# LAW2112
# PROPERTY A

# SKELETON NOTES

# TOPIC 7: SALE AND ACQUISITION OF LAND

### [1.1] WHAT TYPE OF LAND OWNERSHIP IS IT? IF IDENTIFIABLE]

### [1.2] WHAT TYPE OF LEGAL INTEREST IS IT

1. GLL
    a. Legal interest is conveyed upon settlement for General Law Land. = at the step 5 of the SOL process
    b. Have to be made by deed – PLA S52(1)
        i. Signed S73(1) PLA
        ii. Sealed S73A PLA
        iii. Delivered S73(1) PLA
2. Torrens
    a. title passes to the buyer upon registration. – step 6 [only for torrens]

## [2] FORMALITIES FOR TRANSFER OF LEGAL INTEREST IN LAND

- for both GLL and TORRENS

**What is the contact of sale process?**
1. Vendor's Disclosure Statement – pre-contractual matters
2. Parties exchange contracts – both parties sign a version of the contract for the agreed purchase price and swap copies.
3. Buyer also pays a deposit – percentage of the sale price
4. The settlement period (30-90 days) time to arrange funds to pay the purchase price
    - Equitable interest exists here
5. Settlement – buyer pays – completes the performance
6. Registration – if Torrens land

If it doesn't have formalities, can still have equitable interest
- Written? Yes
    - Check for bars
- Written no = go to oral
- Oral = yes
    - Check for bars
- Oral no = no equitable interest

### [2.1] STEP 1: VENDOR DISCLOSURE FORM

1. Needs to be signed by seller and given to buyer before signing a contract
2. Buyer can rescind contract before settlement if seller doesn't give / sign / gives incomplete/false info in the VDF – s32K SLA
3. SEE ALSO: SLA S32 – 32P

*EXCEPTIONS to right of rescinding contract*

1. Buyer has already settled
2. Seller can show that they
    - 'Acted honestly and reasonably and ought fairly to be excused for the contravention' (s32K(4)(a) *Sales of Land Act 1962* and
    - 'The purchaser is substantially in as good a position as if' the statement has been completed correctly (s32K(4)(b) *Sales of Land Act 1962*

### [2.2] STEP 2: PARTIES EXCHANGE CONTRACTS

1. you sign a version of the contract with an agreed purchase price and the seller (vendor) does the same.
2. You swap contracts so you have a copy signed by the other person

*CANCELLING AFTER SIGNING*

Purchases by offer

- 3-day cooling off period whereby the purchaser can change their mind – S31(2) SLA
- purchaser is entitled to the return of all their money except for the sum of either $100 or .02% of the purchase price or whichever is greater – S31(4) SLA
- SEE SLA S31 – PURCHASER'S RIGHT TO COOL OFF

Auction

- no cool off period

### [2.3] STEP 3: DEPOSIT

- You pay an agreed-to amount of money, 5-20% of the price, upfront to secure the property

### [2.4] STEP 4: SETTLEMENT PERIOD 30-90 DAYS TIME

- To arrange funds to pay off the rest of the price during this time

*EQUITABLE INTEREST EXISTS HERE*

- the **buyer gains an equitable interest in rem**
- The **seller retains the legal interest** until the formalities are completed.
- If the seller changes their mind, then the buyer can seek specific performance against the seller to complete the transaction
- The court will compel the legal owner of the property to complete the transaction.

*DAMAGE TO PROPERTY BEFORE SETTLEMENT*

1. s34 Sales of Land Act 1962 – Power of purchaser to rescind contract where house destroyed
    a. SEE S34 SLA
2. s35 Sales of Land Act 1962 – Insurance held by vendor available for benefit of purchaser
    a. SEE S35 SLA

3. s36 Sales of Land Act 1962 – Damage to land
    a. SEE S36 SLA

### [2.5] STEP 5: SETTLEMENT

- GLL COL satisfies here.
- Torrens: also need step 6
- Pay the remaining balance

### [2.6] STEP 6: REGISTRATION [FOR TORRENS ONLY]

- Once registered, it is complete.
- Person buying it now also has a legal interest in the land, transferred from the previous owner.

### [2.7] CHECK: CONCLUDE

Are the formalities complete; General Land Law, Torrens Land?

- If yes, then the interest exists at law.
- **If no, then we need to turn to equity.**

## [3] WRITING EQUITY: FORMALITIES NOT SATISFIED

### [3.1] PARTIES DID NOT MEET FORMAL REQUIREMENTS FOR SALE OF LAND

Equitable Interest might still be satisfied if:

1. The agreement is a binding, valid contract: Agreement, Consideration, Intention, Certainty
2. Evidence of contract: Written
3. IF YES: Specifically enforceable?

### [3.2] THRESHOLD:

- Must be an established binding and valid contract:
- Agreement, consideration, intention, certainty. [usually assume on the exam]

### [3.3] WRITTEN EVIDENCE OF CONTRACT

1. Through s126 of the Instruments Act 1958 (Vic) – can only be used if there is some kind of **written agreement** (e.g. a note or memo recording the agreement which falls short of a deed)
2. writing and signed by the person who is making the conveyance
3. must describe subject matter of the deed – ANZ V Widin
4. **S126(2) –** the requirement under subsection 1 may be met electronically in accordance with the ETA
5. Memo can be in different documents but must expressly or by necessary

implication **refer to the joining document** – ANZ
   a. **And** the other doc also refer back to the original memo – ANZ

EXAMPLE: ANZ V VIDIN
1. INVALID bc didn't outline subject matter agreement
2. Outlined the joinder rule

### [3.4] CONCLUDE
- were the requirements met? If yes: equitable interest exist
  - check for bars [1.6]

**- if no: move to part performance**

## [4] ORAL EQUITY: FORMALITIES NOT SATISFIED

### [4.1] PARTIES DID NOT MEET FORMAL REQUIREMENTS FOR SALE OF LAND
- ALSO did not meet written requirements.

Equitable Interest might still be satisfied if: - ANZ
1. There has been an oral agreement
2. And part performance
- Mason v Clarke

### [4.2] THRESHOLD:
1. Situations where parties are acting as through there's a legal agreement and nothing eels can explain their actions.

### [4.3] TEST FOR ORAL + PP

1. sufficient that the acts [*for the part* performance] unequivocally and in their own nature [are] referable to some agreement of the general nature of the agreement alleged [*of the oral contract*] – REGENT
   a. can analogize / distinguish
   b. was accepted in Regent and ANZ

2. was there another reason parties may have acted the way they did?
   a. Love / affected / loyalties?
   b. Not likely to be equivocal then – Maddison

3. Was there any payment of money?
   a. Indicative but not conclusive of PP – Regent, Pipikos
      i. Pipikos: was just deposit for family/friend so unaccepted as unequivocal
   b. Mere payment isn't enough – ANZ
   c. May satisfy if coupled with other acts – ANZ

4. giving and taking of possession was deemed sufficient as PP
    a. analogize to Regent – possession held as enough
    b. there can't be an equally valid reason for use of the land [lease etc] – McBride [same facts]

### [4.4] CONCLUDE

- were the requirements met? If yes: equitable interest exists
  - check for bars to this equity [next section]

**- if no: no equitable interest**

## [5] BARS TO TEQUITY: SPECIFIC PERFORMANCE

- For there to be an equitable interest, there must also be **specific performance**
- Must not have any bars that prevent it from having SP

### [5.1] BARS TO EQUITY

1. Breach of contract
2. Conditional contract [ex. Subject to finance clauses]
3. SP is impossible / causes hardship
4. Unclean hands
5. Gazumping

### [5.2] TEST / DIAGNOSTIC

- P must be "ready, willing and able to perform their side of the contract, and there must be no bars to equity" – Tanwar

### [5.3] BREACH OF CONTRACT?

- If the contract is breached, the contract is no longer specifically enforceable - Tanwar
- If they went against / acted non-compliantly to the written/oral agreement that was upheld equitably.

### [5.4] CONDITIONAL CONTRACT?

- If it has a subject to finance clause – no SP
    - Shows the person isn't "Ready or able" to give full payment for land at settlement – Tanwar
- If the loan / finances are approved – more likely to have SP
- If there's any clause that implies the person isn't in the position to buy properly = unlikely SP

### [5.5] SP IS IMPOSSIBLE / CAUSES HARDSHIP?

- If there was a time limit to fulfil the performance that wasn't respected – can be sold to someone else or just held off from this person

### [5.6] UNCLEAN HANDS

- Not acting in good faith = unlikely SP - Tanwar
- Delaying rights or performances = unlikely SP
    - Like delayed payments

### [5.7] GAZUMPING

- Settlement with another buyer already happened = original buyer can't buy it anymore
- **Breach of trust b/w vendor and OG purchaser**
- OG purchaser can get proceeds of second sale – Bunny
- SEE "IF SOLD TO TWO PARTIES"

### [5.8] CONSIDER DEATH OF OFFEROR

- If vendor dies = purchaser becomes owner in equity
    - Property can't be left in a will - Lysaught

### [5.9] CONCLUSION

- If no bars = YES, equitable interest [analysis ends here]
- If even 1 bar = no equitable interest [analysis ends here]

## <u>[6] GIFTS OF PERSONAL PROPERTY</u>

### [6.1] HOW

- An effective gift of Torrens title land will require registration of the transfer of land
- An effective gift of general law land requires execution of a deed
- Title to personal property can pass by either a deed or by delivery with the intention to confer ownership. The relevant elements:
    - The donor <u>intends</u> to make a gift
    - The donee <u>excepts</u> the gift
    - The gift was <u>delivered</u>
- N.B. Incomplete gifts can be revoked by the donor.
- Relevant cases:
    - *Re Stoneham* [1919] 1 Ch 149
        - No further act of delivery is required when already in possession to perfect the gift.
    - *Thomas v The Times Book Co Ltd* [1966] 2 All ER 241
        - There can be deliverSy even when the donee completes the delivery.