Real Property Winter 2019 Examiner’s Statement

The exam results for this cohort were within the expected parameters of performance.

Question 1 was directly related to Torrens priority issues, particularly in relation to s 43A of the Real Property Act. Overall, performance was reasonably good and most students did well. Some failed to refer to the relevant sections.

Question 2 was concerned with leases. The first parts were concerned with the right to sublease and the landlord’s power to withhold consent. The second and third parts were concerned with the enforceability of leasehold covenants. Many students erroneously discussed freehold covenants in this section. The final part on fixtures was done well by nearly all the students.

Question 3 was about easements and covenants. The first part related to a restrictive covenant concerning building height and the issue of whether the burden and benefit had passed to new owners. Mostly students only discussed the passing of the burden and neglected the benefit issue. The second part concerned a Wheeldon v Burrows implied easement and whether they could be applied in the Torrens system as was discussed in McGrath v Campbell. Most student failed to discuss McGrath and discussed prescriptive easements which were not at all relevant.

Question 4 related to mortgages. The issues related to the misuse of the power of sale and the question of how s 111A would affect the traditional approach to such issues. Only about half of the students referred this section.