

A. General Concepts and Terminology

A leasehold interest is an interest granted by the registered proprietor of the fee simple to another person, which allows them exclusive possession of the land for a fixed or certain period. A tenant has both a contractual right and a proprietary interest.

A lease involves the grant of possession by the owner to another in consideration for a payment known as rent.

Terminology:

- Lessee = Tenant
- Lessor = Owner/Landlord
- Lease/Tenancy Agreement/Tenancy/Demise = The Agreement
- Demise = Create a Lease (verb)
- Sublease = New Lease granted to a third party
- Determine/expire = Ending of a Lease

B. Classification of Leases

There are four main different types of leases:

Fixed Term

- Has a fixed duration and will cease when the term expires.
- These are express agreements conferring a tenant exclusive possession for a fixed duration (may only be created expressly)
- Duration needs to be knowable or ascertainable at the time of the entering into the lease (e.g. 'when I give birth' or 'at the end of the war' are not ascertainable!!)

Periodic Tenancy

- A lease, which continues indefinitely from one period to another until determined by the giving of proper notice.
 - Periods are commonly for a week, month, or year

TOPIC 8 → LICENCES

A license is simple permission to occupy land (permission to use/be on). Simple permission does not give rise to a proprietary right (only a contractual right!). Therefore, licences are only enforceable against parties to the contract.

LEASES	CONTRACTUAL LICENCES
- Estate in Land (proprietary interest)	- Contractual right only (not proprietary)
- Enforceable against the world	- Enforceable only against parties to contract (privity of contract)
- Right to exclusive possession	- Right to occupy the land only
- Certainty of duration	- May be of certain or uncertain duration

A. Types of Licences

There are three main types of licences:

1. Bare licence

- a. An informal licence, which can be implied or expressly created. It does not grant any proprietary interest.
 - i. For example, you grant people a bare licence to enter your house when you invite them over for dinner. If a guest misbehaves you have the ability to revoke their licence.
- b. A gratuitous permission for which there is no consideration paid or no contractual terms developed around it
- c. Can be revoked at the absolute discretion of the grantor or licensor – they do not have to have good or reasonable grounds, they can just revoke whenever
- d. No remedies for this

TOPIC 9 → SERVITUDES/EASEMENTS

Easements don't grant possession (different from estates), but are still a proprietary right (enforceable against the world).

A. What is an Easement?

An easement is a right constituting a legal interest in land and benefiting one piece of land (the dominant tenement – DT) from the use of a restriction on the use (*short of taking possession*) of another person's land (the servient tenement – ST).

- Positive easements → DT has a right to do something with/on the ST
 - E.g. A right of access/way
- Negative easements → Law is very wary of creating these!
 - E.g. You cannot build higher than three stories

Easements cannot *require* a positive act. They must oblige no more than *sufferance* on the part of the owner of the burdened land.

B. Characteristics of an Easement:

An easement must meet the following 4 requirements from ***Re Ellenborough Park***:

1. There must be a DT and ST
 - a. DT = benefiting/beneficiary land & ST = burdened land
 - b. Easement must benefit the DT and not the public at large (no easements in gross)
 - i. Easement in gross will be said to be a mere personal licence
 - c. **PLA s 197** → deeming provision/small exception: don't need to specify (in the instrument creating the easement) the dominant tenement in respect of rights of way – essentially because of practicality, the land to be accessed is *deemed* to be the dominant tenement
 - d. **Water Act s 136** → Enables easements to be created without dominant tenements (similar deeming provision)

Lack of mortgagee consent

Section 88B TLA → If you do not gain their consent, mortgagee can seek to have an easement removed.

H. Easements and the Torrens System

Easements may be expressly granted or reserved in respect of Torrens System land

- **Section 72 TLA** → Easements can be notified on the certificate of title/register of land of the ST and DT
- **Section 42(2)(d) TLA** → Easements howsoever acquired are made an exception to indefeasibility under the Torrens System.
 - What this means, is that easements of this nature[^] are binding on all future purchasers of the ST, and will continue to run with the ST/burdened land whether registered or not
- Therefore, where easements are *not* registered, indefeasibility will mean the easement will not be enforceable against a registered proprietor of the land.

EXAM METHOD:

1. Does the right satisfy the characteristics of an easement (**substance**)?
 - a. Apply ***Re Ellenborough*** characteristics of an easement
2. Has the easement been properly created (**form**)?
 - a. Is it registered? If not – equitable easement?
3. Has the easement been extinguished or modified (**modification**)?
4. What is the scope of the easement; what rights does the easement actually confer (**scope**)?
 - a. Is the current use of the easement within its scope at the time it was created? Look to ***Westfield; Cargill*** to determine this (e.g. expression as expressed will determine scope, no extrinsic materials etc.)

A. Formalities for Passing/Transfer of an Interest in Land

The law imposes formal requirements for the transfer (or conveyance as it is known in GLL) of title.

General Law Land

- *Property Law Act:*
 - **Section 51** → All conveyances lie in grant (e.g. You can convey land, a mortgage, an easement, a grant – any interest in land etc.)
 - Convey can mean transfer, sell or grant!
 - **Section 52(1)** → All conveyances of land or any interest therein are void for the purposes of conveying or creating a legal estate unless made by deed
 - Essentially = if it's not in a deed, then it is of no effect
 - **Section 52(2)** → Exceptions to this:
 - (a) Assents by a personal representative;
 - (b) Disclaimers made in accordance with the provisions of any law relating to bankruptcy or insolvency;
 - (c) Surrenders by operation of law;
 - (d) Leases or tenancies or other assurances not required by law to be made in writing;
 - (d) Receipts not required by law to be under seal;
 - (f) Vesting orders of the Court or other competent authority;
 - Conveyances taking effect by operation of law.
 - **Section 53** → Requires deed to be in writing & signed by the grantor
 - **Sections 73 and 73A** → Deeds:
 - **Section 73** – must sign or 'place your mark' to execute a deed – sealing alone not sufficient
 - **Section 73A** – expressing a document to be sealed will take the place of a seal (must write signed, sealed and delivered in writing all deeds!)