

Chapter 3: Creation of legal and equitable rights in land

Assessment question

1. Neema owns the legal fee simple estate (unregistered title) in 'Ramsey House'. Two months ago she entered into a written agreement (not in the form of a deed) to let Ramsey House to Markus for five years. The agreement specifically stated that the house should be used for residential purposes only.

Markus has just been made redundant, and is now considering using Ramsey House for a business repairing bicycles. He has heard rumours that Neema is about to sell the house.

Advise Markus, who is concerned that, as his lease is not in the form of a deed, he might be evicted by Neema.

AND

2. Last week, by a written contract, Theo agreed to sell 'Taylor Cottage' to Umar, the sale to be completed in six weeks' time. Unfortunately, yesterday, a bus crashed into Taylor Cottage causing considerable damage.

This morning Theo demolished a small outhouse which stood at the bottom of the garden of Taylor Cottage.

Advise Umar, who wants either to rescind the contract or at least obtain a reduction in the previously agreed price.

Specimen answer

PART 1

Section 52 of the LPA 1925 requires that grants (and transfers) of legal rights be made by deed. The requirements of a deed are outlined in s.1 Law of Property (Miscellaneous Provisions) Act 1989: 'clear on its face that it is intended to be a deed', signed, witnessed and delivered. The agreement for a five year lease is not in the form of a deed, and therefore cannot be a legal lease.

Markus has, however, almost certainly got an equitable lease. A line of nineteenth century cases, culminating in *Walsh v Lonsdale* (1882) 21 ChD 9 (decided just after the Judicature Acts), held that any contract for a lease (or informal grant of a lease) is regarded by Equity as creating an equitable lease. In Equity, the parties to the contract or informal transaction have the same rights and duties they would have had, had a deed been executed. Subject to certain points raised below, Markus will be able to invoke the principle in *Walsh v Lonsdale* and claim that the written agreement confers on him an equitable lease.

One possible initial stumbling block for Markus is that for an agreement to create an equitable lease, it must be a legally valid contract. Contracts for the sale or transfer of rights in land (unlike most contracts) are subject to special requirements as to form. Section 2 of the Law of Property (Miscellaneous Provisions) Act 1989 requires land contracts to be in a written document signed by both parties, including all the agreed terms. If Markus did not sign the agreement, or some of the agreed terms did not appear in the document, the agreement would be void. Consequently, Markus would not have an equitable lease.

Assuming that the agreement did comply with section 2, then Markus has an equitable lease, but the continued existence of that lease is under threat from another direction. Markus's right to an equitable lease depends

upon his right to claim the equitable remedy of specific performance ('He who comes to Equity must have clean hands') of the agreement. If Markus is in substantial breach of his agreement, he will lose the right to specific performance and thus destroy his equitable lease. Markus does not want to suffer the fate of the tenant farmer in *Coatsworth v Johnson* [1886–90] All ER Rep 547, who lost his equitable lease because he failed to comply with the obligation to farm 'in a husband-like manner'. Markus must abandon his plan to run a bike-repair business from the house.

PART 2

The first point to make is that if the 'contract' between Umar and Theo does not comply with Section 2 of the 1989 Act, then the contract is void, and Umar can repudiate the 'arrangement' without fear of being sued by Theo.

Assuming the contract complies with section 2, then in principle an ancient rule of Equity will operate on that contract. Applying the maxim 'Equity looks on as done that which ought to be done', somebody who has contracted to buy a piece of land is regarded in Equity as owner of that land even though the legal estate has not yet been conveyed to him. This means that the 'risk' of anything untoward happening to property passes to a purchaser when the contract is signed, not (at the later stage) when the legal estate is conveyed to the purchaser.

If a building is destroyed by fire or some other calamity between contract and completion, the (unfortunate) purchaser must complete the deal. Applied to Taylor Cottage, this principle would mean that Umar would have to accept a conveyance of the badly damaged building and pay the full price.

The principle that 'the risk passes on contract not completion' has been heavily criticized in recent years, and in 1990 the Law Society drew up a set of standard conditions for the sale of land, clause 5 of which is crucial. Clause 5 provides that the seller of land must 'transfer the property in the same state as it was at the date of the contract', and also that if between contract and completion 'the physical state of the property makes it unusable for its purpose', the buyer can rescind the contract. Provided the contract signed last week incorporated clause 5, Umar can certainly claim compensation from Theo, and (alternatively) if the property is uninhabitable, rescind the contract. If the contract did not include clause 5, then Umar must complete the deal. He will have to hope that his solicitor arranged insurance for the cottage from the date of the contract.

The point regarding the outhouse is only relevant if Umar cannot rescind the contract because of the bus damage. Another consequence (more beneficial to purchasers) of the theory that a purchaser becomes owner in Equity on contract, not completion, is the rule that the vendor must take managerial decisions with respect to the land only in consultation with the purchaser. In *Abdullah v Shah* [1959] AC 124, the vendor immediately re-let part of the property which had fallen vacant between contract and completion. The purchaser, who would have preferred the property empty, was awarded a reduction in price by the Judicial Committee of the Privy Council.

In the same way, Umar (if forced to complete the deal despite the bus damage) can claim a reduction in price to compensate for the demolition of the outhouse.