

**Property A Frameworks  
LAW 2112**

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## ACQUISITION AND TRANSFER OF PROPRIETARY INTERESTS

### SALE OF LAND

#### Step 1: What type of interest is it?

- E.g.:
  - o Fee Simple
  - o Life Estate

#### Step 2: LEGAL INTEREST

##### General law land?

OTF, [insert land] is General Law Land (GLL). Per *s52(1) PLA*, a legal interest in GLL must be conveyed by deed in order to satisfy the requirements of the *Statute of Frauds*, else it is deemed to be void.

Formality requirements under the *PLA* mandate that deeds must be signed, sealed and delivered. However, while the party executing the deed must sign the deed (sealing alone is insufficient; *s73(1) PLA*), an instrument “expressed to be sealed by that individual but not so sealed” will nevertheless be treated as though it were sealed (*PLA s73A*).

Note: exceptions exist under *PLA ss52(2) and 53*.

##### Torrens land?

OTF, [insert land] is Torrens land. Per *s 40(1), 41 and 42(1) TLA*, a proprietary interest in Torrens land is not legal until registration has occurred. Registration occurs when the stamped instrument is lodged with the Registrar (normally on the spot).

[Insert party] may argue that they have a legal interest in [insert land] since, OTF, their interest was registered on the title on [insert date].

OR

[Insert party] cannot claim to have a legal interest in [insert land] since, OTF, their interest was never registered on the title.

#### Step 3: EQUITABLE INTEREST – Since not legal: Is it equitable? (Same for GLL & TLS)

OTF, [insert party] does not have a legal interest in land as they have failed to meet the requirements under the [PLA/TLA]. However, [insert party] will argue that they nevertheless hold an equitable interest in [insert property] under the Doctrine of Conversion (*Lysaght v Edwards*).

A contract of sale (COS) may create an equitable interest in land if it is found to be specifically enforceable (*Lysaght v Edwards*). To claim an equitable interest in [insert land], [insert party] must therefore prove that there is a valid COS to which the court may grant specific performance.

#### STEP 4: IS THERE A VALID Contract Of Sale?

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In order to prove an equitable interest, the contract should include the essential elements of a valid contract.

##### Is there a valid contract?

On the facts, there is a valid contract since the elements of offer, acceptance, consideration and intention are present.

##### Is there EVIDENCE of a valid contract?

#### **(1) Written Evidence**

As *per s 126 of the Instruments Act*, a COS (or a memorandum or note of the agreement) must be in writing and signed by the person charged (the person against whom the K is being enforced).

Furthermore, as per *ANZ v Widin*, the written document must describe the subject matter of the mortgage, including reference to the mortgaged land.

#### **Note:**

- Details of land has to be included in what [Person] signed
- Distinguish between Ambiguity vs Deficiency

#### GENERAL WRITING REQUIREMENT – RED FLAGS:

- **Electronic communications?**
  - As per *s126(2)* of the Instruments Act, the requirements under subsection (1) may be met electronically in accordance with the *ETA*.
- **More than one document?**
  - As per *ANZ v Widin*, the memorandum need not be contained in one document. If the contract of sale is signed by the person charged and refers to another document or transaction (either expressly or by necessary implication) and the other document also refer back to the contract of sale, the documents may be read together to complete the contract.
    - *ANZ v Widin*: The diary with details of the property referred to the mortgage but the mortgage did not refer back to the diary. Thus, the documents could not be read together.
    - This helps clarify ambiguity and not deficiency.
- **Oral evidence?** While oral evidence may be used to qualify ambiguity (e.g. to identify the relevant document), it is not sufficient to import the missing information in and of itself. The whole of the contract must be in writing (*ANZ v Widin*).
  - *ANZ v Widin*: Diary note could only be related to mortgage by oral evidence → inadmissible because only the diary note referred to the mortgage but the mortgage did not.

[Insert party] will argue that a valid COS does/does not exist which meets these requirements because [insert facts].

However, if I am wrong, it is assumed that the general writing requirement had not been met.

## Failure of the general writing requirement?

### (2) Oral Evidence + Part-Performance

[Insert party] will argue that, an oral contract supported by sufficient acts of part performance may still pass equitable title (*ANZ v Widin*).

To have part performance, the actions undertaken by [insert party] must be “unequivocally and in their own nature referable to some such agreement as alleged” (*McBride v Sandland*, adopting the strict test from *Maddison v Alderson*). Clearly, the actions undertaken were unequivocal to the agreement because [insert facts].

- E.g. Possession (*Regent*), mortgage repayments or renovation (*Regent*), did all they could do an arms-length (*ANZ*) → look at their relationship
- Payment of money will not be unequivocally referable to the agreement because it can be for many other reasons (*ANZ*).

To determine whether the strict test is satisfied.

1. Do the acts performed imply the existence of a contract?
2. What is the general nature of that contract?
3. Does the nature of the contract match the acts performed?

*Steadman v Steadman* adopts the **less strict test**:

If the strict test is not satisfied, the High Court left it open in *Regent* whether the less strict test could be used.

Per *Steadman v Steadman*, if the alleged acts of Part-performance point on balance of probabilities to some such contract and were at least consistent with that contract, then that would suffice.

However, per *McBride v Sandland and Maddison v Alderson*, the courts have chosen the stricter test.

#### UNEQUIVOCALLY REFERABLE – RED FLAGS:

- Is there **another reason** that the party might have acted the way they did? E.g. love/affection/loyalty/inheritance per (x) *Maddison v Alderson*, lease per *McBride v Sandlands*?
  - (x) *Maddison v Alderson*: The acts were not equivocal to the house and were related to love and affection
- **Possession?** In (✓) *Regent v Millet*, the giving and taking of possession was deemed to be sufficient part performance to validate the oral agreement.
  - (✓) *Regent v Millet*: Entry into possession; taking of possession and expenditure of money to improve the property with cognizance of other parts to the contract would satisfy part-performance.
- However, the 1918 case of *McBride v Sandland* suggests that for possession to be unequivocally referable there cannot be an equally valid reason for the use of the land (the party had a lease and was using the land for their own benefit, for sheep farming).
  - i.e. it has to be unequivocally referable that the part performance is meant for moving into the property
- **Payment of money?** Payment of money is **indicative but not conclusive** of part performance (*Regent v Millet*). The court in (✓) *ANZ v Widin* held that “mere payment of money is not enough”, but may nevertheless satisfy part performance if coupled with other acts (e.g. discounted bills, indemnity, documentation).

(✓) *Mason v Clarke*:

- Mason set snares, taken rabbit and hired helpers – these acts were part-performance of the oral agreement and exclusively referable to it.
- Though the memorandum was insufficient, Mason’s actions constituted acts of part-performance