

Property Law

The Qualified Lawyers Transfer Scheme – QLTS

Sample Material – MCT Questions

Question 1

John and Jane are the legal and equitable owners of an unregistered leasehold property. The property is mortgaged to BankCo, which holds the title deeds as security for its loan. John and Jane wish to install a new kitchen and bathroom in their property which they will fund using a second mortgage advance from Happy Mortgages, which must be secured by way of a second legal mortgage over the property. Which of the following statements best describes the legal position?

- A. John and Jane are unable to grant a second legal mortgage over their property because the title deeds are already being held by another lender.
- B. John and Jane are able to grant a second legal mortgage over their property but must deposit the title deeds with Happy Mortgages.
- C. John and Jane are able to grant a second legal mortgage over their property but must register it as a local land charge.
- D. John and Jane are able to grant a second legal mortgage over their property but must register it as a Class C(iii) Land Charge.
- E. John and Jane are able to grant a second legal mortgage over their property but must register it as a Class C(i) Land Charge.

The correct answer is E. John and Jane are able to grant a second legal mortgage over their property but must register it as a Class C(i) Land Charge. A first legal mortgagee secures their loan by taking possession of the title deeds and not releasing them until their loan is repaid. However it is possible for subsequent legal mortgages (“puisne mortgages”) to be granted which still take effect in law provided that they are registered as Class C(i) Land Charges in order to ensure that they are detectable. Local Land Charges are generally encumbrances arising from regulatory matters with the local authority. Class C(iii) Land Charges are equitable rather than legal mortgages.

Question 2

BankCo has taken possession of Helen and Sarah’s property and sold it using its power of sale. There is a shortfall of £20,000 remaining owing to BankCo. You have been asked to advise BankCo and upon reading the mortgage deed, you see that it includes no express personal repayment covenant. How would you advise BankCo?

- A. Helen and Sarah have no liability for the shortfall under the mortgage deed and BankCo cannot pursue them for the outstanding debt.
- B. Helen and Sarah remain liable for the shortfall under the mortgage deed and BankCo can pursue them under the deed for the debt.
- C. Helen and Sarah have no liability for the shortfall under the mortgage deed but BankCo can pursue them for the outstanding debt nonetheless.
- D. Helen and Sarah have no liability for the shortfall under the mortgage deed and BankCo will have to make a separate agreement with them to recover the debt.
- E. Helen and Sarah are liable under the mortgage deed for the shortfall but BankCo cannot pursue them because it has sold their property.

The correct answer is B. Helen and Sarah remain liable for the shortfall under the mortgage deed and BankCo can pursue them under the deed for the debt. In circumstances where no express repayment covenant is contained in the mortgage deed, the common law implies an obligation to repay all capital and interest into the mortgage deed. Because BankCo has not foreclosed on its mortgage, the deed continues to have effect and therefore BankCo can pursue Helen and Sarah for the shortfall.

Question 3

Jonny and Mikala are the respective owners of two adjoining fields. Jonny's field has a gate allowing access to the public highway and Mikala's field only gains access to the highway via a stile. Mikala wishes to try keeping a few sheep in her field and Jonny has agreed to grant her an easement over his own field so that she can herd the sheep onto the highway. The easement is expressed to be granted "to Mikala for the benefit of her land to last for so long as she uses the land for the grazing of a small herd of sheep." Which of the following statements best describes the legal position?

- A. Jonny has granted Mikala a legal easement over his land. This binds the world.
- B. Jonny has granted Mikala a legal easement over his land. This binds everyone apart from a bona fide purchaser for value without notice.
- C. It is not possible to grant an easement for an uncertain length of time and therefore Mikala has no interest in Jonny's land.
- D. Jonny has granted Mikala an equitable easement over his land. This binds the world.
- E. Jonny has granted Mikala an equitable easement over his land. This binds everyone apart from a bona fide purchaser for value without notice.

The correct answer is E. Jonny has granted Mikala an equitable easement over his land. This binds everyone apart from a bona fide purchaser for value without notice. Section 1(2) of the LPA 1925 provides that to subsist at law, an easement must be "equivalent to an estate in fee simple absolute in possession or for a term of years absolute." An easement must therefore be granted in perpetuity or else for a certain amount of time. As the length of time that Mikala's easement is granted for is uncertain and reliant on a contingent event, the easement will operate in equity only.

Question 4

Charles is the owner of the fee simple of Buckingham House. He has granted a life interest to his mother Elizabeth allowing her to remain in Buckingham House for the remainder of her life. Charles is experiencing financial difficulties and, unknown to Elizabeth, has sold the fee simple to Edgar. Which of the following statements best describes the legal position?

- A. Elizabeth has a legal estate in Buckingham House which binds Edgar regardless of whether he has notice of her interest.
- B. Elizabeth has a legal estate in Buckingham House which only binds Edgar if he has notice of her interest.
- C. Elizabeth has a legal estate in Buckingham House which does not bind Edgar.
- D. Elizabeth has an equitable interest in Buckingham House which does not bind Edgar.
- E. Elizabeth has an equitable interest in Buckingham House which only binds Edgar if he has notice of her interest.

The correct answer is E. Elizabeth has an equitable interest in Buckingham House which only binds Edgar if he has notice of her interest. Since 1 January 1926 the only legal estates in land capable of existing at law are a fee simple and term of years absolute. All other estates take effect in equity (s.1 LPA 1925). The question of whether Elizabeth's interest binds Edgar is therefore governed by the Doctrine of Notice and he will be bound by her interest if he was aware of it at the time of the purchase.

Question 5

SpeedyMove Limited is the freehold owner of a building in Oldcastle city centre. The building has two units at street level, SpeedyMove uses one of these as an estate agents office and has let the other on a ten year lease to Jane, who uses it as a bistro. The lease to Jane contains a covenant preventing her from assigning the lease without the prior written consent of her landlord. Jane wishes to sell her unit to SnazzyMove Limited, another estate agent and competitor of SpeedyMove. SpeedyMove has withheld its consent to Jane assigning her lease of the unit. Jane is having trouble finding another buyer and SpeedyMove is refusing to accept a sublease and is insisting on an assignment. In order to resolve matters with Jane, SpeedyMove is proposing to purchase her leasehold interest in her unit from her by taking an assignment of the lease. Which of the following statements best describes the position when registration of the transfer is complete?

- A. The leasehold estate will continue to exist independently of the freehold, with both estates being registered in the name of SpeedyMove.
- B. The leasehold estate will have terminated by surrender and HMLR will close the leasehold title.
- C. The leasehold estate will have terminated by the exercise of a break clause and HMLR will close the leasehold title.
- D. The leasehold estate will have terminated by forfeiture and HMLR will close the leasehold title.
- E. The leasehold title will have terminated by merger and HMLR will close the leasehold title.

The correct answer is B. The leasehold title will have terminated by surrender and HMLR will close the leasehold title. A surrender is a bilateral agreement between the landlord and tenant that the lease will terminate and the landlord is returned to the position that they were in prior to the grant of the lease (i.e. having an unencumbered title). A surrender should be contrasted with a merger, where the tenant acquires the landlord's interest in the premises.