

LAW5018: Advanced Property Law

SCRIPT: D will argue that upon registration, they acquired a prima facie indefeasible title and therefore took their interest free from any prior equitable interest or encumbrance, and immune from attack by P pursuant to s 42 of the TLA. This is consistent with the principle that the Torrens system is not one of registration of title but title by registration (*Breskvar v Wall*). However, P will contend that despite the statutory protection of registered title, an exception applies, rendering D's title defeasible (s 42).

<u>RULE</u>	<u>NOTES</u>	<u>SCRIPT</u>
Fraud (s 42(1))	<ol style="list-style-type: none"> 1. What is fraud? 2. What is the fraudulent conduct? <ol style="list-style-type: none"> a. What is the exact conduct in issue here? b. Explain how the conduct satisfies the definition of statutory fraud <ol style="list-style-type: none"> i. Can you find fraud/dishonesty/moral turpitude etc? ii. Can you draw analogies to cases you have studied (or distinguish them)? 3. Who committed the fraudulent conduct (or has knowledge of the fraudulent conduct)? <ol style="list-style-type: none"> a. The registered proprietor? b. An agent or employee? 4. If not of the registered proprietor, can the fraudulent conduct (or knowledge of the fraudulent conduct) be brought home to the registered proprietor? <ol style="list-style-type: none"> a. Remember, it's probably easy to identify fraud – but it needs to be 'brought home' to the registered proprietor before their title can be affected (and made defeasible) 	<p>Fraud is an express exception to indefeasibility under s 42(1) of the TLA. The term refers to 'statutory fraud', meaning actual dishonesty, such as moral turpitude or a wilful and conscious disregard of another's rights (<i>Wicks; Assets Co</i>). It is a narrow and strictly construed concept, given the seriousness of the allegation, and constructive or equitable fraud is not sufficient (<i>Assets</i>). To establish a successful fraud claim, actual dishonesty or wilful blindness is required (<i>Assets Co</i>). The fraud must then be brought home to the registered proprietor or their agent, meaning they must have participated in, known of, or been wilfully blind to the fraud (<i>Loke Yew; Bahr v Nicolay</i>). A mere carelessness alone will not amount to fraud (<i>Pyramid</i>). X will argue that Y's [registered mortgage] is defeasible for [fraud], based upon [Z's forgery] and/or [A's false attestation] which may be brought home to the [RP/bank] (<i>Assets Co</i>). Per s 43 TLA, mere notice of an unregistered interest is not fraud by the registered proprietor and thus, the focus is on conduct prior to registration. Fraud usually has to occur before registration despite the minority view in <i>Bahr</i>.</p> <p>Actual Dishonesty:</p> <p>X will argue that Y committed actual fraud as they intentionally engaged in a dishonest act of [facts] which is a form of 'moral turpitude' (<i>Assets</i>) and thus amounts to</p>

CO-OWNERSHIP

RULES:

- **Joint tenants** – share the same interest in undivided shares
- **Tenants in common** – share the same interest in distinct shares

SCRIPT: Co-ownership exists where two or more people have an interest in property that entitles them both to possess the property at the same time. As X and Y both have an interest in the property, this is likely a co-ownership scenario. It must first be established whether they are joint tenants or tenants in common.

Whether Z can inherit Y's interest depends on the nature of Y's ownership of the property as either a joint tenant or a tenant in common with X.

<u>RULE</u>	<u>NOTES</u>	<u>SCRIPT</u>
Joint Tenants at Law	<ul style="list-style-type: none"> • if they are registered as 'joint tenants; per s 30(2), they will be deemed joint tenants. • Requires four unities (the interest of each joint tenant must be the same in nature, extent and duration): <ul style="list-style-type: none"> ○ S 32 of TLA - registered proprietors <ol style="list-style-type: none"> 1. <u>Possession</u> <ul style="list-style-type: none"> → Each co-owner is entitled to possession of the whole property 2. <u>Interest</u> <ul style="list-style-type: none"> → Each has an interest of the same nature, extent and duration → Co-owner cannot hold 3/4 of the property and the other 1/4 (not same extent) 3. <u>Title</u> <ul style="list-style-type: none"> → Each has acquired title under the same instrument or act 4. <u>Time</u> <ul style="list-style-type: none"> → The interests vested at the same time 	<p>Where land is registered in the names of multiple persons without express words of severance, the law presumes they hold as joint tenants (s 30(2), s 33(4); <i>Pyramid Building Society v Scorpion Hotels; Lawson v Lawson</i>). This presumption can be however rebutted if the unities stipulated in s 32 of the TLA are not met [go through unities].</p> <p>As the unity of [unity/unitites] is/is not met, co-ownership will [remain as joint tenants/switch to tenants in common].</p> <p>Words of Severance:</p> <p>Under CL and s 33(4) TLA, this presumption can also be rebutted by words of severance, or statements of contrary intent, in the instrument. If the instrument that creates the co-ownership</p>

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Presumption	<ul style="list-style-type: none"> • The presumption is that transferee holds property on trust for person providing purchase money. Transferee will acquire legal ownership of pr • Resulting trusts are only concerned with contributions <u>before/at time of acquisition</u>. • Look for intention • Do not look at facts after • <u>Equal contributions</u>: <ul style="list-style-type: none"> ○ A and B contribute equally, but property is transferred in B's name only ○ Equity presumes B will hold legal title on trust for A and B as TIC in shares proportionate to their contributions • <u>Unequal contributions</u>: <ul style="list-style-type: none"> ○ A purchases property but legal title in B's name only. Equity presumes B intends to hold property on trust for A ○ A and B contribute to purchase price but unequally, and title is put in both A and B's names. Equity presumes that the property is held on trust for A and B as TIC in proportion to contributions to PP ○ Legal and equitable on trust for themselves as TIC showing their breakdown of shares <i>Calverley</i> 	<p>Transfer to Volunteer:</p> <p>If there is a transfer of some/all property to another without receiving consideration, the transferee is a volunteer and equity presumes that the transferee holds their legal property interest on trust for the transferor (as the transferor intended to retain beneficial title) (<i>Cummins</i>). On the facts, X has transferred their fee simple interest in land to Y for no consideration (so Y is a volunteer). Equity will therefore presume that X intended to retain the beneficial interest in the property, and that Y holds the interest entirely on resulting trust for X.</p> <p>Purchase Price Resulting Trust:</p> <p>A PPRT arises where the legal title does not reflect the actual contributions to the purchase price. As on the facts X and Y have made unequal contributions to the purchase price with X contributing [% or \$] and Y contributing [% or \$] OR X has contributed to the purchase price but is not reflected on title, equity will presume that X and Y hold the beneficial interest as tenants in common in proportion to their contributions and per s 53(2), this need not be in writing.</p>
Rebutting the	<u>Contrary Intention:</u>	This presumption may be rebutted by evidence of

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- *Kramer*: DL promised S (a farmer) that he would inherit a farm that she owned when she died. In reliance on that promise, S lived and worked on the farm for an additional 23 years. DL died and did not leave it to S.

SCRIPT: P may alternatively have a claim in proprietary estoppel. The elements are similar to CICT but they have different starting points. P bears the onus of proof for all elements (*Sidhu*). X may argue that Y has created or encouraged an expectation or representation that she/he will have an interest in [land] which he/she reasonably relied on to his/her detriment. Proprietary estoppel serves to 'vindicate the expectations of P against D if D seeks to unconscionably resile from an expectation that they have created'.

<u>RULE</u>	<u>NOTES</u>	<u>SCRIPT</u>
Representation	<ul style="list-style-type: none"> ● Has RP made a rep that P will receive an interest in land? <ul style="list-style-type: none"> ○ Caring duties > no wages <i>Ogilvie</i> ○ Working on land > no wages <i>Giumelli</i> R's parents promised part of land for working without wages ● 'this will be yours one day' (<i>Giumelli</i>; <i>Sidhu</i>) ● clear and unequivocal promise must be made through words or conduct ● Caring duties and no wages (<i>Ogilvie</i>) ● Working on land and no wages (<i>Giumelli</i>) 	X may argue that in [promise made by person], Y created an expectation that she/he would acquire a future proprietary right. Where the assumption is 'uncertain or extravagant or out of all proportion to the detriment which the plaintiff has suffered', no estoppel exists (<i>c.f. Sidhu</i>).
Reliance	<p>Has P relied on that representation?</p> <ul style="list-style-type: none"> ● Based on O's representation, R cared for O for his last years of his life <i>Ogilvie</i> ● R relied on parents promise for 14 years, worked for no wages and built house <i>Giumelli</i> ● Life changing decisions (<i>Sidhu</i>) 	X may argue that they have performed acts of reliance based upon the expectation that they would acquire the propriety right as on the facts they have reasonably [facts]. X will argue that but for the representation, they would have [e.g. bought their own home] instead.
Detriment	<ul style="list-style-type: none"> ● Has P changed her position and suffered detriment? 	X may further establish that she/he relied on the promise to his/her detriment as [facts]. Detriment