

Topic: The Proprietary Interest**Victoria Park Racing and Recreational Grounds v Taylor (1937)**

- **Facts:** Victoria Park Racing owned a racing track and charged admission. Taylor owned neighbouring land and built a platform from which he could see the races and broadcast commentary. This reduced attendance at the track. Victoria Park Racing sought an injunction.
- **Ratio:** A spectacle itself is not property that can be owned. The law does not recognise a right to privacy from overlooking. Conducting a business on land does not create a proprietary right to be free from interference with that business's profitability.
- **Reasoning:** The court reasoned that the defendant's actions of looking over the fence and broadcasting were lawful. There is no right to privacy in English law against neighbours overlooking premises. An occupier is free to build fences to block views. The plaintiff's complaint was about interference with business profit, not enjoyment of the land itself. The courts are reluctant to extend proprietary protection to intangible elements of a business like a spectacle.

Yanner v Eaton (1999)

- **Facts:** Yanner, an Aboriginal man, killed two crocodiles for consumption, which was a right under his traditional law and custom. The Fauna Conservation Act (Qld) stated that all fauna was 'property of the Crown' and subject to licensing. Yanner was charged with taking fauna without a licence, but claimed his native title right under the Native Title Act.
- **Ratio:** 'Property of the Crown' in legislation does not necessarily mean full, exclusive, or beneficial ownership. The term 'property' describes a legal relationship with a thing, referring to the degree of power permissible over it, and can apply to many different kinds of relationships.
- **Reasoning:** The court analysed the term 'property' as a description of a legal relationship rather than a thing itself. The Act provided for forfeiture, which would be unnecessary if the Crown already had absolute ownership. The Act detached the Crown from liability for the fauna. The purpose of vesting fauna in the Crown was related to establishing a royalty system, indicating something less than full ownership.
- Native title is extinguished by the creation of rights that are inconsistent with the native holders continuing to hold their rights and interests. The extinguishment of such rights must be clearly established.

he acquired his interest . The indefeasibility principle protects the registered proprietor from challenges based on defects in the title of their predecessor

Breskvar v Wall (1971)

- **Facts:** The Breskvards executed a transfer of land form with the name of the transferee left blank, giving it and the certificate of title to Petrie as security for a loan . This blank transfer was void under statute . Petrie fraudulently inserted his grandson Wall's name and registered the transfer . Wall became the registered proprietor, holding the land subject to the Breskvards' right to set aside the fraudulent transaction . Wall then sold the land to Alban Pty Ltd, a bona fide purchaser for value without notice . Before Alban could register, the Breskvards lodged a caveat .
- **Ratio:** The Torrens system is a system of title by registration, not registration of title . Registration of a void instrument is effective to grant a defeasible title to the fraudulent party, but that party can pass on an indefeasible title to a subsequent bona fide purchaser for value without notice . While the fraudulent party's title is defeasible by the defrauded party, the subsequent bona fide purchaser acquires an equitable interest that can defeat the prior equitable interest of the defrauded party, particularly if the defrauded party contributed to the situation ('arming conduct') .
- **Reasoning:** Wall, although registered via a void and fraudulent instrument, obtained a defeasible registered title . His title was defeasible by the Breskvards due to the fraud . However, Wall granted an equitable interest to Alban . The court resolved the priority dispute between the Breskvards' prior equitable right to set aside Wall's title and Alban's subsequent equitable interest as a bona fide purchaser for value without notice . The Breskvards lost priority because their conduct (executing a blank transfer and giving Petrie the certificate of title) 'armed' Petrie to register Wall and then sell to Alban .

Statutory exceptions: tenants in possession

Perpetual v smith

- **Facts:** Elderly retirees sold their homes to MFLPH in a reverse mortgage scheme, receiving a lump sum, annuity, and a life tenancy . They transferred title but did not caveat their life tenancies . Perpetual loaned money to MFLPH and took registered mortgages over the homes . MFLPH defaulted, and the retirees claimed their life tenancies (protected by s 42(2)(e) TLA) had priority over Perpetual's registered mortgages .
- **Ratio:** Section 42(2)(e) of the TLA provides that registered interests are subject to the interest of a tenant in possession . A lease for life is an 'interest of a tenant in possession' for the purpose of this section . When a registered proprietor's indefeasibility is displaced by a statutory exception like s 42(2)(e), the priority dispute between the statutory interest holder

Loke Yew v Port Swettenham Rubber Co Ltd

- **Facts:** Eusope, the registered proprietor of 322 acres, had sold 58 acres to Loke Yew under unregistered documents, with Loke Yew in possession and paying rent . Port Swettenham Rubber Co negotiated to buy the 322 acres from Eusope . Eusope initially refused to sell the 58 acres occupied by Loke Yew . Port Swettenham's agent, Glass, induced Eusope to transfer the entire 322 acres by promising that Loke Yew's interest in the 58 acres would be respected . After registering the transfer, Port Swettenham sought to eject Loke Yew .
- **Ratio:** Fraud under the TLA includes a deliberate and dishonest trick or misrepresentation that induces a party to transfer land, with the intention of depriving another party of their known existing right . A false assurance or promise made to induce registration, which is later repudiated, can constitute fraud .
- **Reasoning:** The court found that Port Swettenham's agent, Glass, made a false and fraudulent misrepresentation to Eusope to induce the transfer . The intention was to register the whole land and then repudiate Loke Yew's interest . This constituted actual fraud brought home to the registered proprietor (Port Swettenham through its agent), thus defeating their indefeasible title as against Loke Yew's interest

In personam claim

Vassos v State Bank of South Australia (1993)

- **Facts:** Tom Vassos forged the signatures of his father (Paul) and sister (Anna) on a mortgage over their jointly owned property to secure a loan from the State Bank of SA . The Bank registered the mortgage without knowledge of the forgery . Paul and Anna sought to have the mortgage set aside, alleging fraud by the bank (for failing to detect the forgery) and an in personam claim .
- **Ratio:** Fraud under the TLA requires personal dishonesty brought home to the registered proprietor or their agent; the registered proprietor must be party or privy to the fraud . A registered mortgage obtained by forgery is not defeasible for fraud if the mortgagee was unaware of the forgery . An in personam claim against a registered proprietor must be based on a recognised legal or equitable cause of action arising from the registered proprietor's *own* conduct, and in Victoria, this conduct must involve a degree of unconscionability . Mere fact of forgery, without unconscionable conduct by the mortgagee, does not ground an in personam claim to set aside a registered mortgage .
- **Reasoning:** The court found no actual fraud by the Bank as they were not aware of the forgery . There was no unconscionable conduct by the Bank, as they were unaware of the forgery and had no interaction with the defrauded parties that created a personal obligation .

- **Reasoning:** As in the fraud discussion, the court found no unconscionable conduct by the Bank that would give rise to an in personam claim . Simply registering a forged instrument, without more, does not create a personal equity against the registered proprietor .

Volunteer exception

Bogdanovic v Koteff (1988)

- **Facts:** Bogdanovic lived in a house owned by Mr Koteff (senior), paying rent, and later moved with him to a new house, continuing the arrangement and providing domestic services . Mr Koteff promised she could live there for life . Upon Mr Koteff senior's death, his son (Mr Koteff junior) became the registered proprietor of the house by will (as a volunteer) . The son knew of Bogdanovic's arrangement but sought to evict her .
- **Ratio:** In New South Wales, a volunteer (someone who receives land without providing valuable consideration) who becomes the registered proprietor obtains an indefeasible title, unless they are guilty of fraud . The indefeasibility provisions apply equally to purchasers for value and volunteers .
- **Reasoning:** The court interpreted the NSW equivalent of s 42 of the TLA literally, finding no distinction between purchasers for value and volunteers in the indefeasibility provisions . Since Mr Koteff junior was not fraudulent in obtaining registration, his title was indefeasible, even though he took as a volunteer and knew of Bogdanovic's alleged equitable interest . Bogdanovic's prior equitable interest was therefore defeated by the son's registered indefeasible title

Rasmussen v Rasmussen

- **Facts:** Ernest Rasmussen worked on family farms based on an understanding that he would eventually receive a particular block of land ('Markeys') . His father left Markeys and other land by will to Ernest's son, Harold, who became the registered proprietor as a volunteer . Ernest claimed a constructive trust over Markeys based on common intention . Evidence suggested the family, including Harold, believed Markeys already belonged to Ernest .
- **Ratio:** In Victoria, a volunteer who becomes the registered proprietor takes their title subject to any prior equitable interests that would have bound the transferor . Indefeasibility does not protect a volunteer against prior equitable interests .
- **Reasoning:** The court reasoned that the Torrens system's object of facilitating market transactions by protecting purchasers who rely on the register does not apply equally to volunteers . Protecting purchasers is consistent with equitable principles regarding bona fide purchasers for value without notice, whereas volunteers traditionally took subject to prior