

LA 301 PROPERTY LAW II

Students may take into the examination room photocopies or copies downloaded from Paclii of primary legal materials, ie law reports, legislation and subsidiary legislation , but **not** textbooks, journal articles, online materials, personal notes or case lists.

Cite judicial or legislative authority for your answers.

All questions are of equal value.

Answer any FIVE questions.

1. Describe the meaning of, and the significance in the USP region today of, the following:

- (a) freehold estate for life;
- (b) freehold estate in fee tail;
- (c) fixed term estates;
- (d) perpetual estates;
- (e) inheritable estates.

(10 marks)

2. Abraham died earlier this year leaving a will in which he devised his freehold farm in Fiji to his trustee in trust for his son Isaac for life and then in remainder to Isaac's son, Esau, when Esau satisfies the trustee that he has permanently broken off his relationship with Salote, and if Isaac's son has not satisfied the trustee that he has permanently broken off his relationship with Salote then in remainder to the Methodist Church of Fiji.

Advise the trustee as to the validity of the devise of freehold to (i) Isaac (ii) Esau and (iii) Methodist Church of Fiji.

(10 marks)

3. Your client tells you that last year he bought a block of freehold land in your country, which is stated in the document of title to be "bounded on the southern side by the northern bank of the Wasea River."

Your client asks:

- (a) Whether he can build a jetty into the Wasea River to enable him to berth his fishing boat, and also for other boats to use;

(b) Whether he can extract water from the Wasea River to irrigate the extensive rice fields that he is proposing to establish;

(c) Whether he has any legal remedy against his neighbour who has built a large building to house farm machinery close up to the boundary on the northern side of your client's land which has the effect of blocking sunlight and air to an enclosed structure which he has built in order to breed special types of tropical butterflies for export.

What advice would you give to your client in respect of each of these three enquiries?

(10 marks)

4. Your client tells you that she inherited a block of freehold land on Apia Heights in Samoa from her father in 1990, and in that year was registered as the proprietor of that land. Shortly afterwards she had to go to New Zealand for medical treatment. She stayed there and married a New Zealand man until the death of her husband last year. When she returned earlier this year to look at her land in Apia she discovered that:

(a) a portion of it is occupied by some of her Samoan relatives who claim to have been occupying the land since 1991 on the advice of the *matai* of the family;

(b) a neighbour on the harbour side of the land has erected a large multi story building which blocks the splendid view of the harbour which had previously been available from the land.

Your client asks you as to what remedies she has.

(i) How would you advise your client?

(ii) What difference, if any, would it make if the above facts occurred in Fiji?

(10 marks)

5. Your client tells you that earlier this year an owner of a building in a country of your choice in the USP region orally agreed to allow her to have sole occupation of an unfurnished apartment in the building for a rental of \$50 per month. She moved in but:

(a) she has now discovered that the apartment gets badly flooded in times of heavy rain, but the landlord will do nothing;

(b) the landlord has threatened to turn her out of the flat if she does not pay a higher rent;

(c) the landlord has been operating a disco in the rooms on the bottom floor of the building which cause so much noise that she is not able to sleep until 2am or 3am on most nights.

She asks you what remedies, if any, she has against the landlord. How would you reply? (10 marks)

6. (a) How can land be used as a security for a loan in a country of your choice in the USP region?

(b) What powers does a lender have to enforce the security of land if the borrower defaults in the country you have chosen? (10 marks)

7. Describe, in relation to a country of your choice in the USP region,

(a) what instruments relating to land must be registered?

(b) what is the effect of registration?

(c) what is the effect of non-registration?

(d) what protection, if any, is provided for non registered interests? (10 marks)

8. (a) Describe the basic features of the physical planning legislation in a country of your choice in the USP region.

(b) Describe the grounds upon which planning decisions made by a planning authority in the country of your choice may be challenged before the courts as invalid. (10 marks)