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LAW · EXAM REVISION

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# Land Law

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*Exam Study Guide*

COMPREHENSIVE REVISION NOTES · 11 TOPICS

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**Victoria, Australia**

2026 EDITION

## Table of Contents

01	T01 — General Law Priority Rules .....	2
02	T02 — Electronic Conveyancing .....	13
03	T03 — Registration and Indefeasibility .....	23
04	T04 — Statutory Exceptions to Indefeasibility: Fraud & Inconsistent Legislation .....	33
05	T05 — Non-Statutory Exceptions to Indefeasibility: The In Personam Exception .....	44
06	T06 — Unregistered Interests and Caveats .....	54
07	T07 — Paramount Interests (Section 42(2) Exceptions) .....	65
08	T08 — State Guarantee of Title: Volunteers, the Assurance Fund & Errors in the Register .....	74
09	T09 — Co-ownership: Forms, Rights and Duties .....	84
10	T10 — Co-ownership: Severance of Joint Tenancy .....	96
11	T11 — Revision & Exam Synthesis .....	106

# T01 — General Law Priority Rules

## 1. Overview

Before the Torrens system, title to land was held under the **general law** (also called "old system" or "old title") and proved by an unbroken chain of deeds running back to the original Crown grant. Where two or more interests compete for the same parcel, a **priority dispute** arises, and the court must rank them.<sup>[1]</sup> This chapter explains how interests in land are classified (legal versus equitable, and how equitable interests come into existence) and then sets out the four general-law priority rules that resolve competition between them. The governing logic is partly mechanical (first in time) and partly equitable (whose conduct is more meritorious), and the decisive concept throughout is the **bona fide purchaser of the legal estate for value without notice** — "equity's darling". These principles are not historical curiosities: they supply the substantive law of equitable priority that the Torrens system later applies to *unregistered* interests (see T06).

**Reading Guide:** Read this chapter alongside Hepburn, *Australian Property Law* (LexisNexis, 6th ed, 2023) ch 10. Focus on (a) the classification of legal versus equitable interests and how each equitable interest arises; (b) the four priority rules and the case that anchors each; and (c) the "better equity" merit analysis in *Rice v Rice* as refined by *Heid v Reliance Finance* and *Latec v Hotel Terrigal*. When you reach T03 (indefeasibility) and T06 (unregistered interests and caveats), return to this chapter — the equitable-priority test you learn here is the same one the courts apply to competing unregistered Torrens interests.

## 2. Key Definitions

TERM	DEFINITION	AUTHORITY
Legal interest	A common law interest created with the requisite formality (a deed) — e.g. fee simple, leasehold, easement, legal mortgage.	<i>Property Law Act 1958</i> (Vic) s 52(1) <sup>[2]</sup>
Equitable interest	An <i>in personam</i> right enforceable against the legal title holder, compelling them to hold legal rights consistently with equitable obligations.	<i>Lysaght v Edwards</i> (1876) 2 Ch D 499 <sup>[3]</sup>
Priority dispute	A conflict, partial or direct, between two or more interests over the same land, requiring the court to rank them.	<i>Rice v Rice</i> (1853) 2 Drew 73 <sup>[4]</sup>
Nemo dat	<i>Nemo dat quod non habet</i> — a person cannot transfer a title they do not have, and can transfer only the title they actually hold.	<i>Breskvar v Wall</i> (1971) 126 CLR 376 <sup>[5]</sup>
Qui prior est tempore	"He who is earlier in time is stronger in law" — where the equities are equal, the prior interest prevails.	<i>Rice v Rice</i> (1853) 2 Drew 73 <sup>[6]</sup>
Bona fide purchaser ("equity's darling")	A purchaser of the <b>legal</b> estate, in good faith, for value, without notice of a prior equity; takes free of that equity.	<i>Pilcher v Rawlins</i> (1871-72) 7 Ch App 259 <sup>[7]</sup>
Mere equity	A right to invoke the assistance of equity (e.g. to set a transaction aside for fraud) which, until exercised, is not a full proprietary equitable estate.	<i>Latec Investments Ltd v Hotel Terrigal Pty Ltd</i> (1965) 113 CLR 265 <sup>[8]</sup>
Notice	Knowledge — actual, constructive, or imputed — of a prior equitable interest, which defeats the "without notice" plea.	<i>Property Law Act 1958</i> (Vic) s 199 <sup>[9]</sup>

### 3. Legislative Framework

PROVISION	EFFECT
<i>Property Law Act 1958</i> (Vic) s 6	A deed of or affecting general-law land may be registered with the Registrar-General; a deed made bona fide and for valuable consideration and registered in conformity with the Act has priority over other deeds, and the deed first registered has priority — the old-system deeds-registration priority rule. <sup>[69]</sup>
<i>Property Law Act 1958</i> (Vic) s 52(1)	All conveyances of land are void for the purpose of conveying or creating a <b>legal</b> estate unless made by deed. <sup>[10]</sup>
<i>Property Law Act 1958</i> (Vic) s 53(1) (a)	A legal or equitable interest in land can be created or disposed of only by writing signed by the person creating or conveying it (or their agent). <sup>[11]</sup>
<i>Property Law Act 1958</i> (Vic) s 53(1) (b)	A declaration of trust respecting land must be manifested and proved by signed writing. <sup>[12]</sup>
<i>Instruments Act 1958</i> (Vic) s 126	A contract for the sale or other disposition of land or an interest in land is unenforceable unless evidenced by signed writing (derived from the Statute of Frauds). <sup>[13]</sup>
<i>Property Law Act 1958</i> (Vic) s 55(d)	Preserves the doctrine of part performance, so an oral but specifically enforceable contract may still be enforced. <sup>[14]</sup>
<i>Property Law Act 1958</i> (Vic) s 199	Codifies the doctrine of notice, encompassing both actual and constructive notice (and imputed notice through an agent). <sup>[15]</sup>

"An equitable interest in land can only be created or disposed of by writing signed by the person creating or conveying the interest or by his authorised agent." — *Property Law Act 1958* (Vic) s 53(1)(a) (paraphrased by effect).<sup>[16]</sup>

A non-compliant contract or interest is rendered **unenforceable**, not void: the interest is not extinguished, and may still be enforced if the doctrine of part performance is satisfied.<sup>[17]</sup>

## 4. Key Cases

CASE	CITATION	PRINCIPLE	EXAM APPLICATION
Lysaght v Edwards	(1876) 2 Ch D 499	A specifically enforceable contract of sale makes the vendor a (qualified) constructive trustee; the purchaser holds the beneficial interest.	How a purchaser's equitable interest arises on contract.
Pilcher v Rawlins	(1871-72) 7 Ch App 259	A bona fide purchaser of the legal estate for value without notice takes free of prior equities.	Prior equitable v later legal disputes.
Wilkes v Spooner	[1911] 2 KB 473	A purchaser with notice still takes free if buying from a prior bona fide purchaser without notice (the "shelter" rule).	Where notice appears late in a chain of title.
Northern Counties v Whipp	(1884) 26 Ch D 482	A prior legal interest is postponed to a later equity only where the legal holder was party to <b>fraud</b> ; mere carelessness is insufficient.	Prior legal v later equitable disputes.
Rice v Rice	(1853) 2 Drew 73	First assess the merits of competing equities; only if equal does priority in time decide ("last resort").	Prior equitable v later equitable disputes.
Heid v Reliance Finance	(1983) 154 CLR 326	Arming another with the indicia of title may, by estoppel/unconscionability, postpone the prior equity.	The "better equity" / postponing-conduct analysis.
Latec Investments v Hotel Terrigal	(1965) 113 CLR 265	A "mere equity" is defeated by a later bona fide purchaser of an equitable interest for value without notice.	Mere equity v subsequent full equity.

### 4.1 *Lysaght v Edwards* (1876) 2 Ch D 499

**Facts:** Concerned the effect of a specifically enforceable contract for the sale of land on the parties' respective interests. **Issue:** What interest does the purchaser acquire before completion? **Held:** Upon a valid, specifically enforceable contract the vendor becomes a constructive trustee of the land for the purchaser (the trusteeship qualified by the vendor's lien for the unpaid price), and the purchaser holds the beneficial (equitable) interest.<sup>[18]</sup> **Exam Application:** This is the orthodox route by which a purchaser acquires an *equitable* interest pre-settlement. Note the qualification in *Tanwar Enterprises Pty Ltd v Cauchi* (2003) 217 CLR 315, where the High Court doubted the constructive-trust analysis as "bedevilled by circularity", preferring to say the purchaser holds an equitable lien over the deposit.<sup>[19]</sup>

### 4.2 *Pilcher v Rawlins* (1871-72) 7 Ch App 259

**Facts:** Trustees held funds for beneficiaries, granted a mortgage and took security, then fraudulently reconveyed the title to the mortgagor though the loan was unpaid, concealed the prior mortgage, and transferred the legal title to a new mortgagee before absconding with the funds. **Issue:** Did the beneficiaries' prior equitable interest bind the subsequent legal mortgagee? **Held:** No. The later mortgagee was a bona fide purchaser of the legal estate for value without notice; his legal title overrode the earlier equitable interests of the beneficiaries.<sup>[20]</sup> **Exam Application:** The leading authority for the rule that prior equities yield to "equity's darling". Note Mellish LJ's blunt policy: "If you trust your property to a man who turns out to be a rogue, it stands to reason that you may lose it."<sup>[21]</sup>

### 4.3 *Northern Counties of England Fire Insurance Company v Whipp* (1884) 26 Ch D 482

**Facts:** Crabtree, a manager of the insurer (the prior legal mortgagee), had keys to the safe holding the company's mortgage deed. He removed the deed and used it to obtain a further mortgage from Whipp, who had no notice of the prior mortgage. **Issue:** Should the company's prior legal mortgage be postponed to Whipp's later equitable mortgage? **Held:** No. A prior legal estate is postponed to a later equity only where the legal holder **assisted or connived in the fraud** that led to the later equity. Mere carelessness or want of prudence — even leaving deeds accessible — is insufficient, as there is no duty of safe custody owed to a future encumbrancer.<sup>[22]</sup> **Exam Application:** The benchmark for the conduct required to disentitle a prior legal interest. Distinguish fraud (postpones) from negligence (does not).

### 4.4 *Rice v Rice* (1853) 2 Drew 73

**Facts:** Vendors transferred full title to Michael Rice, the conveyance acknowledging receipt of the full purchase price, although a balance remained unpaid (giving the vendors an equitable lien). Michael then deposited the deeds with mortgagees to secure an equitable mortgage. **Issue:** As between the vendors' prior equitable lien and the later equitable mortgage, which prevailed? **Held:** The later equitable mortgagee. Kindersley VC directed the court first to assess the *merits* of the two equities — their nature, the manner of their acquisition, and the whole conduct of each party — and to resort to priority in time only as a "last resort". The vendors had falsely declared the price paid and armed the purchaser with the deeds, "free from every shadow of incumbrance", whereas the mortgagee was not negligent and gave value.<sup>[23]</sup> **Exam Application:** The foundational "better equity" test. Where equities are **equal**, *qui prior est tempore* applies; where they are not, conduct decides.

### 4.5 *Heid v Reliance Finance Corp Pty Ltd* (1983) 154 CLR 326

**Facts:** Concerned a vendor who, having sold land, left the purchaser able to deal with the title as apparent unencumbered owner, enabling a later financier to take a security. **Issue:** Was the vendor's prior equity postponed to the later interest? **Held:** Yes. Where the prior equity-holder arms another with the indicia (or "false colours") of title, that conduct may, through estoppel and the principle of unconscionability, postpone the prior interest to a later equity that relied upon the appearance of title.<sup>[24]</sup> **Exam Application:** Use this to explain *why* postponing conduct works — it operates as a reliance-based estoppel within the merit analysis, not as a rigid rule.

### 4.6 *Latec Investments Ltd v Hotel Terrigal Pty Ltd* (1965) 113 CLR 265

**Facts:** A mortgagee conducted a colourable sale of the mortgaged property to its own subsidiary; a later financier (Southern) then took an equitable charge over the property for value and without notice of the mortgagor's right to set the sale aside. **Issue:** Did the mortgagor's prior right (to have the sale set aside for fraud) defeat the later equitable charge? **Held:** No. The mortgagor held only a **mere equity** — a right to invoke equity's assistance — which had not yet been exercised. A mere equity is defeated by a subsequent purchaser of an equitable *estate* for value without notice. Kitto J treated the later interest as an equitable estate taking priority; Taylor J reasoned the mere equity was not an independent proprietary title, so there was no true competition; Menzies J reconciled the authorities.<sup>[25]</sup> **Exam Application:** The key distinction is

**mere equity** (e.g. a right to rescind/rectify, defeated by a later bona fide equitable purchaser) versus a full **equitable interest** (which competes on the *Rice v Rice* merit test).

## 5. Substantive Content

### 5.1 Classification of interests: legal versus equitable

A **legal** interest is a recognisable common law right created with the requisite formality. Over land, that formality is a **deed**: by *Property Law Act 1958* (Vic) s 52(1), a conveyance is void to create or convey a legal estate unless made by deed (subject to exceptions such as short leases of three years or less).<sup>[26]</sup> Legal interests include the freehold and leasehold estates, easements and legal mortgages.<sup>[27]</sup>

An **equitable** interest is an *in personam* right enforceable against the legal title holder, compelling that holder to deal with the legal title in accordance with equitable obligations.<sup>[28]</sup> Because equitable interests are right-based rather than title-based, *nemo dat* does not constrain their multiplication: many equitable interests may validly arise against the same land.<sup>[29]</sup>

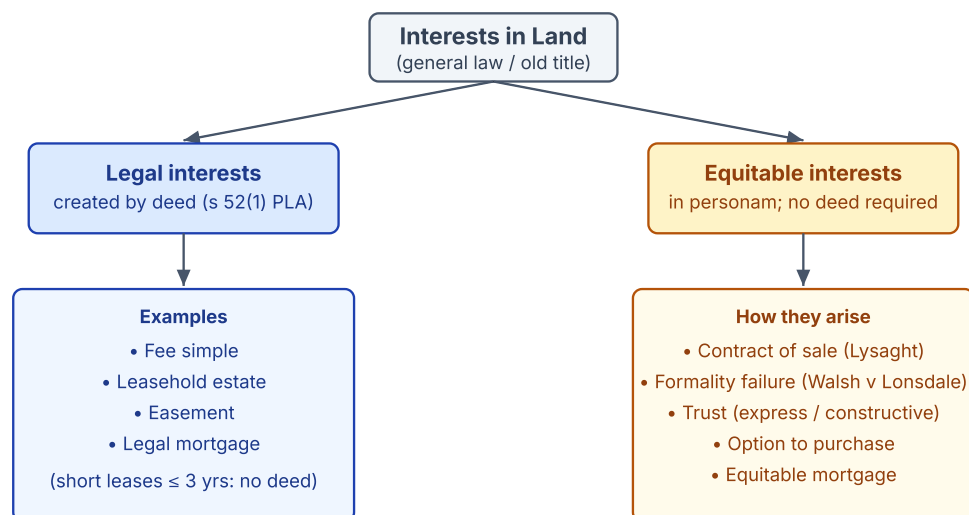


Figure 1.1: Classification tree — legal interests (created by deed) versus equitable interests and the principal ways they arise.

### 5.2 How equitable interests arise

**(a) Contract of sale.** A valid, specifically enforceable contract for the sale of land confers an equitable interest on the purchaser: the vendor becomes a (qualified) constructive trustee and the purchaser the beneficial owner — *Lysaght v Edwards*.<sup>[30]</sup> Because land is unique, damages are rarely adequate, so specific performance is generally available where the parties are ready and willing and the contract is valid.<sup>[31]</sup> The *Tanwar* dicta reframe this as the purchaser holding an equitable lien over the deposit rather than a clean beneficial estate.<sup>[32]</sup>

**(b) Failure of formality — *Walsh v Lonsdale*.** A purported legal interest that fails for want of a deed may still take effect in equity if the agreement is one of which equity would order specific performance: equity treats as done that which ought to be done, so an agreement for a lease is as good as a lease in equity — *Walsh v Lonsdale* (1882) 21 Ch D 9.<sup>[33]</sup> In Victoria, s 53(1)(a) requires signed writing for an equitable interest, but s 55(d) preserves part performance, so an oral but specifically enforceable contract may still be enforced.<sup>[34]</sup>

**(c) Trusts.** Equitable interests arise under express trusts (which, respecting land, must be evidenced by signed writing under s 53(1)(b)) and under constructive and resulting trusts, which equity imposes regardless of formality where unconscionability so requires.<sup>[35]</sup>

**(d) Options and equitable mortgages.** An option to purchase is a specifically enforceable contractual right capable of generating an equitable interest in the land; an equitable mortgage may arise (for example) by deposit of title deeds or by an informal agreement to grant security, as in *Rice v Rice* itself.<sup>[36]</sup>

### 5.3 Rule 1 — legal versus legal: first in time

Where two **legal** interests compete, time of creation governs. Two non-identical legal interests (e.g. a lease and a mortgage) are ranked *prior in tempore potior in iure*.<sup>[37]</sup> Where the *same* legal estate is purportedly conveyed twice, **nemo dat** applies: the grantor, having parted with the estate, has nothing left to convey, so the second deed is ineffective.<sup>[38]</sup> Thus where John conveys to Julie, then steals the deeds and "conveys" to Peter, Peter takes nothing — John no longer holds the legal title and *nemo dat* is not displaced by theft of the documents.<sup>[39]</sup>

"If you trust your property to a man who turns out to be a rogue, it stands to reason that you may lose it." — Mellish LJ, *Pilcher v Rawlins* (1871-72) 7 Ch App 259.

### 5.4 Rule 2 — prior legal versus later equitable: legal prevails unless disentitled

A prior **legal** interest generally defeats a later **equitable** interest: the legal estate holder takes priority provided they are bona fide and have not contributed to the creation of the later equity.<sup>[40]</sup> The legal holder is postponed only where they were **party to fraud** that led to the later equity — *Northern Counties v Whipp*.<sup>[41]</sup> Mere carelessness, even leaving title deeds where they can be misused, does not suffice, because the legal holder owes no duty of safe custody to a future encumbrancer.<sup>[42]</sup> The policy is that a person should not benefit from inequitable conduct that contributed to the dispute — for example, a legal mortgagee who hands the mortgagor a document implying the mortgage is discharged will lose priority to a later equity induced by that document.<sup>[43]</sup>

### 5.5 Rule 3 — prior equitable versus later legal: "equity's darling"

A later **legal** interest defeats a prior **equitable** interest where the legal holder is a **bona fide purchaser of the legal estate for value without notice** — *Pilcher v Rawlins*.<sup>[44]</sup> Three elements must be satisfied:

- **Bona fides** — good faith; fair and proper conduct, not acting unconscionably.<sup>[45]</sup>
- **Consideration** — a *purchaser*, not a volunteer; "purchaser" means the grantee of a legal estate (fee simple, mortgage or lease).<sup>[46]</sup>
- **Without notice** — no actual, constructive, or imputed notice of the prior equity (see 5.7).<sup>[47]</sup>

This is the rule applied in the gazumping scenario: where a vendor contracts with Ken (prior equity) then settles a legal conveyance on Jack, Jack — taking the legal estate for value without notice — defeats Ken's prior equitable interest.<sup>[48]</sup>

"Title of a good faith purchaser for valuable consideration of a legal estate without notice of the equitable interest overrides equitable interests that were created earlier." — *Pilcher v Rawlins* (1871-72) 7 Ch App 259 (Mellish LJ, paraphrased).

**The shelter rule — *Wilkes v Spooner*.** Once "equity's darling" has taken free of a prior equity, they can pass good title even to a purchaser *with* notice: the later buyer "shelters" under the protected title. This preserves the first purchaser's ability to sell. The shelter does not extend to a trustee buying back in breach of trust, or where the subsequent acquisition is itself fraudulent.<sup>[49]</sup>

## 5.6 Rule 4 — prior equitable versus later equitable: the better equity

Where two **equitable** interests compete, the court asks which is the *better* equity. Only if the equities are **equal in merit** does priority in time decide — *qui prior est tempore potior est jure* — and time is the "last resort".<sup>[50]</sup> The merit analysis in *Rice v Rice* weighs (a) the nature and condition of the equities; (b) the circumstances and manner of their acquisition; and (c) the whole conduct of each party.<sup>[51]</sup> Postponing factors include:

- **Arming with indicia of title** — handing over deeds or "false colours" of title, which founds a reliance-based estoppel against the prior holder — *Heid v Reliance Finance*.<sup>[52]</sup>
- **Failure to protect** the prior equity by available means (e.g. retaining the deeds).<sup>[53]</sup>
- **Notice** of the prior interest, which is relevant but not determinative in the merit assessment — *Moffett v Dillon* [1999] 2 VR 480.<sup>[54]</sup>

The assessment is broad and flexible; no single factor is decisive.<sup>[55]</sup>

"If the merits are equal, priority in time of creation is considered to give the better equity. This is the true meaning of the maxim *qui prior est tempore potior est jure*." — Kitto J, *Latec Investments Ltd v Hotel Terrigal Pty Ltd* (1965) 113 CLR 265, 276.

**Mere equity versus full equity.** A **mere equity** — a right to invoke equity's aid, such as a right to set aside a transaction for fraud — is, until exercised, not a competing proprietary estate. It is defeated by a later purchaser of an equitable *interest* for value without notice — *Latec v Hotel Terrigal; Ruthol Pty Ltd v Mills* (2003) 11 BPR 20,793.<sup>[56]</sup> A full equitable interest, by contrast, competes on the *Rice v Rice* merit test.

The role of **caveats** under Torrens (and the consequences of failing to caveat as a postponing factor) is developed in T06; that analysis applies the very priority principles set out here — see *J & H Just (Holdings) Pty Ltd v Bank of NSW* (1971) 125 CLR 546.<sup>[57]</sup>

## 5.7 The doctrine of notice

Notice defeats the "without notice" plea. There are three kinds:<sup>[58]</sup>

- **Actual notice** — the legal holder has in fact been told of the prior equity.
- **Constructive notice** — what they would have discovered on the usual inspections and inquiries; a purchaser is taken to know all interests reasonably apparent from inspection of the land and title, though not matters arising only from oral conversation — *Smith v Jones* [1954] 1 WLR 1089; *Kingsnorth Finance Ltd v Tizard* [1986] 1 WLR 783.<sup>[59]</sup>
- **Imputed notice** — notice received by an agent (actual or constructive) brought home to the principal.<sup>[60]</sup>

*Property Law Act 1958 (Vic)* s 199 incorporates both actual and constructive notice.<sup>[61]</sup> **Timing** is critical: the holder is bound only if notice is received **before** acquiring the interest — in a sale, before entering the contract and acquiring the antecedent equity — *Blackwood v London Chartered Bank of Australia* (1874) LR 5 PC 92.<sup>[62]</sup> Once received, notice cannot be removed — *Jared v Clements* [1902] 2 Ch 399.<sup>[63]</sup>

## 5.8 Critical Perspectives

PERSPECTIVE	SOURCE	ARGUMENT	COUNTER-ARGUMENT
Constructive-trust orthodoxy is unstable	<i>Tanwar Enterprises Pty Ltd v Cauchi</i> (2003) 217 CLR 315, 333	Describing the purchaser as constructive trustee "conceals the contractual relationship" and is "bedevilled by circularity"; better to speak of an equitable lien over the deposit.	<i>Lysaght v Edwards</i> remains workable and widely applied; the trust analysis usefully captures the purchaser's beneficial interest pending completion.
Fraud threshold is too protective of the careless	<i>Northern Counties v Whipp</i> (1884) 26 Ch D 482	Requiring fraud (not mere carelessness) to postpone a prior legal interest shields negligent legal holders whose conduct enabled the later equity.	A duty of safe custody to unknown future encumbrancers would be unworkable; the merit/estoppel analysis ( <i>Heid</i> ) already catches culpable enabling conduct.
Notice is over-emphasised in merit disputes	<i>Moffett v Dillon</i> [1999] 2 VR 480	Treating notice as near-decisive risks displacing the flexible, conduct-based merit inquiry mandated by <i>Rice v Rice</i> .	Notice remains a legitimate and often weighty merit factor; the courts expressly retain it as relevant though not determinative.

## 5.9 The deeds-registration system

The general-law priority rules above operate against the backdrop of a voluntary **deeds-registration** system. In Victoria, general-law land is land alienated by the Crown (between 1837 and 2 October 1862) that has never been brought under the *Transfer of Land Act 1958 (Vic)*; title is proved by the chain of deeds, each of which could be registered with the Registrar-General.<sup>[70]</sup> Registration here does **not** confer title (unlike Torrens registration); it is a system for *recording* deeds and ranking competing instruments.<sup>[71]</sup>

Under *Property Law Act 1958 (Vic)* s 6, a deed of or affecting general-law land may be entered and registered; a deed made bona fide and for valuable consideration and registered in conformity with the Act has priority over every other deed, and as between registered deeds the one **first registered** takes priority.<sup>[72]</sup> Registration thus modifies the common-law "first in time" rule: a later but duly-registered bona fide purchaser for value may gain priority over an earlier unregistered deed. Because registration may give notice of a prior dealing, it also interacts with the doctrine of notice and the merit analysis above — failure to register, like failure to caveat under Torrens, can be a postponing factor in the equitable-priority assessment.<sup>[73]</sup>

The deeds register and the Torrens register ran in parallel until **31 December 1999**; from 1 January 2000 it has been compulsory to convert general-law land to Torrens title in order to register any transfer or other dealing, so almost all Victorian land is now under the *Transfer of Land Act 1958 (Vic)*.<sup>[74]</sup> The deeds-registration priority rule remains examinable as the general-law counterpart to the Torrens priority regime studied in T03 and T06.

## 6. Decision Tree / Procedural Steps

To resolve a general-law priority dispute:

- 1. Classify each competing interest** as legal or equitable, and verify how each was created (deed? specifically enforceable contract? trust? option?).

2. Establish the order in time of creation.

3. Select the governing rule by the legal/equitable matrix:

- o Legal v legal → first in time / *nemo dat* (5.3).
- o Prior legal v later equitable → legal prevails unless party to fraud postponed it (5.4).
- o Prior equitable v later legal → apply the bona fide purchaser test (5.5).
- o Prior equitable v later equitable → assess the better equity; if equal, first in time (5.6).

4. For the **bona fide purchaser test**, check: legal estate? value (not volunteer)? good faith? no notice (actual / constructive / imputed, received before acquisition)?

5. For **competing equities**, run the *Rice v Rice* merit analysis: nature of the equities, manner of acquisition, whole conduct — looking for postponing conduct (arming with indicia, failure to protect, notice). Resort to time only if merits are equal.

6. Check for a **mere equity**: if the prior interest is only a right to invoke equity (e.g. to rescind), it yields to a later bona fide purchaser of an equitable interest without notice (*Latec*).

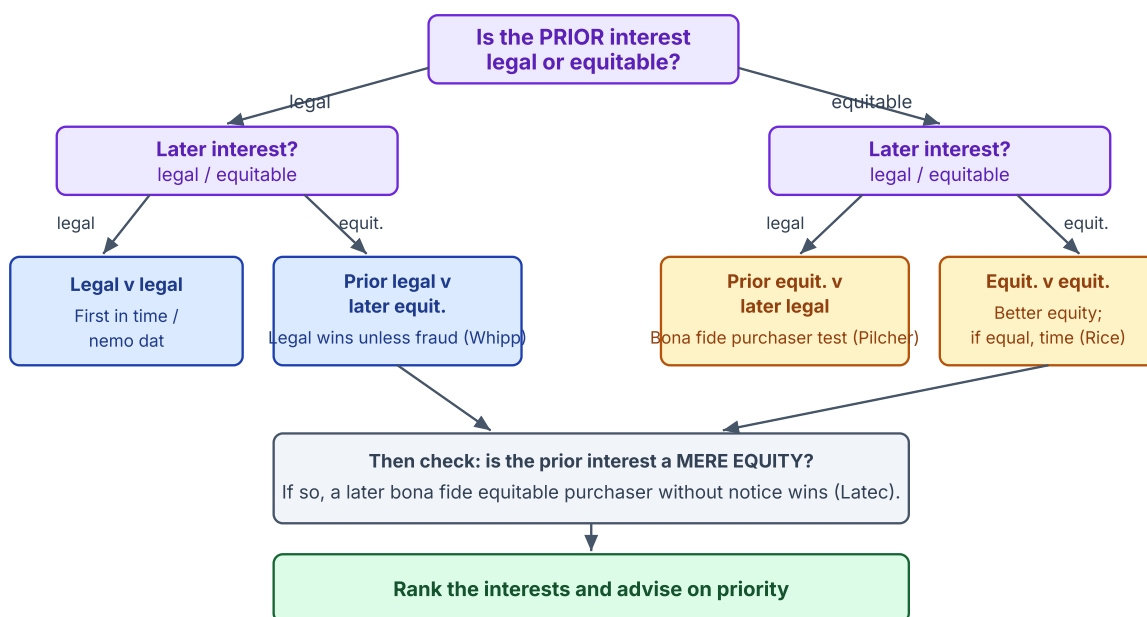


Figure 1.2: Decision flowchart — selecting the applicable general-law priority rule from the nature and order of the competing interests.

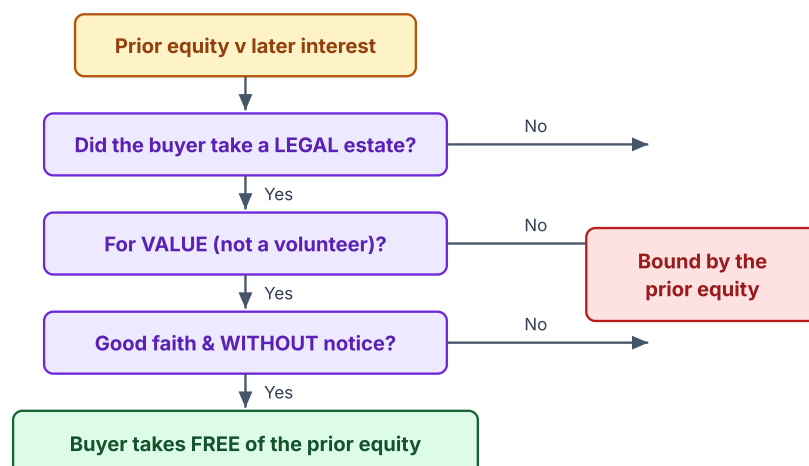


Figure 1.3: The "equity's darling" test — sequential gates for the bona fide purchaser of the legal estate for value without notice.

## 7. Common Exam Questions

### Common Fact Patterns

PATTERN	COMPETING INTERESTS	GOVERNING RULE	LIKELY OUTCOME
Owner conveys, then "re-sells" / steals deeds	Legal v legal	Nemo dat	Second taker gets nothing. <sup>[64]</sup>
Mortgagee leaves deeds accessible; deeds misused for new mortgage	Prior legal v later equitable	<i>Whipp</i> fraud test	Prior legal mortgage prevails (mere carelessness ≠ fraud). <sup>[65]</sup>
Gazumping: vendor contracts with A, settles legal title on B	Prior equitable v later legal	<i>Pilcher v Rawlins</i>	B (bona fide, value, no notice) takes free of A's equity. <sup>[66]</sup>
Unpaid vendor's lien v later equitable mortgage where deeds handed over	Prior equitable v later equitable	<i>Rice v Rice</i> merit test	Later mortgagee may have the better equity if prior holder armed the purchaser. <sup>[67]</sup>
Buyer hears of prior charge via "gossip", then assured (falsely) it is discharged	Prior equitable v later legal/equitable	Notice analysis	Constructive notice issue; fraud beyond buyer's knowledge may not be imputed. <sup>[68]</sup>

### Question Type A — "Who takes priority?" (legal v equitable)

**Approach:** Classify and date each interest; pick the matrix rule; apply the relevant test element-by-element with authority. **Key Points:** Identify the legal/equitable character precisely; for prior-legal disputes apply the *Whipp* fraud threshold; for prior-equitable disputes run the bona fide purchaser test (legal estate, value, good faith, notice, timing).

#### Answer Plan:

- **Issue:** As between Ken's prior equitable interest and Jack's subsequent legal estate over the same land, who has priority?
- **Rule:**
  - Prior equitable v later legal is governed by the bona fide purchaser rule — a later purchaser of the legal estate for value without notice takes free of the prior equity: *Pilcher v Rawlins* (1871-72) 7 Ch App 259.
  - A specifically enforceable contract of sale gives the purchaser an equitable interest, the vendor becoming a qualified constructive trustee: *Lysaght v Edwards* (1876) 2 Ch D 499.
  - A legal estate is conveyed only by deed: *Property Law Act 1958* (Vic) s 52(1).
  - Notice (actual, constructive or imputed) is codified by *Property Law Act 1958* (Vic) s 199; it binds only if received **before** the interest is acquired.
- **Application:**
  - Characterise and date each interest: Ken took an equitable interest on entering the specifically enforceable contract (*Lysaght v Edwards*); Jack later took a legal estate by executed (digitally signed) conveyance satisfying s 52(1).
  - Select the matrix rule: prior equitable v later legal → the bona fide purchaser test (*Pilcher v Rawlins*).
  - Work the elements: legal estate ✓ (Jack took the legal title); value ✓ (a purchaser, not a volunteer); good faith — assume on the facts.
  - Decisive element is notice (s 199): Jack is bound only by interests of which he had actual, constructive or imputed notice received before acquisition.
  - General law has no caveat system, so a reasonable inspection would not reveal Ken's interest; absent actual notice, Jack takes free.
- **Conclusion:** Jack has priority over Ken's prior equity; Ken is confined to a personal remedy (e.g. damages) against the vendor.

### Question Type B — "Better equity" (equitable v equitable)

**Approach:** Confirm both interests are full equitable interests (not a mere equity); run the *Rice v Rice* merit factors; resort to time only if merits are equal. **Key Points:** Hunt for postponing conduct — arming with indicia of title (*Heid*), failure to protect the prior equity, and notice (relevant but not decisive, *Moffett v Dillon*). If the prior interest is a mere equity, apply *Latec*.

## 8. Exam Tips & Traps

### ✓ Do

- Classify *every* interest as legal or equitable and fix its date **before** choosing a rule.
- For the bona fide purchaser test, work through all four elements (legal estate, value, good faith, notice) and address **timing** of notice.
- In competing-equities questions, *start* with the merit analysis; treat "first in time" as the last resort.
- Distinguish a **mere equity** (right to rescind/rectify) from a full equitable interest — it changes the test.

### ✗ Don't

- Don't say carelessness postpones a prior legal interest — *Whipp* requires **fraud**.
- Don't treat notice as decisive in a competing-equities dispute; it is one merit factor only.

- Don't confuse "unenforceable" with "void": a non-compliant contract is unenforceable but the interest survives and part performance may rescue it.
- Don't apply *nemo dat* to equitable interests — multiple equities can validly arise over the same land.

### ⚠ Watch Out For

- **"Equity's darling" must take a legal estate.** A later *equitable* purchaser does not get the full *Pilcher* shield; that contest is decided on the *Rice v Rice* merits (or, against a mere equity, *Latec*).
- **The shelter rule (*Wilkes v Spooner*)** lets a buyer with notice take free if buying from a prior bona fide purchaser without notice — unless trustee-in-breach or fraud applies.
- **Arming with indicia of title** is the most common postponing factor — look for handed-over deeds or false acknowledgements of payment (*Rice v Rice*, *Heid*).

## 9. Connections to Other Topics

TOPIC	CONNECTION
T02 — Equitable Interests & the Creation of Equities	Supplies the detail on how each equitable interest (trusts, estoppel, options) is created; this chapter applies them in priority disputes.
T03 — Torrens Registration & Indefeasibility	Torrens priority rules are superimposed over these general-law rules; registration confers indefeasibility, displacing the bona fide purchaser contest for <i>registered</i> interests. The general-law <b>deeds-registration</b> system (PLA s 6) is the historical counterpart Torrens replaced.
T06 — Unregistered Interests & Caveats	Applies the <i>Rice v Rice / Heid</i> equitable-priority principles to competing <b>unregistered</b> Torrens interests; failure to caveat is analysed as postponing conduct ( <i>J &amp; H Just</i> ).
T-Notice / Fraud	The doctrine of notice here (s 199) contrasts with the Torrens rule that notice of an unregistered interest is not of itself fraud (TLA s 43).

## 10. Quick Reference Card

PRIORITY CONTEST	GOVERNING RULE	LEAD AUTHORITY
Legal v legal	First in time / <i>nemo dat</i>	<i>Breskvar v Wall</i> (1971) 126 CLR 376
Prior legal v later equitable	Legal wins unless party to fraud	<i>Northern Counties v Whipp</i> (1884) 26 Ch D 482
Prior equitable v later legal	Bona fide purchaser for value without notice	<i>Pilcher v Rawlins</i> (1871-72) 7 Ch App 259
Prior equitable v later equitable	Better equity; if equal, first in time	<i>Rice v Rice</i> (1853) 2 Drew 73
Mere equity v later equitable	Later bona fide equitable purchaser without notice wins	<i>Latec v Hotel Terrigal</i> (1965) 113 CLR 265

ELEMENT / CONCEPT	RULE	AUTHORITY
Deeds registration (general law)	<i>Property Law Act 1958</i> (Vic) s 6	Bona fide purchaser for value, first registered, takes priority
Legal estate by deed	<i>Property Law Act 1958</i> (Vic) s 52(1)	—
Writing for equitable interest	<i>Property Law Act 1958</i> (Vic) s 53(1) (a)–(b)	—
Writing for contract re land	<i>Instruments Act 1958</i> (Vic) s 126	—
Part performance preserved	<i>Property Law Act 1958</i> (Vic) s 55(d)	<i>Pipikos v Trayans</i> (2018) 265 CLR 522
Notice (actual + constructive)	<i>Property Law Act 1958</i> (Vic) s 199	<i>Kingsnorth Finance v Tizard</i> [1986] 1 WLR 783
Shelter rule	Buyer with notice takes free via prior darling	<i>Wilkes v Spooner</i> [1911] 2 KB 473

## 11. References

### Legislation

- *Instruments Act 1958* (Vic).
- *Property Law Act 1958* (Vic).
- *Transfer of Land Act 1958* (Vic).

### Cases

- *Abigail v Lapin* [1934] AC 491.
- *Barry v Heider* (1914) 19 CLR 197.
- *Blackwood v London Chartered Bank of Australia* (1874) LR 5 PC 92.
- *Breskvar v Wall* (1971) 126 CLR 376.
- *Heid v Reliance Finance Corp Pty Ltd* (1983) 154 CLR 326.
- *J & H Just (Holdings) Pty Ltd v Bank of NSW* (1971) 125 CLR 546.
- *Jared v Clements* [1902] 2 Ch 399.
- *Kingsnorth Finance Ltd v Tizard* [1986] 1 WLR 783.
- *Latec Investments Ltd v Hotel Terrigal Pty Ltd (In Liquidation)* (1965) 113 CLR 265.
- *Lysaght v Edwards* (1876) 2 Ch D 499.
- *Maddison v Alderson* (1883) 8 App Cas 467.
- *Manton v Parabolic* (1985) 2 NSWLR 361.
- *Moffett v Dillon* [1999] 2 VR 480.
- *Northern Counties of England Fire Insurance Company v Whipp* (1884) 26 Ch D 482.
- *Pilcher v Rawlins* (1871–72) 7 Ch App 259.
- *Pipikos v Trayans* (2018) 265 CLR 522.
- *Regent v Millett* (1976) 133 CLR 679.
- *Rice v Rice* (1853) 2 Drew 73.
- *Ruthol Pty Ltd v Mills* (2003) 11 BPR 20,793.
- *Smith v Jones* [1954] 1 WLR 1089.
- *Tanwar Enterprises Pty Ltd v Cauchi* (2003) 217 CLR 315.

- *Walsh v Lonsdale* (1882) 21 Ch D 9.
- *Wilkes v Spooner* [1911] 2 KB 473.
- *Williams v Booth* (1910) 10 CLR 341.

## Secondary Sources

- S Hepburn, *Australian Property Law: Cases, Materials and Analysis* (LexisNexis, 6th ed, 2023) ch 10.

MLP325 Land Law — T01. Document version 1.0. Verified against TLA 1958 (Vic), PLA 1958 (Vic); case law and legislation current as at 2026.

## Footnotes

1. S Hepburn, *Australian Property Law: Cases, Materials and Analysis* (LexisNexis, 6th ed, 2023) ch 10.
2. *Property Law Act 1958* (Vic) s 52(1).
3. *Lysaght v Edwards* (1876) 2 Ch D 499.
4. *Rice v Rice* (1853) 2 Drew 73.
5. *Breskvar v Wall* (1971) 126 CLR 376.
6. *Rice v Rice* (1853) 2 Drew 73.
7. *Pilcher v Rawlins* (1871-72) 7 Ch App 259.
8. *Latec Investments Ltd v Hotel Terrigal Pty Ltd* (1965) 113 CLR 265.
9. *Property Law Act 1958* (Vic) s 199.
10. *Property Law Act 1958* (Vic) s 52(1).
11. *Property Law Act 1958* (Vic) s 53(1)(a).
12. *Property Law Act 1958* (Vic) s 53(1)(b).
13. *Instruments Act 1958* (Vic) s 126.
14. *Property Law Act 1958* (Vic) s 55(d); *Pipikos v Trayans* (2018) 265 CLR 522.
15. *Property Law Act 1958* (Vic) s 199.
16. *Property Law Act 1958* (Vic) s 53(1)(a) (described by effect).
17. *Property Law Act 1958* (Vic) s 55(d); *Maddison v Alderson* (1883) 8 App Cas 467.
18. *Lysaght v Edwards* (1876) 2 Ch D 499.

19. *Tanwar Enterprises Pty Ltd v Cauchi* (2003) 217 CLR 315, 333.
20. *Pilcher v Rawlins* (1871-72) 7 Ch App 259.
21. *Pilcher v Rawlins* (1871-72) 7 Ch App 259 (Mellish LJ).
22. *Northern Counties of England Fire Insurance Company v Whipp* (1884) 26 Ch D 482 (Fry LJ).
23. *Rice v Rice* (1853) 2 Drew 73 (Kindersley VC).
24. *Heid v Reliance Finance Corp Pty Ltd* (1983) 154 CLR 326.
25. *Latec Investments Ltd v Hotel Terrigal Pty Ltd* (1965) 113 CLR 265, 276 (Kitto J), per Taylor J and Menzies J.
26. *Property Law Act 1958* (Vic) s 52(1).
27. *Property Law Act 1958* (Vic) s 52(1); S Hepburn, *Australian Property Law: Cases, Materials and Analysis* (LexisNexis, 6th ed, 2023) ch 10.
28. *Lysaght v Edwards* (1876) 2 Ch D 499.
29. *Breskvar v Wall* (1971) 126 CLR 376.
30. *Lysaght v Edwards* (1876) 2 Ch D 499.
31. *Lysaght v Edwards* (1876) 2 Ch D 499; *Regent v Millett* (1976) 133 CLR 679.
32. *Tanwar Enterprises Pty Ltd v Cauchi* (2003) 217 CLR 315, 333.
33. *Walsh v Lonsdale* (1882) 21 Ch D 9.
34. *Property Law Act 1958* (Vic) ss 53(1)(a), 55(d).
35. *Property Law Act 1958* (Vic) s 53(1)(b).
36. *Rice v Rice* (1853) 2 Drew 73.
37. *Property Law Act 1958* (Vic) s 52(1); S Hepburn, *Australian Property Law: Cases, Materials and Analysis* (LexisNexis, 6th ed, 2023) ch 10.
38. *Breskvar v Wall* (1971) 126 CLR 376.
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40. *Northern Counties of England Fire Insurance Company v Whipp* (1884) 26 Ch D 482.
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42. *Northern Counties of England Fire Insurance Company v Whipp* (1884) 26 Ch D 482.

43. *Heid v Reliance Finance Corp Pty Ltd* (1983) 154 CLR 326.
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49. *Wilkes v Spooner* [1911] 2 KB 473.
50. *Rice v Rice* (1853) 2 Drew 73.
51. *Rice v Rice* (1853) 2 Drew 73 (Kindersley VC).
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56. *Latec Investments Ltd v Hotel Terrigal Pty Ltd* (1965) 113 CLR 265; *Ruthol Pty Ltd v Mills* (2003) 11 BPR 20,793.
57. *J & H Just (Holdings) Pty Ltd v Bank of NSW* (1971) 125 CLR 546.
58. *Property Law Act 1958* (Vic) s 199.
59. *Smith v Jones* [1954] 1 WLR 1089; *Kingsnorth Finance Ltd v Tizard* [1986] 1 WLR 783.
60. *Property Law Act 1958* (Vic) s 199.
61. *Property Law Act 1958* (Vic) s 199.
62. *Blackwood v London Chartered Bank of Australia* (1874) LR 5 PC 92.
63. *Jared v Clements* [1902] 2 Ch 399.
64. *Breskvar v Wall* (1971) 126 CLR 376.
65. *Northern Counties of England Fire Insurance Company v Whipp* (1884) 26 Ch D 482.
66. *Pilcher v Rawlins* (1871-72) 7 Ch App 259.

67. *Rice v Rice* (1853) 2 Drew 73.

68. *Property Law Act 1958* (Vic) s 199; *Smith v Jones* [1954] 1 WLR 1089.

69. *Property Law Act 1958* (Vic) s 6.

70. *Property Law Act 1958* (Vic) s 6; cf *Transfer of Land Act 1958* (Vic).

71. S Hepburn, *Australian Property Law: Cases, Materials and Analysis* (LexisNexis, 6th ed, 2023) ch 10.

72. *Property Law Act 1958* (Vic) s 6.

73. *Property Law Act 1958* (Vic) ss 6, 199.

74. *Transfer of Land Act 1958* (Vic).



## Sample Preview

This is a preview of the complete study guide.  
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### TOPICS INCLUDED IN THE FULL EDITION:

1. T01 — General Law Priority Rules
2. T02 — Electronic Conveyancing
3. T03 — Registration and Indefeasibility
4. T04 — Statutory Exceptions to Indefeasibility: Fraud & Inconsistent Legislation
5. T05 — Non-Statutory Exceptions to Indefeasibility: The In Personam Exception
6. T06 — Unregistered Interests and Caveats
7. T07 — Paramount Interests (Section 42(2) Exceptions)
8. T08 — State Guarantee of Title: Volunteers, the Assurance Fund & Errors in the Register
9. T09 — Co-ownership: Forms, Rights and Duties
10. T10 — Co-ownership: Severance of Joint Tenancy
11. T11 — Revision & Exam Synthesis