

Ordinary claim skeleton

To weave in authority (case and legislation):

- ___ is authority for the proposition that ___. In these circumstances therefore _____.
- ___ is authority that there is justification for a _____.
- - 'the application of s__ will result in _____'

When using case law, consider:

- Does the case apply? Are the facts sufficiently similar or can it be distinguished?
 - What is the ratio of the case? Is it binding precedent or just persuasive?
 - Why is the current scenario similar to justify applying the case?
1. Identify the parties and the disputes that may arise.
 2. State: ' ___ ('A') may have a case against ___ ('B') for his/her [state which action].
 3. Identify each proprietary interest or estate that each party will be claiming: *Numerus Clausus*
 - a. **Fee Simple:** Granted to a person and their heirs for their lifetime.
 - i. Note words of limitation in notes below.
 - ii. Is this gained through Adverse Possession: peaceful and open possession:
 1. Requires actual control and the mental element, and for 15 years in SA and 60 years at common law. See notes for law re Torrens System.
 - b. **Life Estate:** A grant of estate for a person's life (*pur sa vie*). OR, if the receiver then grants the land to a third person, when the second person dies, the land will still return to the first grantor (*pur autre vie*).
 - i. Note words of limitation in notes below.
 - ii. Note doctrine of Waste in notes below on how the land may be used!
 - c. **Fee Tail:** Granted to a person and the heirs of their body, still possible in SA,
 - i. Note words of limitation in notes below.
 - d. **Easement:**
 - i. Consider elements from *Ellenborough*, endorsed in *Pentilla* and *Westfield*. If any unfulfilled, it is a license.
 1. Must have a dominant and servient tenement
 2. Easement must benefit the dominant tenement i.e. touch and concern the land
 3. Must have separate ownership of the tenements
 4. Easement must be capable of forming the subject-matter if a grant.
 - ii. Consider how created:
 1. Via Statute?
 2. Express grant or reservation
 3. Implied: If exceptions to the general rule of: easement of necessity or if intended by parties.
 4. Quasi easement – *Wheeldon v Burrows* criteria below.

5. General words in the conveyance per LPA s 36. THIS WILL TURN AN EQUITABLE EASEMENT INTO A LEGAL EASEMENT due to operation of the Statute.
6. Prescription: 20 years of usage
 - iii. *Cast an analogy or have a case illustration of the easement.*
- e. **Profit a prendre:** A license coupled with a proprietary interest to access someone's land and take natural produce.
- f. **Mortgage:** Must have a security relationship (language of RPA s 128).
 - i. Also, must have per *Campbell v Holyland* or *Gurfinkel v Bentley*, an intention of the parties to create the mortgage.
 1. If above aren't met, and it isn't legal or equitable, then it is merely an unsecured loan! – *cast analogies wherever possible!!*
 2. Also consider special priority rules for mortgages *below*.

All other dealings of land, even if by a deed, do not constitute property rights at law and create merely personal rights – Thomas v Sorrell. So, is it a license:

- g. **Bare (oral) license:** This is a permission or promise in regard to land unsupported by consideration (*R v Toohy*). It is revokable by the issuer at will, and not enforceable. When the bare licence is revoked, the licensee becomes a trespasser and they can be removed from the land using reasonable force: *McPhail v Persons, Names Unknown*.
 - h. **Contractual license:** A permission or promise in regard to land that is supported by consideration. The rules are set out by the HC in *Cowell v Rosehill Racecourse*:
 - i. It is revokable by will of the landholder at any time. The remedy sought must be under damages for breach of contract, not property law.
 - ii. This will not bind a third party (*Forbes v New South Wales Trotting Club* (1979) 25 ALR 1.)
 - iii. *See in notes analogous cases of Cowell and Heidke.*
 - i. NOTE: There's no property right over a [insert spectacle] and therefore [person] cannot rely on the courts for a solution: *Victoria Park*. – *See notes below for other things that can't be property rights: Like words etc.*
4. *If relevant*, how is this interest owned? - Also consider how it was created and the presumptions at law and equity – *see notes below*.
 - a. Solely by one party – *if so, move on, this isn't an issue.*
 - b. Joint tenancy – *Note effect of survivorship*
 - i. Must have four unities and Just Accrescendi
 - c. Tenancy in common – only need unity of possession.
 5. Are these interests legal (registered) or equitable?
 - a. **If legal:** MUST BE REGISTERED via undergoing the two-stage process of registration.
 - i. **If a lease**, also note if residential or commercial. Must be registered if above one year – ss 116, 69H or 119.
 - b. **If equitable:** s 249 RPA states that equity is not abolished by the Torrens System. Can arise due to:
 - i. The miscreation of a legal right, so that the equitable right will mirror the legal one! See *Walsh v Lonsdale, part performance and estoppel below*.

1. If a conflict occurs, equity must prevail as conscience and justice must prevail: *Walsh v Lonsdale* page 14.
2. NOTE: Always do Part performance before estoppel as it has the specific remedy of specific performance! Whereas in estoppel, the remedy is up to the discretion of the court.
 - ii. The creation of Trusts in land: express, resulting or constructive.
 - iii. The doctrine of conversion (a contract is signed within 30 days; pending settlement, the purchaser obtains an equitable interest)
 - iv. Fraud (i.e. designed cheating or unconscionable behaviour) which excludes someone's legal right.
 - v. *Note other special ways an equitable mortgage can be created!*

NOTE: after establish a trust, part performance or estoppel, go to Torrens system exception to indefeasibility as these could be the in personal exception.

6. **If legal (i.e. registered):** Then per *Fraser v Walker*, endorsed by *Breskvar v Wall*, indefeasibility is immediate subject to any encumbrances on the title and the exceptions. Are they a volunteer? – *if so, see exception to indefeasibility notes.*
 - a. **If equitable:** Protect against *inconsistent interests* with a caveat (s 191 RPA). The Torrens System does not abolish equity per s 249 RPA.
7. Ask, who is the first person to hold the interest, who was the second person?
8. Priority dispute between the two parties – which interest will prevail?
 - a. **Legal (registered) v Legal (registered):** Per s 56(1) first in time has priority.
 - b. **Equitable (unregistered) v legal (registered)** – Equitable interest holder will argue exception to indefeasibility:
 - i. Actual or equitable fraud under s 69(a) – still applies if through an agent – *see notes. CAST ANALOGIES WITH CASES!*
 - ii. Title gained by forgery, insufficient power of attorney or disability (*Amadio*) - RPA s 69(b)
 - iii. Equitable easements s 69(d) and s 249.
 - iv. Unregistered lease, for under 12 months, which takes effect through possession: s 69(h).
 - v. In personam:
 1. Recognised cause of action under s 249 and 71(e) or s 71(d).
 2. Unconscionable for indefeasibility to be asserted.
 - vi. Overriding legislation: RPA is only a SA Statute!
 - c. **Equitable (unregistered) v Equitable (unregistered):**
 - i. Per *Rice v Rice/Breskvar*: All being equal, first in time has priority. – *so weigh up considerations and determine if equal!*
 1. Did one party arm the other party, allowing them to create the equitable interest? *If yes, first may be postponed. – See below.*
 2. Did one party fail to protect their interest with a caveat or acquiring CT? *If yes, first may be postponed. – See below.*
 3. Did the latter equitable interest have notice of the prior interest? *If yes, second may be postponed. – See below.*
 - d. **License v legal/equitable:** License will lose!

9. Is one of the people a third party purchaser?
 - a. If so, are they a **Bona fide purchaser for value**? Is there a proviso that they can use as a defence from 69(a), 69(b), 69(c), 71(f) or 249(2)?
10. Remaining concerns:
 - a. **Possession**: Do they have
 - i. Factual control
 - ii. Mental element
 - iii. Or, did they find a lost item?
 - iv. If a dispute regarding possession, note who had the first (and better) possessory title.
 - b. **Fixtures and fittings** – *Cast case analogies from below in notes.*
 - i. Consider the presumption of fixture if item is affixed, or presumption of fitting if item is freestanding. Accordingly, attempt to rebut presumptions with:
 1. The degree of annexation test
 2. The object of annexation test
 - ii. Note the tenant's rights to remove fixtures at end of leasehold agreement in notes.
11. **Remedies** – Damages or enforcement of interest through specific performance? – consider *Jaggard v Sawyer*
 - a. Or compensation under the Torrens Statute.