

LAW2112

LAW2112: PROPERTY A EXAM NOTES

TABLE OF CONTENTS

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| TOPIC 1: ACQUISITION AND TRANSFER OF PROPRIETARY INTERESTS AND SALE | 3 |
| TOPIC 2: GIFTS OF PERSONAL PROPERTY | 13 |
| TOPIC 3: LEASEHOLD ESTATES | 15 |
| TOPIC 4: LEASEHOLD COVENANTS | 20 |
| TOPIC 5: ASSIGNMENT OF LEASES | 25 |
| TOPIC 6: CREATION OF LEASEHOLD ESTATES/ INTERESTS | 36 |
| TOPIC 7: THE BORDERLINE BETWEEN CONTRACT AND PROPERTY: CONTRACTUAL LICENCES | 39 |
| TOPIC 8: EASEMENTS | 44 |
| TOPIC 9: RESTRICTIVE COVENANTS | 64 |
| TOPIC 10: SECURITY INTERESTS - MORTGAGES | 74 |

TOPIC 1: ACQUISITION AND TRANSFER OF PROPRIETARY INTERESTS AND SALE

| <u>TRANSFER OF PROPRIETARY INTERESTS</u> |
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| 2 ways in which an interest in real or personal property may be acquired: |
| <ol style="list-style-type: none"> 1. Original acquisition 2. Transfer |
| 1. <u>Original acquisition</u> |
| <p><u>Various forms of original acquisitions</u></p> <ul style="list-style-type: none"> • Establishment of native title • Creating or inventing it • Adverse possession (common law) • Doctrine of fixtures |
| 2. <u>Transfer (derivative acquisition)</u> |
| <p><u>By transfer of property from a person who already has a proprietary interest</u></p> <ul style="list-style-type: none"> • Derivative acquisition usually arises from a consensual transaction such as a testamentary disposition where one person (the testator) bequeaths personal property or devises real property to another person by will, or by sale or a gift made during the lifetime of the donor (an inter vivos transfer). • Property may also be acquired from a person without that person's consent (for example under bankruptcy or compulsory acquisition legislation or confiscation of proceeds of crime legislation) or pursuant to a court order. |
| <u>TRANSFER OF A LEGAL INTEREST IN LAND</u> |
| Has the transfer of land met the required formalities? |
| <ul style="list-style-type: none"> • If the formalities are met, there is a legal interest. • If the formalities have not been satisfied, there may be an equitable interest |
| <u>General Law Land</u> |
| <p>PLA, s52(1) "All conveyances of land or of any interest therein are void for the purposes of conveying or creating a legal estate unless made by deed"</p> <p>Title is passed upon the execution and delivery of a deed (PLA ss51 & 52)</p> <p>The deed must be <u>Signed</u> (PLA s 73(1)); <u>Sealed</u> (PLA s 73A); and <u>Delivered</u> (PLA s 73B)</p> |
| <u>Torrens System Land</u> |

TOPIC 3: LEASEHOLD ESTATES

LEASEHOLD ESTATES

Terminology

- **Lessor/Landlord** – person that has granted the leasehold interest, often fee simple owner (landlord)
- **Lessee/Tenant** – The person that has been granted the lease, has right of possession, may off hold lease. May be allowed to
- **Demise/Lease-** Agreement entered into by a landlord and a tenant
- **Tenancy/Tenancy Agreement** - whilst meaning the same as demise/lease they are usually found in respect of short term leases, especially of residential property
- **Let/Demise** - Landlord is usually said to let/demise the rented premises when creating a lease
- **Leasehold Reversion** - Interest held by the landlord after the lease has been granted
- **Lease** = right in rem - proprietary right/interest in land
- **Licence** = in personam right (personal rights against the parties)

4 Types of Leases

1. Fixed term lease

- A lease with a set expiry date, comes to an end at the expiration period
- Only be created expressly
- May be created orally or expressed but can never be implied by operation of law like periodic leases
- May be of any length
- Exact date of termination is known
- Key feature: maximum duration is known from the outset
- Lease which expires automatically at end of agreed period.
- Maximum period of duration is certain (even though lease covenants may allow for early termination)
- Requires express agreement (oral or written); cannot arise by implication of law in absence of agreement.

2. A periodic tenancy

- Ongoing tenancy (e.g. month to month).
- To terminate the lease, the tenant must give notice in accordance with frequency of payment
- Month to month then one months notice
- Exception if it is yearly payments then 6 months notice required
- May be written or oral, and expressly or impliedly created
- **S 13(2) of the LAA** says a periodic tenancy if it's not in writing shall be deemed to terminate at the expiration of the first year or other period, and the tenant's possession becomes adverse once rent isn't paid.
- Extends from time period to time period (e.g. weekly, monthly, even yearly).
- Not a fixed term lease as renews automatically until determined by proper notice.
- Ordinarily renews with each payment of rent (e.g. weekly, monthly et cetera)
- While may arise from agreement, not exclusively dependent on agreement as the mere payment of rent plus exclusive possession typically gives rise to a periodic lease.
- May arise, therefore, after expiry of the fixed term lease ("holding over" through payment of rent and retention of possession).
- May also arise where there is an invalid fixed term lease
- doesn't arise from an agreement, not a product of a contract