

SUMMARY PRINCIPLES OF FRAUD

- A person who acquires a RI (as owner or mortgagee) through fraud obtains a defeasible or impeachable title, that is, a title which may be set aside at the instance of the person defrauded (s42)
- In order for the RP's title to be set aside on the ground of fraud, the RP or his/her agent, must have been privy to the fraud (**Breskvar; Russo**)
- **Fraud committed by the person from whom the RP derived title, is irrelevant (**Breskvar v Wall**), unless the current RP or his/her agent was a party to that fraud, knew of it or wilfully shut his/her eyes to it (**Dejager**).**
- Fraud, ordinarily means that the guilty party dishonestly and wilfully violated or defeated the rights of a person entitled to an interest in land (**Assets**)
 - i.e. it is conduct which is dishonest or involves moral turpitude
- Fraud must defeat or diminish the rights of the alleged defrauded party (**Ferguson**)
- Fraud can consist of fraudulent misrepresentations (see **Loke yew v Port Suettenham**)
- Fraud may take the form of a fraudulent misrepresentation to the land titles office
 - For instance, by putting forward as genuine an instrument of transfer or mortgage that has been materially altered without authority, or which has been fraudulently signed
 - E.g. fraud if bank manager w/o permission from client adds another piece of land, as the land that is mortgaged
- The conduct of Thompson in **Bahr v Nicolay** can also amount to fraud (term in the contract that B had the right to re-purchase the land for fixed amount at end of lease).

Fraud exam answer structure

- In any exam q'n describe what indefeasibility and fraud is
- State in the exam q'n the conduct that is alleged to have occurred which may constitute fraud
- Was this alleged fraudulent conduct directly attributed to the RP (either as an owner or mortgagee) whose title is now sought to be impeached?
- If so, the fraud exception is established and that person's title is declared to be defeasible.
- If not, can fraud be brought home to the RP? This can occur, through the RP's actual knowledge of the fraud committed by the previous RP (as in **Bahr v Nicolay**) or can be brought home to the RP through his/her constructive knowledge, that is, if the registered proprietors suspicions were aroused and he/she abstained from making further inquiries for fear of learning the truth (**Dejager**).
- If not, was fraud committed by the RP's agent?
- If fraud could not be established under any of those particular heads, could not the impersonam exception apply?

CASES re immediate indefeasibility and fraud

Frazier v Walker - When the registered title holder has acted bona fide they obtain immediate indefeasibility even though the transaction by which they became registered was tainted by fraud.

Gibbs v Messier - deferred indefeasibility

Breskvar v Wall - CJ Barwick makes it clear, that reg'n will not be effected by a fraud that the RP has not personally been involved in. Void status of the void transfer did not affect the indefeasibility status of the 3rd party. If the grandson did not transfer his interest to the 3rd party (creating valid EI), the grandson's title would have been defeasible and deferred, because of his involvement in the actual fraud.

Vassos - Despite **Gibbs** not being expressly overruled, Hayne J said in the court of appeal again re-affirmed the immediate indefeasibility principle

2012: Immediate indefeasibility -

Martin and Sally are RPs. Intelfinance registered a mortgage. Upon registration of a mortgage the mortgagee acquires indefeasible title unless it fraudulently registered it or if transaction was tainted by fraud. At issue is