Indefeasibility Of Title / Transfers

Co-Ownership

Leases

Mortgages

Easements & Restrictive Covenants

WHETHER PARTIES HOLD THE LAND AS JOINT TENANTS OR TENANTS IN COMMON

STEP 1: WHETHER THE PARTIES HOLD LAND AT JOINT TENANTS	
Presumption	Common law presumption favours joint tenancy unless "words of severance" (showing intention of distinct share "in equal shares", "amongst", "respectively" are used: **Morley v Bird**
Substance of JT	Joint tenants hold by the share and by the whole, where no individual share exists but there is a union of interest and possession: **Blackstone**
Note	JTs outnumber tenancies in commons with a ratio of ~11:1 among registered co-owners to reflect convenient for couples
STEP 1.1: DOES THE RELATIONSHIP MATCH THE ESSENTIAL FEATURES OF JOINT TENANCY?	
(1) RIGHT OF SURVIVORSHIP	
Order Of Death	First defining feature of JT is right of survivorship, which where estate remains with surviving joint tenant when the other dies (treated as always having owned whole of land from the OG grant)
	CA s 35 If there is uncertainty with who died first, the older person is deemed to have died first and property flows to the younger one (and therefore their estate)
Corporation?	**CA s 25** A corporation can hold property as if it was an individual, and the dissolution of a company is equal to death with respect to determining survivorship
Will	JT's interest CANNOT be left by will, as the right of survivorship comes before any testamentary disposition → only defeated by severance
(2) FOUR UNITIES	
#1 Unity of Possession	**Joint Tenancy.** Each owner is entitled to possession of the whole property, NOT exclusive possession but a right to enjoy the property TOGETHER with the other tenant
	Tenancy in Common. THE ONLY UNITY NEEDED FOR A TENANCY IN COMMON TO EXIST → others are not required
#2 Unity Of Interest	**Joint Tenancy.** Interest of each joint tenant must be identical in nature, extent and duration
	Tenancy in Common. A conveys to B (1/3) and C (2/3) → no unity of interest → TIC // A conveys to B (life interest) and C (fee simple) → no unity of interest → TIC.
#3 Unity Of Title	**Joint Tenancy.** All joint tenants derive title from the same document / act
	Tenancy in Common. B and C are joint tenants; B conveys interest to D, who becomes the new JT → no unity of title (different document creating title) → C and D become TIC
#4 Unity Of Time	**Joint Tenancy.** All interests must vest at the same point in time
	Tenancy in Common. A conveys to X for life, remainder to B at 21 and C at 21; B and C reach 21 in different years → no unity of time → TIC
	EXCEPTION. Conveyance to a trustee for beneficiaries, or disposition by will, can create a JT even without unity of time: **M'Gregor**
Severance	To destroy a joint tenancy, one of the unities will be destroyed
STEP 2.3: WERE TWO OR MORE PERSONS REGISTERED ON TORRENS AS JOINT PROPRIETORS?	
Presumption	**RPA s 100** Two or more persons who are REGISTERED as joint proprietors of an estate **will be deemed to be JOINT TENANTS** [Real Property Regulation Reg 6 → joint tenancy or tenancy in common to be stated on CoT]
Exam Use Interaction with CA s 26 below	Under **RPA s 100,** X and Y are deemed to hold the legal title as joint tenants, but equity can look at the circumstances and decide that, despite joint tenancy, they hold beneficial ownership as TIC
	Registration as joint tenants is legally conclusive as to third parties, but does not prevent the co-owners from establishing between themselves, that they hold as TIC in equity: **Re Foley**
	RPA s 100's rule that registered co-proprietors are joint tenants **governs the legal incidents of the registered title**, but **does not override CA s 26's rebuttable presumption of tenancy in common for the beneficial interest,** which may be displaced by the terms of the instrument: **Hircock v Windsor Homes Development**

STEP 2: WHETHER A CO-OWNER CAN CLAIM PROFITS RECEIVED BY THE OTHER OWNER / COMPENSATION FOR WORK	
STEP 2.1: WHERE DID THE MONEY COME FROM OR GO TO?	
(1) SHARE OF RENTS AND PROFITS RECEIVED BY THE OTHER CO-OWNER	
Rule	A non-occupying co-owner can still claim their proportionate share of rents and profits received by another co-owner because they hold an equitable right: **Ryan v Dries**
Cf (3)	A co-owner's right to recover their share of rents/profits received by another co-owner is a **personal claim** and does not create a lien over the land: **Brickwood v Young**
	Whereas a co-owner's equitable claim for compensation for improvements can create an **equitable charge over the land**: **Brickwood v Young**
(2) PROFIT FROM ONE CO-OWNER'S OWN LABOUR	
Rule	Co-owner does not have to share profits generated by their own labour and capital with another co-owner who did not participate, because the historical Statute of Anne applies to third-party rents / profits, not profits personally generated by the co-owner: **Henderson v Eason**
Analogy	One TIC farmed the co-owned land using their own labour and money, while the other co-owner chose not to participate, and the farming co-owner kept the profits from the produce: **Henderson v Eason**
	Two of four tenants in common personally farmed the co-owned property and paid all the expenses, while the other two did nothing → expenditure of personal labour + expenses entitles the active co-owner to retain resulting profits, and non-participating co-owners cannot claim a share merely because they own part of the land: **Rees**
(3) COMPENSATION FOR IMPROVEMENTS OR REPAIRS	
Rule	A co-owner's claim for compensation for improvements is a defensive/passive equitable claim that operates as an equitable charge over the land, allowing the value of the improvements to be recognised when the co-ownership is being resolved (divided or sold), including by a successor in title: **Brickwood v Young**
Analogy	A co-owner had made improvements to co-owned land, which was later compulsorily acquired, was later entitled to have the value of his improvements taken into account in determining his share of the compulsory acquisition compensation: **Brickwood v Young**
	A co-owner who contributed more towards the property's purchase costs was entitled to a larger share of the sale proceeds, though still liable to occupation rent before land sold **Foundas v Arambatzis**
Cf (2)	Allows compensation for value added to land to be obtained DEFENSIVELY when the co-ownership is being divided or sold → **creates equitable charge: Brickwood v Young**
	Henderson and **Brickwood** concern different ways value is generated, but both prevent one from unfairly benefiting from another's contribution.
Limits	The defensive equity (equitable charge) for improvements is NOT enforceable against a bona fide purchaser for value, without notice: **McMahon v Public Curator of Queensland**
	Under the Torrens system — a purchaser who registers their interest takes it free of the charge: **Deeks**
Repairs	Compensation may extend to repairs, not just improvements — provided the repairs are MORE than mere maintenance → mere maintenance excluded: **Leigh v Dickson**
	✔ However, the court has extended compensation to MAINTENANCE-TYPE repairs, provided **they increased the property's value**: **Ryan v Dries**
STEP 2.2: HOW IS COMPENSATION CALCULATED?	
Rule	Cost of improvements taken into account + improving co-owner's proportionate share of increase in property value created by those improvements: **Houghton v Immer**
Example	$100k improvements → increase to property value of $150k → improving co-owner owns 50% → recover $100k + 50% of the $50,000 gain
Old Rule (Stricter)	An improving co-owner is generally entitled only to the increase in value attributable to the improvements, not necessarily the full amount spent: **Squire v Rogers**
	Compensation is capped at the LESSER of (1) actual amount spent on improvements and (2) actual increase in the property's value caused by the improvements: **Boulter**
	Co-owner spent $100,000 improving the jointly held land, but improvements increased the property value by only $15,000 → lesser amount out of $100,000 and $15,000 → $15k: **Squire v Rogers**

WHETHER A JOINT TENANCY HAS BEEN SEVERED

Note. Joint tenancy must be severed before death to avoid survivorship + the interest cannot be disposed of by will

METHOD 1: WHETHER THE CO-OWNER HAS EFFECTIVELY SEVERED THE JOINT TENANCY BY UNILATERAL ACTION	
(A) BY ALIENATION / TRANSFER TO A THIRD PARTY	
Rule	Severance by unilateral act requires an ACTUAL change / disposition in legal or equitable title, where mere intention to sever is insufficient: **Corin v Patton**
	This requires destruction of unity of title, which is only effective where the acting party's title is actually transferred or otherwise legally or equitably affected: **Williams v Hensman**
	The joint tenant must have done everything necessary to put the land beyond her control (she no longer owns it and cannot claim it again), or else there is no equitable transfer: **Corin v Patton**
Registered	Registration completes the alienation and effects actual change in legal title: **Corin v Patton**
Unregistered	Unregistered transfers only ever raise an EQUITABLE question of whether there was an effective equitable assignment → issue of whether they have done everything they only could do: **Corin v Patton**
	✔ Unregistered transfer can sever JT in EQUITY where transferor has done everything necessary to place transferee in a position to obtain registration without requiring any further act from transferor [here, the husband signed transfers for himself and as his wife's attorney so had authority to execute the transfer on behalf of both joint tenants + wife could obtain registration]: **Wilson v Dillon**
Analogy	✘ Attempted transfer of interest to brother before death was not registered and did not place the transferee in a position to obtain registration without further assistance from her, so no legal or equitable title actually changed and joint tenancy was not severed: **Corin v Patton**
	✘ Deceased retained necessary control of land and documents and had not done everything necessary to put transfer beyond her own control so she had not parted with her interest: **Corin v Patton**
	✘ An incomplete or unregistered transfer by one joint tenant will not sever the joint tenancy unless it has changed equitable or legal title: **Corin; McNab**
	✘ Unregistered transfer purporting to convert her own interest into a TIC did not sever the joint tenancy because it had no operative legal or equitable effect before her death: **McNab v Earle**
	✘ Father and son held land as JT; father attempted to transfer his interest to the OTHER son but the solicitor's refused to do produce CoT without authority of the first son so the intended transferee (the other son) could not obtain registration without further assistance: **Costin v Costin**
	✘ Clear established intention to make a gift is NOT determinative or sufficient: **Stone v Registrar Of Titles**
Cf	In **Wilson**, everything necessary has already been done and registration could proceed without further assistance, whereas in **Corin**, the transferee still needed Patton to provide documents
(B) BY REGISTRATION OF A TRANSFER OF THE INTEREST TO SELF	
Rule	**RPA s 97(1)** Registration of a transfer by a JT of their interest to THEMSELVES severs the joint tenancy
Procedure	**RPA s 97(2)-(3)** RG may require identification of all JTs and a statement that the severing JT is unaware of any limitation on their right to sever + additional info on any affected persons
	RPA s 97(5) RG must notify all other joint tenants of the lodgement
	Rationale. To bypass equitable difficulties in **Corin** and **Costin**, the statute itself provides the actual change in title that severance requires, where severance by unilateral act can occur by registration
Operation	A + B are JT → registered s 97 transfer from A to A → A + B become TIC
Analogy	✔ A registered unilateral severance under **RPA s 97** is effective despite irregularities in its execution (such as having no authority to act), because a JT has a unilateral power to sever and the other has no right to prevent it unless they have a personal claim / cause of action: **Anderson v Anderson** → Authority was given to R1 as primary attorney and R2 as substitute attorney if R1 was unwilling / unable to act, but R2 registered the severance even though R1 was able to act + acceptance of power of attorney was backdated and false statutory declarations were made; **registration is what changes the title**

(C) BY TRANSFER BETWEEN CO-OWNERS	
Rule	Under Torrens, registration of RECIPROCAL transfers between joint tenants is effective to sever, even in a single document with NO third party involved
Example	A, B, C are joint tenants **Step 1.** If A transfers their interest to B, then A will have no interest left in the land at all (becomes a stranger to the land) → B will hold a ⅓ share as a tenant in common (interest from A that is a new interest and not shared with C so it is not joint) + a ⅔ continuing joint tenant interest (B's original joint share) **Step 2.** B then transfers back to A the interest B still holds as a joint tenant with C → At this point, A is a stranger to the original joint title so they are receiving a completely fresh interest from B → Second transfer severs the joint tenancy between B and C in respect of the ⅔ interest, because B has now dealt with / alienated their share of it → The result is that A becomes a tenant in common → B and C's former ⅔ joint interest is also severed into 2 x ⅓ tenancy-in-common shares **Final Result.** A, B and C all end up as tenants in common with each holding a ⅓ share → Joint tenancy complete dismantled through the two paired transfers
Analogy	2 out of 3 sisters cross-transferred their interests to each other in one registered document so they each dealt with their own JT and the registration converted the whole arrangement into three equal ⅓ TIC interests between the three sisters: **Wright v Gibbons**
(D) BY DECLARATION OF TRUST	
Rule	**CA s 23C(1)(b)** JT can declare a trust if declaration is in writing + signed by person entitled to the property (then self-executing and takes effect immediately; no further assistance required)
	JT can sever in EQUITY by declaring a trust over their interest for themselves, another person / third party →, because the declaration immediately creates a separate equitable interest without requiring registration and destroys unity of title; JT's legal title is now burdened with a distinct equitable interest and no longer holds the property in the same way as other JT **(no identical interests)**
(E) WHAT <u>DOES NOT</u> SEVER A JOINT TENANCY?	
Mortgage	Mortgage by one JT of **Torrens land** does not sever joint tenancy because a Torrens mortgage creates only a registered change over interest rather than transferring legal title / destroying unity of title: **Lyons v Lyons**
	✘ One JT mortgaged their interest in Torrens land without the other JT's consent → did not sever the JT: **Lyons v Lyons**
Exception	However a **GENERAL LAW** mortgage traditionally transfers legal title to the mortgagee and may sever the joint tenancy: **Lyons v Lyons**
Lease	A JT's lease of their **fee simple** interest does not sever the joint tenancy because it merely suspends it for the lease term: **Frieze v Unger** → Can lease jointly owned fee simple land without severing underlying fee simple (carving out temporary right of occupation out of fee simple); leasing a house you own is not disposing of ownership
Exception	If joint tenants own a **LEASEHOLD term** (jointly hold a lease of 20 years), and then one deals with that leasehold interest, creating a sub-lease, then the joint tenancy may be severed: **Frieze v Unger** → Joint asset is the lease itself so subleasing that lease = dealing with an inseparable joint asset (unlike a lease for a fee simple, where the fee simple itself is not dealt with)
	Joint tenant of a life estate granting a fixed-term lease may also sever the joint tenancy rather than merely suspend it: **Re Shannon's Transfer**

REMEDIES: WHETHER THE TENANT IS ENTITLED TO <u>RELIEF AGAINST FORFEITURE</u> OF THE LEASE

STEP 1: WHETHER THE TENANT CAN APPLY FOR RELIEF		
Rule	CA s 129(2)	**Original Tenant.** Allows the lessee to apply to the court for relief against forfeiture where the landlord seeks or has exercised re-entry, with the court having DISCRETION to restore the lease on appropriate terms → saves tenant from losing the lease because of the breach
	CA s 130(1)	**Subtenant.** Allows subtenant to ask the court to protect their sublease when the head lease is being forfeited, potentially allowing subtenant to continue lease on terms set by court.
Burden	LL holds the heavy burden to show that due to tenant conduct, relief would be inequitable: **Rogers v Rice**	
Timing	Application for relief should be before the execution of a court possession order or within applicable window for self-help	
Factors Apply these factors	Consider whether (1) breach was wilful (2) seriousness of breach (3) whether breach was remedied (4) harm to landlord (5) whether forfeiture is disproportionate to damage caused: **Shiloh Spinners** → Court has unfettered equitable discretion to grant or refuse relief	
	Unjust Enrichment. Relief may be granted where refusal would give the landlord an unjust windfall / enrichment (eg. valuable renovations become the landlord's for free): **Wynsix Hotels v Toomey**	
	Relief may be granted despite serious breaches where forfeiture is disproportionate, eg. where T has made valuable improvements and LL's actual harm is relatively small: **Love v Gemma Nominees**	
Innocent Third Parties	Relief generally be refused where granting it would prejudice innocent third parties who acquired rights after forfeiture or unfairly prejudice the landlord who changed its position in reliance on the forfeiture: **Gill v Lewis**	
RELIEF FOR NON-PAYMENT OF RENT		
Rule	Relief against forfeiture for non-payment of rent is normally granted once arrears and costs are paid (but this is not automatic, this is discretionary): **Stieper v Deviot**	
Exception	Where the tenant's conduct seriously prejudiced the landlord, endangered the premises, was wilful or persistent or otherwise makes it inequitable to restore the lease: **Stieper v Deviot**	
Factors	**Tenant's Financial Position.** Relief may exceptionally be refused where the tenant is unable, or is reasonably likely to become unable, to pay future rent: **Direct Food Supplies Victoria v DLV**	
Analogy	Although the tenant paid all outstanding rent, relief was refused because storing inflammable materials created a serious fire risk, breached legislation, and jeopardised the landlord's fire insurance, making it inequitable to restore the lease: **Stieper v Deviot**	
Landlord & Tenant Act	**L&T s 9**	When a tenant seeks relief against forfeiture for non-payment of rent, court may require them to pay outstanding rent and the LL's costs into court as a condition of obtaining relief
	L&T s 10	Before judgment for possession is entered, the court may permanently stay the landlord's possession proceedings if the tenant pays all recoverable rent arrears and costs
NON-RENT BREACHES → BREACH OF COVENANTS, UNAUTHORISED ASSIGNMENTS		
Apply	**Same rules applying to non-rent breaches apply here** with broad discretion, but courts are usually granted once rent arrears are paid (simpler, more willing to grant relief)	
Analogy	Relief may be granted despite serious breaches where forfeiture is disproportionate, eg. where T has made valuable improvements and LL's actual harm is relatively small: **Love v Gemma Nominees**	
Long Leases	**CA s 129(2A)**	For leases of 10+ years, the court may grant relief from forfeiture for unauthorised alterations if the alterations cause or are likely to cause no substantial injury to the landlord.
EQUITABLE LEASE		
Rule	CA s 128	Definition of lease includes "agreement for a lease", which gives the court jurisdiction to grant relief from forfeiture of an equitable lease: **Hayes v Gunbola**
Beyond Leases	Equity has an inherent jurisdiction to relieve against forfeiture of equitable interests, extending beyond leases themselves so relief against forfeiture is an equitable doctrine that is not confined to the landlord v tenant context: **Legione v Hately**	
Analogy	Purchaser contracted to buy land, receiving an equitable interest, but failed to comply with a contractual requirement entitling the vendor to forfeit the interest → equity can intervene to prevent the purchaser from losing that equitable interest where it would be unjust: **Legione v Hateley**	

STEP 1: WHETHER THE MORTGAGOR CAN APPLY FOR AN INJUNCTION TO RESTRAIN POWER OF SALE BEFORE IT OCCURS	
STEP 1: IS THE CHALLENGE REGARDING AVAILABILITY OF THE POWER OR MANNER OF ITS EXERCISE?	
Rule	✔ Injunction can only be sought if the challenge relates to existence or present availability of the power itself: **Allfox Building Pty Ltd v Bank of Melbourne** → Such as no default, invalid mortgage, unmet statutory precondition, notice requirements not met
	✘ If the power has validly arisen and the challenge is merely to the MANNER of its exercise (improper conduct, inadequate marketing), the **mortgagor must first "do equity"** by paying the disputed amount (owed debt) into court or offer to redeem (formally state they are ready, willing and able to pay off full mortgage debt to redeem property): **Allfox Building Pty Ltd v Bank Of Melbourne**
	No dispute that default occurred and power is exercisable — dispute is only about amount owed, or mode of exercise → payment in required: **Harvey v McWatter**
STEP 2: DOES THE MORTGAGOR NEED TO PAY INTO COURT OR OFFER TO REDEEM?	
Analogy	Because the power of sale had undisputedly arisen and the mortgagor challenged only how the sale would be conducted, not the existence of the power, the court required it to pay the ~$4 million debt (to satisfy the mortgage debt) into court before obtaining an injunction (to obtain equity, must do equity); as it could not do so, the injunction was refused: **Allfox**
	Granted relief conditional on paying unpaid interest and costs (not full principal): **Glandore v Elders Finance**
Exception	Injunction granted where there was an allegation of misleading / deceptive conduct and source of injunction came from Trade Practices Act → brochure understated earnings and set reserve price accordingly, creating a real risk of sale below true value: **Kinjella**
	"Do equity" payment-into-court rule displaced where the mortgage itself was under attack under the Trade Practices Act: **Rawcliffe v Custom Credit**
	Where amount the mortgagee claims is obviously wrong (grossly overstated), mortgagor isn't required to pay that inflated, erroneous figure into court as the price of an injunction: **Jeans West**
	When an injunction is sought under a broadly-worded statute (rather than ordinary equity), the court isn't bound by the equitable "pay in / offer to redeem" rule — it can grant relief on whatever terms it thinks fit, even if that departs from the traditional equitable approach: **Town and Country Sport Resorts v Partnership Pacific**
TLDR	Challenge to the existence or availability of the power of sale → no need to pay money into court before seeking an injunction.
	Challenge to the way an existing power of sale is exercised → mortgagor must "do equity" by paying the amount claimed into court (or offering to redeem) before equitable relief will be granted.
STEP 3: DOES THE MORTGAGOR NEED TO PAY THE FULL AMOUNT CLAIMED OR ONLY WHAT IS NECESSARY?	
Flexibility	Court can require payment of only what is necessary to protect mortgagee against loss risk (**can tailor payment-in amount to actual risk of loss the mortgagee faces**): **Harvey v McWatters**
	Purpose of payment-in (to protect mortgagee from loss risk) was already satisfied by the mortgagee repossessing the goods so paying into court was unnecessary and unjust: **Clarke v Japan**
Broad View	If the mortgagor is arguing the mortgagee acted in bad faith (here, about how the mortgagor was pushed into default in the first place), that alone might be enough to skip the payment-into-court requirement; requiring payment to challenge bad faith may unfairly protect mortgagee's misconduct **Swann Road v Sterling & Freeman Advisory**
Narrow View	Flexibility only arises where existence/availability of power is disputed; challenging the mortgagee's good faith alone does not avoid the need to pay in: **Macedonian Society of WA**
Unresolved	Because the mortgagors alleged the mortgagee had acted in bad faith, potentially bringing the case outside the ordinary "pay into court" rule, but the court declined to resolve whether that allegation alone removes the payment requirement and decided the case on other grounds, the issue remains unsettled: **HSBC v Wang**

WHETHER THE RIGHT TO AN EASEMENT CAN BE ENFORCED

STEP 1: WHETHER A VALID EASEMENT HAS BEEN CREATED		
OPTION (A): TORRENS LAND → ONCE REGISTERED = INDEFEASIBLE		
CREATION OF EASEMENT		
Creation	**RPA s 46**	A transfer or creation of an easement must be by executed by RPs in approved form and, accompanied by written consent of mortgagee and chargees + registered
	RPA s 47	Easements affecting Torrens land are recorded on the Register + can be varied / released by a registered dealing, usually requiring mortgagee + RP consent
Reserved	**RPA s 45A**	A seller can reserve an easement for themselves over the land when selling a part of their land , without needing the purchaser to re-execute or regrant the easement → allows a vendor selling part of their land to retain an easement over the land sold
Grant	**RPA s 45**	A conveyance can create and vest an easement or similar right in a person simply by declaring that the land is conveyed "to the use" of that person for that right—so the right takes effect without needing a separate conveyance.
REQUIREMENTS TO BE BINDING ON THIRD PARTIES		
Rule	**CA s 88(1)**	An easement (or RC) **created by an instrument** will not be enforceable against someone not a party to its creation, unless it satisfies the requirements below
Requirements	**CA s 88(1)(a)**	Clearly identifies BENEFITTED land
	CA s 88(1)(b)	Clearly identifies BURDENED land
	CA s 88(1)(c)	Clearly identifies WHO can VARY / RELEASE the restriction
	CA s 88(1)(d)	Clearly identifies any person whose consent is required before the easement (or RC) can be released, varied or modified
Identification	**CA s 88(1A)**	The land is clearly indicated if it is shown in (a) a manner required by regulations or (b) in accordance with lodgment rules (c) in another manner satisfactory to the RG
Torrens	**CA s 88(3)**	For Torrens land, the restriction can be recorded on the Register (+ dealings affecting it) by registering the instrument in approved form on the certificate of title, but registration does not cure defects in the underlying instrument
P. Authorities	**CA s 88(4)**	Does not apply to an easement without a dominant tenement acquired by a prescribed authority under s 88A
Note	An easement created by an instrument does not need to be registered.	
OPTION (B): GENERAL LAW		
Rule	**CA s 23B(1)**	Legal easements must be created by deed with no particular wording required → in absence of a deed, the easement does not exist at law and the DT received only a licence
Equitable Easement	Without registration or a deed, an equitable easement may be recognised if the agreement is (a) specifically enforceable and / or (b) there is part performance: **Walsh v Lonsdale**	
	An equitable easement must still satisfy the four **Ellenborough Park** requirements (below	
Part Performance	Equity will enforce an oral agreement if the claimant has acted in reliance on it by undertaking acts that clearly point to the agreement: **Taiga Investments**	
	P installed a skylight after relying on an oral promise that an easement of light would be granted. D was prevented from obstructing light because equity enforced the oral agreement: **McManus**	
Acquiescence	A neighbour knowingly allowed another to use land as though an easement existed. An easement may arise where the servient owner acquiesces in the use: **ER Ives Investments Ltd v High**	
Estoppel	P relied on the council's assurance that access rights would be granted. A landowner may be estopped from denying an easement where another has relied on an assurance to detriment: **Rixon**	

Questions

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Section 1: Question 1 (1) — Marks: **51** out of **60**

Number	Response	Question type	Maximum marks	Marks	Question weight
1	Answered	Essay	60.00	51.00	100 %

Section 2: Question 2 (1) — Marks: **36** out of **40**

Number	Response	Question type	Maximum marks	Marks	Question weight
2	Answered	Essay	40.00	36.00	100 %