

TOPIC 7: TRANSFER/SALE OF LAND & GIFTS

TRANSFER OF LAND

Define the original interest

[On this date], [the vendor still has the legal fee simple] while [the purchaser] has no interest as of yet.

Legal Interest

General law Land

Legal title will pass on execution and delivery of deed of conveyance s52(1) PLA 1958

- S53 deeds must be in writing
- s73 (1) PLA A deed needs to be signed or sealed with executors mark
 - This need not be an actual seal, just need it to be expressed to be sealed in words - intention to be bound (S73A PLA)

Torrens System

- S40(1) TLA - Land must be registered for there to be a legal interest.
- S41 TLA - A certificate of this is conclusive evidence of title

Equitable Interest

In the event of a failure to comply with the formalities and a legal requirement is not met, an equitable interest in the land may pass to [purchaser] before legal title passes, if:

Valid Binding Contract

In order to prove an equitable interest the contract should include the essential ingredients for a valid contract including: – Offer – Acceptance – Consideration – Intention to create legal relations – Certainty.

“Assuming all other elements of contract formation are present, there must be evidence of the contract either in writing pursuant to s126 IA or an oral agreement with sufficient acts of part performance”

S126 Instruments Act

- Contract must be written and signed by the party to be charged (person who it is to be enforced against), or a signed written memorandum (s126(1) IA)
- This can be signed electronically (s126(2) IA)
- “For there to be sufficient writing... that writing must describe the subject matter of the mortgage” (ANZ V WIDIN)

S126 Instruments Act WITH the ANZ case

- Documents signed and expressly or impliedly referring to one another can be read together
- Must be unclear but not completely deficient
- May be permissible to rely on oral evidence which points to another written document that expressly refers to the other document

TOPIC 8: LEASEHOLD ESTATES

ESTABLISHING A LEASE

Is there a lease?

A lease is an interest in land given by a LL (the RP) to a tenant for a certain period of time with exclusive possession, including both a contractual and proprietary interest in the land.

Exclusive possession

EP is defined as the control of the premises to the exclusion of all others, including the LL but subject to the LL's right to re-entry (STREET V MOUNTFORD)

TEST: on a factual basis, has the tenant been given the right to EP (RADDACH)

- Who controls entry to the property (RADDACH)
- Is EP necessary for the way they use the premise? (RADDACH)
- Do they lock up (RADDACH)
- Does the deed stipulate that upon end they will give up possession? (RADDACH)
- Do they have the right to quiet enjoyment? (STREET)
- EP if not a lodger (STREET)
- Airbnb (SWAN)
- Right to exclude others (STREET)
- Irrelevant that contract states it is a license (RADDACH, STREET)
- Court will look at substance over form (RADDACH confirmed in STREET)
- Did LL intend to grant EP (RADDACH)
- Doesn't matter is LL has a set of keys (SWAN)
- Strong presumption that residential premises need EP (STREET)

STREET V MOUNTFORD

Facts

- Right to occupy 2 furnished rooms, weekly rent, 14 days termination

Factors leading to EP

- Residential – strong presumption that there must be exclusive possession so you can live in privacy (cf. commercial in Raddaich)
- Hotel scenario – there was no services provided by the landlord, tenant paid rent, they were not family or friends

RADDACH V SMITH

Facts

- Granted "licence" to R to run milk bar for 5 years

Factors leading to EP

- Agreement granted right to store goods for sale – need exclusive possession to stop theft in a shop
- Agreement said that the store had to be open for certain times which created presumption that it was also capable of being closed
- Tenant was responsible for breakage – paid for broken keys and locks to be replaced
- Agreement looked like a lease – had option to renew and assignment

This is a sample from page 3 of adverse possession notes.

[Land] will be considered adversely possessed if [X] can establish factual possession and an intention to possess (Buckinghamshire City Council v Moran)

FACTUAL POSSESSION

Definition

[X's] possession must be "open, not secret; peaceful, not by force; and adverse, without consent of the true owner" **MULCAHY V CURRAMORE**

- **Open:** user must be unconcealed so owner who is reasonably careful of his interests would notice.
 - NB: owner doesn't have to know, so long as they could find see AP occurring.
- **Peaceful:** AP cannot use force to obtain or retain possession, must be uninterrupted
- **Adverse:** possessor must be on premises unlawfully (i.e. trespassing), without consent
 - NB: a licence, when terminated, can transform consensual possession into AP (**JA Pye**).

Principles and Cases

WHITTLESEA CC V ABBATANGELO

- Must deal with land as an occupying owner would be expected to, to exclusion of others
- Unique factual question for each case:
 - Nature, position, value and characteristics of the land
 - Available uses of the land
 - Course of conduct which owner might be expected to follow
- Acts that confer "special benefit" insofar as they complement and enhance use of adjoining land can evidence exclusive possession → not mutually exclusive
- Don't need a physical change in appearance
- Land surrounded on three sides by land that the council owned – visited every weekend from G
 - Installed a gate, fences around farm (horses), road access through A's land, bathtub, swings/cubby, BBQs/social events, neighbour's opinions, removal of fence, livestock

BUCKINGHAMSHIRE CC V MORAN

- Appropriate degree of physical custody and control of the land
 - Depend on the circumstances, in particular the nature of the land and the manner in which land of that nature is commonly used or enjoyed
- Single and exclusive possession
- Unnecessary to use land inconsistently with true owner's purpose
- Council bought plot of land to eventually build a road, original owner of land next door maintained it as part of his land – then sold to Moran
 - Complete enclosure (controlled access through M's property), lock and chain on gate to property, dealt with the land as an owner would (maintenance of weeds)

JA PYE V GRAHAM

- License for G to use P's land for grazing expired, he did not leave – offered to pay/renew license
 - Land enclosed by hedge, padlocked gate controlled access, JA Pye had to ask for access, Maintained farmland like he did his own