BUSI 111

Answer Guide No. 8

CHAPTER 15: Mortgage Law

Marks: 1 mark per question.

1. Answer: 2
Under the criminal code, it is an offence for a person or a corporation to enter into an agreement to receive interest at a criminal rate. A criminal rate is defined as an effective annual rate of over sixty percent. This provision applies to all types of loans of any amount. Section 7 and section 10 of the Interest Act deal with mortgages. The provisions of the Consumer Protection Act permit a court to intervene where, having regard to all the circumstances, the cost of the loan is excessive and the transaction is unconscionable.

2. Answer: 4
The Interest Act provides a right of prepayment where the mortgagor is an individual, and where a mortgage prohibits prepayment for a period exceeding 5 years. In calculating this 5 year period, the courts will add together the original term with the terms of all extensions unless the renewal agreement (also known as an extension agreement) deems the date of the original mortgage to be changed to the date of the renewal.

3. Answer: 2
Elliot, as a licensee, has a general duty to protect the best interests of Belinda — this includes ensuring that the vendor receives a fair price for her property and that she receives adequate security for the loan. Statement A is therefore correct. Statement B is also correct because this arrangement would result in a situation where the total of the first and second mortgages would exceed the total purchase price of the property. Statement C is correct because the Interest Act does not limit the rate of interest which can be charged in a mortgage transaction, although provincial legislation or the Criminal Code may apply. Statement D is incorrect because under the Mortgage Brokers Act, a person must make at least ten mortgage loans in a year in order to be defined as a mortgage broker.

4. Answer: 4
In deciding whether a transaction is a sale or a disguised mortgage, the court will take into consideration such factors as: whether the sale price is far below the market value; whether the vendor is required to give up possession of the land or is allowed to live there rent-free; and whether the future sale proceeds will be shared with the mortgagee.

   If the court characterizes a transaction as a mortgage, the mortgagor has, by definition, the right to redeem the property free and clear upon repaying the mortgagee.

   The equity of redemption is a feature of mortgages ONLY.

5. Answer: 2
A mortgage is not a loan. Legally, it is an interest in land created by contract as security for a loan.

6. Answer: 4
Only option (4) is correct. The Property Law Act provides a means of circumventing the privity of contract principle, and allows a lender to take direct action against a current owner. The provisions of the Property Law Act which limit a vendor's liability in the case of default in an assumed mortgage are not applicable if the loan was not initially for a residential purpose. Finally, if the lender elects to pursue an action in foreclosure, following the order absolute the lender will no longer be entitled to pursue the borrower on the borrower's personal covenant to pay.

7. Answer: 3
The Property Law Act provisions regarding an original borrower's release from liability upon assumption of the mortgage apply only to residential mortgages. To release the original borrower from liability, the lender's approval of the new purchaser must be in writing.

8. Answer: 1
In British Columbia, mortgages are generally registered as charges against the land and the first registered mortgage is treated like a legal mortgage. Any subsequently registered mortgage will be an equitable mortgage charging the borrower's equity of redemption. To properly create an equitable mortgage with a duplicate certificate of title, it is necessary to acquire the certificate from the land title office and to then deposit it with the lender.

9. Answer: 1
Unless the president of ABC Ltd. is guaranteeing the loan, only the company's finances are relevant. Stable house prices will not offset the accrual of interest if default occurs; further, if ABC Ltd. renegotiates with the same bank, Velma's liability on the personal covenant may not necessarily end at the expiration of the term. Relying on rent as the means to make payments is very risky for a vendor, because it does not take into account what will happen if the property remains vacant.

10. Answer: 1
There is no distinction drawn between residential and commercial mortgages under s. 10. The only distinction is between individual and corporate mortgagors, the latter may not prepay under s. 10. The right to prepay is not absolute. Firstly, it does not apply to a corporate mortgagor, and secondly, the mortgagee is not obliged to accept the tender, it is simply precluded from charging any further interest after a tender.

11. Answer: 2
Part 5 of the Business Practices and Consumer Protection Act requires that disclosure be given by mortgage brokers and lenders in all of the situations except Option 2. A Disclosure Statement, Notice or Statement of Account must be given to the borrower only once every 12 months if the interest rate is floating.

12. Answer: 3
Section 3 of the Interest Act provides that if a document does not mention interest, no interest can be charged. The provision also stipulates that if a document requires interest to be paid, but does not set out the amount, then the rate allowed by law is only 5%.

13. Answer: 1
Once a petitioner has been granted an order absolute, the petitioner can transfer title into his or her name and deal with the property as his or her own. If the petitioner later sells the land, there is no requirement to account for any profit; however, if there is a shortfall, the petitioner cannot later sue on the personal covenant. The granting of the order absolute is the court's authority to the petitioner to deal with the property as his or her own, no further approval for any action is required.

14. Answer: 4
While the first three options are all in the Interest Act, Option (4) is not. Where no interest is stipulated in a mortgage, none may be charged. However, if an indication of some interest exists, but the actual rate does not appear, a rate of 5% may be charged.

15. Answer: 4
The Interest Act prohibits the interest to be charged when the loan is in arrears from exceeding the rate chargeable when the loan is in good standing. The penalty amount provided for in an indemnity clause has the effect of raising the interest rate in arrears above the rate payable when not in arrears, thus offending the Act. For this reason, it is unenforceable.

16. Answer: 1
An option, such as clause B, when included in a mortgage, constitutes a clog on the equity of redemption of the mortgagor. This is because if the mortgagee exercises the option, it will not be possible for the mortgagor to repay the debt and redeem the property. The clause is therefore unenforceable.

17. Answer: 1
Today, a collateral advantage, even where it exceeds the term of the mortgage, will be enforceable provided that it does not constitute an unreasonable restraint of trade or a clog. Product agreements such as clause C are common and this does not seem to be unreasonable. It only extends beyond the mortgage term by 2 years, and should be valid for the specified 10 years.

18. Answer: 1
Clause D is known as a sales clause. It prevents a mortgage from being automatically assumable. The clause gives Beauty Corp. exclusive discretion as to whether the mortgage may be assumed or not. The Interest Act only deals with rates of interest chargeable and has no relevance to whether or not a mortgage can be freely assumed. This is not a collateral advantage.

19. Answer: 4
S. 10 of the Interest Act does not apply to mortgagors who are companies. There are no restrictions on the value of mortgages to which s. 10 applies.

20. Answer: 4
Your course manual reviews the different types of equitable mortgages in detail. All of the items named describe different kinds of equitable mortgages.

20 Total Marks