

LAND LAW REVISION PROBLEMS

1. The Earl of Horncastle, a resolute bachelor, lives in a large stately home (of registered title, which he owns outright) with his elderly mother, the Dowager Countess of Horncastle. Only a few rooms are habitable, but this does not trouble Lord Horncastle. They employed a cleaning lady, Mrs Tweedle, from the local village, who initially was to come in twice a week. Over the years, Horncastle has come to rely more and more on Mrs Tweedle and now she comes every day, making meals, taking care of the Dowager Countess and generally acting as full time housekeeper and carer. Occasionally, she stays overnight, sleeping on the sofa bed in the lounge as this is one of the few warm rooms. She is paid very little, as the Earl lost all his money on a failed business venture in the West Indies, but the Earl is so grateful that he often tells Mrs Tweedle that “you will be looked after when I die – you have always loved this house”. Mrs Tweedle is fond of the Earl, but worries about the effect her work is having on her own family and often feels she is neglecting her husband and four children. In 2003, the Dowager Countess dies, and Mrs Tweedle pays all the funeral expenses out of her own pocket. Mrs Tweedle’s husband is a junior solicitor at a local firm (having retrained after being a teacher) and he tells his wife that she might have a claim on the Earl, but Mrs Tweedle says she is glad to help anyway.

The Earl dies in Jan 2004, leaving his property by will to his great nephew, the new Earl. The new Earl asks Mrs Tweedle to live in the property to look after it, and she and her family move in, giving up their own rent-controlled cottage in the village. The new Earl soon finds that the upkeep of the property far outstrips its income as a tourist attraction and asks Mr Tweedle to arrange a mortgage. Mr Tweedle does so, and the Heraldic Bank take a first registered charge in July 2004. The new Earl is soon in arrears under the mortgage and the Bank now seeks possession with a view to a sale.

Mrs Tweedle, who always thought her husband was an excellent teacher but a poor lawyer, comes to you for advice.

2. Hubert is the registered proprietor of a small town house which he purchased with the aid of a £30,000 mortgage from the Friendly Building Society in 1995. In 1996, he meets Winifred, falls in love and she moves in. In reply to her questions about their future together, he writes and signs a document, which he gives to her, and which states that the house is to be “owned jointly by Hubert and Winifred”. In 1997, they have a son, and while Winifred stays at home, Hubert goes out to work and continues to pay the mortgage. They decide to have Simon taught at home, and employ Thomas a home teaching expert. Thomas stays rent free in the spare room for five days a week and goes home to his parents at the weekend.

Discuss the following *alternative* situations:

- a. Hubert and Winifred decide to build an extension, costing £20,000; £5,000 of which comes from Winifred’s personal savings and £15,000 from a gift Simon has received from his grandfather (George). George and Winifred agree that

Simon's money should be spent on the extension. After it is complete, Hubert and Winifred disagree about what the extension should be used for and they decide to split up, sell the property, distribute the proceeds and go their separate ways.

b. Thomas is sacked by Hubert and Winifred, but refuses to leave. Hubert, with Winifred's agreement, sells the property to Peter. Peter, a property developer, made very few enquiries when he bought the house because he wants to demolish it and build luxury flats. Peter now wishes to evict Thomas.

c. Hubert secretly re-mortgages the house to the Sharper Loan Bank plc for £100,000 in order to pay off the first mortgage and to escape to the Bahamas for a new life. Winifred discovers the new mortgage after Hubert flies off with the remaining money but cannot afford the repayments. The Bank now seeks possession.

d. Winifred falls in love with Thomas and wants to build a new life with him. She wants the property sold in order to move elsewhere with Thomas. Hubert, who has had a heart attack because of the stress, wants to stay in the property.

3. Vera has sold and transferred Dunsloggin (a residential property with registered title) to Peter. By agreement between them, Peter, though the new registered proprietor has not paid all the purchase money. Instead he has allowed Vera to remain living in Dunsloggin until he has sold another property to allow full payment. It is expected that this will take eighteen months. Peter has also agreed that Vera's sister, Susy, can continue living on the property. Susy moved in after her divorce three years ago at the suggestion of Vera who encouraged her to put her divorce money into structural renovation of the house. Susy paid for re-roofing, a new gas boiler and the installation of en suite facilities in all three bedrooms. She has just started four-year law studies at the nearby University. It was also agreed with Peter that Tim, a first-year University student, would occupy the third bedroom for a weekly fee of £100. Whilst Vera and Susy were away during the Christmas vacation he re-carpeted and re-wallpapered the house, telling them that he had done so "knowing that I am going to be living here until I graduate". Unbeknown to all three, Peter, whose business luck has plummeted, sold the property to Quentin during that Christmas vacation whilst the house was uninhabited when the carpet was being laid and the two sisters were on a Caribbean beach. It also transpires that Peter granted the manager of Superworld Supermarket, which is immediately next door, the right to park his car on Dunsloggin's backyard five days a week during business hours. None of these matters came to the attention of Quentin at the time he became registered proprietor of Dunsloggin and he claims he is bound by none.

Advise Quentin.

4. Emily and Chloe, two elderly spinsters, are the registered proprietors of Summer Cottage, having purchased the property some years ago with the profits of their herbal

medicine business. In 1989, Emily becomes ill and she and Chloe agree that they need some help around the house. They invite their niece, Zoe, to live with them rent free in return for daily chores including personal care of Emily. Zoe lives in the property in a small attic room, but realising this is unsuitable, Emily and Chloe take out a small mortgage with Beneficial Bank and use the funds to extend the cottage. Zoe agrees to make the regular payments due under the mortgage and by 1999 the mortgage is paid off. Zoe is happy in the cottage, but often worries about the future and asks the spinsters what will become of her as the ladies get older. Emily tells her not to worry, because after all “this will all be yours when I’m gone.” Chloe says much the same, except that she warns Zoe that their other niece (Xandra) “will also be given the right to live in the property for the rest of Xandra’s life.” Zoe is much happier and does not bother to seek elsewhere to live, even making plans with Xandra about how they will decorate “when they’ve gone.”

Unfortunately, Emily gets worse and it is clear that she needs specialist nursing care. In 2001, Emily and Chloe mortgage the property a second time to the Beneficial Bank for 50% of the value of the property and use the funds to pay for Emily’s removal to a nursing home. It soon becomes clear that neither Emily nor Chloe can pay the sums due under the mortgage and, in any event, Chloe is now very frail and also wants to go into the nursing home. The Beneficial Bank seek possession (which is not contested by Emily and Chloe) in order to sell the property, but this is resisted by Zoe and also by Xandra who moved in just after the second mortgage to Beneficial Bank.

Advise the Bank on its chances of gaining possession and, if successful, how it should distribute any proceeds of sale.

5. Arnold has just purchased a large 100 acre property from the Ziffle family, title to which is registered. The property includes farmland and a recently modernised farmhouse. After the transfer of title, he has discovered the following facts:

(i) For several years his new neighbour Boris has been growing apples on the distant southern corner of the property. Boris has encroached by gradually extending his own orchard onto the property. To discourage local children, including the wild Ziffle kids, he posted ‘beware of the dog’ signs. The extent of his encroachment is approximately quarter of an acre.

(ii) Boris has an option to purchase the property granted only a month ago. This contract was made by Mr Zak Ziffle as sole legal owner of the land when he was strapped for cash and just before the sale to Arnold. Zak has since ‘done a runner’.

(iii) Mr Ziffle’s estranged wife, Yvonne, has returned from a temporary two month absence in America, where she had been tending her ill sister whilst the property was being renovated. Yvonne contributed to Zak’s purchase of the property and now claims a proprietary interest. She left her seventeen year old daughter with instructions to watch the sly Zak during her absence. However, when Arnold’s surveyor inspected the property, the daughter would not answer inquiries as she would not be interrupted from listening to her favourite trance music CD.

(iv) On the northern boundary, a strip of land belonging to the neighbour Clarence has mistakenly been included in Arnold's title, due to an error made by the Ziffle's solicitor at the time they purchased after the War.
Advise Arnold.

