

MLL325 Notes

Contents

Interests in Land	3
Deed:.....	4
General Law (Old Title) and Torrens Title Land: Difference	5
Equitable Interests in Land	5
Boundaries of Land Ownership	6
Priorities Rules	7
Priorities between legal estates under general law	7
Priorities between legal and equitable interests under general law	7
Doctrine of Notice.....	8
Priorities between equitable interests	8
The Torrens System	9
Objectives of TS	11
Indefeasibility of title (CB 11.6) –	12
Transfer of Land Act – Sect 42	13
Transfer of Land Act – Sect 43	13
Transfer of Land Act – Sect 44	13
The debate between immediate and deferred indefeasibility CB 11.8	14
Breskvar v Wall (CB 11.13).....	15
Scope of Protection: Personal Interests (<i>In Personam</i>).....	15
Exceptions to Indefeasibility.....	16
Statutory exceptions.....	16
Express exceptions.....	16
Statutory Fraud CB 11.18.....	16
Prior Certificate of title/Wrong Folio.....	19
Non-statutory exceptions	19
Paramount Interests – S 42(2): CB 11.61.....	19
Adverse Possession CB 11.62.....	20
Easements CB 11.64.....	20
Tenancies CB 11.69	21
In personam right/personal equities	22
Answering a in personam question STEPS:	22
State the general rule (RP gains indefeasible title upon reg; s 43)	22

What is the conduct in question?	22
Does it generate an in personam right?	22
What is the conduct in question?	22
Honest representation subsequently dishonoured	22
Constructive knowledge	22
Knowing receipt of trust property	22
Fiduciary information	22
Does the conduct generate an In Personam Right?	22
Express assurance subsequently dishonoured	23
See <i>Bahr v Nicolay</i> : held: interest will be subject to a constructive trust and enforceable under the in personam exception (trust property is the promise).....	23
Inconsistent Legislation	24
Volunteers.....	27
Assurance Fund/State Guarantee of Title	29
Unregistered Interests	32
Caveats.....	35
Failure to lodge a caveat.....	37
Consequences of failure to lodge a caveat – priority dispute	37
Priorities between unregistered interests.....	38
Co-Ownership: Joint Tenancy & Tenancy in Common	38
Rights and Duties	41
Co-ownership: Severance and Partition	46
SEVERANCE In a joint tenancy, one would like to pass their interest by will to particular family members. If the joint tenancy is current, you can't - executing a will does not mean you can pass your interest under a joint tenancy (does not trump right of survivorship). You must remove one of the four unities: this will sever the joint tenancy, and you are in a position where your co-ownership reverts to a tenancy in common, and you can pass your interest pursuant to the will.	46
PARTITION.....	46

Interests in Land

Legal Interests in Land

(Legal interests take priority in any conflict)

- Must be in the form of a deed, otherwise **NOT** legal: *S 52(1) Property Law Act (S 53 PLA* – Must be in writing).
 - o **EXCEPTIONS** to the rule:
 - *S 52(2) Property Law Act* sets out a variety of orders AND
 - *S 54(2) Property Law Act* sets out that leases not required to be in writing such as oral leases for 3 years and under.
- Applies to all 'conveyances' of land. *S 18 Property Law Act* defines conveyances broadly to include: 'mortgage, charge, lease, assent, declaration, etc.'

Property Law Act 1958 (VIC) – Section 51

Lands lie in grant only

- (1) All lands and all interests therein shall lie in grant and shall be incapable of being conveyed by livery or livery and seisin, or by feoffment, or by bargain and sale; and a conveyance of an interest in land may operate to pass the possession or right to possession thereof, without actual entry, but subject to all prior rights thereto.
- (2) The use of the word 'grant' is not necessary to convey land or to create any interest therein.

Property Law Act 1958 (VIC) – Section 52

Conveyances to be in deed

- (1) All conveyances of land or of any interest therein are void for the purpose of conveying or creating a legal estate unless made by a deed
- (2) This section shall not apply to –
 - (a) Assents by a personal representative
 - (b) Disclaimers made in accordance with the provisions of any law relating to bankruptcy or insolvency or not required to be evidenced in writing
 - (c) Surrenders by operation of law, including surrenders which may, by law, be effected without writing.
 - (d) Leases or tenancies or other assurances not require by law to be made in writing
 - (e) Receipts not required by law to be under seal
 - (f) Vesting orders of the Court or other competent authority
 - (g) Conveyances taking effect by operation of law

What is a deed?

History

- Common Law ***Manton v Parabolic***: Ritual/instrument to signify solemnity.
- Early times: 'Livery of seisin': vendor removed his battle glove from which he had defended the land and 'vested' the purchaser with it. Vendor then dug up a sod and handed it to purchaser along with the knife.
- A memorandum of events subsequently prepared. This Memorandum came to be known as deed – replaced ancient rituals. In today's society, we have evolved and we have a means which we can categorise these transactions as land transactions since land transactions are 'enormous' (consistently transferring land (frequency in new ownership of land)). It is effectively **EQUIVALENT to settlement**.

Deed: most solemn act a person can perform with respect to particular property: ***Manton***

It is usually applied to conveyances, transfers, mortgages, charges and leases of land.

Common Law requires a deed to be: **signed, sealed and delivered**.

- o It must be executed by the grantor in presence of the prescribed number of witnesses, known as instrumentary witnesses.
- o A seal must be affixed to it (note, most jurisdictions outdated seals, and now the grantor and witness signatures are primary).
 - Statute reinforces this: *S 73PLA* must sign or place mark – sealing alone is insufficient.

Transfer Land Act S 40(2) every instrument – when registered – shall have the same effect as if it were a deed under seal.

CONFLICT where deed is lodged electronically as it is not physically signed. **THUS →**

- o *Electronic Conveyancing (Adoption of National Law Act) 2012 (NSW) Appendix s 9(1)* gives electronically lodged registry instruments the same effect as paper documents.

General Law (Old Title) and Torrens Title Land: Difference.

- General Law (old title) land represents all land grants issued between 1838 and 1862 which have not been brought under the Torrens system.
- In Victoria, the Torrens system first introduced in 1862 pursuant to the Real Property Act (Vic) which is now set out in the *Transfer of Land Act 1958 (Vic)*. Land issued after 1862 was Torrens land OR land converted to Torrens under the 'conversion process' in Torrens land.

"Searching a Chain of Title"

- o To verify general law title, *S 44 PLA* sets out only need to search back for the 'good root' of title. This amounts to documentary title apparent in the previous 30 years.
- o Purchaser is not affected by any title existing beyond this 30-year period: *PLA S 44(6)*.
- o Must be aware of titles existing within the 30-year period because will be affected by this.
- o No guarantee of title with general law interests.

General Law

- Original form of land ownership.
- When land was sold, a crown grant would state that the land had been given to the person named in each grant → creating a **chain of deeds**.
- Any general law land that is **transferred must be converted** to modern Torrens title.

Torrens title interests

- o *TLA* provides for register to in a variety of forms such as old CT's or computer.
- o Computer titles can be created in two ways:
 - (1) Directly from newly registered plans of subdivision for lots, roads and reserves on those plans. In this situation there is no paper folio for the land, only the computer folio information
 - (2) Through the registration of a dealing affecting a paper folio (title) for which there is computer "search" data available. The registration transforms the data to computer folio data, which can be subsequently updated instead of the paper title.
- o ONLY CONTAIN CURRENT INFO (i.e. not old RP's) and NO DETAILED DIAGRAMS OF EASEMENTS ETC.

Registered and Unregistered Interests in land

- o Both general and torrens title land may be unregistered.
 - General law interests cannot be registered under torrens until they are CONVERTED.
 - Torrens title interests may be unregistered because holders CHOOSE not to register (system is not compulsory).
- o Unregistered interests do not gain the protection of indefeasibility that registered holders of Torrens title land acquire.

SUMMARY

General Law Land:

- Represents all land grants issued between 1838 – 1862
- Prior to TS, ownership of land was evidenced by a chain of deeds
- Highly amenable to fraud (just take the chain out) = ** Potential for priority dispute arises!

Torrens System:

- Title by registration – acquires indefeasibility – NOT COMPULSORY

Equitable Interests in Land

- Does not have to occur by deed, but in writing (to prevent fraud) → *S 53 PLA*

Property Law Act 1958 (VIC) – s 53 **Instruments are required to be in writing**

- (1) Subject to the provisions hereinafter contained with respect to the creation of interests in land by parol –
 - (a) No interest in land can be created or disposed of except by writing signed by the person creating or conveying the same, or by his agent thereunto lawfully authorised in writing, or by will, or by operation of law
 - (b) A declaration of trust respecting any land or any interest therein must be manifested and proved by some writing signed by some person who is able to declare such trust or by his will

- (c) A disposition of an equitable interest or trust subsisting at the time of the disposition must be in writing signed by the person disposing of the same, or by his agent thereunto lawfully authorised in writing or by will.
- (2) This section shall not affect the creation or operation of resulting, implied or constructive trusts.

Legal interest at settlement BUT equitable interest when enforceable contract entered.

- Settlement period necessary to organise finance; investigate title.
- Contract will generate equitable interest (constructive trust/equitable lien) if specifically, enforceable.
- Specific performance available if damages inadequate and parties ready and willing and the contract is valid.
- Orthodox type of equitable interest: **constructive trust**: vendor qualified trustee and purchaser holds beneficial title. Vendor's trusteeship qualified by vendor's lien (*Lysaght v Edwards*).
- Tanwar dicta revises this: suggests no constructive trust but purchaser holds equitable lien over deposit because description of purchaser as constructive trustee conceals the contractual relationship and this analysis is 'bedevilled by circularity'.

^ CB 9.9 – 9.13

S 126 Instruments Act (Vic) 're-enactment of the 1667 Statute of Frauds (Eng)

- An interest arising under a contract for the sale of land or a disposition of land will not be enforceable in court UNLESS the written agreement creating the interest, or a note or memorandum of the agreement is produced.
- S 126 upon equitable interests = unenforceable.

Equitable interests arising from specific performance and part performance

Pre-conditions to the awarding of a decree of specific performance.

1. Contract must be valid.
2. Contract must apply to the general requirements applicable to contracts for the sale of land.
3. Equity will not grant specific performance of a contract if the P has an adequate remedy at law in damages.
4. The party seeking specific performance or part performance must prove that they performed or is ready and willing to perform, the substance of their own obligations under the contract.
5. If the contract is conditional, the contract is not specifically enforceable unless and until the condition is satisfied.
6. There must be no bar to the award of the equitable remedy of specific performance.
7. Specific performance of a contract for the sale of land will not be available unless the vendor has proven **good title** or the purchaser has accepted such title as the vendor has.

NOTE: the contract may be specifically enforceable where there is no writing or insufficient writing IF there has been SUFFICIENT acts of part performance of the act.

To establish part performance, must show:

- o That the acts of performance unequivocally relate to the agreement alleged
- o That the act relied upon must have been done on the faith of the agreement and must have resulted in a change of position with respect to the subject matter of the contract, such that the person would be unfairly prejudiced if the other party were to take advantage of the absence of any written evidence.

*S 55(d) PLA: equitable doctrine of part performance is not affected by the formality requirements in S 53 PLA.

Boundaries of Land Ownership

- Physical measurements: boundary defined according to survey lines. If survey lines removed may establish boundary lines according to adverse possession (where proven).
- If measurements incorrect: General law land will result in defective title. Torrens title land no indefeasibility for registered holder of land 'wrongly described' unless can prove are a *bona fide* purchaser for value.

Boundaries abutting water

- Tidal waters: high water mark is the boundary subject to public rights to fish and navigate. (basically, if you own property close to the beach, you own up to the tidal water, and that is subject to public rights relating to fishing and navigation.)
- Non-tidal waters: abrogated by statute in Vic to vest river bed in the Crown: *S 327(1) Water Act 1989*. (basically, all non-tidal water belongs to state)
- Accretion/Avulsion: you live next to land and it has 'ambulatory borders' (depends on the way water operates) but you can acquire or lose land where there is erosion or accretion which is gradual and 'imperceptible' rather than sudden and dramatic: *Williams v Booth* (CB 150).

Encroachment (Intrusion on a person's territory, rights, etc).

- Property rights only extend to physical boundaries of land
- Any encroaching property which is affixed to the land will be owned by the adjoining land owner pursuant to doctrine of fixtures
- If encroachment not affixed, adjoining owner may claim damages for intrusion

*Encroachment includes land and airspace.

Priorities Rules

(concerns priority disputes between land interests under general law or Torrens when RP does not register)

Why do we need priorities rules?

- o Jurisdictional fragmentation increases chances of conflict
- o Must determine which interest is entitled to priority
- o Priority dispute will arise where two or more interests in conflict, whether partial or direct, over one piece of land
- o Priority only conferred to extent of conflict.

Is it registered? If so → Torrens. Otherwise CL or equity.

Priorities between legal estates under general law

2 identical legal estate:

Only one party can have a legal interest in land – not possible to grant same legal estate twice (e.g. fee simple).

Rule: *Nemo dat quod non habet*

'a person cannot convey an interest in which he or she does not have'.

2 non-identical legal estates:

Two interests can exist harmoniously (e.g. grantor confers life estate AND remainder interest). However, they operate chronologically and do not offend nemo dat.

Priorities between legal and equitable interests under general law

Prior legal estate, subsequent equitable interest

The priority rule to apply to this dispute is from *Northern Counties Fire Insurance v Whipp*: a legal interest prevails over subsequent equitable interest.

* EXCEPTIONS exist.

Northern Counties Fire Insurance v Whipp (CB 10.11)

Facts:

- Crabtree manager of Northern Counties
- Crabtree borrowed from Northern Counties
- Old title mortgage – Northern Counties put title deed into safe to which Crabtree had keys
- Crabtree removed mortgage deed and obtained further legal mortgage from Whipp
- Competition between legal mortgage: Northern Counties and equitable mortgage: Whipp.

HELD:

- The prior legal interest holder must have **fraudulently contributed to the creation** of the subsequent equity.
- Mere carelessness or negligence not enough
- Negligence implies duty of safe custody over title documents and this does not exist
 - o Carelessness or want of prudence insufficient to postpone prior legal mortgage: CB 532.

Ultimately, the legal estate holder will always take priority unless the legal estate holder has contributed to the creation of the subsequent equitable interest.

Prior equitable interest, subsequent legal interest

Priority rule: the holder of a legal estate has priority over a prior equitable estate if they can prove they are a *bona fide* purchaser for value (good consideration) without notice (no notice of prior equity); (*Pilcher v Rawlins*)

Pilcher v Rawlins (CB 10.15)

Facts:

- Trustees looked after funds for beneficiaries
- Trustees gave mortgage and took security
- Trustees then fraudulently reconveyed title to mortgagor even though loan not paid
- Trustees then transferred title to new mortgagor (also a trustee) and fraudulently concealed prior mortgage
- Took off with funds. Competition between prior beneficiaries and subsequent legal mortgagee.

Held:

- Legal mortgage was bona fide and no notice
- Prior trustees 'roguish' and subsequent trustee honest investment motivation
- Beneficiaries lost out because 'if you trust your property to a man who turns out to be a rogue, it stands to reason that you may lose it'.

3 fundamental aspects of this rule:

1. Bona fides: is the subsequent legal interest holder bona fides
2. Consideration: is the subsequent legal interest holder a purchaser (i.e. not a volunteer)
3. Notice: Has the subsequent legal title holder taken without notice of the existence of a prior equitable estate.
 - Actual or constructive notice (knew or should have known about the prior equity) will suffice.
 - Constructive notice – may also be required to make reasonable inquiries if the circumstances demand it; **Royal Bank of Scotland v Etridge.**

Doctrine of Notice

The doctrine of notice will hold a subsequent legal title holder to any equity which they knew or should have known about.

- o Actual notice: been informed
- o Constructive notice: should, had you performed usual protocols, have discovered: *Nettle J in IGA Distribution* (CB 541)
- o *S 199 PLA* incorporates both actual and constructive notice (CB 10.17)
- o TIMING is crucial
 - Did legal interest holder receive notice of prior equity before acquisition of interest or after. Will only be bound if it is before.
 - In a sale context – must receive notice before entering into contract and acquiring antecedent equity: *Blackwood v London* CB 538
 - Will be taken to be aware of all interests reasonably apparent from inspection – does not include interests arising from oral conversation e.g. right to rectify not in document: *Smith v Jones* CB 539.
- o Effect of notice: once you receive notice, cannot 'remove it': *Jared v Clements [1902]* (CB 545)
- o Equitable interests arising from co-occupation may have 'constructive notice'.
- o *Kingsnorth* CB 543 – not a reasonable inspection to ascertain whether any co-occupant lived in the property and held equitable rights: timing and failure to follow.

EXCEPTION to the doctrine of notice: **Wilkes v Spooner [1911]** CB 10.20

RULE: when a legal interest holder who has taken without notice of the existence of a pre-existing equitable title passes that legal title on to a bona fide purchaser who does have notice of the equitable interest, the latter will take good title.

Why? Should not restrict first legal title holder's ability to sell

Exceptions: trustees in breach of trust OR if subsequent acquisition due to fraud.

Priorities between equitable interests

Competing unregistered interests

In a dispute between equitable interests the court determines which of these is the better interest. (if the merits of the claim are equal, priority in time of creation is considered to give the better equity).

Rice v Rice (1853): where facts of the case are examined first, if they are entirely equal, priority in time will apply.

- Michael R purchased lease from George and Lydia Rice
- Michael paid portion of price but balance outstanding
- George and Lydia transferred full title indicating full purchase monies paid
- Michael then deposited transfer with Ede and Knight to secure a mortgage
- Competition between prior equitable lien for unpaid purchase price and subsequent equitable mortgage.

HELD:

- Possession of title deeds can be an indicator of better equity (aka Ede and Knight)
- However, George and Lydia voluntarily armed Michael with the means of dealing with the estate as absolute legal and equitable owner free from every shadow of encumbrance or adverse equity.
- It cannot be said that Michael, in mortgaging the deeds, has done George and Lydia any wrong, for he has only done that which the vendors authorised and enabled him to do.

RULE: The interest which is prior in time will take priority if both interests are equal in merit. '*qui prior est tempore potior est jure*' (*Rice v Rice* 10.22)

1. **Merit analysis**

- (a) Whether prior interest holder has contributed to creation of subsequent equitable interest
- (b) Whether prior interest holder has sufficiently protected their interest by retaining title documents.
- (c) Priority of time is the **last resort**

In examining relative merits consider: nature and condition of equities, the circumstances and manner of their acquisition and whole conduct of each party

Mere equity and subsequent entity

(right to bring an equitable action)

RULE: Mere equity defeated by a **bona fide** purchaser for value **without notice** (*Latec v Terrigal* CB 10.27).

Mere equity is a right to set aside for improper exercise of power of sale (sale at undervalue) ; **Hotel Terrigal**

Priority disputes between mere equity interests will depend upon the characterisation of the interest as an 'antecedent equity'. Mere equitable interests must be enforced within a specific time frame.

Latec v Terrigal:

- Kitto J: mere equity pre-dates full equity and any priority principle based upon competition between mere and full – bona fide purchaser rule. Menzies J broadly agreed and added that merit rule not applicable
- Taylor J: mere equity not an independent proprietary title therefore no competition

Ruthol v Mills CB 557

The Torrens System

Four stages re the development of the TS:

a. **General law without a registration system**

PROBLEMS

- Time consuming and expensive
- Title was not secure and bound by previous interest because:
 - Deeds missing
 - Deeds forged → null and void
 - Bound by equitable interest on the basis of constructive notice
- Some titles are inherently insecure
 - Equitable interests are defeated by *bona fide* purchaser of an estate
 - Volunteer's title is always subject to prior equitable interests

→ DRS implemented

b. Deeds Registration system

- DRS established a centralised register with the aim of recording instruments or dealings over land
- Objective was to simplify the process of searching a particular title
- Aim is to reduce the risk that a person acquire an interest in land without knowledge of an earlier inconsistent interest.

Two critical elements introduced:

- **Publicity:** the system aimed to make land dealings a matter of public record by creating a register which a potential purchaser could search in public records
- **Changed Priority Rules:** where an instrument is executed *bona fide* and for valuable consideration and it is registered, it will take priority over an instrument which could have been registered but is not or which was registered at a later date. This was the incentive to register dealings with land.

Priority between competing registerable interests is not dependent on the date of execution (creation) of interest, or upon nature of the interest, but rather on the date of registration.

The Transfer of Land (Single Register) Act 1998 (Vic) amended the system **and no further registrations under DRS** are possible in Victoria:

- o Register is closed although searches may be made
- o Registrar under obligation to bring all fee simple estates under the Torrens System
- o Conversion scheme makes conversions possible for entitled persons

Note: operated consistently with the Torrens System (introduced in 1990).

PROBLEMS:

- o It remained necessary to search the chain of deeds to ensure that there were no defects
- o A deed was registered and not a title
- o It did not validate a defective title
- o A guarantee of good title was not provided
- o The system was optional = not comprehensive
- o Applied only to interests created by document and not legal equitable interests arising under unregistrable processes
- o Priorities in land were subject to two parallel sets of rules
- o The DRS did not protect purchasers against registered interests that pre-dated the good root of title
- o Volunteers were not assisted because the priority granted by registration applied only to document made for value
- Because of the above problems, a Torrens land registration system was adopted.

c. Torrens system: title by registration

- TS was adopted in SA and Vic in 1858 and 1862 and now embodied in TLA
- TS is applicable to all land interests issued after the introduction of Torrens legislation and old title interests which have been converted into Torrens title interests
- Cheap and reliable without disadvantages of DRS
- System of independent title whereby upon each conveyance, the land would be surrendered to the Crown who would then re-grant it to the purchaser.

Once an interest is registered it receives FULL STATUTORY PROTECTION, subject to a FEW EXCEPTIONS:

- **The title becomes indefeasible:** the registered title is cured of any defects (except fraud) and the registered proprietor takes free from any prior equities, even those of which he may have had notice of
- **Abolished the doctrine of notice**
doctrine of notice: if you actually or should have known that someone else had an interest within the title that your acquiring, you have to respect that. **TS abolishes this.**

Consequences:

- o Never a problem that a registered proprietor being bound by higher interest, even if they should have known that, because they are not going to be bound.
- o Fraud does not equal notice.

****What is fraud?**

Draw upon general law (CL and equity)

CL – deceit (intentional element)

equitable fraud – e.g. innocent misrepresentation in contractual terms (something is false you didn't realise it tho, attracts equitable remedies = equitable fraud). (e.g. estoppel – representation to induce another to rely on that and then you remit)

EQUITY IS BROADER: how much equity is available in the framework?

- Registered proprietor is only subject to encumbrances noted on title and the statutory and non-statutory exceptions to indefeasibility
- Paradigm shift: distinction between registered and unregistered interests / different hierarchy and priority rules.
- TS also provides a mechanism for **the protection of unregistered interests via the caveat system**: caveat imposes a statutory injunction on the registration of inconsistent interest for a limited period of time (caveats are not transferable).
- TS sets up a regime for the payment of compensation for any error or loss occurring as a result of the registration system under the assurance fund to:
 - o Either person who is deprived of interest or
 - o Who relies on entry in register who suffers a loss
- Single document evidencing title for each parcel of land (CRT) replaced the old chain of title which comprised a number of documents.
- Single document held by Registrar-General available for public inspection
- Copy is given to owner of land
- Standard forms in straightforward language are used for registration
- From the date of introduction of Torrens legislation all subsequent alienations of land came within the application of the Torrens system as well as old title land converted to the TS
- All unconverted land prior to the torrens legislation are regulated by the CL and equitable priority principle.

Objectives of TS

- Provide a register from which persons who proposes to deal with land can discover all the facts relevant to the title.
- Ensure that a person dealing with land which is registered is not adversely affected by any defects in the vendor's title which do not appear on the register
- Guarantee the conclusiveness of the register and to provide adequate compensation to any person who suffers loss as a result of this guarantee.

Note: registration is not compulsory.

- Lodgement (land is registered in order in which they are lodged) → Registration (are recorded in the register/creates and records title)
 - o Notification (restrictive covenant) merely announces to the world that a dealing does exist: unlike registration, it does not guarantee its title.
- Unregistered interest does not have the guarantee of security and remains subject to CL priorities principles.

SUMMARY OF TORRENS FRAMEWORK

- **Public: registry staff effect transfer rather than private individuals**
- **Registration under TLA 'cures defects' and good title passes to RP**
- **Nemo dat problem eliminated**
- **Single CT document – no chain of title**
- **Compensatory insurance fund added**
- **Paraigm change – registered and unregistered replaced legal and equitable**
- **Digital titles.**

Types of interests under the TLA CB 11.4

Registerable dealings:

Interests which are capable of being registered. Includes all CL estates except leases under 3 years. Most common: fee simple estates, mortgages, long term leases.

Interests not registered but recorded: s 37 (clear that equitable interests CANNOT be registered)

Includes: trusts and covenants. Recording means notification only and recording is different to registration as it does not cure defect.

Transfer of Land Act – s 37

Entry of trusts in Register

The Registrar shall not record in the Register notice of any trust whether express, implied or constructive.

Interests which are both unregistrable and not capable of being recorded

Equitable interests other than trusts. May be caveated only.

Interests which are unregistered – but capable of being registered