

LAWS4107: *Land Law*

Question 1: 50 minutes (*25 marks*)

Question 2a/2b: 10 minutes (*5 marks*)

Question 3: 30 minutes (*15 marks*)

Question 4: 30 minutes (*15 marks*)

Total: 120 minutes (60 marks)

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INDEFEASIBILITY: Attack Plan

1. What is the nature of the parties' interests? (Specify whether lease, mortgage, FS, etc.)
 - **Registered**
 - **Unregistered**
2. What is the priority rule?
 - **Torrens Methodology, *Rice v Rice***, etc.
3. Is RP a volunteer?
 - Retains indefeasible title – ***Bogdanovic, Cassegrain***
 - OQ as to whether s 134 applies – ***Rasmussen***
4. To what extent does the indefeasibility attach?
 - Option to renew or purchase in a lease – ***Mercantile Credits***
 - Personal covenant to repay in a mortgage – ***Tsai***
5. Do any exceptions apply?
 - Express exceptions (misdescription of land, short-term lease, prior CoT)
 - Fraud
 - Right *in personam* (CICT, RCT, ***Bahr*** undertaking, SEC, estoppel)
6. If an equitable interest, did they protect it?
 - If not – extinguished by registration of inconsistent dealing
 - Was a failure to lodge a caveat postponing conduct?
7. Can they correct the register?
8. Can compensation be claimed?
 - a. Against the liable party? – **s 201**
 - b. Against the registrar? – **s 205**

TORRENS SYSTEM: Indefeasibility

Torrens Methodology

- Registered proprietor (RP) has an immediately indefeasible title unless an exception applies
 - Frazer v Walker, Breskvar v Wall*, s 68 TLA

Key Indefeasibility Provisions (TLA)

- s 53** – In a priority dispute between two registered interests, the first in time shall prevail
- s 58** – No instrument will effectively pass legal title under TS until it is registered
- s 63** – Registration cures all prior defects that may have been encumbered on certificate of title (CoT)
 - CoT is conclusive evidence of indefeasible title
- s 68** – RP has unencumbered interest in the land besides relevant exceptions
- s 134** – Purchasers not required to inquire into title, nor are they affected by notice (actual or constructive) of unregistered interest, except in certain circumstances
- s 199** – RP protected against ejectment, except in certain circumstances (own fraud)
- s 202** – A purchaser who obtains property from an RP who registered through fraudulent means is protected against ejectment and unaffected by this past fraud (*nemo dat* does not apply)
- Provisions in relation to duplicate CoTs no longer relevant since TLA Amendment Act 2022**
 - Original CoT held in title's register is now the single source of truth regarding land

Deferred vs Immediate Indefeasibility

- Immediate indefeasibility** – Subsequent RP immediately acquires indefeasible title despite the validity of the instrument, or fraudulent means of acquisition unrelated to their own conduct
- Deferred indefeasibility** – Subsequent RP does not acquire indefeasible title upon registration of a void instrument; indefeasible title is only granted upon a subsequent dealing

Case Facts	Issue	Held/Reasoning
<i>Gibbs v Messer</i> [1891]		
- Mrs M left Dup CoT with her solicitor Cresswell - C forged deed of transfer (DoT) in favour of HC (fictitious person) - HC becomes RP - C forges HC signature on a DoM in favour of McIntyres - Mortgage registered - M's sell property by auction to 3rd party on default by HC	- Did M's become indefeasible title holder? - Is Mrs M entitled to be restored as RP? - Is Mrs M subject to M's mortgage? If immediate – M's had indefeasible mortgage If deferred – M's did not have an indefeasible mortgage	- Lord Watson (PC): - Those dealing with a forger, as opposed to the RP, do not transact on faith of the register (cannot be registration acquire title) - However, still able to pass valid title to 3rd party - Prefers deferred approach

3 Interpretations from *Gibbs v Messer*

- Broad – Registration of a void instrument, regardless of reason, is ineffective to pass title
- Intermediate – Instruments bought due to fraud or forgery invoke deferred indefeasibility
- Narrow – Deferred indefeasibility only applies when dealing with a fictitious, and non-existent RP

<i>Frazer v Walker</i> [1967]	
• Mrs F forged Mr F's signature on a mortgage in favour of Mr & Mrs R ◦ Mortgage registered • Mr & Mrs F defaulted • Mr & Mrs R sold property to Mr W • The DoT executed by R's in favour of Mr W was registered • Mr W sought possession of the property from F's	• Once registration has been affected, it doesn't matter that the instrument that was registered was void for any reason • Registration passes valid indefeasible legal title, endorsing immediate indefeasibility • Gibbs never overruled, but saved only for where there is a fictitious proprietor

<i>Breskvar v Wall</i> (1971)		
• Mr & Mrs B borrowed \$1,200 from P and handed over Dup CoT and DoT signed in blank • P fraudulently inserted W's name on DoT and registered DoT and Dup CoT ◦ W now RP and aware of P's fraud • P negotiated sale of the property to A • W executed DoT in favour of A and provided Dup CoT ◦ Not registered • B's discover fraud and lodge absolute caveat ◦ Freezes register preventing any registration • A lodged DoT and Dup CoT for registration – denied by caveat	• Priority dispute between: ◦ B's (unregistered equitable interest or a mere equity); and ◦ A (unregistered equitable interest)	• TLA and TS uninterested in unregistered interests therefore look to general law land (<i>Rice v Rice</i>) • B's first in time, however, facilitated fraud by providing blank CoT • Alban therefore successful