LAWS2383 FINAL NOTES

CASE | STATUTE – [read facts 3x 1st]

KEY CONCEPTS

- Right to use and enjoy: **Yanner v Eaton**
- Right to alienate (assign): **R v Toohey**
  - Assignability is not in all circumstances an essential characteristic of a right of property, but generally correct to say a proprietary right must be 'capable in its nature of assumption by third parties'
- Right to exclude (private, enforceable right): **Stow v Mineral Holdings (Australia) Pty Ltd**
- **Numerus Clausus Principle** – there are only nine possible proprietary interests in land, which are:
  - (a) the three estates in land, being:
    - (i) two forms of freehold estate:
      - (A) fee simple; and
      - (B) life estate;
    - (ii) leasehold;
  - (b) the three so-called "lesser" interests, being:
    - (i) easements; (ii) profits à prendre; (iii) restrictive covenants;
  - (c) the three security interests, being:
    - (i) mortgages; (ii) charges; (iii) liens.

LAND BOUNDARIES

Doctrine of accretion: **Southern Centre of Theosophy Inc v South Australia**

- Applies to gradual and **imperceptible** changes at a water boundary.
- Grounded in fairness + convenience (think about potential impact on property eg waterfront)
- Extends to leases, including Crown leases, unless expressly excluded.

- A boundary "delineated in the public maps" does not automatically exclude operation of doctrine unless this intention is clear.

Land bounded by water

- Land borders tidal waters? (sea/tidal river/lake), owner's land ends @ mean high-water mark: **Attorney-General v Chambers**
- Any land below that mark belongs to the Crown (the state): **Hill v Lyne**
- If land contains non-tidal waters (eg river or lake), landowner has exclusive rights to water bed: **Orr Ewing v Colquhoun**
- If land is merely bounded by non-tidal waters, the owner's rights extend to the middle line (medium filum) of the water: **Lord v Commissioners for the City of Sydney**

Doctrine of accession – merge chattels

- Applies when chattels cannot be separated easily or w/o damage: **McKeown v Cavalier Yachts Pty Ltd**
- If merger occurs w/o the owner's knowledge, the owner of the principal chattel gains ownership of the whole.
- **Rendell v Associated Finance Pty Ltd:** a car engine was inserted into a hired car. Court ruled that the engine did not merge with the car because engines are readily severable, unlike building materials. Doctrine did not apply.
- **McKeown v Cavalier Yachts Pty Ltd**: Powned a yacht hull, and D added materials to complete it.
  - Court **held** that under accession, McKeown retained ownership, as the added materials could not be removed without destroying the hull.
- **Borden (UK) Ltd v Scottish Timber Products Ltd**: resin mixed w/ chipboard lost its separate identity, so P lost their title to it

INDEFEASIBILITY

IS THERE IMMEDIATE INDEFEASIBILITY?

- Indefeasibility is when a person becomes a registered proprietor, they take their interest (fee simple) free from all other interest not recorded on the register: s 42 RPA
- The full content of a registered dealing referred to in a CT is taken to be set forth in full in that CT: s 40(1B) RPA
  - what is **notified** to someone searching the Register is limited to **what is referred** to in the current CT: **Deguisa v Lynn**
    - Includes:
      - Registered instruments; and
      - Instruments referred to within registered instruments, if also registered.
    - Purchasers are not required to search cancelled titles or external records not referenced on the current title
  - HCA applied **Westfield Management Ltd v Perpetual Trustee Co Ltd:**
    - Purchaser's knowledge is confined to info on CT & instruments expressly referenced on it
    - No external evidence is admissible to aid construction of a registered instrument unless its referred to on title.

Indefeasible title of *VOLUNTEERS*

- A volunteer is someone who receives a gift (no valuable consideration).
- A registered volunteer <u>**has**</u> **indefeasible title** under ss 42 and 43 RPA, even against prior equities: **Bogdanovic v Koteff**
- Obiter **Farrah Constructions**: volunteers get indefeasibility; no distnc' made b/w volunteers / purchasers
- ***NOTE***: a person deprived of title **through fraud** can bring action for **recovery against a volunteer** who gets their title **from** the person who **defrauded** them: s 118(1)(d)(ii)) RPA

Is the *covenant* in a registered lease indefeasible?

Question is whether it is sufficiently connected to the original interest?

- Registered dealings confer indefeasibility on covenants that are an "**integral part**" or "**intimately connected**" w/ the registered estate or interest: **Mercantile Credits Ltd v Shell Co Australia**
  - Option to renew - sufficiently connected to the estate conferred by the original lease as to obtain the benefit of indefeasibility
  - Option to purchase - per s 53(3) RPA
  - Pay rent - **Karacominakis**
- NOTE: if an option to renew in a rego lease is indefeasible, then a resulting lease, if unregistered, creates an equitable interest enforceable against 3rd parties, including subsequent RP.
  - **Re Eastdoro Pty Ltd**: court upheld enforceability of second option to renew despite original lease expiring and first renewed lease being unregistered.
    - SO options in unrego renewed leases can bind future purchasers - must investigate if such options have been exercised even if only the original lease appears on register.

Mercantile Credits Ltd v

- **FACTS**: Dispute b/w lessee (respondent) and a mortgagee (appellant) over rights to land. The respondent's lease, originally rego in 1969, included a right to renew for 3+ times.
  - First renewal exercised + rego, extending lease to 1974.

<table>
<tr><td>Shell Co of Australia Ltd</td><td>

Appellant's mortgage was rego in 1973, b4 respondent gave notice in Feb 1974 to renew lease again (to 1979). While the lessor executed an extension in April 1974, it was never registered.
After lessor defaulted, the appellant sought to sell the land and argued that the unregistered lease extension was not binding. The respondent lodged a caveat to protect its interest. A judge ruled in favour of the respondent, holding the lease extension was valid and registrable.

ISSUE: Does the registered lease, containing a covenant to renew, give the lessee a prior and enforceable interest, even if the extension of lease was not itself registered?
RATIO: Covenant to renew is enforceable and runs w/ land – the rego lease, including renewal right, is indefeasible and takes priority over the mortgage → didn't matter the extension was not itself rego'd

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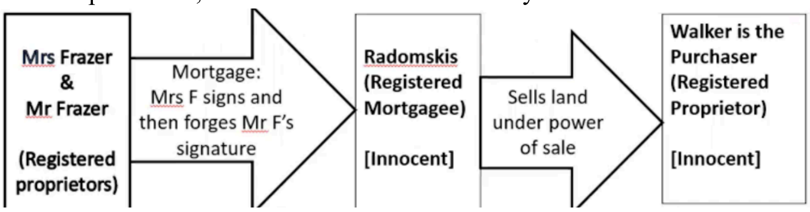
<tr><td>Frazer v Walker [1967]</td><td>

FACTS: Mr + Mrs Frazer RP → Mrs F borrowed $$$ from Radomskis & as security, gave a mortgage.

She forged her husband's signature to the mortgage → Mrs F failed to make payments, Radomskis exercised power of sale and sold to Mr Walker
Mr Walker became RP and tried to obtain possession → Mr Frazer counterclaimed, contending the mortgage to Radomskis was null and sought cancellation of the mortgage

RATIO: Radomski mortgage and the Walker transfer was indefeasible – once a void instrument is registered w/o fraud on part of RP, the RP obtains an immediately indefeasible title.
JUDGMENT: 

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<tr><td>Breskvar v Wall (1971)</td><td>
FACTS: Bs were RPs of the estate and signed a memo of transfer as security for a loan from P (the name section was blank, breached QLD legisl, so P inserted Wall's name)

Wall agrees to sell the land to a bona fide purchaser, Alban Pty Ltd, and executes a transfer
B discover W is the RP and lodge a caveat against further dealings – A tries to register but ≠ bc of caveat → B ultimately appeal to the HCA

ISSUE: Who is entitled to register the interest? Who had the better equitable interest?
RATIO: There is immediate indefeasibility of title by the registration of the person named in the register. A registration which results from a void instrument is effective according to registration.
JUDGMENT: Alban's equitable interest had priority, largely due to the fact that the Breskvars gave Petrie a signed but incomplete transfer and left it open for misuse, creating the opportunity for fraud, whereas Alban had made a good faith purchase for value without notice.

As long as Wall was on the Register, it was conclusive for Alban (who as innocent purchaser relied upon the Register) and so Alban was capable of, and did, obtain an equitable proprietary interest in the fee simple from Wall

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<tr><td>Instruments void for defects, other than forgery</td><td>

Unauthorised alteration by mortgagor's solicitor – valid upon rego: Morton v Black
POA created after execution of doc – valid upon rego: Broadlands International Finance v Sly
Attorney acted beyond POA – rego upheld: Spina v Conran Associates Pty Ltd
Mortgage by a minor securing a loan void by statute – rego upheld: Horvath v CBA
Void statutory proclamation acquiring land – rego upheld: Boyd v Mayor of Wellington

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<tr><td colspan="2">RECORDED IN THE REGISTER: s 41(1) RPA</td></tr>
<tr><td>Must be registered to have a proprietary interest, otherwise equitable interest may arise</td><td>

No effect before registration: A dealing has no legal effect to transfer an estate / interest, or to make the land security for payment of money, until it is registered.
Effect upon registration: Once the dealing is registered per the Act:

The specified estate or interest in the dealing passes to the relevant party, or
The land becomes liable as security for the payment of money.

BUT → This effect is subject to:

The covenants, conditions, and contingencies stated in the dealing, and
Any covenants, conditions, and contingencies the Act implies in instruments of same kind.

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<tr><td colspan="2">PARAMOUNCY OF RP ESTATE: s 42 RPA</td></tr>
<tr><td>BASIS FOR INDEAFEASIBILITY</td><td>

(1) As RP, you generally have paramount title, even if someone else claims a better right under equity

Your title is only subject to:

What's already recorded in your folio (except in fraud), and
The specific exceptions listed in (a) to (d).

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EXCEPTIONS	• (1) Fraud
	• (1)(a) Someone with an **estate/interest recorded** in an **earlier folio** for the same land
	• (1)(a1) **omission** or **misdescription** of a valid **easement**
	• (1)(b) **omission** or **misdescription** of any **profit à prendre** created in or existing upon any land,
	• (1)(c) **land wrongly included** in your title bc of **incorrect** parcels or boundary **description** – applies only if you didn't buy or mortgage for value, and
	• (1)(d) tenant is in possession (or entitled to immediate possession), and you had notice of their tenancy prior to registration, provided that:
	  ○ (i) short term tenancy under three years, and
	  ○ (ii) Any extra term (if there's an option/agreement) would not exceed the total of 3 year

OTHER NOTES	• (2) "Estate or interest" includes registered rights in a mortgage, charge, or lease that can be directly or indirectly identified from the title • (3) This section prevails any conflicting law, unless that law clearly says it has effect despite **s 42.**
NOTICE HAS NO EFFECT ON PURCHASER OR VOLUNTEER (FROM RP): s 43 RPA	

	• (1) Except in cases of fraud, a person dealing with the RP:
	  ○ Need not inquire/ascertain how / why the proprietor (or previous proprietor) became registered.
	  ○ Is not affected by notice (direct or constructive) of any trust or unregistered interest.
	  ○ Simply knowing that a trust or unregistered interest exists does not impute fraud.
	• (2) ss(1) does not override claims based on a "subsisting interest" (per Part 4A) affecting land in a qualified folio of the Register.

INDEFEASIBILITY: EXCEPTIONS

FRAUD

GENERAL PRINCIPLES	
RULE: ss 42-43 RPA; Loke Yew	• Indefeasibility does not apply where the RP gained their title through fraud. The title of a fraudulent RP will not prevail against the interest of the former RP who was defrauded. • S42 RPA: registering something you know is fraudulent is immediate exception (seeing, told, etc) • ***NOTE***: a person deprived of title **through fraud** can bring action for **recovery against a volunteer** who gets their title **from** the person who **defrauded** them: s 118(1)(d)(ii)) RPA + **Cassegrain**

STANDARD REQUIRED TO SATISFY FRAUD
 	
Fraud must occur before registration
 	
Note exception re volunteers above in circumstances of fraud: s 118(d)(ii) RPA
	STEP 1: Is there actual fraud?
	• Fraud means **<u>actual</u> fraud** (by party who obtains a registered interest through fraud) and includes willful blindness to fraud: **Assets Co Ltd v Mere Roihi**
	  ○ BUT must be willful blindness *as to fraud*, not mere mistake: **Macquarie Bank Ltd v Sixty-Fourth Throne Pty Ltd**
	• **Determining actual fraud and not mere carelessness**
	  ○ **Fraud** includes dishonest undertaking (false statement of present intention or an undertaking that induces a transfer & is later repudiated): **Loke Yew v Port Swettenham Rubber**
	  ○ **Wilful blindness**: Suspicions aroused, and abstaining from inquiry for fear of learning the truth, constitutes fraud.
	  ○ **Mere carelessness** or **negligence** (e.g., in witnessing signatures) by itself is not fraud without dishonest intent: **Grgic v ANZ Banking Group Ltd**
	STEP 2: Is there actual dishonesty?
	• Actual fraud involves some sort of **<u>actual</u> dishonesty**, that is, conscious dishonesty (carelessness, even gross carelessness, is not enough): **Pyramid Building Society v Scorpion Hotels**
	  ○ must involve an element of **personal dishonesty or moral turpitude**
	• **Mere notice** of an earlier **unregistered interest** is not fraud: s 43(1) RPA
	  ○ However, actual notice/knowledge of fraud is fraud and is a species of actual dishonesty
	STEP 3: Is this 'brought home'?
	• The fraud which must be proved in order to invalidate the title of a RP for value must be brought home to the person whose registered title is impeached, or to his agents" (through action or knowledge): **Assets Co Ltd v Mere Roihi**
	• **'Brought home'**: means the fraud must be a dishonesty of some sort, and the RP must be involved in, or have knowledge of, the fraud at the time of registration.

Effect of the fraud	• RP must have gained their interest bc of fraud + fraud must be operative (i.e. operated on mind of