student Number	
Teaching Period	Semester 1, 2016

FINAL EXAMINATION	DURATION				
LWZ223 – Property Law	<table border="1"> <tr> <td>Reading Time:</td> <td>10 minutes</td> </tr> <tr> <td>Writing Time:</td> <td>180 minutes</td> </tr> </table>	Reading Time:	10 minutes	Writing Time:	180 minutes
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INSTRUCTIONS TO CANDIDATES

1.1 The examination has two sections. Answer each section in separate answer books.

Section A

Suggested Time: 90 mins. Compulsory Problem Questions: Answer BOTH questions. Each question is worth 15 marks. (30 marks in total)

Section B

Suggested Time: 90 mins. Choice of Short Essay Questions: Answer 2 of 5 questions. Each question is worth 15 marks. (30 marks in total)

1.2 Note that questions ARE of equal value.

1.3 Read ALL questions carefully.

EXAM CONDITIONS

You may begin writing from the commencement of the examination session. The reading time indicated above is provided as a guide only.

This is an OPEN BOOK examination

Any calculator is permitted

Any handwritten material is permitted

Any hard copy, English dictionary is permitted (annotated allowed)

ADDITIONAL AUTHORISED MATERIALS	EXAMINATION MATERIALS TO BE SUPPLIED
Any printed material with the exception of CDU Library books	3 x 16 Page Book

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DOUBLE-SIDED.**

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Section A

Suggested Time: 90 mins

ANSWER BOTH QUESTIONS. Each question is worth 15 marks. (30 marks in total)

QUESTION ONE

(15 marks)

Tommy and Felicity met at the races on Melbourne Cup day in November 2012. After lots of champagne and prawns they decided to place a bet on a mystery trifecta returning \$52,000 on a \$500 bet. They both contributed half the money to place the bet, and agreed each would be entitled to half of any winnings.

Felicity purchased a unit in Darwin using her \$26,000 winnings. Tommy paid off his credit card with his share of the winnings, and used the remainder to purchase an engagement ring for Felicity. They quickly married and Tommy moved into the unit in November 2013. Felicity and Tommy register as joint tenants on the title for the unit.

Felicity paid the mortgage repayments, and Tommy paid for all other running expenses associated with the unit as well as the day to day living costs such as food bills and the occasional holiday. Tommy also pays for the renovations to the unit amounting to approx. \$40,000 that improve the value of the unit by \$60,000.

Felicity discovers that Tommy has a serious addiction to gardening since meeting a hippie named Jordo at their local community garden, and decides their marriage must end. She orders Tommy out of the unit and refuses to pay him any allowance or refund the moneys spent.

Tommy comes to you for advice wanting to answers to the following questions:

- a) What does he need to do to sell the property? **(6 marks)**
- b) Can he recover any moneys that he spent on the unit or living expenses? **(9 marks)**

QUESTION TWO

(15 marks)

Rosie and Ken were joint tenants of 23 Blayney Rd, Fannie Bay, Northern Territory. The residential property is registered under the Torrens title.

The house was mortgaged to the Arafura Bank (AB), and the AB's mortgage was registered. The AB kept possession of the certificate of title.

Rosie and Ken were getting ready for retirement and decided to book a 100 day round the world cruise to begin their retirement. Rosie and Ken decided to lease out their house to a group of law students while they were cruising. The agreement was entered in writing and provided for a 100 day lease. The rent was fixed at a very reasonable price and included all services, due to commence on the day the cruise ship leaves. Rosie and Ken have told the law students that if they continue to travel, the students can stay for as long as they are overseas.

Ken decided to borrow some extra money for the cruise as he thought starting off retirement with a bang would be a great idea and he wanted to surprise Rosie with some exotic gifts purchased from the foreign ports they were going to visit. He approached Sam, their bank manager at the AB who Rosie and Ken had known for years. Sam was happy to provide a loan but he wanted to secure the entire amount with a mortgage over the Fannie Bay house. Ken agreed and Sam gave Ken documents for a new mortgage to be signed by Ken and Rosie. Ken took the documents home, forged Rosie's signature and gave the forged dealing back to Sam. Sam witnessed the documents and falsely stated that he had seen Rosie sign the dealing. Sam knew it was wrong to do this but he felt it was just a bureaucratic rule and he wanted to spare Ken the hassle of bringing Rosie to the bank and knew Ken was planning on surprising her with gifts. The second mortgage was registered.

Unfortunately two days after the mortgage was registered, Ken and Rosie died in a car accident and they never got the chance to take the cruise. Ken's daughter, Sophie came home and began to investigate what had happened to the house. She discovered that the law students were in occupation of the house and claiming to be tenants. She went and saw Sam and he broke down confessing that he had been involved in fraudulent activities at the Bank, fuelled by his marriage break up, and that he had taken the certificate of title and had forged discharges of the two AB mortgages (which had not yet been registered). He had also forged a transfer from Rosie and Ken and was planning to sell the property to his bookie Charlie (this was also unregistered).

Charlie, the bookie has taken the transfer, discharges and CT in satisfaction of the gambling debts and has lodged the documents at Land Titles Office for registration earlier that morning

- a) Can Sophie prevent the transfer of the house to Charlie? If so, how? **(5 marks)**
- b) If Sophie can prevent the transfer to Charlie, will the house be subject to both mortgages? **(5 marks)**
- c) Will a new registered title holder be subject to the law students' lease? **(5 marks)**

SECTION B (30 marks in total)

Suggested Time: 90 mins

Multiple Choice Short Essay Questions: Answer 2 of 5 questions.

Each question is worth 15 marks.

1. How does fraud affect title in the Torrens System? Consider who commits the fraud and when the fraud occurs.
2. What is joint tenancy? Give an example of when you would consider advising a client to purchase a property in joint tenancy, rather than as tenants in common.
3. What is the consequence of not registering a long term lease in the Land Titles Register of the Northern Territory? Consider how the interests of both the lessee and lessor are affected. Use case law and the legislative provisions to support your answer.
4. What is a caveat and what is a covenant? What are the legal requirements? Support your answer with relevant law.
5. An easement requires a dominant and servient tenement. What are the other requirements of an easement? Support your answer with relevant law.