problem 2

George

The question of whether George has a claim to Utopia is dependent on the relationship between Anne and Beatrice – whether it was a joint tenancy or a tenancy in common. If it was a joint tenancy then under the principle of jus accrescendi, Anne would survive to the whole and George would not have a claim. If it was a tenancy in common, then A could devise her property in accordance with RPA ss 163 and 165.

Under the Torrens system the position of co-ownership is not settled, however in the rare circumstance that parties are registered as 'joint proprietors' without detail of the relationship, it is deemed to be a joint tenancy – RPA s 74.

This presumption, however, can presumably be rebutted (though the textbook provides no authority). At equity, A and B would be regarded as tenants in common because of their unequal contributions to the purchase price. If they were business partners, the classification of tenants in common would be strengthened. It is not clear whether buying Utopia was a business venture. The fact that A and B are not living there would support that conjecture. In any event, the drastically differing contributions (30% and 70%) give a very strong rebuttal to the presumption of a joint tenancy. Therefore, as the relationship is a tenancy in common, George could succeed to A's 30% share.

Beatrice v Frederick

It is very likely that Beatrice would succeed in getting Frederick off Utopia, as it is highly unlikely that it would be found that F was the holder of an easement.

Firstly, no easement was registered to create a legal easement or enforceable right, and there was no valid and binding agreement in writing which would give rise to an equitable easement. Further to this, the doctrine of part performance could not be used to allege a contract sufficient to create an equitable right because it would not create a right recognisable at law. This is because the arrangement between A&B and F does not fulfil the criteria for an easement in Riley v Pentilla and Re Ellenborough Park.

Firstly, it is not stated where F's own land is and thus no connection between the tenements can be established. Secondly, the arrangement was for the personal benefit of F and not for any business activities and therefore cannot be classified as an easement. Furthermore the agreement was not specific or precise, and was vague and imprecise and therefore cannot form the subject matter of a deed or be regarded as an easement (Re Ellenborough Park)

Therefore, this arrangement was a licence, and as F gave no consideration, it is a bare licence. B may thus withdraw her permission but in order to avoid committing the tort of

conversion she must allow F reasonable time to collect his belongings. After a reasonable time, if F remains, he will be a trespasser and can be removed by reasonable force McPhail v Persons Names Unknown.

F may be able to bring an action in estoppel, however depending on the criteria used (which vary) it is likely that this action will fail.

B did induce F to adopt an assumption, but if, as in Waltons Stores v Maher, it is necessary to have or to assume that one has a legal relationship, the action would fail. Moreover, in Je Maintiendrai v Quaglia, 'substantial' detrimental reliance was required before the representing party was estopped from resiling from the induced assumption. Detriment is evaluated as at the date of purported resilement (if resilement was permitted) and F would have suffered perhaps slight detriment from the amount of his purchases totalling 7000 dollars. These purchases, however would not be sufficient to establish substantial detrimental reliance as they could be used and enjoyed elsewhere (in nature reserves). Furthermore, these purchases can be explained by an interest in or enthusiasm for koala watching which may be totally independent from the representation made by B.

In any event, the detriment would most likely not be substantial enough for equity to force a continuing relationship between the parties or to compensate F, as he can continue to use the equipment elsewhere.

Beatrice v Diana

The two interests that Diana has in the corner and in the access road are described as 'agreed upon'. They are thus presumably not registered or recorded in writing and thus they are not enforceable legally under the Torrens system or in equity.

It is possible that D's interest in the corner is a lease, and if this lease were for less than a year and took effect in possession, then it would be binding on B – s 119 and s 69(h) of RPA.

Depending on whether D can be described as having exclusive possession of the corner or not, this agreement could be a lease (Radaich v Smith). It is not settled amongst academic commentators whether rent must be paid for this agreement to be characterised as a lease. The position is therefore quite uncertain. Most likely however, given that the time of determination was not certain at the time of creation, and as no rent is paid, this cannot be a fixed term or periodic lease. Rather, it is a tenancy at will (Turner v York Motors) and is determinable at any time. Furthermore, if this was an easement or licence as D's possession was found not to be exclusive possession it would not be enforceable and would still be revocable at will. As no consideration was given by D, she would not be entitled to any damages.

As for D's interest in the road, this meets the criteria for easements in Riley v Pentilla, as the tenements have sufficient connection (neighbours), the tenements are separately owned,

the interest is specific and precise and there is accommodation of the dominant tenement. Although this is not strictly for the benefit of the lands it is to accommodate business (hosting baseball games and admitting spectators) and so is a valid easement in accordance with Moody v Steggles and Copeland v Greenhalf.

As previously stated however, both of these interests fall down on formalities. They are not legal unless registered and there seems to be no written agreement which would fulfil the criteria in Walsh v Lonsdale.

It is possible that D could use the doctrine of part performance as she did perform unequivocal acts establishing the road and installing stands in accordance with the alleged agreement (Prough v Nettleton)

However on normal contract principles, the alleged contract would be unenforceable: in fact there is no contract as D did not provide valuable consideration.

As for the issue of the stands, it is necessary to determine whether they were fixtures, and if so, whether D is entitled to remove them.

As the stands were on the land only by their own weight they are prima facie not fixtures, and can be removed. This presumption extends to objects embedded in the soil, which the poles supporting the stands were This situation is also directly analogous to Ewles v Maw, where a barn which was attached by wooden upright poles was found not to be a fixture. It is necessary to consider all of the circumstances (Palumberi) and as the stands were not brought to benefit the real estate but to benefit D personally (business), this strengthens the presumption they are not fixtures and thus she can remove them. Furthermore, removal would not destroy attached property (Metal Manufacturers).

The fact that D intended to pour concrete and thus may have intended that the stands be permanently affixed, is only one factor (Eon Metals) and is outweighed by the other factors that indicate that the stands are not fixtures and that B cannot keep them.

If they were fixtures, reasonable time is allowed for tenants at will to remove fixtures, so D could remove them within this time after tenancy was determined (Smith v City Petroleum).

Beatrice v Charles

It is likely that B will not be able to evict C. This arrangement could be an easement if the sporting equipment was for C's conduct of a business. It fulfills the other criteria discussed in relation to D. It is not enforceable at law as not registered and is also not enforceable at equity under Walsh v Lonsdale. The contract may, however, be enforceable under the doctrine of part performance which operated under LPA s 26(2). Unlike D, C provided valuable consideration of his work on the land and also undertook unequivocal acts in

relation to the land which were consistent with the existence of the alleged contract (Brough v Nettleton, Regent v Millett)

He could also support a claim in promissory estoppel more successfully than F as he thought there was a legal relationship (Walton's). And further suffered substantial detriment if forced to remove the shed, including his labour invested into it.

In conclusion, B would most likely succeed against F, succeed in evicting D, would not be able to keep the stands, and fail in evicting C. And G would succeed to A's 30% share.

Problem 3

Trudy v Sue

Trudy is presumably suing for trespass to goods or conversion, both of which require that the plaintiff has previously had possession of the chattels in question.

The bees would most likely be classed as ferrae naturae. Even though bees may have previously returned to Trudy's apiary, it is unlikely they would be classed as domitae naturae and imputed with the desire and ability to return to their owner if they escaped. As the bees are ferrae naturae, the first person to capture them and reduce them into possession is their owner.

In this case T had not done all that was possible to reduce the bees into possession (Young v Hitchens) except for having an apiary. On the other hand S performed a better possessory action in consideration of all the circumstances (The Tubantia) by 'enticing' them into the apiary. It is difficult to conceive of an action of possession more efficient or more decisive than that one in the context, so S can be regarded as having the best possessory title (Tubantia) and thus cannot be sued for trespass or conversion as T never possessed the bees. S has exercised the requisite level of custody by having them in her apiary and, also, of intention to control - to reiterate, unlike T.

Therefore T cannot maintain an action.

Ulrich v Sue

Ulrich was a tenant under an oral fixed term lease. This lease would not be enforceable at law or equity but the doctrine of fixtures still applies to determine whether Ulrich can take the apiaries at the conclusion of his tenancy.

It is necessary to determine whether the apiaries were fixtures or not. Given the apiries are fastened (annexed) to the land, this gives rise to the presumption that they are fixtures.

The fact that only some are properly fixed is relevant, however even a light degree of annexation will suffice to give rise to the presumption that the apiaries are fixtures (Commissioner of Taxation v Metal Manufacturers).

It is necessary then to apply further tests to establish whether the presumptions can be rebutted. It is necessary to consider all the circumstances (Palumberi).

The fact that only some of the apiaries were strongly affixed may go towards supporting the presumption that they are fixtures, for to escape classification as a fixture it is necessary to show that annexation was 'absolutely necessary' (Re De Falre).

The fact that V could carry out his business for 10 years presumably without incident suggests that this affixation was not necessary.

Furthermore this situation can be compared with Re Starline Factory where joining machines were held to be fixtures in a furniture factory. Apiaries in the context of a bee farm for profit which is what some of Fortune has turned into (comprising all of U's share and some of T's) are directly equivalent to joinery machines in a furniture factory - they are absolutely integral to its operation. The joinery machines were found to be fixtures as they were affixed for better use and enjoyment of the property as a furniture factory. The same can be said of apiaries in this situation.

Furthermore, the presumption that the apiaries are fixtures is strengthened by the criteria suggested in Metal Manufacturers v Federal Commissioner of Taxation:

The removal of the apiaries could destroy the attached property, and therefore the presumption is corroborated. If the presumption was that the unbolted apiaries were not fixtures, the facts discussed above, including the contemplated use of the property as a bee farm and the damage caused by removal would most likely be sufficient to rebut that presumption, although the presumption that the apiaries are not fixtures would be supported by Reid v Smith which states it is unlikely (though not impossible) that a person with only a temporary interest in the real estate, like Ulrich, would annex something to benefit it (which would classify it as a fixture).

If the apiaries were found to be chattels, U could remove them. Even if they were fixtures, however, U could remove them within a reasonable time of tenancy determining (Smith v City Petroleum). After the tenancy terminated, U would still have to regard himself reasonably as a tenant (eg at will during the overholding period) which, consistent with the facts - U is not a tenant at sufferance, and they may have still been negotiating whether he would exercise the option to renew or not

Henry

Even though Victor did not ever purchase Forgotten, his possessory title is enforceable against all the world except the paramount title holder, William, or someone with a superior

(earlier) possessory title. It is possible to devise possessory title, though in 2009 Victor would not yet have gained the title of adverse possessor, as in South Australia it is necessary for 15 years to elapse before that occurs (Asher v Whitlock, Limitation of Actions Act s 4 and s 28).

Therefore the fact that only 14 years elapsed of Victor's possession means that he did not extinguish the fee simple right of William, to which Henry succeeds.

If Y and Y had taken possession immediately on Victor's death, meaning that the adverse possession was continuous, and Henry had returned later in 2010, then his title would have been extinguished and he would have had no further claim.

Therefore H may take possession of Forgotten.

He may also use the right of way in the air space over Vista as it is registered and binding on Trudy (though there does not seem to be any dispute about this).