

## PROPERTY LAW FOR BUSINESS 383 2015

### ASSIGNMENT QUESTIONS

**Students must answer BOTH questions**

#### Question 1

Anthony, a former recruitment manager, received a large redundancy package in light of the global financial crisis and uses it to purchase a run-down farm in south western WA. The property is under the *Transfer of Land Act 1893* (WA).

Anthony completes a viticulture course at UWA in anticipation of his retirement and plans to turn the property into a vineyard. He borrows \$500,000 and secures it on the property by way of first mortgage in order to carry out capital works. The loan is obtained through his solicitor, Kevin.

Anthony eventually becomes a successful winemaker, the property has produced a famous 2009 Shiraz which proved popular with international tourists. However, some time later when aerial spraying Anthony's vines, the pilot of the plane oversprays some adjoining farming properties causing considerable damage to their farm crops. Anthony is liable for this damage (for reasons not relevant to this question).

Anthony is left in a grave financial position and defaults on his mortgage to Kevin. Kevin gives Anthony notice under s.106 of the *Transfer of Land Act 1893* (WA), and proceeds to a mortgagee's sale by auction. Kevin appoints his friend Sean, a real estate agent, to conduct the sale. Sean is a specialist in selling industrial sites and small businesses. Sean advertises the property once in the *Australian Financial Times* ('the most widely read paper in the country', he says) on Good Friday, referring to it as 'a former farm with great potential'.

No mention is made of the property's actual usage as a vineyard. No advertisement is made locally or in any rural newspapers. Ultimately, the auction is attended by three persons and is sold to S & K Pty Ltd, a company of which Sean and his wife are the sole shareholders and directors. The purchase price is significantly below market valuation of the property.

**Advise Anthony.**

#### Question 2

Sven lends money to Kym. Kym forges the signature of her husband, Augustus, to the mortgage documents. Sven lodges a caveat to protect the mortgage. He is then informed by Augustus that the mortgage is a fraud. Sven proceeds to register the mortgage. When the payments on the mortgage are not made, he seeks possession of the secured property.

**Is Sven entitled to seek possession of the secured property?**