Real Property Summer 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 disappointing. Students were told that this section was to be examined but nearly half failed to refer to it.

Question 2 was concerned with 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. 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*.

Question 3 was concerned with co-ownership. The owners were tenants in common and the rights of them to adjustments needed to be discussed. This question was done reasonably well by most students.

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 half of the students referred this section.