

MLL325 Land Law Exam Notes

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Topic 1 - General Law Land and Priority Rules

- Two systems of land registration in Aus:
 1. General Law Land; and
 2. Torrens Title Land
- Land under the general law system of land title is referred to as 'general law' land, or 'old title' land, or 'CL' land
 - The only way legal title can be transferred from one person to another is by deed, called a 'deed of conveyance'
 - For the sale of an interest in land, the vendor must prove their title to the land to the purchaser
 - To do this, the purchaser traces the vendor's title to check for a good root of title by examining the chain of title
- Torrens system introduced in Aus 1860s and land under this system is known as 'Torrens title' land
 - An interest in land is known as a registered interest in land
 - It can also be called a legal interest, but should not be confused with a legal interest in General Law land

Legal Interests in Land Under General Law

- The general principle for the creation of legal estates is that all conveyances or dispositions of legal interests in land (unless they are by will) must be made by a formal deed
 - s 52(1) *Property Law Act 1958* (Vic): All conveyances of land or any interest therein are void for the purpose of conveying or creating a legal estate unless made by deed
- s 18 PLA: Conveyance = mortgage, charge, lease, assent, vesting declaration, disclaimer, release, surrender, extinguishment and every other assurance of property or of an interest by an instrument except a will
- Exception to this statutory requirement = oral leases created for 3 years or less
 - s 54(2) PLA: Nothing in the foregoing provisions of this Division shall affect the creation by parol of leases taking effect in possession for a term not exceeding three years (whether or not the lessee is given power to extend the term) at the best rent which can be reasonably obtained without taking a fine
- A 'deed' for the purposes of s 52(1) PLA = document which has been signed by both parties with the intention of operating as a deed
 - Document should be signed and witnessed by both parties and it does not need to have a wax or wafer seal; there should be a printer indication where the seal would be affixed
- Under CL, deed a ritual/instrument to signify solemnity: *Manton v Parabolic*
 - Concluded that a deed is the most solemn act a person can perform with respect to a particular property
- An instrument which is not in the form of a deed will not create a legal interest under s 52(1) PLA
- s 73 and s 73A PLA: Requirements concerning the creation and execution of deeds
 - s 73(1): Where an individual executes a deed, they shall either sign or place their mark upon the same and sealing alone shall not be deemed sufficient
 - s 73A: An instrument executed after the date of the *Property Law (Deeds) Act 1977* which is expressed to be sealed shall operate as if it has actually been sealed
- Whenever a person has an estate and wishes to convey that estate to another, it must be carried out by way of a deed (unless s 52(2) applied)
 - If there is no formal deed, then no legal interest can be created
 - If a deed has been executed, then the interest will be treated as legal because it is enforceable at CL
 - If no deed is executed, the interest may still be enforceable under the equitable jurisdiction

Equitable Interests in Land

- The creation of equitable interests in land does not have to occur by deed but it does usually occur in writing
- The main provision relevant to the enforceability of equitable interests in land is s 53 PLA: Instruments required to be in writing, p. 496
 - (1) Subject to the provisions hereinafter contained with respect to the creation of interest 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 authorized 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 authorized in writing or by will.
 - (2) This section shall not affect the creation or operation of resulting, implied or constructive trusts
- This provision requires that equitable interests, as an interest in land, are required to satisfy certain formality requirements, p. 496
- s 53(1) PLA (Vic) applies specifically to the creation of all trusts and other express equitable interests but not to resulting trusts or constructive trusts: s 53(2), p. 497
- Where an express trust is created by way of declaration rather than transfer, s 53(1)(b) indicates that the formality requirements is that the trust be 'manifested and proved' by some in writing, p. 497
 - Trusts coming within the scope of this subsection need only be evidenced in writing, not created in writing
 - Possible for a trust to be created orally and subsequently enforced by evidence in writing of the terms signed by the settlor
- s 53(1)(a) overlaps with trusts coming within (b), however, it has been held that where trusts over land are orally declared, (b) should have an independent operation: *Secretary, Department of Social Security v James* (1990) 95 ALJ 615
 - (a) and (b) do not require a declaration of a trust in land to be treated as a special class of equitable interest only capable of being created in writing and manifested and proved in writing, signed by the declarant
 - (b) would be otiose (serving no practical purpose or result) if (a) included the declarations of trust in respect of land specifically provided for in (b)
- s 53(1)(c) applies to transactions with pre-existing equitable interests, p. 497
 - Any disposition of a subsisting equitable interest must be in writing and signed