

EXAM NOTES

PROPERTY LAW 2018

Student Name / Student No. / LAW 1511

CONTENTS

PROCESS FOR ANSWERING A PROBLEM QUESTION	3
WHAT IS PROPERTY?	4
Fundamental Characteristics	4
Legal and Equitable Rights (Under the Torrens System)	4
Numerus Clausus	5
Licenses	5
THE TORRENS SYSTEM OF INDEFEASIBILITY	7
Basic Principles	7
Immediate Indefeasibility	7
Paramountcy	8
Exceptions to Indefeasibility (in rem)	8
Exceptions to Indefeasibility (in personam)	11
Operation of the pro viso	11
LEASES	13
Legal and Equitable Leases	13
Substantive Criteria of a Lease	13
Covenants in Leases	14
Types of Leases	15
Termination of the Lease Agreement	16
EASEMENTS	17
Substantive Criteria of an Easement	17
Types of Easements	18
Creation of an Easement	18
Remedies and Termination	20
CO-OWNERSHIP	22
Joint Tenancy	22
Tenancy in Common	23
Strata Title	23
MORTGAGES	25
Terminology	25
Legal and Equitable Mortgages	25
Creation of a Mortgage	26

Foreclosure	26
Power of Sale	27
EQUITABLE INTERESTS	29
Trusts	29
Proprietary Estoppel (Remedy for Unconscionable Conduct)	33
Part Performance v Estoppel	34
Contractual (Conversion)	35
PRIORITY DISPUTES	36
Legal v Legal (i.e. Registered v Registered)	36
Legal v Equitable	36
Equitable v Equitable	37

WHAT IS PROPERTY?

Fundamental Characteristics

- Possession
- Exclusivity (*Victoria Park Racing & Recreation Grounds Co Ltd v Taylor*)

Legal and Equitable Rights (Under the Torrens System)

Legal (in rem)

- System of title by registration
- Two stage process of registration
 - Verification of Identity: 'reasonable steps' to verify the identity of their clients
 - Verification of Authority: 'reasonable steps' to verify their client has the right to deal with the land

Equitable (in personam)

- A relationship between persons in regard to the land in question – binds individuals against individuals
- Where you don't have a legal right, you may still have a property right in equity
- Often exist in the following scenarios:
 - Transfer of legal title
 - Contracts for estates and interests in land that haven't been perfected/registered
 - Declaration of a title
 - Declaration of express trust
 - Transfer of an equitable title
 - If you deal with an equitable interest, for example by assignment or mortgage, that dealing must be equitable

EXAMPLE SCENARIO

- You loan someone money and they use their house as security (a mortgage), but then you forget to register that mortgage (the mortgage is now your 'interest') with the LTO...
- You have failed to comply with a 'formality'. Therefore, you have no LEGAL right to recover...
- However, you still have a right to recover in EQUITY.

Example Answer

- ...Sue does not have a legal claim against Tom because she has failed to comply with section 28(1) of the Act. When the sale of her home occurred, the transaction was not documented in a written contract as required. However, she still has a claim in equity...

Numerus Clausus

Fee simple: closest thing to complete ownership

Fee tail: transfer of property by lineage

Life estate: transfer of property for the life of the holder in fee simple of

Easement: a right for one landowner to do something on the adjacent land of another, for example, a right of way

Lease: a contract by which one party conveys land, property, services, etc. to another for a specified time, usually in return for a periodic payment

Mortgage: property conveyance as security for a loan

Profit a prendre: a right to go onto another's land and remove/retain something, for example, timber, crops, fish

- Right to the profit of the land only, not a right to enter and take from the land, therefore this type of interest is usually coupled with a license

Licenses

- **Where rights stop, licences begin** Permission to allow someone to do something on land, or to occupy land, on particular conditions, which may or may not include payment
 - May yield permissions or privileges to use the land of a landowner
 - BUT... does NOT permit exclusive occupation of land

Bare license

- Permission or promise in regard to land, unsupported by consideration (gratuitous permission)
 - *Arise when anyone invites someone else into their home or shop*
- Can be withdrawn at any time - Verbal and revocable at will of the person giving it, subject only to allowing the licensee time to collect their belongings (in order not to commit the tort of conversion)
- When revoked, the licensee becomes a trespasser. Legal system allows a degree of self- help: trespasser can be removed using reasonable force
- NOT binding on third parties
- Major or continuing trespass can be restrained by injunction. Otherwise, remedy is damages.

Contractual license

- Permission or promise in regard to land, supported by consideration (granted pursuant to a contract)
 - *When a person buys a ticket to cinema, theatre, pays entry to a car park or sporting fixture*
 - *Students at a fee-paying institution*
 - *Contractors or employees performing work on land*
- Revocable by the will of the landholder, even BEFORE any time expressly or impliedly fixed in the contract for the duration of the contract is due (DESPITE revocation being in breach of contract, and EVEN IF the other contracting party has done no wrong)
- When contractual licence revoked, licensee should be given notice, and be permitted a reasonable amount of time to leave premises (*Cowell v Rosehill Racecourse*)
- If licensee refuses to leave, becomes a trespasser (*Cowell v Rosehill Racecourse*)
- If licence contract breached, remedy is in damages ONLY

THE TORRENS SYSTEM OF INDEFEASIBILITY

Basic Principles

- **Mirror principle** - interests relevant to the title are identified by looking at it
- **Curtain principle** - interests not recorded on the title are generally irrelevant, once you register your interest a curtain comes down around you and anything before or after is irrelevant
- **Guarantee principle (assurance fund)** - for those people that are adversely affected by the operation of the Torrens system, a public funded assurance pool will compensate for their loss

Immediate Indefeasibility

Breskvar v Wall

Facts

- Upheld *Frazer v Walker*
- Bs were registered proprietors of land. Obtained a loan from Petrie, providing him with duplicate cert. of title and blank transfer form (REMEMBER – BRESKVAR WASN'T A MORTGAGE)
- Due to leg. requirements in Qld, transfer was void.
- Petrie fraudulently inserted name of his grandson (W) into the transfer
- Wall became registered proprietor, contracted to sell land to Alan Pty Ltd
- Before A registered its interest, Bs had discovered what had gone on – lodged a caveat to prevent reg. going ahead.

Issues

- ★ Was the registration of Wall effective to divest the Breskvars of their interest?
- ★ And if so, should the Breskvars' interest in equity be postponed to the equitable interest of Alban Pty Ltd?

Principle/Held

- Although Wall was party to fraud, this simply meant that his title was defeasible
- Didn't mean that he couldn't create a valid interest
- If he had NOT been party to fraud, interest would have been immediately indefeasible
- Whilst Wall remained registered proprietor, he was able to create valid interests in third party (Alban)
- Real dispute was between unregistered interests of Breskvars, as against Alban