

LAND LAW EXAM CHEAT SHEET

What is the issue regarding?

1. Priority Rules > General Law Land or Unregistered interests
2. Indefeasibility of title > do any exceptions apply?
3. Co-ownership > is the issue about creation, rights and duties or severance?

1. PRIORITY RULES

Priority rules are only relevant to general law land or unregistered interests – they will not be relevant where the issue is concerning Torrens title land.

2. INDEFEASIBILITY OF TITLE

Once a title holder becomes registered under the Torrens system, they will acquire indefeasibility of title unless one of the following exceptions apply – thus, where the question is regarding indefeasibility, it is necessary to determine whether an exception applies, if so, indefeasibility will not be acquired and the registered proprietor will be vulnerable to the relevant exception.

- a) Statutory Fraud
- b) Prior/Wrong Folio
- c) Paramount Interests
- d) In personam
- e) Inconsistent Legislation
- f) Volunteers
- g) State Guarantee of Title

3. CO-OWNERSHIP

If the question involves co-ownership, first determine what aspect of co-ownership it is concerned with – is it a creation of co-ownership issue, a right and duties of the co-owner's issue or is it concerned with whether the co-ownership relationship has been severed.

PRIORITY RULES

General Law Land Unregistered Interests

Step 1: Is it a general law land or an unregistered interest?

Step 2: Transferring general law land and unregistered Torrens land formalities

- i. What type of interest is it?
 - Legal interest (deed)
 - Equitable interest (no deed)

Step 3: Priority rules

- i. What are the interests in dispute?
 - Prior legal interest and subsequent equitable interest
 - Prior equitable interest and subsequent legal interest
 - Competing equities
 - Mere equity and subsequent equity
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STEP 1: GENERAL LAW LAND OR UNREGISTERED TORRENS LAND INTEREST?

General Law Land

- The priority rules for unregistered TS land are the same for General Law Land; the TS registration is not compulsory.
- General law land is the original form of land ownership, it is land that has yet to be converted into TS
- Any alienation of general law land now must be converted into the TS
- To transfer general law land, the vendor must prove ownership which is done by tracing the chain of deeds

Unregistered Interest

- Unregistered interests are simply interests in Torrens title land that have yet to be registered (registration is not compulsory)
- TS recognises unregistered interests despite s 40(1) TLA implying that it doesn't Barry v Heider.
- Barry v Heider – TS recognises equitable interests which are equivalent to unregistered interests and therefore unregistered interests are recognised (even though not all unregistered interests will be equitable in nature)
- Barry v Heider – Additionally, the caveat system clearly indicates that the drafters of the TS assumed unregistered interests could exist
- Barry v Heider – highlights that the TS is not concerned with contracts; they're not land interests (in personam) but contracts can create equitable interests
- Paramount interests do not need to be registered, they will prevail
- 3 types of unregistered interests
- Priority rules = competing equities – further considerations required for caveats

In this case the court held that the subsequent legal interest prevailed because they were bona fide and had no notice “if you trust your property to a man who turns out to be rogue, it stands to reason that you may lose it.”

Test –

- i. Is the subsequent legal title owner bona fide? Examine the overall circumstances of how the interest was acquired, was there any fraud or anything unconscionable?
- ii. Is the subsequent legal title owner a purchaser? They must have given value
- iii. Has the subsequent legal title owner taken title without notice of the existence of the prior equitable interest? (The Doctrine of Notice)

COMPETING EQUITIES: The rule is that the stronger equity takes priority however, where the equities are equal in merit then the prior equity will prevail; the priority of time is a last resort Rice v Rice: In this case the court held that when determining whether there is a stronger equity, attention should be given to the nature and condition of the interests, the circumstances and manner of their acquisition and the whole conduct of each party.

Unregistered Interests – When conducting the merit review, the prior interest holder’s failure to caveat their interest can be considered although it will not be determinative. The merit review should be broad and include all possible action or conduct relevant to the nature of the interest Heid v Reliance.

In contrast, where the circumstances are that the prior didn’t caveat their interest because they didn’t have too e.g. they possessed the title documents, it will have the opposite effect. The subsequent interest holder will be seen at fault for entering into an agreement without the title documents being present.

MERE EQUITIES: There is no universal definition for mere equities but they mean equities that are less significant to a full equitable interest. The rule is that the mere equity will be defeated by a bona fide purchaser for value without notice Latec v Terrigal; Ruthol v Mills.