

# ANSWERING PRIORITY QUESTIONS

[ Plaintiff ] is claiming [ Interest ] against [ Defendant ] and their [ Interest ].

**\*\*Are they registered interests? \*\*Did registration heal void instrument? > s.63 → If NO = Void instrument \*\***

If reg > TORRENS

If both unreg. > GenLaw

Competing Priorities: **\*\*Who's interest is being challenged?? = X**

## STEP 1: Establish the INTERESTS + REGISTERED? CAVEATED?

### STEP 2: Torrens Methodology

**X** has immediate IndT unless **exception** applies > **s.68 TLA**; Fraser v Walker; Breskvar v Wall

**\*\*NOTE:** Differed IndT if fictitious transferee > Gibbs v Messer

Fraud	Prior ctf	Easements
Wrong description lease/licence	Reservation in grant	Mining
Adverse Possession lease/Agr. <5yrs	Unpaid Rates	Unreg

### STEP 3: APPLY Exception

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#### WAS THERE FRAUD? **s.68 TLA**

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1. **Type:** Against prior RP                      Against an Unreg. Proprietor                      Against the Registrar
2. Fraud NOT defined in **TLA** > ComLaw requires **actual** fraud [not equitable fraud] > Assets
3. **Notice** of unreg interest NOT fraud > **s.134 TLA**; Mills v Stockman  
Exceptions if...
  - a) "object to cheat a man" by "deliberate/dishonest trick to keep Reg. clear." > Waimiha; Loke Yew
  - b) had suspicions BUT didn't make inquiries > Assets; OR
  - c) conscious/wilful disregard of another's interest > Russo following Waimiha [NOTE: on its own NOT enough]
4. Must be **BEFORE** reg > Bahr v Nicolay (Wilson, Toohey JJ)  
**After** reg? → See *In Personam*  
→ FRAUD
5. Must be **sheeted home** to RP\*\* OR Agent > Assets                      **\*\*The one who registered**
  - a) RP personally liable? [Apply above to RP]
  - b) Fraud by **Agent**?

**\*\*Priority Rules (GenLaw + Torrens)\*\***