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CHAPTER 2: Estates and Interests in Land

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**This assignment is a Multiple Choice Assignment.**

Marks: 1 mark per question.

1.     Answer: 3  
A building scheme is a group of restrictive covenants attaching to two or more lots within a particular development plan. Approval of all owners is not a requirement for the enforce-ability of a building scheme.
  
2.     Answer: 3  
A restrictive covenant is an interest in land and is enforceable against those who subsequently acquire the property from the covenantor. A covenant imposes a burden on the covenantor's land for the protection of the covenantee — a neighbour who is not a covenantee cannot compel Paolo to comply with the restriction. A restrictive covenant can be released impliedly, in the absence of an express agreement to the contrary, if the character of the neighbourhood changes so as to make its enforcement useless.
  
3.     Answer: 3  
Daria is free to dispose of her interest, but in doing so, she severs the joint tenancy only as far as her share is concerned. Alvin, Boris and Claus continue as joint tenants amongst themselves and as tenants in common with Xander.
  
4.     Answer: 2  
To ensure that a restrictive covenant is valid, the following factors must be present: the existence and situation of the property to be benefited must be indicated with reasonable certainty; the covenant must be negative in nature; the covenantee must, at the time of creation and when seeking enforcement, have an interest in the land which is being protected; the covenant must be capable of benefiting the dominant land and not be imposed for purely personal reasons; and, it must be the common intention of both parties that the burden shall run with the land.
  
5.     Answer: 3  
The registration of a restrictive covenant does not guarantee that it is valid and enforceable against the land. The fact that Greenacre is not currently being used as a nursery does not automatically release the restrictive covenant; it is still open for the current or future owners of Greenacre to enforce it. It would be an implied release if Whiteacre had been used as a flower shop for a number of years; this would be open enjoyment inconsistent with the restrictive covenant, and to which the owners of Greenacre acquiesced. Once it is created, the restrictive covenant does not depend upon the original owner retaining either property.

6. Answer: 4  
If a life estate is granted without impeachment for waste, a life tenant will not be liable for any of the three common law categories of waste. Voluntary waste consists of direct, positive acts which result in damage to the property beyond the wear and tear "damage" a life tenant is entitled to allow. Permissive waste consists of allowing a property to deteriorate without any positive acts of the life tenant. Malicious or wanton destruction devaluing the property so that there is little or nothing to inherit will be classified as equitable waste. A clause stating that the life tenant is not liable for waste will not exempt equitable waste unless the clause explicitly states this.
7. Answer: 2  
Goneril, Regan and Cordelia, upon the death of their father, are joint tenants of the remainder interest in the property following Fool's life estate. Cordelia's joint tenancy is severed by her sale of her interest to Gloucester. However, upon Regan's death, the right of survivorship operates to pass Regan's interest to the remaining joint tenant, Goneril. Fool's life estate is unaffected by these developments.
8. Answer: 1  
All joint tenants must have the same kind of interest in the land: the extent, nature and duration must be identical and their interest must be equal. All joint tenants must have received their interests at the same time and from the same document. In example A, there is no unity of interest, since not all the children receive the same amount of ownership. In example B, there is not unity of title, since Wolfgang and Nan did not receive their interests from the same document. In example D, a severance has been executed. Under *Stonehouse v. A.G. (B.C)*, a secret transfer, even if unregistered, still severs a joint tenancy by removing the unity of title.
9. Answer: 4  
An estate pur autre vie, a leasehold estate and a fee simple subject to a life estate are all interests in land which amount to estates because they grant absolute possession to the holder. An easement is an interest in land less than an estate. Interests less than estates generally give no proprietary or possessory rights to the holder of the interest.
10. Answer: 1  
The right of survivorship only applies to joint tenants. George and Kramer were not joint tenants but tenants in common because of s.11 of the Property Law Act which provides that if property is conveyed to two or more persons, it will be presumed that they are tenants in common unless there is express language creating a joint tenancy. Because George and Kramer are tenants in common, George can leave his interest in the condominium to whomever he pleases; his beneficiary (Elaine) will take the same interest as George, thus becoming a tenant in common with Kramer.
11. Answer: 4  
The unity of possession does not refer to having occupancy of the land; it means that all parties must have an undivided interest in the whole of the property. Even though John and Wendy both live on the property, they do not hold it to the exclusion of Graham. All four unities exist in Ted's transfer.

12. Answer: 3  
In *Grant v. Grant*, the court held that commencement of a partition action does not operate to destroy a joint tenancy. Severance of the tenancy will be effected if a judgment for partition and sale is made. In this case, Jack had started the partition action, but died before the judgment was given; thus, the right of survivorship operates to grant Diane sole ownership of Greenacre. Jack's will does not have an effect on his joint tenancy with Diane.
13. Answer: 2  
The courts use a two pronged test to determine whether an item is a fixture or a chattel. The first test involves the degree of affixation: under this test, the developing machine, sink and cabinet unit, and pictures lining the store walls are all prima facie fixtures. The darkroom equipment just sits by its own weight on the cabinets in the darkroom so it is a chattel. The second test considers the purpose of affixation: is it for the better use of the items themselves or for the enhancement of the premises? Under this test, only the counter and sink combination can be seen as being affixed for the better use of the store.
14. Answer: 2  
The modern position with respect to airspace is that an owner's right to airspace above his or her property is limited to what that owner can effectively use. Furthermore, no action lies for trespass in respect of passage through airspace above land where the owner's reasonable use of it is not interfered with.
15. Answer: 4  
Land need not be in its natural state for an owner to have the right to support; however, the right of support will not protect any buildings on the property except where it can be shown that the withdrawal of support would have caused the land to collapse even without the weight of the building being imposed on it. The fact that the defendant's property is not adjacent to the plaintiff's property does not necessarily preclude liability for loss of support for the plaintiff's land. A land-owner has a right to support independent of prescription.
16. Answer: 2  
A property owner has the general right to have vertical and lateral support for his or her land, therefore, it is not necessary for Ann to show negligence on the part of the contractor to recover damages. The fact that the shed is very old will not affect Ann's right to recovery but it may affect how much she recovers. Ann must show that the toolshed's weight did not cause its collapse in order to recover, however.
17. Answer: 3  
A licence is not an interest in land; easements, profits a prendre and restrictive covenants are all interests in land, although less than estates. A contractual right to enter upon and use someone's land for a certain purpose is a licence. A profit a prendre is the right to enter another's land and take something off that land that occurs there naturally. An example of a profit a prendre is Option D; Option C is a licence. Option A is an easement and Option B is a restrictive covenant.

18. Answer: 1  
The agreement between Amanda and Jane was without consideration or payment for the permission; for this reason it is a bare or gratuitous licence which may be revoked at any time. Revocation of a bare licence does not attract any liability to the grantor. The licence is not coupled with an interest in land; Amanda's corn comes from her own property, not Jane and Michael's.
19. Answer: 3  
Options (1), (2) and (4) are true. At common law, a life tenant may not commit voluntary waste without being required to compensate the remainderman.
20. Answer: 2  
Under the Property Law Act provisions cited in *Giatsios v. Dike*, a person may seek to cancel an easement in appropriate circumstances. The Act sets out the appropriate circumstances in which an easement may be cancelled. These include the invalidity of the instrument creating the easement; a change in the neighbourhood which makes the easement obsolete; and, the person who benefits from the easement has agreed to it being cancelled. In the case of *Pharand v. Jean Louis*, the court held that an easement was not lost simply through non-use.

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20 Total Marks