

ANSWER GUIDES

Land Law

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INTERESTS IN LAND

STEP 1: Consider which system of **LAND REGISTRATION** applies [pg 3, notes]

○ **GENERAL LAW LAND**

- Land issued **before 1862** and had **NOT been converted**
- Legislation = **Property Law Act 1958 (Vic)**
- Vendor has to show a number of conveyances and transfers leading to he/she owning the land (chain of title)
 - One must search title back for 30 years: **s 44(1) of the PLA 1958 (Vic)**

or

○ **TORRENS TITLE LAND**

- Land issued **after 1862** or land issued **before 1862** that has been converted into Torrens land (evidenced by certificate of title)
- Legislation = **Transfer of Land Act 1958 (Vic)**
- All the vendor must to do prove good title is show a title is his/her name

- **IN EXAM:** Given the facts mention there is a deed, plus a chain of title, the General Land Law system applies.

Or

- Given there is no mention of a chain of title, plus the land is issues post 1862 the Torrens Title Land system applies.

STEP 2: Identify whether the party's interest in land are **LEGAL** or **EQUITABLE** [pg 5, notes]

○ **LEGAL INTERESTS** must either be *executed by deed or registered on the title*

▪ **EXAMPLES:**

- Fee simple: absolute ownership – highest form.
- Life estate: ownership of land for the duration of a person's life.

Different types of interests



BOUNDARIES & ENCROACHMENTS

Encroachments = intrusion on persons property

STEP 1: Boundaries of Land Ownership [pg 7, notes]

- Ordinarily **LAND BOUNDARIES** will be defined in accordance with specific **MEASUREMENTS** shown on the **CERTIFICATE OF TITLE**
 - o Ownership is only enforceable **WITHIN** the specific dimensions of that land

STEP 2: Consider whether the land ABUTS WATER [pg 7, notes]

- o Remember **COMMON LAW RIPARIAN RIGHTS** to water have been **EXTINGUISHED** but **STATUTORY RIGHTS** to access and use water may be granted in accordance with relevant statutory framework
- o **RULE:** where someone's property abuts water, the water mark is the boundary

STEP 2.1[pg 7, notes]

- If the land **ABUTS TIDAL WATERS** consider where the boundary line will be.
- The boundary line for land abutting the **SEASHORE**, whether Torrens or old title is to be the **MEAN HIGH WATER MARK: *A-G (UK) v Chambers (1854) 4 De GM & G 206***
 - o Unless there is a **CONTRARY INTENTION**
 - Such as an express boundary set out within the certificate of title
 - o Land that exists beyond the high water mark is deemed to **BELONG TO THE CORWN**

STEP 3: Consider the exact MEASUREMENT of the land [pg 7, notes]

- Measurements are set out in the certificate of title or associated title documents
- If there is an **INCORRECT MEASUREMENT** on the title, consider whether the error is one of **WRONG DESCRIPTION** or **SURVEY**
- If **WRONG DISCRPTION**
 - o Old title land an error which neither the vendor/purchaser is aware = 'defective' title
 - o Torrens land – the registered proprietor will not acquire indefeasibility of title
 - The registered proprietor cannot claim the land; however a bone fide purchaser for value will be protected
- If **SURVEY**, a registered proprietor may acquire good title, in the absence of fraud

STEP 3.1: When measuring land consider whether fences sit property on the boundary

- Make sure the physical measurement corresponds with the measurements set out on the title and that the fence is sitting on the correct boundary
- Adjoining landowners are **JOINTLY LIABLE** to keep the fence in **REASONABLE CONDITION: s 4 of the *Fences Act 1984 (Vic)***

STEP 4: Consider whether there are any encroachments on the land [pg 7, notes]

- **ENCROACHMENTS** = 'intrusions' on the land
- A building which encroaches on land will vest in the owner of the encroached land where it satisfied the **FIXTURES TEST** with no compensation being available
 - o **UNLESS:** It can be proven that the adjoining landowner encouraged or allowed such an encroachment to occur
- Encroachments on **AIRSPACE** will constitute a **TRESPASS** entitling the owner to seek compensation

CAVEAT SYSTEM

[pg 58, notes]

STEP 1: Describe what a caveat is/what it does... [pg 59, notes]

A caveat confers limited protection to unregistered interest **Section 89 TLA**

- Protects against registration of inconsistent dealing on the same title
- Usually protection of 30 days, but can be more depending on the type of caveat lodged
- **IN EXAM:** What can possibly protect **X and Y's** EQUITABLE INTEREST (**state what the interest is – eg, equitable lien as purchaser / vendors lien**) is a caveat.
 - A caveat confers...

STEP 2: Is the interest in the facts scenario a 'caveatable interests'?... [pg 60, notes]

Examples - if you spot one of these the interest IS caveatable:

- (a) Interest of a **builder** under a charging clause in a building agreement;
 - (b) Interest of a **purchaser after signing a contract of sale**;
 - (c) Interest of a **mortgagee** under an **unregistered mortgage** or charge;
 - (d) Interests arising under a **trust**;
 - (e) Interest of a **lessee** under an unregistered lease (although there is probably no need, given the wide exception of **s 42(2)(e) TLA**);
 - (f) Interest of a person arising from contributions made to the purchase price of property;
 - (g) Benefit of a restrictive covenant;
- **IN EXAM:** However, for a party (**state party in facts scenario – name**) to be able to protect their interest by lodging a caveat they must have a "caveatable interest"...
 - In the facts scenario **X's** interest IS caveatable interest as it is (**state one of the above eg's**) as it is an interest of a purchaser after signing a COS, yet not yet reached settlement, and thus not yet registered.

STEP 3: Process of lodging a caveat...

Upon receipt of notice that an inconsistent instrument has been lodged for registration, caveator may commence legal proceedings to establish their right to maintain the caveat: **s 90(1)**

- a) Must commence within 30 days or caveat will lapse (to extent on inconsistency) + dealing lodged will be registered: **s 90(1)**

STEP 4: If there is a FAILURE to lodge a caveat [pg 66, notes]

- Failure to lodge a caveat does not affect the validity of an unregistered interest, BUT it might prevent it from being protected
 - NOTE: still protected if it is covered by an exception.
- That interest cannot be revived: **Leros v Terara**
 - Registration confers immunity through indefeasible title → extinguish all prior unreg interests which *but for registration* would have conflicted: **Leros v Terara**

INDEFEASIBILITY IN THE TORREN SYSTEM

before starting question note who are parties/what are their interests ect
(follow guides above)

STEP 1: State what INDEFEASIBILITY is... [pg 24, notes]

- Once a title holder is REGISTERED under the Torrens system, the Registered Proprietor will obtain an INFEFEASIBLE TITLE.
- Indefeasibility of registered title referred to the fact that every time the title is registered it is created as a NEW TITLE – cured from any previous defects.
 - o **S 40 Transfer of Land Act (Vic)**: states the above, that an interest in land will NOT be effective until registration occurs. [pg 25, notes]
- **IN EXAM**: Given the facts scenario it can be held that the title from X (name party) has effectively registered and become effective as per **S 40 Transfer of Land Act (Vic)**, and therefore on face value X now has an indefeasible title to **property**.
- But, we need to look at when the title became indefeasible, and whether any statutory or non-statutory exceptions apply, which may result in the title being defeasible.

STEP 2: Consider when INDEFEASIBILITY occurs (immediate or deferred indefeasibility)... [pg 27, notes]

Deferred indefeasibility → not followed in Australia

- **Two privy council decision against each other:**
 - o **Gibbs v Messer** adopted **deferred indefeasibility** (decision been overruled)
 - Where title is 'tainted by fraud' the RP cannot acquire indefeasible title.
 - Registered proprietor cannot claim protect of indefeasibility where they have dealt with a fictitious person rather than the RP.
 - **Note**: deferred indefeasibility may be preferred where there is a 'fictitious person' and it would be unfair to go with immediate.- **Gibbs v Messer**

Immediate indefeasibility → followed in Australia

Immediate indefeasibility: proprietor is protected as soon as title is registered, regardless of an invalid transfer process or defects in the transferor's title