



LAND LAW



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Topic 6 – Inconsistent Legislation

<p>Title of RP may be set aside where subsequent legislation overrides/peels it Direct inconsistency will render indefeasibility ineffective - Horvath</p>	<p>Pratten v Warringah Shire Council: W via LG Act had title but not registered and P bought land – IN REM Indefeasibility WILL NOT AVAIL/operate to defeat a statutory right of the council ‘statutory and public rights override indefeasible title</p>	<p>EFFECT: applying to all land and indefeasibility displaced by overriding provision Street J: clear intention in legislation to paramount Torrens Removed registration</p>
<p>Horvath v CBA: Cth has mortgage and RP was couple, RP defaulted and son did not want to pay Issue: proviso’s on age inconsistent with Torrens? Ormiston JA: neither Act dealt ‘directly with the subject matter in law of the other’</p>	<p>Both the Supreme Court Act (minor) and Torrens could and was ‘left to operate within their respective spheres’ No direct inconsistency as legislative scope confined to own spheres</p>	<p>INCONSISTENCY – Horvath Determine the level of inconsistency, express language or must NECESSARILY imply a repeal of the prior enactment → not at creation but at validity of the mortgage through the subsequent Act Implied repeal = Gov Act/Council takes priority</p>
<p>Hillpalm v Heavens Door: subdivided lots, plan referred to easements but title did not, could Dominant propose the existence of easement via inconsistency in planning Act and Servient’s title? Planning Act needed consent → was this inconsistent?</p>	<p>JJ used narrow and strict interpretations: planning Act unenforceable on subdivision condition = not inconsistent WHY? Right of subdivision consent was not a right in rem on title real and lively’ question of inconsistency if right to consent was created →</p>	<p>INCONSISTENCY – Hillpalm → title cf Breskvar v Wall: encumbrances limited to rights on title → Hillpalm: right conferred by LG act was not a right in rem registrable on title that COULD BE HELD INCONSISTENT vs Torrens Indefeasibility = INCONSISTENCY MUST BE A RIGHT IN REM on title</p>
<p>Kogarah v Golden Paradise (OBITER): void and title can be set aside, but can be a valid registration WHY? The valid registration was derived from Registrar General and upon the transfer or antecedent transaction → antecedent conveyance of council to subseq. RP DID NOT CREATE TITLE but the TORRENS indefeasibility → not inconsistent</p>	<p>City of Canada Bay v F & D Bonaccorso Pty Ltd: Rezoned and replanned land then sold and became residential land for FD Co → this was prohibited by LG Act / did this override Torrens? HELD: via Hillpalm no express wording or implied intention to repeal = denied indefeasibility provisions</p>	<p>INCONSISTENCY: Canada Bay how? Via Kirby J in Hillpalm: must read the statutes sequentially → title prior to registration was invalid because not allowed to be residential BUT upon registration → new clean title THUS: no express repeal of Torrens + subsequent registration = clean title and NOT INCONSISTENT</p>
<p>Pike v Tighe: condition to allow easement over L1 for L2 must be satisfied before council can consent L1 executed easement but no mention + Council consented = unsatisfied the LG condition Pike (L2) wanted to enforce easement on Tighe (L1)</p>	<p>The LG Act expressly stated that the condition of a valid easement ‘RUNS WITH THE LAND’ & ‘BINDS OWNER AND SUCCESSORS IN TITLE’ → HCA: condition ran with land and DID NOT EXPIRE UPON REGISTRATION</p>	<p>Interpretation: natural and ordinary meaning = obligations ran with ALL OF THE LAND Not an issue of indefeasibility → if condition runs with the land CANNOT expire via registration thus Tighe (L2) committed a development offence</p>

Topic 7 – Volunteers

<p>Volunteers: persons with no valid consideration who take title cannot take full benefit of indefeasibility provisions (VIC ONLY)</p>	<p>Consideration: doesn't need to be adequate but must be 'sufficient' in matching the value Cannot be a moral obligation ✓ Valuable = money vs X Good = Love Xiao Hui Yung v Perpetual Trustees vic: Good consideration will deny a trust bc it will be presumed as a gift</p>	<p>Valuable vs Good Consideration Chief Commissioner of State Revenue (NSW) v Dick Smith Electronics Holdings Pty Ltd: valuable = marriage good = love Director of Public Prosecutions (Vic) v Le: equity intervenes for VALUABLE (MONEY) and GOOD consideration is insufficient</p>
<p>VICTORIAN PERSPECTIVE (BINDING) King v Smail: indefeasibility does not apply to Volunteers → WILL ONLY APPLY TO PROTECTED BONA FIDE PURCHASERS FOR VALUE Rasmussen v Rasmussen: Victoria through express wording for bfpwvwn will only protect bfpwvwn and not volunteers Valoutin v Furst: s43 does not relieve a Volunteer, applying indefeasibility would be INCONSISTENT with TLA</p>	<p>Other JURISDICTIONS (APPLY IN DISCUSSIONS) Bogdanovic v Koteff (NSW opposition with King): nothing in NSW Torrens RPA point to an intention to preclude volunteers from indefeasibility Conlan v Registrar of Titles (WA): "indefeasibility can apply to a holder of a registered interest where RP registered via Volunteer Transaction" if it doesn't apply, Volunteers must attach to exceptions recognised by TLA</p>	<p>Farah Constructions v Say-Dee (HCA) [198] Gleeson CJ, Gummow, Callinan, Heydon and Crennan JJ: RP would prevail even they are volunteers Regal Castings v Lightboy (NZ) (Tipping J): would be illogical to exclude volunteers from indefeasibility</p>
<p>STATE Assurance Fund TLA ss108-111</p>		
<p>A person who is deprived of their interest as consequence of bringing land into the Torrens system is entitled to compensation: TLA s110(1)(a) Supported by the Consolidated Revenue Fund</p>	<p>EXCLUSIONS – TLA s109(2) 1) not liable if loss was caused by RP 2) loss was caused by Crown grants 3) a misdescription of title has resulted in 2 parcels of land on the same CT</p>	<p>COMPENSATION TLA s110: loss through: a) bringing any land under TLA b) lawyer failed to disclose a defect in title or another interest in land c) amendment in Register Book d) error or omission in register book e) consideration on faith of any entry in register book f) loss or destruction of any document lodged at titles office or error in official search g) mistake of Registrar/officer in their duties h) Registrar's exercise of any power conferred</p>
<p>NO INDEMNITY TLA s110(3)-(4) 3)a) claimant, his lawyer, or conveyancer, agent substantially contributed to loss by fraud/neglect b) costs defending lawsuit without consent of the Registrar c) in consequence of Registrar not inquiring into power of attorney</p>	<p>d) consent given without authority of Registrar (Subdivision Act s22(1AC)) TLA (4)a) cannot exceed the value of estate at the time error was made b) amendment of Register book = value before amendment</p>	
<p>How to make a Claim: Limitation of Actions (Vic) s5(1)(d): 6 years Must have causation between MISTAKE & LOSS Must show erroneous area of land Error a result of exercise of discretion of Registrar Land must be registered</p>	<p>Diemasters v Meadowcorp (NSW) (deprived estate not in VIC): keep a person from possession or enjoying [land]/included deprivation by subsequent registration and fraudulent activity resulting in indefeasible registration Lincu v Registrar General (NSW): included breach of trust Solak v Registrar of titles(VIC): can challenge validity of a registered instrument via s110</p>	<p>REGISTRAR POWER TO CORRECT ERRORS TLA s103(2)(a) Express power to correct register Frazer v Walker: 'slip up rule' adesinged to correct obvious admin errors with no substantive importance State Bank of NSW v Berowra: cannot amend indefeasibility and create a situation forbidden by RPA (TLA) James v Registrar-General: can restore omission</p>