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Fundamental Concepts of Land Law

Possession

Possession entails the right to be in control of the land, to use and occupy and exclude others

Ownership

- Title holder as registered proprietor.
- Entitled to possession unless the owner has granted rights to another.
- If granting rights to possession to another (i.e. through a lease) they have a reversionary interest of possession which converts to a right to possession at the end of the agreed period.
- Limitation act: 12 years to begin proceedings to reclaim land. (Adverse Possession)

Possession

- Possession rights can be held by those who are not the actual owner of the land.
- In the situation of a lease, the tenant has a right to possession upon execution of the lease.
- However, they do not have actual possession until they move onto the land.
- Possession rights do not arise under a 'licence' (contractual rights which are not proprietary (i.e. allowing someone to housesit while you are on holidays)).

Recognised Interests in Land

Fee Simple:

- Highest possible ownership in land, entitled to possession indefinitely and holds the rights to use, enjoy and devise.

Lease:

- Time limited interest in land, entitled to possession at the exclusion of all others including the owner of the fee simple.

Mortgage:

- Mortgagor = Owner of the land
- Mortgagee = Bank or lender.
- Security interest in land in return for the loan of money.
- If the loan is not repaid the mortgagee can sell the property to cover that shortfall.

Easement:

- A right to do something on another person's land.
- Usually involve right of way, parking or utilities pathways and maintenance access.
- Positive right (to do something on land).

Restrictive Covenant:

- Negative right held against another's land.
- Usually involves development but also commonly appearance and use of building materials.
- Often Burden multiple blocks of land, such as in residential subdivisions.

Profit á Prendre:

- The right to natural materials on land.

Lien or Charge:

- Security interest which does not include the power to sell the land. Equitable interest.

Property v Contract

The benefit of holding a proprietary right over a contractual right is remedies. A proprietary right will open up remedies that can involve the return of possession and registration of interest, this is specifically important where a person is bankrupt. Contractual rights on the other hand only entitle a person to damages, which are useless where a person becomes insolvent. Contractual rights are also only enforceable against parties to the contract while property rights are enforceable against anyone.

Numerus Clausus

- Contracts can contain almost any rights, while property rights are limited to a number of specific types of rights.

- Closed list of rights and they are NOT customisable to a certain situation.
- **Why?** Because property rights also bind third parties, while contracts only bind the parties.

Fixtures

The grey area between chattels and land: chattels when attached to land with the objective intention that they are to remain part of the land become part of the land under the doctrine of fixtures. A chattel that has been attached to the land is prima facie a fixture, a chattel that is not attached to the land is prima facie a chattel.

How do Contracts Interact with Land Law

Contracts are the mechanism we use to settle the transfer of property

Conveyancing Act s 54A

- (1) Contracts for the sale of land MUST be in writing. (Applies to ALL dealings with land).

Exchange

- Demonstration of the intention to be legally bound in land law.

Transfer of Title?

- Contracts DO NOT transfer the title in land or even an interest.
- A contract for the sale of land is ONLY a promise to transfer the title in the future in exchange for the purchase price.

Specific Performance

- Valid contracts, that are in writing (s 54A) will be specifically enforceable in a court of Equity.
- Specific performance is an order of the court compelling one party to complete the contract. i.e. pay the money or transfer the title.

How does Equity Interact with Land Law

Equity intervenes in property disputes where the legal remedies are unsuitable or inadequate

Remedies

- Equitable remedies can enforce rights that are not recognised by the law and compel the legal title owners to act in accordance with those interests.
- I.e. a person with an equitable interest could be awarded a constructive trust over land or a portion of the land.

Equitable Interests

- An equitable interest in land is a proprietary right.
- A contract for the sale of land *creates* an equitable interest in the land in favour of the purchaser. (equitable fee simple)
- Applies to all other areas of property law.