



LLB 220 – PROPERTY EXAM NOTES

Semester 1 2018



Table of Contents

INTRODUCTION TO TITLE.....	4
CROWN LAND	4
NATIVE TITLE	4
OLD SYSTEM TITLE	4
<i>Old System Title Depends on Establishing a Chain of Title</i>	4
TORRENS TITLE.....	4
<i>Indefeasibility</i>	5
ADVERSE POSSESSION.....	3
DISPOSSESSION OF DOCUMENTARY OWNER.....	3
FACTUAL POSSESSION.....	3
INTENTION TO POSSESS.....	4
<i>Evidence of Possession/Intention</i>	4
TIME LIMITATIONS	4
<i>Private Land</i>	4
<i>Crown Land</i>	4
NO EVENTS WHICH STOP TIME RUNNING.....	4
<i>Claimant Under a Legal Disability</i>	4
<i>Fraud</i>	4
<i>True Owner Asserts Rights</i>	5
<i>Confirmation of the Cause of Action Limitation Act s 54</i>	5
<i>Abandonment</i>	5
CAUSE OF ACTION EXPIRED	5
NOTE - ADVERSE POSSESSION OF TORRENS LAND	5
INTRODUCTION TO EQUITY AND TRUSTS	6
TRANSFERRING INTERESTS IN LAND AT LAW	6
<i>Inter-Vivos – Old System</i>	6
<i>Wills</i>	6
<i>Torrens Land</i>	6
CREATION AND TRANSFER OF INTERESTS IN LAND IN EQUITY – CONTRACTS FOR THE SALE OF LAND.....	6
<i>Overcoming the Absence of Formal Requirements – The Equitable Doctrine of Part Performance</i>	6
<i>Equitable Interests Arising Under Contract – The Doctrine of Conversion and Requirement of Specific Performance</i>	6
CREATION AND TRANSFER OF INTERESTS IN LAND IN EQUITY – TRUSTS	7
<i>Express Trust</i>	7
<i>Resulting Trust</i>	7
<i>Constructive Trust</i>	8
ESTOPPEL	8
LEASES.....	10
TYPES OF LEASES.....	10
<i>Fixed Term</i>	10
<i>Periodic Tenancy</i>	10
<i>Tenancy at Sufferance</i>	10
<i>Tenancy at Will</i>	10
<i>Tenancy by Estoppel</i>	11
<i>Concurrent Leases</i>	11
<i>Reversionary Leases</i>	11
<i>Leases Governed by Statute</i>	11
SUBSTANTIVE REQUIREMENTS.....	12
<i>Certainty of Duration</i>	12
<i>Exclusive Possession</i>	12
FORMAL REQUIREMENTS	12

<i>Old System</i>	12
<i>Equitable Leases</i>	12
<i>Torrens Title</i>	13
COVENANTS IN LEASES.....	13
<i>Common Law Covenants – Landlords</i>	13
<i>Common Law Covenants -Tenants</i>	14
<i>Statutory Covenants – Tenants</i>	14
<i>Statutory Covenants – Landlord</i>	15
<i>Express Covenants</i>	15
ENFORCEMENT OF LEASE COVENANTS – PRIVY OF CONTRACT.....	16
PRIVITY OF ESTATE	17
<i>Enforcements of Covenants</i>	17
<i>Privity of Estate and Equitable Leases</i>	18
<i>Assignment of the Landlord’s Interest</i>	18
<i>Concurrent Liability of Assignee and Original Tenant</i>	18
REMEDIES FOR BREACH (OTHER THAN TERMINATION)	18
<i>Damages</i>	19
<i>Injunction</i>	19
<i>Set-Off</i>	19
TERMINATION OF LEASES	19
<i>Notice</i>	19
<i>Time</i>	19
<i>Merger</i>	19
<i>Surrender</i>	20
<i>Frustration</i>	20
<i>Contract</i>	20
<i>Forfeiture by Re-Entry</i>	20
EASEMENTS.....	23
SUBSTANTIVE REQUIREMENTS <i>RE ELLENBOROUGH PARK</i>	23
<i>Dominant/Servient Tenement</i>	23
<i>Easement Must Accommodate Dominant Tenement</i>	23
<i>Dominant and Servient Tenement Owners Are Different</i>	24
<i>Right Capable of Forming the Subject Matter of the Grant</i>	24
CREATION OF AN EASEMENT.....	25
<i>Express Grant</i>	25
<i>Express Reservation</i>	25
<i>Conveyancing Act s 88(1)</i>	25
<i>Implied Grant</i>	26
<i>Prescription</i>	27
<i>By Statute s 88K CA</i>	27
EXTENT OF RIGHTS CREATED – EASEMENTS.....	28
<i>Extent of Right Created – Easements by Implication or Prescription</i>	28
EXTINGUISHMENT OF EASEMENTS.....	28
<i>Express Release</i>	28
<i>Abandonment</i>	28
<i>Statutory Extinguishment s 89(1) CA</i>	29
<i>Suspension of Easements</i>	29
REMEDIES FOR EASEMENTS	29
<i>Abatement</i>	29
<i>Action in Nuisance</i>	30
PROFITS A PRENDRE	30
RESTRICTIVE COVENANTS.....	31
ENFORCEABILITY OF COVENANTS	31
<i>The Benefit of the Covenant – At Law</i>	31
<i>The Burden of the Covenant – At Law</i>	32

<i>Burden of the Covenant in Equity</i>	32
<i>The Benefit of the Covenant in Equity</i>	34
FORMAL REQUIREMENTS FOR CREATING A COVENANT	34
<i>Old System</i>	34
<i>Torrens Title</i>	35
<i>Plans of Subdivision</i>	35
REMEDIES.....	35
<i>Injunction</i>	35
<i>Damages</i>	35
DISCHARGE AND MODIFICATION	35
<i>Express Agreement</i>	36
<i>Implied Agreement</i>	36
<i>Merger</i>	36
<i>Statutory Extinguishment Under s 89(1) CA</i>	36
<i>Suspension of Covenants</i>	36
CONDITIONAL INTERESTS AND PERPETUITIES.....	37
DETERMINABLE AND CONDITIONAL INTERESTS.....	37
<i>Determinable Interest</i>	37
<i>Defeasible Interest (Condition Subsequent)</i>	37
<i>Conditional Interest (Condition Precedent)</i>	37
VOID CONDITIONS	37
VESTED INTEREST.....	37
<i>An Interest is Vested if</i>	38
RULE AGAINST PERPETUITIES	38
PERPETUITIES PERIOD	38
STATUTORY PROVISIONS TO PREVENT FAILURE	38
<i>'Wait and See' Rule s 8 Perpetuities Act</i>	38
<i>Age Reduction s 9(1) Perpetuities Act</i>	38
<i>Class-Closing Rule s 9(4) Perpetuities Act</i>	39

Introduction to Title

- Four types of title used in NSW today:
 - Crown land
 - Native title
 - Old System land
 - Torrens title

Crown Land

- A form of land owned and managed by the Crown
- Governed by Crown land statutes (*Crown Lands Act 1989 (NSW)*)
 - Regulates the Crown's power to dispose of unalienated land
 - Controls the Crown's ability to use and deal with land

Native Title

- Collectively held, generally exists over Crown land
- Extinguished by grant of land in freehold

Old System Title

- The system which existed before Torrens
- Crown grants in NSW made prior to 1863 are under old system, unless converted to Torrens.

Old System Title Depends on Establishing a Chain of Title

- For example:
 - Crown grant to E
 - Conveyance from E to D
 - Mortgage from D to C
 - And so on until it follows to you
- Each transfer must be valid for you to receive valid title to the land
- Good root of title
 - An instrument of disposition dealing with or proving on the face of it (without the aid of extrinsic evidence) the ownership of the whole legal and equitable estate in the property sold, containing a description by which the property can be identified, and showing nothing to cast any doubt in the title of the disposing party *Gateway Developments Pty Ltd v Grech*
 - Good root of title means going back at least 30 years - s 53 CA. Only a presumption

Torrens Title

- Created under *Real Property Act 1863 (NSW)*
- Current legislation *Real Property Act 1900 (NSW)*

Indefeasibility

- Torrens title is a system of title by registration *Breskvar v Wall*
- *RPA s 42(1)*:
 - Notwithstanding the existence in any other person of any estate or interest which but for this Act might be held to be paramount or to have priority, the registered proprietor for the time being of any estate or interest in land recorded in a folio of the Register shall, except in case of fraud, hold the same, subject to such other estates and interests and such entries, if any, as are recorded in that folio, but absolutely free from all other estates and interests that are not so recorded.
- The exception is fraud. Registration by fraud by the person registered can be invalidated. However, an innocent person is protected, even if they gain a title acquired by fraud