

LAND LAW NOTES

Fundamental Concepts of Land Law.....	2
Native Title.....	5
Indefeasibility.....	7
Exceptions to Indefeasibility.....	9
Competing Equitable Interests.....	15
Co-ownership.....	16
Leases.....	20
Lease Remedies.....	28
Mortgages.....	32
Easements.....	35
Freehold Covenants.....	38

LAND LAW EXAM NOTES

FUNDAMENTAL CONCEPTS OF LAND LAW

Possession

- If someone has 'possession' it means that they are entitled to be in control of land and to use and occupy it
- Adverse possession is where someone is in possession of land, adverse to the rights of the plaintiff. The time limit to bring an action to recover land is 12 years.

Numerus Clausus Principle

- Numerous clausus or 'closed list' principle...there is a finite list of established interests in property, landowners are not at liberty to customise land rights to meet their own needs
- Property law is highly prescriptive: The system of rights in rem is a strictly circumscribed one, with a tight regulatory regime governing the range and form of available rights over land
- But, parties may agree to bind themselves contractually to any type of arrangement of rights and responsibilities, as contract law allows parties the 'fullest latitude' when formulating rights between themselves over real and personal property
- Small number of interests in land that are recognised as property. Fall into three categories...
 - **Estate**: Fee simple, life interest and leasehold
 - **Servitude**: Easements, profits and restrictive covenants
 - **Security interest**: Mortgages and other charges
- Accordingly, numerous clausus principle prevents rights that do not fit neatly into the recognised categories of corporeal and incorporeal hereditaments from entering the pantheon of proprietary interests

Fee Simple	Largest Interest. Entitles owner to possession of the land for an indefinite period, subject only to government acquisition and regulation by planning and other laws.
Life Interest	Right that only lasts for the lifetime of the person.
Lease	Time limited interest in land. Possession by lessee/tenant to the exclusion of everyone else. Landlord's interest, whilst lease is running, is referred to as 'The Reversion'.
Mortgage	Owner of a fee simple/lease (mortgagor) carves out interest in their land and gives it to mortgagee in exchange for money. The mortgagee is entitled to sell land if not given money, take what they require and give the rest to the owner. Referred to as secured creditors.
Lien or Charge	Interest in land equivalent to amount of money owed to owner of lien. Does not include the right to sell land. If land is sold, owner of the lien has a right to be paid directly out of the proceeds of the sale.

Easement	Right to do something on someone else's land. Easements always affect two pieces of land- the dominant tenement and the servient tenement. Easements 'run with the land' – whoever owns the benefitted land can use the easement and whoever owns the burdened land has to accept their land being used
Restrictive (Freehold) Covenant	Right to stop someone doing something on their land
Profit Prendre	Right to gather naturally occurring materials from another's land

Property v Contract

- The fundamental difference between contract rights and property rights is that contracts are only enforceable between the parties to the contract (privity of contract) – (*King v David Allen & Sons Billposting Ltd*)
- While property rights are enforceable 'against the world' or in property language, *in rem*.

Doctrine of Fixtures

- The doctrine of fixtures provides that personal property may become real property if it is annexed (attached) to land
- In other words, if a chattel is affixed to or placed on land, it may become a part of the land, and even transfer ownership (to the owner of that land, without compensation)
- This means that the doctrine resolves disputes contesting title, in the absence of an agreement

Test for Fixtures

- In *Belgrave Nominees v Barlin-Scott Air-conditioning* the court was required to determine whether an air-conditioning plant was a fixture, and ruled as follows...In determining whether an object has become a fixture, one employs a two-step process examining...
 - 1) The degree of annexation
 - 2) The intention of the person who affixed the chattel

How does Contracts connect with Land Law?

- Contracts for the sale of land must be in writing → **S54A Conveyancing Act 1919**
- Residential contracts for sale are usually the standard Law Society blue form. These contracts can be altered.
- It is an offence to advertise residential property for sale without a prepared contract available for inspection (to avoid 'gazumping' - selling to a higher bidder)
- For land, exchange of contracts is the standard way of showing intention to be legally bound
- **S54A** applies to all contract that relate to land.