



Examiner's Comments

05 REAL PROPERTY

September 2025 Examinations

The exam comprised of four questions. Candidates were required to answer only three questions. Question 1 was compulsory (40 marks). Candidates were required to also answer any TWO (2) of Questions 2, 3 and 4 (20 marks each).

Question 1

Part A required students to examine the issue of the creation of joint tenancy and tenancy in common by reference to law and equity.

Part B was an examination of the laws surrounding fraud in the creation of mortgages and the concept of indefeasibility and requirements of s 56C.

Part C invited the students to discuss the creation of equitable interests in the Torrens system and the issue caveats.

Part D looked at short term tenancies and how they rank in priority against unregistered interests

Question 2

This question examined the issue of easements created by prescription and the enforceability of restrictive covenants in the Torrens system.

Question 3

Part A of this question was based around the issue of tacking for further advances in mortgages.

Part B was concerned with the issue of a breach of the duty of good faith/reasonable care in the exercise of the power of sale in a mortgage.

Question 4

This question examined co-ownership. The first part was about self-transfer as a method of unilateral severance. The second part was concerned with s 66G. The final part was based around issue of equitable accounting between co-owners.

Characteristics of poor or average responses

Poor answer failed to refer to cases of statutes and often just repeated the facts of the question. Poor responses failed to provide answers or completely missed relevant issues.

Characteristics of very good or excellent responses

Good answers recognised the relevant issues and made reference to the relevant sections of the legislation and the relevant cases. Excellent answers did this in a convincing way while pointing out the divergent views on some topics.

Common mistakes

In Q1 common mistakes included a failure to discuss s 56C. In Q2 common mistakes included the treatment of the easement as an implied easement rather than as a prescribed one. Q3 mistakes included the failure to discuss s 111A in part B. In Q4 many students used the rules on equitable completion of gifts to discuss s 97 self-transfers.

Areas for improvement

The biggest area for improvement is in the area of issue recognition and the use of relevant case law to justify answers.