

LAWS204 – Land Law

Exam Notes

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LAWS 204 – Land Law

TOPIC 1

Core Torrens Concepts and an Introduction to Indefeasibility of Torrens Title

Lecture 1 Notes

Registration of Property Rights

The Torrens System

- The Torrens system is a system of title by registration, not registration of title. The register is conclusive proof of the current Registered Proprietors (RP's) title (subject to exceptions)
 - Where the current RP derived title through the RP's own fraud or fraud of the RP's agent, the RP still has good title but is subject to being divested at the suit of the former RP
 - A former RP is indemnified for loss, unless the loss is caused or substantially contributed to by neglect, fraud or willful default of the RP or the RP's solicitor or agent (acting within the scope of their authority)

Terminology

- Torrens Legislation: In Victoria: Transfer of Land Act 1958 (TLA)
- Torrens land: A parcel of land under the operation of the TLA (in Victoria) or equivalent statute (in other jurisdictions that have Torrens legislation)
 - All land alienated by the Crown since 1862 (when the first TLA was enacted in Victoria) is Torrens land.
 - Land alienated before 1862 may be brought under the TLA so as to become Torrens land.
- Folio of the Register: The electronic data kept by the Registrar of Titles under the TLA pertaining to a particular parcel of Torrens land
 - In previous paper-based system, the Registrar of Titles kept a paper Certificate of Title with this data
- Certificate of Title: A paper certificate setting out the data for a folio of the Register, to be held by the registered proprietor with the right to deal with the land and produced with the next dealing as evidence of their right to deal

- In previous paper-based system, this document was referred to as the Duplicate Certificate of Title because the Original Certificate of Title was retained by the Registrar of titles
- Registered proprietor (RP): Person recorded for the time being in the Register as the owner of an estate or interest in Torrens Land

Title by Registration (Ie Torrens System)

- Legal title to an estate or interest in Torrens land (subject to some exceptions) is effectively
 - Divested from the RP transferring an estate or interest; and
 - Vested in the transferee upon the Registrar of Titles registering the transferee as the new RP
- Legal title to an estate or interest in Torrens land at any point in time is proved simply by searching the folio of the Register for that land
- Section 40: Title by Registration
 - Subject to this Act no instrument until registered as in this Act provided shall be effectual to create vary extinguish or pass any estate or interest or encumbrance in on or over any land under the operation of this Act, but upon registration the estate or interest or encumbrance shall be created varied extinguished or pass in the manner and subject to the covenants and conditions specified in the instrument or by this Act prescribed or declared to be implied in instruments of a like nature.

Indefeasibility of Title

- The only circumstance in which a former RP can set aside the registered title of a current RP and so be restored on the register as RP, is where registration of the current RP was obtained by actual fraud on the current RP's part or by his or her agent
- No other principle of law or equity applies to defeat the statutory title of a RP
- Section 42(1)
 - Notwithstanding the existence in any other person of any estate or interest (whether derived by grant from Her Majesty or otherwise) which but for this Act might be held to be paramount or to have priority, the registered proprietor of land shall, except in case of fraud, hold such land subject to such encumbrances as are recorded on the relevant folio of the Register but absolutely free from all other encumbrances whatsoever.

Statutory Indemnity and Compensation

- Allocation of risk:
 - Purchasers have a high degree of protection under the Torrens System
 - Current RPs bear the risk of being disentitled through error, fraud or accident
 - Example: Mary is RP of Blackacre. Joan sells Blackacre to Peter pretending she is Mary and forges Mary's signature

on the transfer. Peter is registered as RP of Blackacre through no fraud of his own.

- State indemnifies person incurring loss by fraudulent or erroneous entries in the register or by the operation of the rules of the Torrens System

Principles

- **The Mirror Principle:** The register mirrors accurately and completely the current state of the title
 - **Section 41:** No folio of the Register under this Act shall be impeached or defeasible by reasons or on account of any informality or irregularity in any application or instrument or in any proceedings previous to the creation of the folio or the making of any recording on it; and every folio of the Register shall be received in all courts as evidence of the particulars recorded in it and all the recordings of those particulars in the Register, and shall be conclusive evidence that the person named in the folio as the proprietor of, or having any estate or interest in, or power to appoint or dispose of, the land described in the folio is seised or possessed of that estate or interest or has that power.
- **The Curtain Principle:** Purchasers can rely on the register and need not investigate how the grantor acquired her registered title
 - **Section 43:** Except in the case of fraud no person contracting or dealing with or taking or proposing to take a transfer from the registered proprietor of any land shall be required or in any manner concerned to inquire or ascertain the circumstances under or the consideration for which such proprietor or any previous proprietor thereof was registered, or to see to the application of any purchase or consideration money, or shall be affected by notice actual or constructive of any trust or unregistered interest, any rule of law or equity to the contrary notwithstanding; and the knowledge that any such trust or unregistered interest is in existence shall not of itself be imputed as fraud.
- **The Insurance Principle:** The State indemnifies loss through error or fraud on the register or a rule of the system
 - S.110(1) – Indemnity given to anyone sustaining loss (whether by deprivation of land or otherwise) by reason of:
 - Land being brought under the Act;
 - Amendments to the Register;
 - Errors omissions or misdescriptions in the Register;
 - Loss or destruction of documents at the titles office;
 - Omissions, mistakes or misfeasance by the Registrar;
 - Exercise of power by the Registrar (other than loss to a person who is party or privy to the application for the exercise of that power)

Priority of Unregistered Property Rights

- Equitable property rights cannot be registered in a Torrens system.
- Section 34 – registered dealings entitled to priority in order of time of lodgment for registration

Protection of Unregistered Property Rights (Caveats)

- A person claiming an unregistered property right to Torrens land can lodge a caveat to protect it. The caveat must be signed by the caveator (or her or his agent) and be supported by a declaration that the caveator has the right claimed.
- Three issues:
 - The effect of a caveat
 - The right to lodge a caveat
 - Compensation for lodging a caveat improperly

Effects of a Caveat

- Not the same as registration
- Doesn't change the nature of the right it protects nor does it give it priority over older rights.
- Do two things:
 - Provide people searching the register with notice of unregistered rights
 - Prevent the registration of conflicting rights
- When a caveat is lodged, the Registrar will notify the registered proprietors, who can require the caveator to take legal action to establish the existence of the unregistered right.

Rights to Lodge a Caveat

- A caveat can be lodged by anyone claiming an unregistered property right to land in the Torrens system
- People without unregistered property rights:
 - Three main groups of people entitled to lodge caveats even though they do not have unregistered property rights to land:
 - Registrars
 - Can lodge to protect others
 - Registered proprietors
 - Can lodge to protect her or his registered right, if there is a danger that it might be destroyed or impaired by improper dealings
 - The settlors of trusts
- People with unregistered property rights
 - Two main situations in which people might not be allowed to lodge caveats to protect their unregistered property rights:
 - The right was once protected by a caveat that was removed from the register
 - The right is a "mere equity" to recover land in Victoria

Compensation for Lodging a Caveat Improperly

- A person who lodges a caveat without reasonable cause can be required to pay compensation for any losses caused by that caveat.
- Damages could be considerable, especially if the caveat delayed or prevented a major real estate development project.

Priority between Unregistered Property Rights

Legal Rights

- People can have unregistered legal rights to possess land in a Torrens system, either adversely or under an informal lease
 - Adverse possession
 - Since adverse possessors do not give value for their rights, they cannot use the defence of *bona fide* purchase for value to defeat older equitable property rights
 - Informal leases
 - Most unregistered leases are equitable, created by contracts to grant leases.
 - However, tenants can have unregistered legal leases created informally.

Equitable Rights

- When two unregistered rights to Torrens land are in conflict, the dispute is resolved according to the normal priority rules of equity
- Normally, the older right will have priority over the newer right
- However, if the newer right was acquired for value, in good faith, and without notice of the older right, there is a possibility that the older right will be postponed to the newer right

Caveats

- Caveats can affect the priorities of conflicting unregistered rights in two ways
 - A caveat can provide notice of the existence of a right
 - The failure to lodge a caveat might be regarded as a reason for postponing an older equitable property right to a newer one

Legislation to Note: Transfer of Land Act 1958

Section 40: Instruments not effectual until registered

- (1) Subject to this Act no instrument until registered as in this Act provided shall be effectual to create vary extinguish or pass any estate or interest or encumbrance in on or over any land under the operation of this Act, but upon registration the estate or interest or encumbrance shall be created varied extinguished or pass in the manner and subject to the covenants and conditions specified in the instrument or by this Act prescribed or declared to be implied in instruments of a like nature.