

Fee Simple

- Closest thing to absolute ownership (*Gumana v Northern Territory*).
 - Holding in free and common socage, in absolute possession.
 - Fee simple continues as long as heirs, potentially indefinitely.
 - If an owner dies with no one to pass it onto, crown takes land as bona vacantia (s 72G(e) Administration and Probate Act 1919 (SA) (*Feja v Northern Territory*))
- How has it been obtained?
 - a) **Registration (legal arises)**
 - RPA s 57(3) and 69:
 - 57: for the purposes of law, legal title means registered title.
 - 69: contains list of exceptions to indefeasibility (indefeasibility = once registered proprietor of an estate, you are indefeasible, nobody can deprive you of land no matter how you got it).
 - b) **Adverse possession**
 - Continuous time period – must be made within 15 years in SA & Vic, 12 years in NSW and QLD – Section 4 of Limitations Act 1936 (SA).
 - *Mulcahy v Curramore*: “possession (by the squatter) must also be “open, not secret; peaceful, not by force; not by consent of the true owner”.
 - c) **Part performance (PAGE 16)**
 - d) **Gift:**
 - *Corin v Paton*: severance in equity still requires completion of the relevant acts of alienation, not just unilateral intention to sever – “no equity to perfect and imperfect gift” (depends on what formalities required to complete transfer of the relevant type of property. Courts won’t step in to perfect an imperfect gift.
 - No interest transfers until property is actually registered in their name.
 - e) **Institutional constructive trust - conversion (equity usually arises)**
 - Fills gap in time between contract of sale and conveyance. At law, contract has no effect on title, in equity, contract has a proprietary effect (*Walsh v Lonsdale*), so doctrine of conversion fills gap between contract and conveyance.
 - *Tanwar* case throws into uncertainty the validity of doctrine of conversion. The rights of the purchasers of land are treated as being determined by the terms of contract itself.
 - *Tanwar* requires the contract to be specifically enforceable before conversion occurs. Equitable rights are recognised where an equitable remedy available and would be applicable > no special performance allowed (equitable remedy) > because contract incomplete > so not considered an equitable interest.
 - f) **Constructive trust (equity usually arises)**
 - Passive arrangement, where one person holds property as its nominal owner for the good of one or more beneficiaries. Implied into the circumstances to prevent person holding the property from unjustly benefitting from properties beneficiaries.
 - Where no formal trust deed – arrangement between parties are such that implied trust should be constructed.
EXAMPLE: A is registered proprietor of property but purchased by pooling A + B’s resources. A = trustee, both are beneficiaries. Interest is a fee simple, held in trust by one for both beneficiaries.
 - g) **Resulting trust (equity usually arises)**
 - “automatic” resulting trust – arise regardless of the intention of the parties where an individual has simply failed to dispose of a beneficial interest – inferred out of legal necessity where there is an incomplete disposition. (e.g., A leaves land to B in their will on trust. A dies, B (business, no longer exists), but as B holds trust, trust ‘results’ (reverts) back to A (dead, so goes to A’s estate).
 - Equity presumes that a trust results for the provider of the purchase money where someone purchases property and puts it (legal title) in the name of another.

- “presumed” resulting trust – occur on presumption one party intended to give property to other, ancient ‘weak’ presumption.

h) Unconscionable conduct (equity usually arises)

- Legal or equitable?
 - Registered = legal fee simple.
 - Not registered = equitable fee simple.

Case	Facts	Outcome
CONTRACT INCOMPLETE > NOT EQUITABLE INTEREST		
Tanwar Enterprises Pty Ltd v Cauchi	Tanwar entered into three contracts to purchase adjacent parcels of land. Due to financial problems, an extension for payment is made. August 2000 – Cauchi issues notice of termination. Parties meet and determine three new contracts where time is ‘of the essence’ – June 2001, settlement period lapses and no money has been transferred – next day Cauchi issues notice of termination – then terminates contract.	Purchaser claimed they had an equitable interest from the time of contracting, and the purchaser tried to use equitable remedies (relief from forfeiture, specific performance). HCA found vendor was entitled to terminate contract when the agreed time for completion by the purchaser (payment of the balance) had expired. Specific performance not granted. Therefore, not equitable interest > contract was incomplete and validly terminated by a breach of essential term.

Leasehold

RESIDENTIAL TENANCY AGREEMENT: automatically binding → legal

- IF CONTRACT: “The lease is binding under s 71(d) of the RPA.”
- If considering breach of covenant, need to determine applicability of RTA:
- “This is a residential tenancy agreement (s 3 RTA) that does not fall within any of the excluded categories (s 5).”

Excluded categories 5(1)(a):

- hotel or motel
- educational institution, college, hospital, or nursing home
- club premises
- home for aged or disabled persons
- retirement village
- supported residential facility
- prescribed premises, or premises of a prescribed class

Covenants in leases:

OBLIGATIONS OF THE LANDLORD
<ul style="list-style-type: none"> ● To maintain the premises in a reasonable state of repair (RTA s 68) ● To allow quiet enjoyment by the tenant of the premises (RTA s 65) ● To keep tenant reasonably secure in the premises (RTA s 66) ● To provide notice and a reasonable opportunity to pay in non-payment of rent situations (RTA s 80) ● To provide notice and a reasonable opportunity to remedy breaches under the tenancy agreement (RTA s 80)
TENANTS' RIGHTS
<ul style="list-style-type: none"> ● To be informed in advance of rent increases (RTA s 55) ● Exclusive possession and quiet enjoyment (RTA ss 64 and 65) ● To assign and sublet under the lease, with the consent of the landlord (s 74) <ul style="list-style-type: none"> ➤ Assign: transfer of the whole of tenant’s interest: assignees substitutes for original tenant in terms of obligations and responsibilities (Richardson v Landecker; Haidler v Blendale). But this isn’t creation of a new lease (Debonar Nominees v J & K Berry Nominees; Mason v Harris). ➤ Sublet: lessor creates another lease under the lease. NOTE – there exists privity of contract between landlord and tenant. Third party (subtenant) CANNOT sue on their lease. No legal relationship between landlord and subtenant.

LEGAL V LEGAL

RPA s 56(2): instruments registered or recorded in respect of or affecting the same estate or interest in land are entitled (despite any express, implied, or constructive notice) to priority according to the time of registration or recording.

LEGAL V EQUITABLE

[Person A] is a legal ... owner, and [Person B] is an equitable ... owner. [Person A]'s title should prevail as indefeasibility of title is established upon registration (*Breskvar v Wall*), though [Person B] could argue there is an exception to indefeasibility. Due to, [exception] could be an exception to [Person A]'s indefeasibility.

1. Indefeasible title will prevail - *prima facie registration and indefeasibility will apply, unless...*
2. Exception to indefeasibility can be made out:
 - Fraud: s 69(a) (PAGE 13)
 - Equitable rights: s 71(d) & (e), 249. (PAGE 14)
 - Forgery: s 69(b) (PAGE 15)
 - Vol (verification of identity mortgagor)
3. Exception may be rebutted by a third party under the proviso.

Indefeasibility of title:

- Gained immediately upon registration (*Breskvar v Wall*).
- Doesn't matter if documents which led to registration were invalid.

Exceptions to indefeasibility:

SAY WHEN DISCUSSING INTREST:

SHOT OWNER > LOOK SIMILAR > MADE FAKE PASSPORT > DEFRAUDING CONVEYANCER.

"Clearly defeasible, very unconscionable act has occurred".

"Although guilty, he is a registered proprietor, and can create valid interests in the property, legal and equitable."

Fraud: RPA s 69(a), 71(e), 249

- Lake Yew, *Cassegrain v Cassegrain*.
- s 69(a): fraud in the case of fraud, in which case any person defrauded shall have all rights and remedies that he would have had if the land were not under the provisions of this Act: provided that nothing included in this subsection shall affect the title of a registered proprietor who has taken bona fide for valuable consideration, or any person bona fide claiming through or under him.
- Failure to enquire is not fraud (*Mere v Roihi*), but failure to enquire out of fear of learning the truth may be (*Pyramid v Scorpion Hotel*).
- Fraud relies on designated cheating (*Loke Yew*).
- Notice of X's rights not enough (s 72).
- The fraud [did/did not] "operate on the mind of the registered proprietor" (*Loke Yew*), therefore fraud [did/did not] occur.
- If not enough evidence to get fraud argument over the line, back it up with action in personam (unregistered equitable rights).

Case	Facts	Outcome
<i>MAKING PROMISE AND NOT FOLLOWING THROUGH</i>		
Loke Yew v Port Swettenham Rubber	Eusope owed 322 acres of land in Selangor. Out of this, Loke Yew was using 58 acres based on informal agreement that required him to pay rent to Eusope. Port S knew about Lokes interest, bought all 322 acres from Eusope, claiming the 58 acres were excluded from sale. Signed a document saying they'd deal with Loke directly. However, Port S ended up being registered as the owner of all 322 acres and tried to evict Loke.	Was Port S's title indefeasible? Rationale: a registered proprietor who has acted fraudulently will not be protected. <ul style="list-style-type: none"> - Is a type of fraud for one party to make a promise, in order to induce another to agree to the transaction and then goes back on promise. - When Port S went back, was guilty of fraud.
<i>FRUAD > JOINT TENACY > IS OTHER TENANTS TITLE IMPACTED?</i>		
G Cassegrain v C Cassegrain	CC acted fraudulently by utilising credit balance in GC loan account to purchase property. Property was transferred from GC to CC and wife of CC as registered joint tenants, CC transferred his interest in property to FC for nominal consideration of \$1, wife registered.	When CC's half of title transferred to FC in second transfer, was it infected by original fraud? No, her half separate. Wife retained half of her interest, but CC's half was held in trust for the GC. She did not receive all of property (through joint tenancy), as she was not a purchaser who gave valuable consideration. If she had transferred the property to another bona fide purchaser for consideration, that person's title would've been indefeasible.
<i>PURCHASER UNKNOWNING OF PREVIOUS OWNERS DUE TO FRAUD</i>		
Breskvar v Wall	Registered owners (B) gave Petrie a signed blank land transfer and title as loan security. Petrie illegally added his grandson Wall's name as transferee, got it registered, and Wall sold to Alban Pty Ptd, which bought in good faith. B lodged a caveat after discovering the fraud.	Does fraud of Wall impact Alban's title to the property? HC held Petrie and Wall acted fraudulently, but Alban was protected because it was bona fide purchaser for value . The court confirmed immediate indefeasibility, so Alban's registered title stood valid despite the earlier fraud.

Unregistered Equitable Rights (in personam exception) – (make a promise and go back on it)

Basis: personal equity resides in the person who has lost or devalued their interest in land.

- **Bahr v Nicolay (No 2)**
- Key exceptions are:
 - **RPA, s 71(d)**: contracts, includes sale of land (once conversion (required steps) has taken place), contracts to lease land, etc. Opens avenues for:
 - *Equitable doctrine of part performance* (PAGE 16)
 - *Estoppel* (PAGE 17)
 - **RPA, s 71 (e)**: trusts, a beneficiary under a trust has an equitable interest that they can enforce on the conscience of the trustee.
- **Baumgartner** principle: whether a constructive trust should arise?
 - Only if unconscionable if is NOT imposed.
 - A constructive trust may be imposed irrespective of the parties' intention to create a trust.
 - Appropriate test to impose is not based of "fairness or "reasonableness", but whether it is unconscionable not to impose a trust is relevant circumstances.

Case	Facts	Outcome
<i>WAS WIFE ENTITLED TO RELIEF VIA EQUITABLE INTEREST – CONSTRUCTIVE TRUST</i>		
Baumgartner v Baumgartner	Couple moved onto property, purchased in sole name of make. Woman provided man with her pay packet, used for household expenses including mortgage repayments with respect to the property. Together contributed \$89k, man = \$51k, woman \$38k. Broke up, woman sought a declaration she had equitable interest in property.	Was woman entitled to relief through a constructive trust? Husband had asserted that it was only if they got married, title would be transferred – so no subjective intention the wife would acquire proprietary interest. HC maintained wife was entitled to relief, by constructive trust , as: <ul style="list-style-type: none"> - Man asserting property was solely his amounted to unconscionable conduct. - Both made contributions for the purpose of joint relationship. - Court afforded husband greater equitable interest, 55:45 ration, as his financial contributions were greater.
<i>UNDERLYING OBLIGATION NOT ABIDED BY</i>		