

THE UNIVERSITY OF  
NEW SOUTH WALES



FACULTY OF LAW

## LAWS1082 Property and Equity 2

END OF SESSION EXAMINATION - Session 2, 2009

Time allowed: 2 hours, plus 10 minutes reading time

Examination condition: THIS IS AN OPEN BOOK EXAMINATION  
You are permitted to bring any printed or handwritten materials into the examination room.

Total number of questions: 2

Value of questions: Question 1 is worth 60%  
Question 2 is worth 40%

Questions to be answered: You should answer both questions

### OTHER INSTRUCTIONS:

1. Your NAME and STUDENT ID should be written on the front of each exam booklet you use.
2. Your **TEACHER'S NAME** and your **CLASS DAYS AND TIME** should be written at the **top right hand corner** of each exam booklet you use.
3. Answers and plans must be written in ink. Leave a whole blank page between questions.
4. Answer each question in a separate booklet.
5. You may retain the examination paper.



**Question 1**

**60%**

Aaron Anderson was the registered proprietor of land in Beaconsfield which he agreed to lease to Bill Black. The land was the site of a large warehouse. The lease contained the following covenants:

1. The lease is for a term of 5 years with an option to renew for a further 5 years.
2. The lessee will pay annual rent of \$52,000, in weekly instalments of \$1000.
3. The lessee will keep the premises in repair, reasonable wear and tear, damage by flood, fire, lightening, storm and tempest, act of God, earthquake, war excepted.
4. The lessee will not at any time during the term use the leased premises or permit them to be used for any noxious, noisome or offensive trade, act, business, occupation or calling or permit or omit to prevent any act on the leased premises which may cause annoyance, nuisance, grievance, damage or disturbance to occupiers or owners of adjacent premises.
5. The lessee will not assign or sublet the premises without the prior written consent of the lessor.
6. On default by the lessee of any of the covenants in the lease, the lessor has the right to terminate the lease by 14 days written notice to the lessee.
7. The lessee agrees that all of the covenants of this lease are essential terms of the lease.

The lease was registered on 1 March 2002.

Without Aaron's knowledge, Bill Black divided the warehouse in half by the installation of a temporary wall down the centre. On 1 April 2002 Bill orally agreed to let one half to Cindy Chan for two years so that she could run her importing business from the site. Bill and Cindy agreed that she would pay market rent of \$600 a week, but they did not discuss any other terms. Cindy immediately took possession.

Bill then agreed to let the other half of the warehouse to Debra Dan who intended to run a personal fitness centre. Bill drafted a written agreement which stipulated that Debra must pay \$700 a week rent, that the lease would last for three years and that she would keep the premises in repair, reasonable wear and tear excepted. Debra and Bill signed and exchanged identical copies of the agreement on 1 May 2002. Debra moved in and paid rent regularly.

Debra installed a range of fitness equipment including ten heavy duty exercise bikes. She ran regular "spin" classes where she turned down the lights, switched on a disco ball and yelled at participants through a microphone to "pedal faster and feel the burn". The concrete floor of the warehouse was uneven so that the bikes rocked back and forth as they were used, producing a thumping noise and causing small cracks in the concrete floor. Cindy found these classes very unpleasant; the flashes of the disco ball gave her a headache and the thumping and yelling made it hard for her to hear clients on the phone. Even the cafe owner across the road, Eric Endez, found the noise disturbing and his business suffered as a result.

Bill was aware that trouble was brewing and preferred not deal with it. With Aaron's written consent, he assigned his lease to Felix Ford. The assignment was registered on 1 January 2003. Aaron was unaware that either Cindy or Debra was in possession.

The noise from Debra's business continued to disturb both Cindy and Eric's businesses, so much so that Eric could no longer make his mortgage repayments from the profit from his cafe. Eric had three mortgagees:

- Greater Finance had a mortgage registered on 1 March 1998 which purported to secure all money owing under the loan agreement; the loan agreement stipulated that a sum of \$500,000 was owed;
- Ian Ives had a written agreement created on 1 January 1997 securing a sum of \$300,000;
- Julie Jobs had a written agreement created on 1 July 1999, securing a sum of \$200,000.

Eric failed to make any repayments in January, February and March 2003. In April 2003, Greater Finance served him with a s57 notice under the *Real Property Act* 1900, demanding immediate payment of all interest owing. Three months passed without Eric complying and Greater Finance took possession.

Greater Finance set about organising a sale of the property. They advertised the property's auction for three consecutive weeks in the local paper as well as the *Sydney Morning Herald*. They held an open for inspection each Saturday and the real estate agent employed to conduct the sale told prospective purchasers that the property had been valued at around \$900,000. However, on the scheduled day of the auction, 31 August 2003, Henry Hung, a director of Greater Finance, decided that he would like to buy the premises. He signed a contract of sale in his personal capacity to purchase the property from Greater Finance. The purchase price was \$800,000.

When Ian and Julie heard that Henry had signed a contract of sale with Greater Finance they both lodged caveats for the first time. Ian lodged his caveat on 10 September 2003 and Julie lodged her caveat on 12 September 2003.

1. Advise

- a. Cindy,
- b. Debra,
- c. Felix,
- d. Aaron and
- e. Bill

of their rights and liabilities in relation to the warehouse premises.

2. What benefit can be gained from Ian and Julie lodging caveats?

3. If the sale to Henry is completed, how will the proceeds of sale be distributed?

**Question 2**

**40%**

Why do people engage in the planning of land use by private agreement? How is planning done by private agreement? Consider in what ways a private planning instrument may be invalid and thus legally unenforceable.

**END OF PAPER**