

## LAWS 311- PROPERTY LAW - TUTORIAL 9

**Q 1.** Lots 3 and 4 on registered plan number 34567 are adjoining residential properties in an old part of Clayfield in Brisbane. The eastern boundary of Lot 3 is the western boundary of Lot 4. In 1893 the registered proprietor of Lot 3 granted a right of way over a strip of land six feet wide along the eastern boundary of Lot 3 to be appurtenant to (ie. to be for the benefit of) Lot 4. The easement was duly registered in the Titles Office and was recorded on the certificates of title to both lots. The easement has never been used by the successive owners of Lot 4 and there is no physical sign of its existence visible to anyone living in the houses on Lots 3 and 4 or to anyone inspecting those properties.

Both Lots 3 and 4 have changed hands many times since 1893. In 1965, Lot 3 was transferred to Tony Weller. When the transfer to Tony Weller was registered it was found that there was no room for any more entries on the certificate of title to Lot 3. The Registrar of Titles therefore issued a new certificate of title for Lot 3 in the name of Tony Weller. Unfortunately an error was made in the Titles Office and no record of the easement to which Lot 3 was subject was entered on the new certificate of title issued for Lot 3. Weller sold Lot 3 to Sawyer in 1971; Sawyer sold to Snodgrass in 1982; and Snodgrass sold to the present registered proprietor, Pickwick, in 1987. Sawyer, Snodgrass and Pickwick are all purchasers for value who had no knowledge of the existence of the easement of right of way.

Bardell is now the registered proprietor of Lot 4. She has obtained planning permission to demolish the old house on Lot 4 and put up a block of units. She will need to use the easement over Lot 3 to provide access to the new units and her solicitors, Dodson & Fogg, have written to Pickwick advising him of Bardell's intention to construct a driveway on the six-foot strip of land along Pickwick's eastern boundary. Dodson & Fogg also advised the Registrar of Titles of the error made by the Titles Office in 1965 and requested that the Registrar correct this error by noting the easement on Pickwick's title. The Registrar refused this request. Pickwick is shocked by the letter from Bardell's solicitors as there was, at the time of purchase, no record of the easement of right of way on his certificate of title. The letter from Bardell's solicitors is his first intimation of its existence

Advise Pickwick including a discussion of the appropriate role for the Registrar of Titles in these circumstances.

**Q 2.** Harry J. Miller is the registered owner of a small shopping centre which contains six shops. Shop 6 is a successful fruit shop owned by Con who has an unregistered lease of 3 years which includes a 3 year option to renew. The option period commences on the 1 December 1997. Con is not in default under the lease at any time.

On the 1 October 1997, Miller is negotiating with a prospective purchaser, Bob, an ex politician who recently retired with a large superannuation payout. In the presence of Miller, Bob inspects the shopping centre and is introduced to Con. Con asks: 'I have always trusted Harry to look after me. Will you make sure my business is secure on these premises?' Bob replies: 'I want good tenants and I will take care of you and your business.'

On the 2 October 1997 a contract of sale is signed. Clause 8 of the contract states 'The purchaser is referred to the leases specified in the schedule attached.' The contract then shows the various lease details in a schedule attached to the contract including the lease of shop 6 to Con. This schedule mentions Con's lease term and option period.

On the 2 November 1997 the sale of the centre is completed. On the 4 November Bob is registered as owner. On the 10 November Con receives a letter from Bob's solicitor stating 'Our client requires you to vacate by the 30 November 1997. Our client is not bound by the option contained in the lease.'

Advise Con of his position. Would your advice vary if: (a) the initial term of the lease was registered and (b) if the initial term was unregistered but Miller executes a renewal of the lease pursuant to the option to renew on the 1 November 1997?