

LAWS3112 – Law of Property B

Lecture Notes

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Lecture 1 – Introduction to the Torrens system and indefeasibility

- Title is right in relation to land – events/transaction/documents relevant to proving title
- Conveyancing prior to Torrens

- Feudal systems – feoffment with livery of seisin, lease and release
 - Title was derivative – validity of documents was crucial
 - Historical investigation of chain of title
- Problem: chain of title could date back hundreds of years
 - England reduced it to 60 years
 - Queensland reduced it to 30 years (s 237(1) PLA)
- Sir Robert Torrens was elected to SA Parliament and introduced first Torrens legislation in 1858

Key features of the Torrens system

- Certainty and ease of transactions
- Each grantee would become a fresh grantee from the Crown
- **Gibbs v Messer** – save trouble and expense of going behind the register, in order to investigate the history of their author's title
- **Breskvar v Wall** – not a system of registration of title but a system of title by registration. The title it certifies is not historical or derivative.
- **Bahr v Nicolay (No 2)** – indefeasibility is the foundation of the Torrens system of title
- **Frazer v Walker** – indefeasibility of title is a convenient description of the immunity from attack by adverse claims. The conception is central to the system of registration.
- Completeness – mirror, curtain and insurance principle

The Torrens system in Queensland

- Original legislation introduced in 1861
- Modern legislation – *Land Title Act 1994* (Qld)
 - QLD only has Torrens title, some other States still have some old system land
- Does not completely override the common law, but rather works alongside it
- PLA is also relevant
- Registrar (s 6) and registry/register (s 7)
- Responsibilities of the Registrar (ss 27-30)
- s 8(1) – a register may be kept in the form the Registrar considers appropriate
 - Computerized – documents stored in digital form after paper documents are used for purpose of registration
 - Australia-wide move towards entirely digital register and registration process
- The main 'interests' capable of registration are:
 - Transfer of a lot (eg. when a lot is sold)
 - Mortgage
 - Easement
 - Lease
 - Statutory covenant
- An 'interest' is recorded on the register through registration of the appropriate 'instrument' (eg. an instrument of transfer or mortgage)

- ss 173-174 – registration occurs when the Registrar records in the register the particulars necessary to identify the instrument
- s 37 – this creates an indefeasible title
- s 38 – an indefeasible title is the current particulars in the freehold land register about the lot
- s 177 – instruments affecting a lot must be registered in the order in which they are lodged
- s 11(1) – instruments must be executed by both the transferor/person creating interest AND transferee/person in whose favour the interest is created
- s 161 – must be executed correctly and sealed with company seal (company) or witnessed (individual)
- s 162 – obligations of a witness
- s 31 – once registered, an instrument forms part of the freehold land register
- s 181 – an instrument does not transfer or create an interest in a lot at law until it is registered
- s 176 – the registered instrument operates as a deed
- Indefeasibility is conferred by ss 184-185 LTA
- Immediate indefeasibility – occurs when the first transfer is registered
 - **Breskvar v Wall** – HCA confirmed that indefeasibility is immediate
 - Subsequent Qld cases have generally applied immediate indefeasibility
- Deferred indefeasibility – occurs when a second transfer is registered
- **Gibbs v Messer** – possible ‘fictitious person’ exception