

LAW2214- Property Law

Seminar 1 Property LAW2214

Dr Julie Copley- Seminar 1 objectives

- Admission Rule 4(1): 'Meaning, purposes of the concept of property'.
- Weighting of topic within course: 9%.
- Introduction of concepts and principles relevant to all property law Admission Rules and to all subsequent course topics.



Course topics – Admission Rules – modules

- Meaning and purposes of the concept of property
- Possession, seisin and title
- Nature and type (i.e. fragmentation) of proprietary interests
- Creation and enforceability of proprietary interests
- Legal and equitable remedies
- Statutory schemes of registration
- Acquisition and disposal of proprietary interests
- Concurrent ownership
- Proprietary interests in land owned by another
- Mortgages
- Property
- Property law and practice
- Possession
- Fragmentation of property interests
- Legal and equitable interests
- Co-ownership
- The Torrens System Part 1
- The Torrens System Part 2
- Leases
- Easements, profits and freehold covenants
- Mortgages
- Course review

in rem (with respect to a thing)

First, property is a system; like any system, property is governed by a "design principle", albeit an "unstated" one. It works in rem, and to do its work, it needs, inter alia, things. Moreover - and this is a second commitment - property is exceptional. It is different from contract or tort. To allow infinite customization would undermine or even erase property's exceptionalism, robbing it of its unique capacity to solve social ordering problems.

Jane B Baron, 'The Contested Commitments of Property' (2009) 61(4) *Hastings Law Journal* 917

Primary and secondary sources

1. Legislation (includes, eg, Land Title Practice Manual)
2. Common law (caselaw)
3. Equity (caselaw) 'a complex entanglement'
4. Secondary sources

Property – module/week 1

1. Meaning and purposes of the concept of property

Legal and social frameworks
Property rules
A unique legal vocabulary
Forms of property

2. Property rights

Essential characteristics
Foundations of property rights in

Queensland

A property law taxonomy

What sort of right?

Creation

Priority

3. High Court jurisprudence



A client's instructions

P was a substantial enterprise with land and mining tenements around the world, including in WA. In 2005, B was the second largest global gold mining enterprise assessed by market capitalisation and gold reserves, and the third largest by gold production. B announced a hostile, and ultimately successful, takeover of P. The acquisition was the largest transaction of its kind in the gold industry. When P and B were amalgamated in May 2006, that entity became the world's largest gold mining business.

After B acquired a controlling interest in P, the Commissioner of State Revenue issued an assessment to B under the *Stamp Act* which stated that P was a "listed land-holder corporation" and *ad valorem* duty (means proportional with value of land) of A\$54,852,300 was payable. B objected, the Commissioner disallowed the objection, and B applied to the State Administrative Tribunal for a review of the Commissioner's decision to disallow the objection.

Whether P was a "listed land-holder corporation" caught by Div 3b of Pt IIIBA of the *Stamp Act* turned on a single issue – did the value of all of P's land, regardless of its location, meet or exceed 60 per cent of the value of all of P's property, namely 60 per cent of \$12.8 billion (\$7.68 billion).

Goodwill in law:

Commissioner of State Revenue (WA) v Placer Dome Inc (2018) 265 CLR 585 [163] (Kiefel CJ, Bell, Keane, Nettle and Gordon JJ) 91. Goodwill for legal purposes does not extend to every positive advantage, and whatever adds value, including privileges or advantages that differentiate an established business from a business just starting out. Goodwill for legal purposes does extend to those sources which generate or add value (or earnings) to the business by attracting custom, whether that be from the use of identifiable assets, locations, people, efficiencies, systems, processes, or techniques of the business, or from some other identifiable source. And those sources of goodwill for legal purposes have a unified purpose and result - to generate or add value (or earnings) to the business by attracting custom.

Property Exam Guide

ADVERSE POSSESSION
MORTGAGEE'S DUTIES

EASEMENTS — IRAC CHECKLIST
BONA FIDE PURCHASER

LEASES vs REGISTERED OWNER
LEASE + INDEFEASIBILITY

⚖️ Equities must be compared and the stronger one will gain title *Heid v Reliance Finance Corp* (1983) 154 CLR 326

⚖️ Prior equity beat later equity in time- *Rice v Rice* (1853) 61 ER 646

⚖️ In *Corin v Patton* (1990) 169 CLR 540, the decision by the majority of the High Court supported Griffith CJ's view in *Anning v Anning* (1907) 4 CLR 1049: that a donee (receiver) of Torrens land may be entitled to an equitable interest.

A **mere equity** is weak; a *right to ask the court to create or restore an equitable interest*, not the interest itself.

Fee simple: almost total ownership, can last forever.

- A transfer after a caveat s150 LTA means that one is lodged after and not useful

⚖️ If you have given consideration, you can lodge a caveat (*GPT RE Ltd v Lend Lease Real Estate Investments* (2005) if there is no postponing conduct

? "Seised of an estate in fee simple" → they own the property outright (full ownership)

? Deeds registration = ownership proven by document history, not a single guaranteed title register Torrens

Queensland Torrens Statutory Framework

⚖️ A contract for sale- Does not transfer legal title- Creates only an equitable interest until registration *Lysaght v Edwards* (1876) 2 Ch D 499

⚖️ Under the Torrens system, priority is determined primarily by registration, not by notice or timing in equity. *Breskvar v Wall* (1971) 126 CLR 376 and s 182 LTA

☞ A registered mortgage as per s 182 LTA is very strong and has priority over, Earlier equitable interests, Later equitable purchasers, Unregistered contracts for sale, *Breskvar v Wall* (1971) 126 CLR 376

☞ A registered mortgagee may exercise a power of sale on default and convey good title to a purchaser. This allows the mortgagee to sell free of subordinate equitable interests.

☞ The in personam exception preserves personal remedies against the contracting party but, consistent with ss 184–185 of the Land Title Act 1994 (Qld), cannot defeat a registered mortgagee who was not privy to the contract. *Breskvar v Wall* (1971) 126 CLR 376 in personam *Frazer v Walker* [1967] 1 AC 569 (PC)

☞ Non-compliance with s 11A means the mortgagee cannot rely on indefeasibility if the interest was procured by fraud, and the court may therefore set the mortgage aside or rectify the register under s 185(1A).

Step 1: Is there a registered interest? Yes → Torrens rules apply (LTA 1994 (Qld) ss 184–185) No → Equitable priority rules apply (*Latec Investments*)

Step 2: Who assumed the obligation? Vendor only → in personam applies only against vendor Mortgagee did not assume obligation → mortgage unaffected

Step 3: Remedy check Against land → blocked by registration Against person → contract / equity claim

Torrens title; use of register

☞ Borrowed heavily from the Hanseatic registration system in Hamburg the Torrens system is the Land Title Act to give an accurate picture of land Rights

☞ Blank transfer or giving the title to random is contributorily negligent and terminates your compensation 189(1)(b) LTA

☞ Postponing conduct (*Abigail v Lapin*) can see you lose priority- conditional finance approval is not

☞ If you don't check the register and settlement notice is there it is deemed constructive notice *Bank of Credit and Commerce International Ltd v Akindale* [2001]

☞ If you don't check the register it is deemed constructive notice and you can lose your priority as per *Platzer v Commonwealth Bank of Australia* [1997]

☞ If you do check the register and there is nothing, failure to search is not held against you *Abigail v Lapin* (1934) AC

☞ Interests will be postponed if you do not obtain deeds *Latec Investments Ltd v Hotel Terrigal Pty Ltd* (1965) 113 CLR 265