

Property law problem question case study



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In order to answer this question one must assess and consider the law relating to real property, with the emphasis being on how correct the two quotations are and whether any other definition of property is a more accurate one.

According to Blackburn J in the case of Milirrpum v. Nabalco Pty Ltd ^[1], property can be defined as ‘ the right to use or enjoy, the right to exclude others, and the right to alienate’. It was further stated that these do not necessarily need to co-exist before a proprietary interest is created and that these rights are possibly subject to further definition. Accordingly a proprietary interest in land is where an individual has either a legal or equitable claim over the property. This in itself arises in a number of different situations that will need further explanation.

Accordingly a proprietary interest can arise in situations that vary in different land law areas. These consist of interests arising out of adverse possession ^[2], in ownership of the property by way of a mortgage or outright ^[3], or where a lease is created. In using the example of a lease for the purposes of this quotation; a lease is created when the agreement demonstrates three different elements. The first one being that exclusive possession is granted by the landlord to the tenant ^[4]. The second element being for a term that is certain by the terms of the agreement. The third element being for a rent or other sufficient consideration ^[5]. It is clear from the quotation that the usage of a lease does demonstrate the requirements that Blackburn J identified. As mentioned above a lease requires a tenant to be able to enjoy, to exclude others, and to alienate. Thus, the first part of the quote is a

correct identification of how the law stands at present. However, the second part of the quote, that being that they need not co-exist before a proprietary interest is created is clearly an incorrect statement of how the law stands. Using the example of a lease, it cannot be created without the elements identified by Blackburn J. If a lease is not created properly then the non-owner of the property is granted a licence ^[6]. This in its entity does not grant the non-tenant the rights identified by Blackburn J. The final statement refers to the fact that these rights could require further explanation. It is always open to different interpretations over how things in law change and are differently defined. This in its entirety is the nub of a liberal democratic philosophy of law.

The second quote refers to what the law of property tries to strive towards and how the approaches differ from what the law actually is and what the law wishes to be. The quotation from B. Ackerman in his work ' Private Property and the Constitution ^[7] ' can be divided into three parts. The first being that property law does not define the relationship between a person and property, it defines the situations when a conflict arises. It is clear from every case that arises in property law; the main issue is how to resolve a dispute ^[8]. The second part being that the law looks at using the property disputes amongst the numerous different roles that individuals may claim to hold ^[9]. Clearly, in the case of adverse possession different competing views are seen to exist. This is the nub of this part of the quotation. However, in cases of repossession orders, the only claim is between the mortgage lender and the mortgagee. In every legal dispute, the claim is between two or more parties, thus every dispute has competing claims. The final part of the quote <https://assignbuster.com/property-law-problem-question-case-study/>

relates to the second part of it. Thus, every legal dispute involves competing claims that revolve around the rights of the individuals concerned.

In conclusion, the first quotation relates to the inception of the usage of the right to enjoy, to exclude and to alienate others from the property concerned. This is clearly the true position in English law. It is clear that these have to exist before a proprietary interest is created. The second quote relates to what the property law attempts to strive. This being the roles that occupy the dispute mechanism. This is a true reflection of English law; however the idea of conflicting views arises in every legal dispute, rather than just a property dispute.

Footnotes

[1] [1971] 17 FLR 141.

[2] Adverse possession is where an individual takes over the possession of property without the consent of the true owner.

[3] This is where an individual in effect owes the property.

[4] This means that the tenant has the right to exclude or restrict anyone from entering the property.

[5] Thomas v Thomas [1842] 2 QB 851.

[6] There is 4 ways in which a license can be created. These can be either a bare licence (A bare licence is where the licensor gives permission to the licensee without the requirement of consideration); a contractual licence (is <https://assignbuster.com/property-law-problem-question-case-study/>

where consideration is given for the licence); a licence that is joined with the grant of a property right (this is when the licensor gives a proprietary right to the licensee to enter the licensor's property); or a license created by estoppel (this is where a licence is granted by an assurance that a licence will be granted).

[7] Done in 1977.

[8] Street v Mountford [1985] AC 809.

[9] An example of which can be seen under the new rules from the Land Registration Act of 2003. This is in relation to adverse possession.