

LAND LAW EXAM NOTES

FUNDAMENTAL CONCEPTS IN LAND LAW

[Moodle extract 1.1-1.7]

***Milipurn v Nabalco* identifies 3 indicia of property:**

1. Right to use or enjoy
2. Right to alienate (NB: some forms by statute are incapable of assignment (e.g. non-assignable leases) but generally correct to say they must be assignable: ***R v Toohey; Ex Parte Meneling Station Pty Ltd***)
3. Right to exclude

POSSESSION

- Possession is good against all but the rightful owner: ***Asher v Whitlock***
- Entitled to be in control of land and to use and occupy it

ADVERSE POSSESSION

If rightful owner does not come forward and assert their title in time prescribed, right is forever extinguished and possessory owner acquires an absolute title: ***Perry v Clissold***

Must demonstrate

- Actual possession
- Intention to possess
- Possessory unbroken chain/ limitation period – 12 years, ***s38 Limitation Act 1969 (NSW)***

RECOGNISED INTERESTS IN LAND

Numerous Clausus: the law only recognises a closed list of property rights these include:

- **Fee simple**: largest interest that anyone can have in land – entitles the owner to possession of the land for an indefinite period (subject only to government acquisition and regulation by planning and other laws).
- **Lease**: a time limited interest in land. Entitled to possession of land, to the exclusion of everyone, including the landlord.
 - Landlord keeps fee simple, but has carved out smaller interest
 - While the lease is running landlords interest is referred to as the 'reversion'
 - While terms of the lease will regulate how lessee uses the land, it is still an interest in land that belongs to the lessee
 - Can be sold or given away (assigned) by the lessee not landlord
 - Lessee can carve out smaller interest and create sublease
- **Mortgage**: a small interest in land that the owner of a fee simple, or lease, gives to another in return for money.
 - Mortgagee (usually a bank) is entitled to sell land if money is not paid back – will take what money they are owed and the rest goes to mortgagor
 - Includes contractual promise to repay all of the money borrowed, but better and more secure than mere contractual promise to repay as mortgagee can access specific piece of land to satisfy the debt (mortgagee = secured creditor)
 - Is an interest in land and can be sold by the person who owns it (the mortgagee)
- **Easement**: right to do something on someone else's land.
 - Always affects 2 pieces of land – land benefited and land burdened.
 - As property interests, easements 'run with the land' that is, whoever owns the benefited land can use the easement, and whoever owns the burdened land has to put up with their land being used.
- **Restrictive (or freehold covenants)**: a right to stop someone doing something on their land
 - Again, affects land benefited and land burdened
 - Covenants usually burden multiple parcels of land (i.e. residential subdivisions)

- **Profit a prendre:** the right to gather naturally occurring materials from another's land
- **Lien or charge:** a little interest in land equivalent to an amount of money owed to owner of lien. Is like a mortgage but there is no right to sell. If land is sold, the owner of lien has a right to be paid directly out of proceeds of sale.

PROPERTY V CONTRACTS

Contracts are only enforceable between the parties (in personam) to the contract (privity of contract), while property rights are enforceable against the world (in rem)

- Need to determine which rights are contractual and which are proprietary
- 1st step in purchase of land is a contract
- contracts do not transfer legal title, registration does this

WRITING REQUIREMENT

Contracts for sale of land must be in writing: **s54A Conveyancing Act 1919**

- Entire contract need not be in one formal document
- Question of whether there is an enforceable contract will depend on:
 - Completeness of agreement
 - Certainty of agreement
 - Intention to conclude a formal contract
 - And obviously the writing requirement
- Applies to all contracts relating to land (i.e. leases, easements, mortgages)
- If, when looking at the agreement, it is clear no interest in land was intended, writing is not required (i.e. licenses)

SPECIFIC PERFORMANCE

If there is offer and acceptance, the contract contains all of the essential terms, and it is in writing, it will generally be specifically enforceable.

LICENSES

Permission given by one person to another to do an act on licensor's land, which would otherwise constitute trespass

- Types: bare (no contract), contractual, coupled w/ proprietary interest
- Example: **King v David Allen** (*contract to place posters on wall w/ owner – owner sold land but did not include agreement in contract for sale – new owners refused to recognise existing arrangement*)
 - Held: Proprietary interests turn on characterisation of agreement

EQUITY AND LAND LAW

- Trusts always include property, either personal or real
- The client's legal rights or remedies are inadequate
 - Specific performance
 - Fiduciary relationships
- The client has not acquired any legal rights or remedies
 - Constructive trusts
 - Part performance
- The client could never acquire any legal rights or remedies
 - Beneficiaries under a trust

EQUITY, CONTRACT AND LAND LAW

- Contract must be complete, valid and enforceable
- If contract relates to land it must be in writing (s54A)
- A specifically enforceable contract to give someone fee simple will give the purchaser an equitable interest fee simple: ***Bunny industries*** (Principle applies in all interests in land)
 - i.e. A specifically enforceable agreement to grant someone a lease will give them an equitable lease: ***Walsh v Lonsdale***
- Equity regards done what ought to be done
- Equitable interest is a property right, not a contractual right

‘IN WRITING’ s54A v s23C(1)(c)

- **s54A:** If a vendor has solemnly promised to transfer title to land, the promise is in a written legally enforceable contract (s54A), then because equity thinks the vendor *should* transfer the legal title to the land, equity will treat the equitable title as already having moved to the purchaser.
- **s23C(1)(c):** This is the actual disposition of B’s equitable interest. It is not the contractual promise to give C the interest at a later date, it is the actual, “right here, right now, I am disposing of my equitable interest to you” and it needs to be in writing in accordance with s23C(1)(c) (i.e. transferring/assigning legal interest)

LEGISLATION

54A Conveyancing Act 1919 - Contracts for sale etc of land to be in writing

No action or proceedings may be brought upon any contract for the sale or other disposition of land or any interest in land, unless the agreement upon which such action or proceedings is brought, or some memorandum or note thereof, **is in writing**, and **signed by the party** to be charged or by some other person thereunto lawfully authorised by the party to be charged.

23C Conveyancing Act 1919 - Instruments required to be in writing

(1) Subject to the provisions of this Act with respect to the creation of interests in land by parol:

- (a) no interest in land can be created or disposed of except by writing signed by the person creating or conveying the same, or by the person’s agent thereunto lawfully authorised in writing, or by will, or by operation of law,
- (b) a declaration of trust respecting any land or any interest therein must be manifested and proved by some writing signed by some person who is able to declare such trust or by the person’s will,
- (c) a disposition of an equitable interest or trust subsisting at the time of the disposition, must be in writing signed by the person disposing of the same or by the person’s will, or by the person’s agent thereunto lawfully authorised in writing.

(2) This section does not affect the creation or operation of resulting, implied, or constructive trusts.