

PROPERTY A

<p>Transfer/Sale/Gift of proprietary interests</p>	<p>► Sale or gifting land, missing deed or no registration, oral agreement about land, contract exchanged but not settled.</p> <ol style="list-style-type: none"> <li><b>Type of Interest:</b> Fee simple, life estate (who holds remainder (vested or contingent) <i>NT v Griffiths</i>)</li> <li><b>Which land system:</b> Torrens or General Land Law? <i>s52(2) PLA, s40 TLA, Breskar v Wall 1971</i></li> <li><b>Are formalities satisfied?:</b> Y = legal interest, N = of or derivative acquisition             <ol style="list-style-type: none"> <li><b>IF no</b>, is there an equitable interest per <b>Regent Miller 3 part test?</b> <ol style="list-style-type: none"> <li><b>Valid contract</b> (essential terms, parties, land, price)</li> <li><b>Evidence of contract?</b> <ol style="list-style-type: none"> <li><i>S126 Instruments Act</i> (written+signed), multiple docs okay if linked without oral explanation (<i>ANZ v Wildin</i>) OR</li> <li>Part Performance: <b>YES: Regent v Millet ; NO: Pipikos</b></li> </ol> </li> <li><b>Specifically Enforceable?</b></li> </ol> </li> <li><b>Nature of interest during settlement period;</b> NOT a trust, right to seek specific performance only per <i>Tanwar v Cauchi</i></li> </ol> </li> </ol>
<p>Lease (contract) + Leasehold Estates (property)</p>	<p>► License but exclusive use, landlord disrupts tenant's use, tenant/landlord changes (new party trying to enforce covenant), no deed/unregistered (equitable lease question), third party assignee to the lease</p> <ol style="list-style-type: none"> <li><b>Identify if it's Lease or License</b> <ol style="list-style-type: none"> <li><b>Certainty of Duration:</b> at the time of commencement per <i>Lace v Chantler</i></li> <li><b>Exclusive possession:</b> power to exclude all including grantor; <i>Radaich; Mountford; Swan v Uecker</i></li> </ol> </li> <li><b>Type of lease tenancy:</b> <ol style="list-style-type: none"> <li><b>Fixed:</b> start + end date, terminates automatically per <i>Lace v Chantler</i></li> <li><b>Periodic:</b> no fixed end, rolls by rent period, arises expressly/by implication/ holding over LL</li> <li><b>At will:</b> LL consent, no rent, no duration, terminable anytime</li> <li><b>At sufferance:</b> holds over lawful lease ends, no LL consent or dissent ≠ trespasser</li> </ol> </li> <li><b>Formalities, IF</b> <ol style="list-style-type: none"> <li>&lt;3yr: no deed/registration needed (<i>s 54(2) PLA; s 66(1) TLA</i>)</li> <li>&gt;3yr: deed (<i>s 52 PLA</i>) + registration Torrens (<i>s 66 TLA</i>)</li> <li>oral lease not satisfying <i>s 54(2)</i> = tenancy at will</li> <li>if unregistered &gt;3yr = equitable lease: <i>Walsh v Lonsdale + Chan v Cresdon</i> limitation</li> </ol> </li> <li><b>Landlord obligations</b> <ol style="list-style-type: none"> <li><b>Quiet Enjoyment:</b> acts ON the leased premises itself → substantial interference with ordinary lawful enjoyment <i>Hawkesbury v Battik</i></li> <li><b>Non derogation:</b> acts on OTHER retained/adjoining land of same LL → renders premises materially unfit for intended purpose; Aussie Traveller; <i>Nordern v Blueport; Purple Tangerine</i>            ★ <b>Apply 5-part test:</b> (1) same LL; (2) substantial interference; (3) LL knew purpose; (4) rendered unfit; (5) LL able to correct/terminate</li> </ol> </li> <li><b>Is the covenant enforceable AFTER assignment?</b> <ol style="list-style-type: none"> <li>For assignee of <b>TENANT:</b> 4 Part Touch and Concern test per <i>Gumland</i> <ol style="list-style-type: none"> <li>(a) affects L/T only in capacity as L/T; (b) affects nature/quality/value of land; (c) not personal; (d) payment OK if connected to land</li> </ol> </li> <li>For assignee of <b>REVERSION</b> (new landlord)             <ol style="list-style-type: none"> <li><i>s 141 PLA</i> (new LL enforces tenant's covenants) <b>OR</b></li> <li><i>s 142 PLA</i> (tenant enforces LL's covenants against new LL) — same "reference to subject matter" = touch and concern test <i>Gumland</i></li> </ol> </li> </ol> </li> </ol>
<p>License</p>	<p>► License revoked (breach/can have injunction?), Third Party denied access, permission to enter land with no exclusive possession, entry needed to use a proprietary right (license coupled with grant).</p> <ol style="list-style-type: none"> <li><b>Identify type of license;</b> <ol style="list-style-type: none"> <li><b>Bare</b> — no consideration, no contract; revocable at will; reasonable time to vacate then trespasser</li> <li><b>Contractual</b> — supported by consideration; revocable at law even if breach <i>Cowell</i>; equity may restrain if damages inadequate <i>Heidke</i>; implied negative stipulation not to wrongfully revoke <i>Sigma Constructions</i></li> <li><b>Licence + grant</b> — attached to proprietary right; irrevocable while proprietary right subsists</li> </ol> </li> <li><b>Has the license been revoked?</b> <ol style="list-style-type: none"> <li><b>Bare:</b> always effective — ask reasonable time given?</li> <li><b>Contractual:</b> effective at law (<i>Cowell</i>) — are damages adequate?             <ol style="list-style-type: none"> <li><b>IF YES:</b> damages only (<i>Cowell</i>); <b>IF NO:</b> injunction is available (<i>Heidke</i>)</li> </ol> </li> <li><b>Licence + grant:</b> purported revocation ineffective</li> </ol> </li> <li><b>Is there enforcement against a third party?</b> <ol style="list-style-type: none"> <li><b>NO:</b> license in personam only per <i>King v David Allen ; Georgeski</i> <ol style="list-style-type: none"> <li><b>Exception:</b> Unconscionability/ Constructive trust - mere notice is insufficient, needs more (<i>Ashburn</i>)</li> </ol> </li> </ol> </li> </ol>

<p><b>Easements</b></p>	<p>▶ <b>Right to use someone else's land</b> (walk, park, draw water, access) <b>claimed as permanent/binding on successors, using an easement in a new way or for new land</b> (intensification vs expansion), <b>20+ years of neighbour's land use with no formal grant</b> (long user / prescription), <b>subdivision</b> (implied easement claimed under s 12(2) Subdivision Act)</p> <ol style="list-style-type: none"> <li>1. <b>Apply the 4 Part test per Re Ellenborough Park</b> <ol style="list-style-type: none"> <li>a. Dominant and servient tenement (<b>DT and ST</b>) <b>exist distinctly</b></li> <li>b. <b>Owners</b> of DT and ST are <b>different</b></li> <li>c. Easement <b>accommodates + serves DT</b> (provide benefit to land and not individual)</li> <li>d. Capable of <b>forming subject matter</b> of the grant and is NOT           <ol style="list-style-type: none"> <li>i. mere recreation with no utility — <i>Re Ellenborough Park</i></li> <li>ii. too wide or vague — <i>Clos Farming</i></li> <li>iii. inconsistent with ST's ownership — <i>Copeland v Greenhalf</i></li> </ol> </li> </ol> </li> <li>2. <b>How was the easement created?</b> <ol style="list-style-type: none"> <li>a. <b>Express</b> — deed (s 52 PLA) / registration (<i>s 72 TLA</i>); but <i>s 42(2)(d) TLA</i>: equitable easement still enforceable</li> <li>b. <b>Implied</b> — necessity, common intention, <i>Wheeldon v Burrows, s 12(2) Subdivision Act Body Corporate v Sheppard</i> (must be necessary + consistent with ST's use)</li> <li>c. <b>Long user (prescription)</b> — <b>3 elements</b>: (1) 20+ yrs continuous; (2) as of right (no force, secrecy, permission); (3) informed acquiescence of ST owner IN possession <i>Sunshine Retail; Laming v Jennings</i> <ol style="list-style-type: none"> <li>i. For an absentee owner, no acquiescence (no refusal?)</li> </ol> </li> <li>d. <b>Scope - Is it intensification or expansion?</b> <ol style="list-style-type: none"> <li>i. <b>Intensification</b>: same type of use, more of it = within scope <i>Cargill v Gotts</i></li> <li>ii. <b>Expansion</b>: different purpose or new/additional land = outside scope <i>Westfield</i></li> <li>iii. Construe strictly from the grant terms — no extrinsic material</li> </ol> </li> </ol> </li> </ol>
<p><b>Restrictive covenants</b></p>	<p>▶ <b>Promise not to do something with land</b> imposed on a past owner, <b>New owner wants to develop</b> — RC restricts, <b>Application to remove or vary an old RC (s 84 PLA), Successor claims benefit</b> — <b>has the benefit passed (annexation / assignment)?</b></p> <ol style="list-style-type: none"> <li>1. <b>Apply the 5 part validity test per Talk v Mohay,</b> <ol style="list-style-type: none"> <li>a. Must be <b>negative</b> in nature</li> <li>b. Must <b>benefit</b> an identifiable <b>DT</b> Must <b>"touch and concern"</b> the land</li> <li>c. Must have an <b>intention to bind</b> the land and successors</li> <li>d. Successor must have notice of covenant</li> </ol> </li> <li>2. <b>Has the benefit passed to the current DT owner?</b> <ol style="list-style-type: none"> <li>a. <b>Annexation</b> — baked into the land at creation; runs automatically. Instrument must identify DT and show intention to run <i>s 79A PLA</i> (whole and every part)</li> <li>b. <b>Assignment</b> — if no annexation, must be expressly assigned on each conveyance of DT <i>s 134 PLA</i> (chose in action)</li> </ol> </li> <li>3. <b>Can it be removed? — s 84(1) PLA</b> <ol style="list-style-type: none"> <li>a. Obsolete / impedes reasonable user — neighbourhood changed? Development ≠ reasonable user per <i>Vrakas</i></li> <li>b. Beneficiaries agreed to discharge</li> <li>c. No substantial injury to those entitled to benefit per <i>Vrakas</i> — high bar</li> </ol> </li> </ol>
<p><b>Security Interests</b></p>	<p>▶ <b>Loan secured over land</b> (valid legal or equitable mortgage?), <b>Defective deed or no registration</b> (mortgage formality incomplete), <b>Advance + repayments made without paperwork</b> (equitable mortgage via part performance?) <b>Borrower bankrupt / property sold</b> (who has priority?).</p> <ol style="list-style-type: none"> <li>1. <b>Legal Mortgage - identify land system;</b> <ol style="list-style-type: none"> <li>a. <b>GL</b>: deed required <i>s 52(2) PLA</i> → operates as conveyance of fee simple; borrower retains equitable right of redemption</li> <li>b. <b>Torrens</b>: registration required <i>s 74 TLA</i> → NOT a transfer; borrower retains title; lender holds security interest</li> </ol> </li> <li>2. <b>Equitable mortgage per 3-part test ANZ v Wudin; Walsh v Lonsdale (IF legal formalities not satisfied above)</b> <ol style="list-style-type: none"> <li>a. Clear intention to grant mortgage</li> <li>b. Advance of funds made</li> <li>c. Identified property as security</li> </ol> </li> <li>3. <b>Effect</b> <ol style="list-style-type: none"> <li>a. <b>GL legal mortgage</b>: fee simple conveyed to lender; borrower holds equity of redemption</li> <li>b. <b>Torrens legal mortgage</b>: borrower retains title; lender = registered security interest</li> <li>c. <b>Equitable mortgage</b>: binds parties but may not bind bona fide purchaser for value of legal estate without notice</li> </ol> </li> </ol>

## SALE OF LAND CONTRACT EVALUATION

1. What type of interest?

Fee simple or Life Estate?

**Fee simple** (absolute, perpetual ownership per **Northern Territory v Griffiths (2019)**)

**A life estate** (duration = grantee's life; grantor retains reversionary interest)

→ **OR pur autre vie life estate** (duration = life of a third person, not the grantee).

**SCRIPT:** The interest here is a **[fee simple / life estate / pur autre vie]** because **[reason]**

→ **IF life estate:** Because **[grantor]** is conveying a life estate, **[grantor]** retains a **reversionary interest** (a present right to future possession upon the life tenant's death)

→ **IF the remainder is also granted to a third party:** **[Third party]** holds a **remainder interest** (a future interest in a third party who was not the grantor)

**\*Note:** State whether the remainder is **vested** (identity ascertained, no condition precedent other than end of prior estate) or **contingent** (condition not yet met).

2. Is the transfer a legally valid transfer + which system of land?

**SCRIPT**

The preliminary issue to consider is whether **[transferor]** has validly transferred a legal interest in **[property]** to **[transferee]**, requiring the formalities to be satisfied.

The land is **[torrens / general law]** land. The applicable formalities are accordingly **[deed + registration under s 52(2) PLA and s 40 TLA / deed under s 52(2) PLA]**. The Torrens system confers title by registration and not by the underlying document per *Breskvar v Wall*.

→ **IF Torrens:** Registration is additionally required under **s 40 of the Transfer of Land Act 1958 (Vic)** for legal title to pass as the Torrens system is a system of title by registration, not registration of title (***Breskvar v Wall (1971)***).

Here, **[transferor]** **[executed a deed / did not execute a deed]** [and the transfer was / but it was not] registered on the Torrens folio. Accordingly, the requirement of **[a deed / registration / both]** has **[been / not been]** satisfied.

**[Transferee]** **[has / has not]** acquired a legal interest in **[property]**.

**\*Note: IF formalities are incomplete,** it is necessary to consider whether an equitable interest has arisen. A proprietary interest may be acquired either by

- ◆ **original acquisition:** where title is created through possession without transfer (as in adverse possession or native title) — or by
- ◆ **derivative acquisition:** a transfer from an existing title holder (as in sale or gift).

→ **IF:** title is acquired via creation or invention, e.g. adverse possession and native title, there is no transfer here. Instead, someone is relying on their possession to justify their title

◆ = **No transfer (Original Acquisition)**

→ **IF:** you get a property interest from someone else, there is a transfer or a gift, there is a formal transfer that is done through the register.

◆ = **Transfer (Derivative Acquisition)**

**SCRIPT**

As formalities are incomplete, it is necessary to consider whether an equitable interest has arisen. Here, **[party]**'s interest is one of **[original / derivative]** acquisition because **[reason — e.g. they have possessed the land for X years without any grant / they claim under a conveyance from the registered proprietor]**.

NO ↑

3. Do they hold an equitable interest instead?

### Where legal formalities have not been satisfied but equity may recognise an interest

**IF** the formalities for a legal interest have not been satisfied, equity may nonetheless recognise a proprietary interest if three conditions are met:

- (1) there is a **valid contract between the parties**;
- (2) the contract is **evidenced in writing and signed** as required by **s 126 of the Instruments Act 1958** (Vic) **OR** the contract is orally made and the plaintiff has performed acts of part performance sufficient to invoke the equitable jurisdiction;
- (3) the contract is specifically enforceable in equity (**Walsh v Lonsdale (1882)**; **Regent v Millet (1976)**).

3 Part test per Regent v Mills	
<p><b>SCRIPT:</b> The issue is whether [party] holds an equitable interest in [property] notwithstanding the absence of [a deed / registration / both]. Here, the court must apply the 3 part test per <b>Regent v Mills</b></p>	
<p><b>Is there a valid contract?</b></p>	<p>There [is / is unlikely to be] a valid contract between [party A] and [party B]. The essential terms of the [parties, land, price / parties, land, rent, term] — [are / are not] sufficiently identified.</p> <p>Accordingly, Element 1 is [satisfied / not satisfied] as there is/isn't a valid contract.</p>
<p><b>Is there evidence of the contract?</b></p>	<p><b>IF there is a physical/written contract — s 126 writing:</b></p> <p><b>Per Section 126 of the Instruments Act 1958</b>, an agreement for the disposition of an interest in land must be in writing and signed by the party to be charged, or their agent.</p> <p>Here, [party] [signed a written agreement identifying the land, parties and price / has not signed any written agreement / relies on [document X] as satisfying s 126]. Further, there must be essential terms met to satisfy interest in the land, including offer acceptance, consideration and intention. Here, as ____, this element is met/unsatisfied</p> <p><b>IF multiple documents</b> are relied upon, they may together satisfy <b>s 126</b> if they are linked without requiring oral explanation per <b>ANZ Banking Group v Widin</b>.] Here, [document(s)] [do / do not] satisfy <b>s 126</b> because [reason]. Accordingly, <b>s 126</b> is [satisfied / not satisfied].</p> <p><b>IF an oral agreement - Part Performance</b></p> <p>Alternatively, where an oral agreement has been made, the doctrine of part performance may be invoked. Applying the test per <b>Regent v Millet (1976)</b>, acts relied upon be "unequivocally and in their own nature referable to some contract of the general nature alleged".</p> <p>Here, [party] has [list acts — e.g. taken possession / paid mortgage instalments / made improvements]. These acts [are / are not] unequivocally referable to a contract of the general nature alleged because [reason].</p> <p>Accordingly, part performance [is / is not] established.</p> <p><b>IF NOT:</b> Per the part performance failure established in <b>Pipikos</b>, as __ act relates to a different property, part performance here is not established.</p>
<p><b>Is the contract specifically enforceable?</b></p>	<p>The contract must be specifically enforceable with no bar in equity to the grant of specific performance. Here,</p> <ul style="list-style-type: none"> <li>• <b>IF is enforceable:</b> There is no apparent reason why specific performance would be refused, as the contract is for land (for which damages are presumptively inadequate) and [party] has not acted inequitably. OR</li> <li>• <b>IF isn't enforceable:</b> Specific performance may be refused because [party] has [e.g. delayed unconscionably / breached their own obligations].</li> </ul> <p>Accordingly, Element 3 is [satisfied / not satisfied].</p>

<b>Conclusion</b>	<p>All three elements <b>[are / are not] satisfied. [Party] [holds / does not hold] an equitable interest in [property] arising from the [written agreement / oral agreement supported by part performance].</b></p> <p>The nature of that equitable interest is the right to bring specific performance against <b>[other party]</b> to compel completion of the transfer, and per <b>Tanwar Enterprise v Cauchi</b>, it is not a trust relationship).</p>
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**What is the nature of the equitable interest during the settlement period?**

**SCRIPT**  
 The court must resolve the issue of the nature and extent of **[buyer]**'s equitable interest between exchange of contracts and completion.

Here, contracts have been exchanged between **[vendor]** and **[purchaser]** on **[date]** and settlement has not yet occurred. Accordingly, **[purchaser]** has an equitable interest in **[property]** arising from the specifically enforceable contract.

However, that interest is not a beneficial interest under a trust, it is the right to seek specific performance. **[Vendor]**'s subsequent **[act — e.g. dealing with the property / encumbering it] [may / may not]** give rise to a claim by **[purchaser]**, but **[this is not a breach of trust / the appropriate remedy is specific performance of the contract rather than a proprietary claim in trust]**.

As such, **[Purchaser]** holds an equitable interest in **[property]** but is not a beneficiary under a trust per **Tanwar v Cauchi (2003)**.

**CASES**

**IS THE TRANSFER A LEGALLY VALID TRANSFER?**

Case/Legislation	Authority on	Basic facts / Content
<b>s 52(2) of the Property Law Act 1958 (Vic)</b>	A deed is required for any legal transfer of general law land (or any legal estate in land). Without a deed, no legal interest passes. The interest may be void at law but may still be recognised in equity.	"All conveyances of land or of any interest therein are void for the purpose of conveying or creating a legal estate unless made by deed."
<b>s 40 of the Transfer of Land Act 1958 (Vic)</b> <b>CITED in Breskvar v Wall (1971)</b>	For Torrens land, registration is required in addition to a deed for legal title to pass. Without registration, the transferee holds only an equitable interest. This is why the Torrens system is a "system of title by registration" — Breskvar v Wall (1971).	"No instrument of transfer is effectual to pass an estate or interest in land under the Torrens system unless that instrument is registered in accordance with the Act."
<b>s 126 of the Instruments Act 1958</b>	<b>Regent Mills 3 Part Test</b> Part 1. Validity; For physical contracts; Is there evidence of a written contract?	
<b>ANZ Banking Group v Widin</b>	<b>Regent Mills 3 Part Test</b> Part 2. Evidence; If multiple documents are relied upon, they may satisfy s126 if linked without requiring oral explanation  Part performance established by advancing loan + commencement of repayments — acts unequivocally referable to a mortgage agreement. Equitable mortgage recognised.	W negotiated a mortgage with ANZ. Bank manager recorded it in his diary (unsigned). Deed executed but missing property details. W declared bankruptcy before details supplied. Legal mortgage failed. Court found equitable mortgage via part performance.
<b>Regent v Millet (1976)</b>  Contrast with Pipikos (failed pp)	<b>Regent Mills 3 Part Test (PART PERFORMANCE)</b> Part 2. Evidence; If there is an oral agreement, you can invoke part performance.  acts relied upon be "unequivocally and in their own nature referable to some contract of the general nature alleged".	Millet (couple) orally agreed with wife's parents (Regents) to pay off a mortgage on a house; on completion, the house would transfer to them. Millets took possession, made repairs, borrowed jointly for renovations. Parents refused to transfer.
<b>Pipikos v Trayans [2018] HCA 39</b>	<b>Regent Mills 3 Part Test (PART PERFORMANCE)</b>  Part performance failed: paying a deposit on a different	L & S alleged an oral agreement that their names be registered on the Clark Road property in exchange for funding

<p>Contrast with Regent v Millet (successful pp)</p>	<p>property was NOT unequivocally referable to the Clark Road property. No giving or taking possession of the alleged subject property = no part performance.</p>	<p>the Penfield Road property. Acts relied on related to other properties, not Clark Road. No equitable interest.</p>
<p><b>Walsh v Lonsdale (1882)</b></p>	<p><b>No formal lease; but wanting to uphold formalities</b>          If the tenant holds an agreement for the lease and the same terms as if an equity has been granted, he cannot complain of the rights exercised by the landlord would have had if a lease had been granted.</p>	<p>L agreed to lease to W with covenant for lease payment 1 year in advance, W went into possession and paid quarterly rent. No formal lease. L req year payment, W sued for distress.</p>
<p><b>Tanwar Enterprise v Cauchi (2003)</b></p>	<p>Once a specifically enforceable contract for the sale of land has been entered into, the purchaser acquires an equitable interest in the property. The precise nature of that interest; <b>The conveyancing relationship is not a trust.</b> The buyer's <b>equitable interest is limited to the right to bring an action for specific performance</b> against the vendor <b>to compel completion.</b> <b>The vendor does not become a trustee during the settlement period.</b></p>	<p>Tanwar contracted to buy three parcels of land for \$4.5m, paid deposit but failed to settle. Cauchi terminated. Tanwar argued the Lysaght trust applied, seeking relief against forfeiture. HCA rejected the trust analysis entirely.</p>

SAMPLE