

Indefeasibility

- **Equitable property interest in land:** Finalised **contractual agreement with NO registration** (*exchanged copies?*)
 - offer/acceptance/consideration/certainty/completeness/intention
 - **complies with formalities under s 54A Conveyancing Act 1919 (NSW) – writing/signed**
 - alternatively, where there are **sufficient acts of part performance** that are specifically enforceable - otherwise seen as a gift (*Walsh v Lonsdale*)
 - **RESULT:** legally binding contract which will in turn create a specifically enforceable equitable interest in land
- **Legal property interest in land (settlement):** As per *s 42 of the Real Property Act 1900 (NSW)*, the torrens system provides legal indefeasible, or undefeatable title, according to registration of an interest in land.
 - **RESULT:** subject to anything that appears on the register (e.g. *leases, easements, other estates*), tho will generally prevail over any unregistered interest, regardless of notice or constructive knowledge s 43 RPA
 - **Exception: Mercantile Credits:** where a **registered lease has expired, an option to renew** (covenant) will trump later legal interests.

Exceptions to indefeasibility:

RP as a volunteer:

- Volunteers, via a gift or Will (*inherited property*) do not give valuable consideration for their title.
- However, prima facie, in NSW, once a **volunteer registers this is enough for indefeasibility** (*Bogdanovic*) though, in *Cassegrain*, the court suggest NSW is moving more towards Vic's approach of restricting indefeasibility to purchasers for value, though this is not yet accepted.
 - **Fact analogy:** In *Bogdanovic*, couple occupied a house as tenants, lessor died and left estate in his will to son. Son, as a volunteer was held to be given indefeasible title making him RP of land.

Fraud on the part of the RP – Against registered proprietor: purchaser/mortgagor

- According to *Frazar and Breskvar*, indefeasibly will exist even where registered under a void instrument.
- However, *s 42 of the RPA and Russo*, note that where fraud is brought home to the RP, then their legal interest becomes defeasible, allowing the previous registered owner to 'set it aside' by making a claim under their mere equity interest (earlier legal)
 - (*including volunteer indef – cassegrain*)

TEST:

1. *Russo* defines fraudulent activity to be **actions of dishonesty OR moral turpitude or wickedness to** deprive/infringe on an interest in land
2.*buy notes for more*