

Property Law 2004 Exam
Question 2
High Distinction 85%

Alice has a life estate pur autre vie, ie on the life of another (QEII).

Ben and Bertha have a remainder fee simple absolute.

Alice is subject to s12 LPA, which does not permit equitable waste unless there is a contrary express intention given. Equitable waste is a sub group of voluntary waste. It is defined as intentional and serious harm done to a property.

Part 1

Arguably the contract made by Alice for the Mining Company to mine the property is equitable waste as Blackacre is a working farm and also native shrubs, especially since it is part of the native bush.

Alice cannot rely on the fact that she did not do it herself but making a contract for a mining company to mine is an intention to do serious harm to Blackacre by the subject matter of the contract.

Part 2: Terry's Lease

Terry has an unregistered equitable 10 year fixed term lease. It is not a legal lease as the lawyer suggests. The issue is whether the clause 'if you use the land productively, I'll extend your occupation' is equivalent to a right of renewal for a further 10 years.

Arguably it is not as it is dependent on the satisfaction of the conditional part of the contract. Either way it has only been 2 years into the lease and things might be done by Terry which are unproductive.

I would advise Alice that Terry has an equitable 10 year fixed term lease and as there is an express clause about termination, termination will be at expiry of 10 years. NB: end of duration is ascertainable here.

Part 3

There is an issue of non derogation of grant here. Alice gave Terry a lease and allowed him to raise exotic animals. Alice also took away this enjoyment by granting a mining lease which would no doubt be inconsistent with a lease to breed exotic animals.

Part 4

Hardhat has an unregistered, equitable profit, ie a definable right to take something (minerals here) off land that naturally occurs there.

This right would be coupled with a bare licence to go on the land to use the profit. However, this does not give a further right to temporarily settle 100 employees.

It is arguable that Alice has a right to charge for this.

Part 5

It is likely to be a case of a licence coupled with an equity, as Hardhat uses the land and ??? to a different use onto the rest of the property.

Alice might possibly get a estoppel to stop the other land being subsided or at lease rectify the problem.

Part 6

There is a number of implied covenants at law. The relevant one here is the implied covenant of fitness for habitation. The premises must be fit for habitation at the commencement of the lease for a furnished premises (Smith v Marrable).

However, the distinction between a furnished and unfurnished premises is ridiculous for habitability. Arguably Smith v Marrable should not be followed in Australia.

On the facts we do not know the extent of 'extremely poor conditions' or whether homestead was furnished. The issue of the state of the property was not mentioned.

Terry does not need to pay rent and can sue for damages.

Part 7

There is also an implied covenant of quiet enjoyment. However, the landlord must be the person who disturbs (ie Alice) or authorizes a third party to disturb the tenant. On these facts, although the facts are not clear, it is unlikely for Alice to authorize Ben and Bertha to disturb Terry's quiet enjoyment of the property.

Terry may get a restraining order perhaps!

If QEII dies, Ben & Bertha have a legal fee simple absolute. They will take over the place of Alice.

Terry: his lease will still be valid.

Hardhat: profit will be valid.

Ben & Bertha would not be able to disturb Terry's quiet enjoyment as it is likely to be ??? in Australia that substantial physical interference is not required (Southwark v Baxter).

However, the equitable interest of Terry & Hardhat is subject to the proviso if they both do not caveat.