

PART II- Freehold estates

TOPIC E: The doctrine of tenure and estates

The doctrine of tenure describes the way that land title is fragmented between the Crown and other owners. Under this doctrine, only the Crown has 'ultimate' or 'radical' title to land. As a result, we only have an estate or interest in the Crown's land- right of possession.

Doctrine of estates says that an estate is a thing separate to the land itself. The owner of an estate is not entitled to absolute ownership per se, but to 'seisen' (the right of possession at some time) for a specific duration, or to a specific extent.

Incorporeal hereditament

There are two types of estates; freehold and leasehold

1. Freehold estates

- Provide holders with ownership rights to exclude others, alienate or convey land- uncertain amount of time, personal property

1.1 Fee simple:

- o Owner is the registered proprietor of the land
- o Largest interest in land possible
- o Rights include use, alienation (can occur *inter vivos* or by testamentary disposition) and exclusion

1.2 Fee tail:

- o An estate of inheritance limited to lineal descendants or by a particular class (e.g. by gender), same rights as fee simple but limited to who can own it
- o These have been abolished in Australian jurisdictions (other than WA)

1.3 Life estate

- o A life estate is an estate measured by the life of a particular person (therefore lesser rights):
 - For the life of the grantee: "to B for life"
 - For the life of a third party (*pur autre vie*): "to B for the life of C"
 - If B passed away, as the estate was one of inheritance, the doctrine of occupancy states the first person to step onto the land after B's death was entitled to land *pur autre vie*
 - If B passed away but in the grant of estate stated "to B and B's heirs for the life of B", B's heirs were entitled to the land
- o Life estates imply that a fee simple estate in land can be divided between the life estate, and the estate that exists after the life estate has ended: reversion and remainder
- o Life estates can be established either *inter vivos* (during lifetime), or as a testamentary disposition (via will)
- o Rights to possession, receipt of income (rent) and disposition (wills)
- o Have a number of responsibilities dictated by the doctrine of waste