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Summary of proprietary interests

Real property (land)	
Legal interests in real property / land <ul style="list-style-type: none"> - See below for categories of property interests Can be assigned/created by: <ul style="list-style-type: none"> - Old System Land: deeds signed, sealed, and attested under Conveyancing Act s 23B - Torrens Title: dealings registered under Real Property Act s 41 - Oral lease that meets the requirements of Conveyancing Act s 23D(2) 	Equitable interests in real property / land <ul style="list-style-type: none"> - See below for categories of property interests Can be assigned/created by: <ul style="list-style-type: none"> - Contracts caught by Conveyancing Act s 54A - Transfers caught by Conveyancing Act s 23C - Agreements with part performance - Constructive or implied/resulting trusts - Equity otherwise regarding as done what ought to be done
Choses in possession	
Legal interests in choses in possession <ul style="list-style-type: none"> - Ownership - Possession as a bailee Can be assigned by: <ul style="list-style-type: none"> - Voluntary assignment (<i>inter vivos</i> gift) - Assignment for value under SOGA 	Equitable interests in choses in possession <ul style="list-style-type: none"> - N/A
Choses in action	
Legal choses in action <ul style="list-style-type: none"> - Money in a bank: Foley v Hill - Debt - Insurance policies - Shares: Colonial Bank v Whinney - Contractual rights (incl. gift vouchers and royalties: Shepherd v FCT (but still do future property analysis)) - Copyright and patents - Benefit of a creditor under a guarantee - Policy of insurance - Right to sue for breach of contract (if assignable) Can be assigned by: <ul style="list-style-type: none"> - See topic on assignments. That is all about choses in action. 	Equitable choses in action <ul style="list-style-type: none"> - Interest of a beneficiary under a trust: Baker v Archer-Shee - Interest of a legatee (heir) under a will - Reversionary interest under a will - Interest of a beneficiary under an unadministered estate (Livingston right) - Right to receive future property once ascertained (but go to future property analysis for this) Can be assigned by: <ul style="list-style-type: none"> - See topic on assignments. That is all about choses in action.

Categories of property interests

Freehold interests: freehold title transfers/disputes and mortgage problem questions

- **Fee simple** = This is the maximum interest a person can have in land. Rights to exclusive possession, use/enjoyment of the land, and right to alienation and transfer.
- **Life estate** = right to exclusive possession for the duration of measuring life. Registered in Torrens Title.
- **Mortgage** = mortgagee (usually bank) takes title of the land as security for the loan they are providing to the mortgagor.
 - o Old System mortgage requires a deed; Torrens Title mortgage must be registered; otherwise, might be an equitable mortgage.

Non-freehold interests: lease, licence, easement, and chattels problem questions

- **Lease** = right to exclusive possession for a certain term (fixed or periodic). Formality requirements must be satisfied to create either a legal lease or equitable lease (*go to scaffold for Old System / Torrens and writing requirements*).

EQUITABLE INTERESTS – Writing requirement scaffold

Old System Title: if the requirements for a written deed have not been satisfied, there is no legal interest. However, equity can 'take cognisance' through **s 23C and 54A**.

Torrens Title: if there is no registration, there is no legal interest. However, equity can 'take cognisance' through **s 23C and 54A**.

1. Was there a signed or written agreement?

- **Conveyancing Act s 23C(1)(a):** "No interest in land can be created or disposed of except by writing signed by the person creating or conveying the same [or a person authorised in writing]."
 - This section arises where there is no prior agreement (such as a memorandum of understanding, etc). It relates to a present intention to create an executed contract. It requires perfect form.
 - Electronic documents and electronic signatures are valid: **s 23C(3)**
 - If satisfied, this allows for creation of an **equitable** (not legal) interest in land by a written and signed instrument.
- **Conveyancing Act s 54A:** "No action or proceedings may be brought upon any contract for sale or other disposition of land or any interest in land... unless the agreement... or some other memorandum or note thereof is in writing and signed by the party to be charged [or an authorised person]."
 - This section applies to executory contract (promises), i.e. seeking specific performance for an agreement to transfer property in future. This will arise when the parties contemplate doing some further act before the circumstance is finalised.
 - When there is an executory contract, only s 54A is engaged: Per White J in **Ciaglia v Ciaglia**.
 - Where there was an executory contract that has subsequently been performed, both **s 23C(1)(a) and s 54A** are engaged: **Ciaglia v Ciaglia**, relying on **Khoury v Khouri** (disagreeing with **Baloglow v Konstantinidis** on this point).
 - If the facts are unclear about whether it is an executory contract or a present intention to create an executed contract, consider both s 23C and s 54A.
 - This section is about action or proceedings – it becomes relevant when someone sues i.e. you cannot sue someone unless there is some document in writing (or evidence of part performance).
 - It also covers an agreement to declare trust over land: **Khoury v Khouri**
 - This section is less stringent than **s 23C(1)(a)**, i.e. some note or memorandum is sufficient, and the agent does not have to be authorised in writing: **Baloglow v Konstantinidis**
 - Electronic documents and electronic signatures are valid: **s 54A(4)**

2. Does the Trust exemption apply?

- **Conveyancing Act s 23C(1)(b):** "a declaration of trust... must be manifested and proved by some writing signed by some person who is able to declare such trust or by the person's will"
 - **Express trust** = sufficiently certain declaration of intention that the trustee will hold property for the benefit of the beneficiary (e.g. holding something 'on behalf of someone else' etc.)
- **Conveyancing Act s 23C(2):** the writing requirements do not apply with respect to "the creation of resulting, implied, or constructive trusts."
 - **Resulting/implied trust** = contribution to the purchase of property gives right to a presumption of trust, unless rebutted.
 - **Constructive trust** = a Court order, or a trust-like relationship that exists in reality (e.g. when someone signs a contract for sale of property, but the settlement date has not yet occurred, the vendor is a trustee under a constructive trust and the purchaser is beneficiary): **Lysaght v Edwards (1876)**.
- If the Trust exemption does apply, consider equity below (because **s 23C(2)** only "saves" resulting/implied and constructive trusts — it does not create them, so you still need to argue that equity will come into play).
- Equity applies to enforce all trusts. Trusts do not transfer a legal interest, only an equitable interest: **LR Holdings Co (No 2) v Commissioner of Stamp Duties (1980)**

3. If no to above, is there evidence of part performance?

- **Conveyancing Act s 54A(2):** the writing requirements in **s 54A** do not apply when there has been part performance. The continued operation of this doctrine is confirmed by **Conveyancing Act s 23E**.