

Contents

Topic 2 – Indefeasibility and exceptions	7
Torrens title.....	7
The Register	7
Certificate of title	7
Registration.....	7
Order of registration	7
Indefeasibility.....	8
S 42(1) RPA	8
S 45(2) RPA	8
Immediate indefeasibility:	8
Volunteers	10
Ambit of indefeasibility	11
When searching the register	11
Exceptions to indefeasibility	11
Fraud	11
S 42(1) RPA	12
S 43 RPA – Definition – Includes actual and constructive notice	12
Actual Fraud	12
Agency and fraud	13
Is knowledge of fraud, fraud?	15
When does the fraud have to have occurred?	16
Volunteers and fraud	16
Statutory exceptions to indefeasibility	17
In personam exceptions	17
Registrars power of correction	19
Topic 3 – Common Law priorities	19
What is equity?.....	19
Creation of trusts	19
Creating an interest.....	20
Deeds	20
S 23B Conveyancing Act 1919	20
S 38 Signature and attestation	20
Equitable interests	21
S 23C Conveyancing Act 1919	22

S 23D Conveyancing Act 1919 – Short term lease exception.....	22
Part Performance	22
Equitable mortgage by deposit of title deeds	24
Contracts to grant / create an interest.....	25
S 54 A – Creation of interests in land must be in writing and signed.....	25
What is specific performance?.....	25
Enforcing an equitable interest – Doctrine in Lysaught v Edwards	26
Common Law Priority Rules	26
Categories of priority contests:.....	27
Equitable interests	28
Prior Legal v Later Legal	28
Prior Legal v subsequent equitable	28
Prior Equitable vs Subsequent equitable	30
Notice – Conveyancing Act s 164	31
Equitable v Equitable	32
Mere Equities	34
Topic 4: Caveats and Unregistered Interests.....	36
Unregistered interests	36
Caveats and Priorities between unregistered interests.....	38
Caveatable interests – s 74(F)	39
Formalities of caveats	39
Powers of the Registrar General with respect to formalities:.....	39
Effect of a caveat	39
Removal of caveats	40
Other Provisions	40
Priorities and caveats.....	41
Consider all of the facts and circumstances	41
The Relevance of failure to caveat	44
- The Relevance of notice.....	44
Is there any justification for failure to caveat?	45
Did they equitable interest holder take any other protective action?	47
Is caveating a routine practice in the jurisdiction?	48
Topic 4: Section 43A	48
S 43A Interpretations	49
The Hardie-Taylor view	49
The Kitto view.....	49

S 43A requirements – Summary cheat sheet	49
S 43A successive effect.....	51
S 43A Requirements	52
S 43A Requirements – Other considerations	58
Topic 5 – Mortgages	60
Nature of Mortgages	60
Old System Mortgage.....	60
Torrens Title Mortgage	61
Indefeasibility and Mortgages	62
<i>S 56C RPA</i>	63
What is the reach of indefeasibility?	63
All monies mortgages.....	64
Rights and remedies of the mortgagee – Power of sale	66
Standard of care - Power of sale.....	66
Conduct of the power of sale.....	68
Conduct of the power of sale.....	69
Priorities and Tacking.....	70
Topic 6 – Co-Ownership	72
Joint Tenancy.....	72
Tenants in common (TiC)	73
Creation of co-ownership.....	73
At Law	74
At Equity	74
<i>Delehunt v Carmody (1986) 161 CLR 464</i>	75
Severance	75
1. Unilateral act by one joint tenant.....	76
2. By mutual agreement.....	78
3. Course of dealing by JT.....	78
4. By court order.....	79
5. Unlawful killing.....	79
6. Bankruptcy.....	79
Ending Co-ownership	79
By Action of the parties.....	79
By order for sale or partition by the court	80
Rights between co-owners (inter se).....	80
Right to possess and / or occupation fee	80

Ambit of indefeasibility

- Registration will not make something out of something it is not.
 - Eg. Just because something is registered as an easement, if it doesn't meet the criteria of an easement, and it is not in fact an easement, registration won't make it an easement
 - Therefore you can't have indefeasibility of something that doesn't exist.
- An application can be brought to the Supreme Court to have the interest declared invalid and it would then be removed from the register.
- Eg Mortgages:
 - Indefeasibility will only extend so far as what is recorded on the register

When searching the register

- S 42(1) the registered proprietor is ... "subject to such other estates and interests and such entries, if any, as are recorded in that folio"
- You do not need to go further than the register when searching for other interests
- However, if the register refers to other documents, then it is expected that your search will extend so far as the other documents referred to in the register,

Bursill v Berger

→ Required to search only so far as documents that are referred to on the register

- Berger was the neighbour of Bursill (Ivy case)
- Register mentioned that an easement existed on Bursill's land to the favour of Berger
- The register noted that the easement was created by a previous transfer (no. 7922) between two previous owners.
- When examining the actual transfer document (no 7922) it actually allows more than a mere easement – It allowed building along the easement, as long as it was 12 ft from the ground
- Bursill claimed the easement gave him rights to the exclusive use of that part, to rebuild etc.
- Berger objected.

HELD

- Berger could only be affected by the transfer if it was sufficiently notified on the register
- Question was whether the rights were sufficiently displayed on the register by reference to the transfer document
- Upon seeing reference to document, a purchaser is obliged to search it.
- Berger was held to have constructive notice as he failed to search the document that was referred to on the register

Exceptions to indefeasibility

- Fraud – s 42(1) and s 43 RPA
- Statutory exceptions in s 42(1)(a)-(d)
- In personam exception

Fraud