

**PROPERTY LAW  
MODEL EXAM  
2010**



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## ***IRAC method of completing exams***

- Issues** - Outline the issues that you are going to discuss.
- Rules** - Define the legal rules that are relevant to the question.
- Application** - Apply the legal rules to the facts of the question (this is the hard part!).
- Conclusion** - Tie things up, usually in the form of an advice to your hypothetical client.

Always use your reading time wisely to **PLAN YOUR ANSWER** before writing. This is of utmost importance as it will help you clarify your thoughts and ensure that you avoid following desperate exam strategies that unprepared students commonly resort to, such as:

- i) 'the kitchen sink' i.e. spilling all of your knowledge that is vaguely related to the topic onto the exam paper and hoping for the best.
- ii) 'the garden path' i.e. going off on an irrelevant tangent

Remember that the **APPLICATION IS THE MOST IMPORTANT SECTION** of your answer and should take up the bulk of your time. The actual conclusions you reach are often superfluous. Rather, your marker will be most interested in *how you arrived* at your conclusion.

## Question One

Bruce owns a parcel of rural land on the south coast of New South Wales called “Bruceville”, which has views of the ocean. He uses the land to rear alpacas. Adjoining “Bruceville” is another parcel of rural land belonging to “Ocean Grape Wine Estate”, owned by Shelley. Recently, Bruce and Shelley attended a town meeting about a proposed road by-pass which, according to the NSW Government, will cut into their parcels of land. Bruce and Shelley were concerned about this and sought initial legal advice (not from you) about the legality of the acquisition should the planned road go ahead. The solicitor advised them that the Government could compulsorily purchase the required land from them to construct the road, but that it would need to issue notices in advance of their intention to acquire the land and the amount to be paid (do not be concerned about the details of the acquisition).

Subsequently, Bruce and Shelley learned that the boundaries between the two blocks were inaccurate as a result of prior dealings with the land before they both acquired it. The solicitor discovered:

- That the original line dividing the properties, set down in 1927, gave “Bruceville” a greater land holding which includes a lot of Shelley’s vineyard;
- That when Shelley acquired her property in 1989, the fences had been renovated (in 1988) due to disrepair of the original 1927 fences. The fencing contractor did not follow the original dividing line, as the fences had fallen into disrepair and were hard to locate, effectively granting a greater proportion of land to what would become “Ocean Wine Grape Estate”. Subsequently Shelley planted vines on the extra land;
- Bruce purchased his land in 1989 and planted trees along the fences erected by Shelley to protect his stock and privacy;
- In 1997 many fences were destroyed by large storms and winds which caused much of Bruce’s windbreak to fall and destroy Shelley’s fences. Bruce’s alpacas wandered across the boundaries into Shelley’s land. Similarly, animals Shelley was rearing on an adjoining paddock wandered into Bruce’s greener pastures.

The fences were repaired along the same lines as they were repaired in 1988.....

### **Question Two**

Bernadette was the registered proprietor of a winery and bed and breakfast in South East New South Wales. There was a registered mortgage to Seachanger Bank which included both the bed and breakfast and the winery cellar door. Bernadette had established the land and winery as a successful boutique business attracting affluent Sydney-siders seeking a country escape.

Bernadette managed to keep on top of the monthly mortgage repayments and also met the costs for the up keep of the property. Recently, Bernadette has struggled to make ends meet and has failed to meet some mortgage payments as a result of a failure of the latest grape harvest from a late frost and the effects of the drought. In October 2006 Seachanger Bank sent Bernadette a notice under s57 of *Real Property Act* (NSW) stating that if the outstanding payments are not met within one month the Bank would sell her property.

Bernadette was shocked to have received such a notice considering she had always paid on time and paid extra towards her mortgage repayments. She has missed two payments and the next one is soon due. Bernadette was expecting to be in a position to repay all payments owed in six weeks as she was expecting a large conference and fully booked accommodation at the Bed and Breakfast. Bernadette wrote to the Bank to explain that she will meet all payments in six weeks and request the Bank not take any further action until then.....

**Question Three**

Brandon is the registered proprietor of commercial premises in Sydney, which is registered under the *Real Property Act* (NSW). On this premises he operates a bookshop called 'Brandon's Books'. At the rear of the store there was a space which had potential for expansion of his business. In 2000 Philip, a long time friend of Brandon's, proposed to Brandon that he use the space to establish a coffee counter. Philip was a successful Barista and wanted to run his own business but could not afford the cost of establishing a café. Brandon accepted Philip's offer and said that he could use the space rent free until June 2002 to get the business established and then they would look at its progress and make a further decision about the arrangement.

Philip began running his small coffee counter in the rear space of the store. He brought in some vintage furniture from home for customers to use. Philip's space was separated from the rest of the book store by an existing banister and decorative drapes which hung from the ceiling.

The coffee business became a success in a relatively short time and by June 2002 was earning significant income. In July 2002 Philip and Brandon agreed to extend the time Philip could use the space until July 2006 provided that Philip pay a 15% commission on his monthly profits. They agreed that it would be a type of "rent" for the premises. This agreement was never formally written down and Philip did not contemplate registering his interest in the folio since he and Brandon went 'way back'.....



**If you have any queries regarding the property law model exam  
please email - [info@lawskool.com.au](mailto:info@lawskool.com.au)**