THE UNIVERSITY OF THE WEST INDIES

EXAMINATIONS OF: APRIL/MAY 2015 SEMESTER II

CODE AND NAME OF COURSE: LAW2220 Real Property II

DATE AND TIME: (do not write in this space) DURATION: 2 Hours

INSTRUCTIONS TO CANDIDATES: This paper has 3 Pages and 4 Questions.

Candidates are required to answer ANY TWO questions.

1. "Redemption is of the very nature and essence of a mortgage, as mortgages are regarded in equity. It is inherent in the thing itself. And it is, I think, as firmly settled now as it ever was in former times that equity will not permit any device or contrivance designed or calculated to prevent or impede redemption".

   Explain and comment on this dictum.

2. Alex had two adjoining freehold properties, New Haven and Sunset Crest. In 2009, Alex granted a ten-year lease of New Haven to Dick for a yearly rent of $1,000.00. Alex subsequently gave Dick the right to park his car in the garage of the adjoining property of Alex, Sunset Crest, where Alex resides with his family, for the sum of $50.00 per quarter.

   Dick has been using a driveway running across Sunset Crest at the southern end to gain a quicker access to the highway.

   In 2012, Alex sold and conveyed New Haven to Dick. Soon thereafter, Dick, a medical doctor, converted New Haven into a clinic. Dick's family members and patients have been using the driveway to access the highway. Dick's first son, a motorbike enthusiast, has been parking his motorbike in the garage of Sunset Crest. The vehicular use and foot traffic over the driveway over Sunset Crest have increased considerably.

   Alex seeks your legal opinion if he has the legal right

   (i) to block the use of the driveway by Dick, his family members and patients; and
(ii) to revoke the personal permission he granted to Dick for the use of the garage of Sunset Crest.

3. Answer BOTH (a) AND (b)

(a) Earlier this year Bob bought the freehold of Whiteacre, and leased it to Ken. In the lease, Ken covenanted (a) to keep the demised building in good tenantable repair, fair wear and tear excepted and that he (b) shall not assign, sublet or part with the possession of the whole or any part of the demised premises without the prior permission of the lessor in writing.

Joe, who is reputed and lauded in the local press as “a person of utmost respectability”, has been in occupation of Blackacre as a tenant of Bob. Joe also has the distinct honour of being awarded the most desirable tenant national title by the National All Landlords Association (NALA) of which Bob is the current president.

Ken wrote to ask Bob if he could sublet Whiteacre to Joe. On the same day the letter was sent, and without waiting for any reply, Ken sublet Whiteacre to Joe.

During the last rainy season, a tile fell off the roof of Whiteacre. The tile was not replaced and as a result the roof has been leaking so badly that the inner walls of the house have become damp and mildewed.

Advise Bob who insists on recovering possession of Whiteacre.

AND

(b) In 2011, Lex granted a five-year lease of Darkacre to Upjohn at a monthly rent of $1,000.00, subject to the usual proviso for re-entry or forfeiture for breach of any of the covenants contained in the lease. In 2014, during the subsistence of the lease granted to Upjohn, Lex sold and conveyed Darkacre to Richie. Upjohn has not been paying his rent regularly; he was in arrears of two years’ rent (i.e., $24,000.00 arrears of rent) at the time Lex sold and conveyed Darkacre to Richie.

Upjohn has not paid any rent to Richie since the reversion was sold and conveyed to Richie a year ago (i.e., $12,000 arrears of rent).

Advice Upjohn who is claiming that he is not bound to pay any rent to Richie.

4. In 2006, Mike acquired the fee simple estates in two adjacent properties, Redacre and Yellowacre. There was a house on Redacre, in which Mike lived, while Yellowacre was an open field.

In 2011, Mike built two houses on Yellowacre and sold them to Kate and Tasha respectively, each purchaser entering into covenants:

(a) not to allow a child or children to reside on or live at any of the houses built on Yeallowacre; and

(b) not to carry on or suffer or permit to be carried on any trade, business, profession, club or other activity on Yellowacre and not to use or occupy the house built on Yellowacre for any purpose other than as a private residence.
In 2012, Mike sold Redacre to Eric. In the conveyance, Eric covenanted:

(i) not to carry on or suffer or permit to be carried on any trade, business, profession, club or other activity on Yellowacre and will not use or occupy the house built on Yellowacre for any other purpose than as a private residence.

(ii) not to cause or permit Redacre or any part thereof to be used for any commercial or agricultural purpose.

In 2014, Kate and Tasha sold their properties to Cynthia and Daphne respectively, the conveyances containing no reference to the covenants. Kate moved into Yellowacre with her seven children who resided and lived at the house on the Yellowacre.

Daphane is carrying her business of hairdressing in the house on Yellowacre.

Eric has converted Redacre into a pig farm from where he rears and sells pigs.

Advise all the parties:

(a) as to whether they are bound by all or any of the covenants, and

(b) if they are so bound, whether they may obtain a discharge or modification of all or any of the covenants.

END OF QUESTION PAPER