

MULTIPLE CHOICE. Choose the one alternative that best completes the statement or answers the question.

1) 'Real property' is a term that means:

- A) land, valuable goods that are taxable, and assets such as timber and minerals.
- B) land and anything that is fixed to the land.
- C) land, goods and intellectual property, such as shares.
- D) land and anything valuable that is stored on the land.

Answer: B

2) After an exchange of contracts for the purchase of land and before the final payment of the sale price the purchaser has:

- A) a life interest.
- B) an equitable interest.
- C) a legal interest.
- D) a fee simple interest.

Answer: B

3) When there is conflict between a legal interest in land and an equitable interest in land:

- A) both will be defeated by a will or right to adverse possession.
- B) the equitable interest will usually defeat the legal interest.
- C) the legal interest will usually defeat the equitable interest.
- D) the equitable interest will defeat the legal interest if it was created before the legal interest.

Answer: C

4) While Peter was co-renting a house he found a bag of old dollar notes that had been hidden behind some bags in the garden shed. If the true owner cannot be found who is likely, under common law, to have the best title to the goods?

- A) The person who owned the house when the notes were probably hidden away.
- B) The person who owns the house where Peter found the notes.
- C) Peter's flatmate, because the rental agreement was in her name.
- D) Peter.

Answer: D

5) The difference between a fixture and a non-fixture is important in a contract for the sale of land because:

- A) fixtures are automatically included with the land if they were fixed in three or more years prior to the contract of sale.
- B) fixtures are automatically included with the land unless they are specifically excluded in the contract of sale.
- C) non-fixtures are included with the land unless they are specifically excluded in the contract of sale.
- D) non-fixtures are automatically included with the land.

Answer: B

6) One of the following cases confirmed that when the true owner of goods cannot be found and the goods are attached to land the person with the strongest claim to the goods is the owner of that land. What is the name of the case?

- A) *Bernstein v Skyviews & General Ltd.*
- B) *Ranger v Giffin.*
- C) *APA Ltd v Coroneo.*
- D) *Perpetual Trustee Co Ltd v Khoshaba.*

Answer: B

7) Which of the following would be probably classified as non-fixtures?

- A) A built-in dishwasher.
- B) A garden seat.
- C) A house.
- D) A block of land.
- E) All of the above.

Answer: B

8) Which of the following is not a chose in action?

- A) A partner's interest in a partnership.
- B) Shares in a company.
- C) A trademark.
- D) A lease over land.

Answer: D

9) In the case of *Bernstein v Skyviews*, the court held that landowners' rights to the airspace over their property were:

- A) restricted to the height necessary for ordinary use and enjoyment.
- B) unlimited if there were no aeroplanes over the property.
- C) restricted to the height limits recognised by the Department of Civil Aviation.
- D) restricted to 100 metres or a reasonable height above that level.

Answer: A

10) Which of the following is not a guideline that can be used to decide if an item is a fixture or a non-fixture to land?

- A) What was the intention of the person who placed the item on the land?
- B) How long did the person who placed the item on the land intend it should remain there?
- C) Could the item be removed without skilled labour or equipment?
- D) Could the item be removed without causing substantial damage?

Answer: C

11) The most extensive type of freehold title over land is called:

- A) an estate in fee ultimate.
- B) an estate in fee complex.
- C) an estate in fee simple.
- D) a life estate.

Answer: C

12) What is the name of the estate in land that gives a person the right to make any legal use of the land except the right to sell it or leave it in a will?

- A) An estate in fee complex.
- B) An estate in fee simple.
- C) An estate in fee ultimate.
- D) A life estate.

Answer: D

13) When a tenant in common dies, what happens to their share of the property?

- A) It passes (transfers) automatically to any surviving (living) tenants in common.
- B) It passes automatically to the tenant's surviving spouse or de facto partner.
- C) It passes to the TICGC (Tenancy in Common Guardianship Committee).
- D) It passes to the person who has been left the property in the tenant's will.

Answer: D

14) Which of the following statements in relation to joint tenancies and tenancies in common is not true?

- A) Joint tenants hold an equal undivided share in the property.
- B) Joint tenants cannot have the right to leave their share to another person in their will.
- C) Tenants in common hold equal but distinctive shares in the property.
- D) Tenants in common have the right to leave their share to another person in their will.

Answer: C

15) Heckle and Jeckle buy a house and land as joint tenants. Heckle fights with Jeckle and leaves the house. Jeckle dies and leaves all his property to Tom. What statement best describes the legal rights of Heckle and Tom?

- A) The house and land must be sold and evenly divided between Heckle and Tom.
- B) Heckle has the first right to make an offer and buy Tom's share.
- C) Tom is entitled to sole possession of the house and land.
- D) Heckle is entitled to sole possession of the house and land.

Answer: D

16) Why are business partners usually advised to hold property as tenants in common rather than as joint tenants?

- A) Each partner has the right to leave their share in their will to a third party and the shares in the property must be equal.
- B) The property automatically passes (transfers) to the last living partner and the shares in the property do not have to be equal.
- C) The property automatically passes (transfers) to the last living partner and the shares in the property must be equal.
- D) Each partner has the right to leave their share in their will to a third party and the shares in the property do not have to be equal.

Answer: D

17) Xue and Zoe are cousins who own a property as tenants in common. Xue wants Zoe to buy his share which two valuers have estimated to be \$ 300 000. Zoe is only willing to pay \$200 000. Which statement best sums up Xue's legal rights?

- A) Xue has no right to terminate the tenancy. The best he can hope for is that Zoe will die first and he will automatically acquire full rights in the property.
- B) Xue has the right to ask a court for order for specific performance to force Zoe to buy his share for \$200 000.
- C) Xue has the right to terminate the tenancy and offer it for sale.
- D) Xue could ask a court to appoint a trustee to oversee the sale of the property.

Answer: D

18) An easement is:

- A) a right to use a neighbour's land without possessing it.
- B) also known as a *profit à prendre*.
- C) a right to gain ownership of a neighbour's land.
- D) a simple and easy way to gain access to a pathway on a neighbour's land.

Answer: A

19) Which of the following is not one of the essential elements of a valid easement?

- A) The easement must give a benefit to the dominant land.
- B) The right granted must be very wide e.g. the right of a person to cross a neighbour's land without making visual contact with the neighbour.
- C) The easement must become part of the land and will continue when the current owners sell it.
- D) The two parcels of land affected by the easement must be held and occupied by separate persons.

Answer: B

20) Which of the following statements about covenants is not true?

- A) Most covenants impose restrictions on the use of land.
- B) Covenants may be positive as well as negative.
- C) The document creating a covenant must comply with statutory requirements and clearly indicate the dominant and servient tenements.
- D) The document creating a covenant must clearly indicate any caveats or other legal claims.

Answer: D

21) The old system title to land relies on:

- A) state registration of title documents.
- B) the principle of state guaranteed insurance protection for losses suffered by innocent persons.
- C) indefeasibility of title.
- D) a series of documents showing transactions that affect the land.

Answer: D

22) The Torrens title system is based on:

- A) the curtain principle.
- B) the insurance principle.
- C) the mirror principle.
- D) the indefeasibility principle.
- E) all of the above.

Answer: E

23) What is the name of the land title system that provides a state guaranteed title to land?

- A) Torrens title.
- B) Native title.
- C) Crown title.
- D) Old System title.

Answer: A

24) 'Indefeasibility of title' means that a person who is registered as the owner of land has an indefeasible or unquestionable title to the land. This concept is a feature of:

- A) common law title.
- B) old system title.
- C) Torrens title.
- D) all of the above.

Answer: C

25) When Rihanna went overseas she asked Kylie to mind her house. Kylie found Rihanna's Certificate of Title and transferred title in the land to her own name by forging Rihanna's signature. Kylie then sold the house to Leonardo who is now the registered proprietor. He paid market value and knew nothing about Kylie's fraud. Rihanna has returned and wants her house back. What is the most likely legal position?

- A) Rihanna should regain her title because Kylie obtained it through fraud. Leonardo will have to take legal action against Kylie
- B) Leonardo will remain the registered proprietor. Rihanna may be entitled to compensation from the Torrens Assurance fund in her state.
- C) Leonardo will remain the registered proprietor. Rihanna's only chance of compensation is to take legal action against Kylie
- D) Leonardo's name will be removed from the title while the Land Titles Office investigate and determines the rightful owner.

Answer: B

- 26) The indefeasibility principle in the Torrens title system means that:
- A) a registered interest in land will take priority over an unregistered interest.
 - B) the Torrens title system has created an exception to the *nemo dat rule* that you cannot pass on a better title to property than the one you are legally entitled to.
 - C) a purchaser of land who acts honestly, pays a fair price and was ignorant of any fraud will remain the registered proprietor even when the title was passed on by someone who lacked good title.
 - D) all of the above.

Answer: D

- 27) The Torrens title system provides 'indefeasibility', which means that a person who becomes registered on the title to a parcel of land has:
- A) an indefinite and consequential title.
 - B) a title which can be defeated (lost) if the registered person has committed fraud.
 - C) an indefinite and proportionate title.
 - D) a title which cannot be defeated if the registered person has committed fraud.

Answer: D

- 28) A person who has an equitable interest over Torrens title land can protect it by lodging:
- A) an equity of redemption.
 - B) a deed.
 - C) a covenant.
 - D) a caveat.

Answer: D

- 29) What is the name of the document that warns anyone doing a title search of land that somebody is claiming an interest in the land?
- A) A certificate of title.
 - B) A covenant.
 - C) A caveat.
 - D) A restrictive covenant.

Answer: C

- 30) The name of the title to land that is based on ownership of shares in the property is:
- A) Company title.
 - B) Community title.
 - C) Torrens title.
 - D) Strata title.

Answer: A

- 31) Mortgages are contracts in which borrowers give lenders:
- A) their personal property as security for a loan.
 - B) their house but not their land as security for a loan.
 - C) the right to occupy their real property as security for a loan.
 - D) their real property as security for a loan.

Answer: D

- 32) The main feature(s) of a Torrens title mortgage is/are that:
- A) the mortgagee acquires a security over the land.
 - B) an unregistered mortgage creates an equitable interest.
 - C) the mortgagor remains the legal owner.
 - D) all of the above.

Answer: D

- 33) A mortgagee who is exercising the power of sale has a duty of good faith to the mortgagor. Which of the following statements most accurately reflects the extent of this duty under Australian common law?
- A) The mortgagee must advertise the sale through a licensed real estate agent.
 - B) The mortgagee must take reasonable care to obtain a proper market price.
 - C) The mortgagee must not act fraudulently, or recklessly sacrifice the interests of the mortgagor.
 - D) All of the above.

Answer: C

- 34) Mrs North, who had limited business experience, mortgaged her property to a finance company to raise money for her husband's business. The contract greatly favoured the finance company. Two people have advised Mrs North against taking out the loan - her son, who was an accountant, and a barrister, who is a friend of the family. Mr North's business failed and the finance company has moved to sell up the property. Mrs North has been advised the finance company cannot sell up her house if she can prove that the mortgage contract was unconscionable. What is her legal position?
- A) The contract is probably unconscionable because the terms favoured the finance company and Mrs North lacked business experience.
 - B) Although the contract is unfair it is probably not unconscionable.
 - C) If the court finds the contract was unfair it must find that the contract was unconscionable.
 - D) The contract is probably unconscionable because her only professional advice came from a friend and a relative.

Answer: B

- 35) Which of the following statements is true in relation to bank obligations to guarantors under the Code of Banking Practice?
- A) The bank must advise the guarantor about the minimum sum being guaranteed.
 - B) The bank must inform the guarantor about the need to obtain independent advice.
 - C) The bank is obliged under privacy laws from advising the guarantor about the debtor's capacity to repay the loan.
 - D) All of the above.

Answer: B

- 36) Under common law, mortgagees who have the power to sell up a property have a duty to act in good faith. This means that they must:
- A) not act fraudulently.
 - B) delay the sale until there is a better time to sell.
 - C) obtain the best price.
 - D) comply with all of the above.

Answer: A

- 37) In *Garcia v National Bank* the High Court ruled that a wife who signs a guarantee for her husband's business loan was not liable for the debt because:
- A) the lender did not ensure she received independent legal advice.
 - B) she did not have a sufficient interest in the loan.
 - C) she did not fully and accurately understand the agreement.
 - D) all of the above reasons applied.
 - E) of A and B only.

Answer: D

38) Mrs Lopez signed a loan guarantee agreement with a bank that gave her share of the family home as security for a loan to her husband's company. She is not involved in her husband's business and does not know much about it or the agreement she has signed. Mrs Lopez was reluctant to sign but agreed after Mr Lopez insisted and assured her that the family home could never be sold up. Mr Lopez's business has gone into liquidation. Which of the following reasons could indicate that the mortgage contract could be unconscionable?

- A) The interest rate on the loan was significantly above the market rate.
- B) Mrs Lopez would be forced into bankruptcy if the house was sold up.
- C) The bank did not ensure that Mrs Lopez received competent and independent legal advice.
- D) The bank wrongly believed that Mrs Lopez was a capable professional who had run her own business.

Answer: C

39) A mortgage over land protects the interests of the mortgagee (lender) because:

- A) the mortgagee has the right to sell any property of the borrower if the borrower does not repay the loan.
- B) the mortgagee is entitled to charge a higher interest rate.
- C) the borrower could be made bankrupt if they do not repay the loan.
- D) the mortgagee has the right to sell the land if the borrower does not repay the loan.

Answer: D

40) Which of the following statements is true regarding a mortgagee sale of property?

- A) The mortgagee must sell through a licensed real estate agent.
- B) The mortgagor must be given the first right to purchase the property at a fair price.
- C) The mortgagor is not allowed to attend the sale in case he or she makes a high bid and discourages genuine buyers.
- D) The mortgagor remains liable for any sum owing to the mortgagee after the proceeds of the sale have been distributed.

Answer: D

41) Which of the following conditions must be satisfied before a mortgagee can forcibly sell up a property?

- A) The mortgagee gave at least one month's notice in writing of its intention to sell.
- B) The sale must be genuine, which is usually achieved by selling at a public auction.
- C) The mortgagor is in default usually by failing to make at least one repayment.
- D) All of the above

Answer: D

42) In Victoria, mortgagees who exercise their power of sale have a statutory duty:

- A) to take reasonable care to ensure the property is sold for not less than market value or the best price that may be reasonably obtained.
- B) to take reasonable care to ensure the property is sold at market value.
- C) to act in good faith and to consider the interests of the mortgagor and any guarantor.
- D) to satisfy all of the above requirements.

Answer: C

43) Which of the following statements is not true about a mortgagee's duty of good faith in relation to their power of sale?

- A) Mortgagees should take expert advice regarding the sale method and any reserve price.
- B) Mortgagees must sell a mortgagee's property by auction to ensure there was a truly independent bargain.
- C) Mortgagees who sell the property to an associate or corporation to themselves must prove the sale was in good faith and an independent bargain.
- D) Mortgagees cannot sell the mortgagor's property to themselves.

Answer: B

- 44) In New South Wales, mortgagees who exercise their power of sale have a statutory duty:
- A) to take reasonable care to ensure the property is sold at market value.
 - B) to act in good faith and to consider the interests of the mortgagor and any guarantor.
 - C) to take reasonable care to ensure the property is sold for not less than market value or the best price that may be reasonably obtained.
 - D) to satisfy all of the above requirements.

Answer: C

- 45) In Queensland, mortgagees who exercise their power of sale have a statutory duty:
- A) to take reasonable care to ensure the property is sold for not less than market value or the best price that may be reasonably obtained.
 - B) to take reasonable care to ensure the property is sold at market value.
 - C) to act in good faith and to consider the interests of the mortgagor and any guarantor.
 - D) to satisfy all of the above requirements.

Answer: B

- 46) In Western Australia, mortgagees who exercise their power of sale have a statutory duty:
- A) to act in good faith and to consider the interests of the mortgagor and any guarantor.
 - B) to take reasonable care to ensure the property is sold for not less than market value or the best price that may be reasonably obtained.
 - C) to take reasonable care to ensure the property is sold for not less than its market value.
 - D) to satisfy all of the above requirements.

Answer: C

- 47) An accountant has prepared tax returns for a client for several years and been paid until last year. The accountant has a possessory lien over:
- A) all the tax documents in the accountant's possession.
 - B) the client's lineage.
 - C) all the tax documents in the accountant's possession and the client's vehicle if it is left at the accountant's premises.
 - D) only the tax documents relating to the last year.

Answer: D

- 48) A possessory lien gives its holder the right to:
- A) apply legitimate pressure to obtain payment of a debt.
 - B) enter another person's property and seize specific goods.
 - C) retain control of goods that are already in their possession.
 - D) all of the above.

Answer: C

- 49) Under the federal *Corporations Act 2001* a mortgagee that exercises its right to sell a corporation property has a statutory duty to:
- A) act in good faith and to consider the interests of the mortgagor and any guarantor.
 - B) take reasonable care to ensure the property is sold for not less than market value or the best price that may be reasonably obtained.
 - C) take reasonable care to ensure the property is sold at market value.
 - D) satisfy all of the above requirements.

Answer: B

50) Which of the following statements is not true in relation to the *Personal Property Securities Act 2009*?

- A) The PPS Register is administered by the Commonwealth Insolvency and Trustee Service.
- B) A secured party, such as lender that has been given a fixed charge over a company's assets can register its interest on the PPS Register.
- C) Secured parties can search the PPS Register to find out if a security interest is registered over personal property.
- D) The PPS Register includes possessory, non-possessory and statutory liens.

Answer: D