Chapter 17: Co-Ownership and Priorities: The Defences Question

All books in this flagship series contain carefully selected substantial extracts from key cases, legislation, and academic debate, providing able students with a stand-alone resource. This chapter deals with the priority rules applicable where co-owned land is sold or mortgaged. It concentrates on overreaching. It is theorized that s 27(1) of the Law of the Property Act 1925 (LPA 1925) provides the basis of overreaching. Other theories include that the basis of overreaching lies in the doctrine of conversion and the trustees’ powers of disposition. The chapter considers the preconditions for overreaching to take place and the practical division that arises between trusts with one and two (or more) trustees. The chapter explores the contentious question of the effect on overreaching where a transaction constitutes an intra vires or ultra vires breach of trust and the protection available to purchasers in those circumstances where a breach of trust precludes overreaching.
17. Co-Ownership and Priorities: The Defences

Question