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FUNDAMENTAL CONCEPTS IN LAND LAW

I. POSSESSION

Definition:	- If someone has possession it means they are entitled to be in control of land, to use and occupy it - This can occur through freehold title or leasehold title - A bare licence DOES NOT constitute possession merely permission to be on land - Someone without any of the above is a trespasser
Limitations for Adverse Possession:	12 years for privately owned land (s 27(2) Limitation Act 1969 (NSW)). 30 years for Crown land (s 27(1) Limitation Act 1969 (NSW)).
Recognized Interests in Land:	
1. Numerus Clausus Principle	- There are only a certain number of 'types' of property rights which are recognised. - A person will have a PI if their right falls into one of the established categories. - landowners CANNOT customise land rights in an entirely novel way to suit their particular circumstances - Any rights must fit firmly within established pigeonholes or which the law ONLY permits a small and finite number - Property law is highly prescriptive and considered a rule of social and economic utility Contracts is entirely the opposite and save for a few extreme circumstances (i.e. illegality) the contract allows for the fullest latitude when formulating rights and obligations as between people over real and personal property
2. Fee Simple	- Possession for an indefinite period, subject to govt acquisition or regulation Largest interest in land that anyone can have - Arises from a purchase of land
3. Lease	Time-limited interest in land - As lessee/tenant you will be entitled to possession in land, to the exclusion of everyone else, including the landlord Landlord still owns fee simple and during the lease their interest is referred to as a reversionary interest (a right to land at a future date when the lease ends) Lessees may grant subleases to the land depending on the terms of the head lease
4. Mortgage	- Small interest in land given by the owner of the fee simple (or lease) to another in return for money Mortgagor = owner of land → gives mortgage in land in exchange for money Mortgagee = lender of money → obtains mortgage in land in exchange for money - Secured creditor – land is the security - The mortgage interest enables the mortgagee to sell the land if they are not paid back to recover the amount they are owed (the residual amounts go to the mortgagor) - A mortgage includes a personal covenant (contractual promise) to repay all money owed
5. Easement	- Right to do something on someone else's land, - e.g. walk or drive across, run a pipe or wires across - The right is annexed to the land, and survives changes in ownership - Easements always affect two pieces of land:

	○ Dominant tenement = land benefited ○ Servient tenement = land burdened • Easements run with the land so that whoever owns the benefited land can use the easement
6. Restrictive (or Freehold) Covenants	• This is a right to stop someone doing something on their land ○ e.g. prevent neighbour building above two storeys • Restrictive covenants affect more than one piece of land and usually burden multiple parcels of land ○ e.g. covenant not to subdivide land into smaller lots on a residential subdivision
7. Profit a Pendre	• Right to gather naturally occurring materials from another's land ○ e.g. right to quarry or cut timber or kill animals
8. Lien or Charge	• A small proprietary interest which acts as security for payment. • It is like a mortgage but DOES NOT include a right to sell the land • If the land is sold the owner of the lien has a right to be paid directly from the proceeds of sale • This is useful if the debtor is bankrupt or insolvent

Fixtures

- **Doctrine of Fixtures:** refers to anything that is permanently attached to the land as becoming part of the land (*Belgrave Nominees*)

Contract and Land Law

Writing s 54A CA:

Requirements for a valid contract for sale of land:

- 1) **Offer/acceptance**
 - 2) **Consideration** (usually deposit of 10% of purchase price)
 - 3) **Intention to conclude a formal contract** (usually 'exchange' of contracts between purchaser and vendor, exchanging signed contracts shows intent to be bound)
 - 4) **Certainty** (usually satisfied by use of standard form contracts)
 - 5) **Writing (all contracts in relation to the sale of land must be in writing, unless the test for part performance is satisfied): s. 54A CA**
 - Entire contract need not be in one formal document. There **must be written documents containing all essential terms** (property, parties, purchase price, etc.) which can be **linked to each other + signature**
- **s. 54A** applies **NOT ONLY to sale, but also to leases, mortgages, sales of equitable interests in land**, etc.
 - Immediate assignment of an equitable interest in land **still needs to be in writing: s. 23(1)(c) CA**
 - It is an **offence to advertise** a residential property for sale **without a prepared contract available for inspection: s. 66R CA**
 - Look at what the parties have actually agreed, see whether the rights intended to be granted fit in one of the **numerus clausus** Pls. If they do, it's a contract in relation to land and writing will be needed under **s. 54A**.
 - **Contracts MUST be exchanged** to demonstrate an **intention to be legally bound**
 - This involves exchanging signed identical copies of the contract
 - **Contracts do NOT transfer legal title** – it is merely an agreement to do something at some point in the future
 - **A contract for the sale of land is:**
 - An agreement by one party to transfer legal title to a property interest

○ To the other party ○ In return for consideration (money) ○ On an agreed date – usually within 42 days of making the contract • Specific Performance: Contracts for the sale of land are typically specifically enforceable – meaning the court with equitable jurisdiction can make an order for the other party to perform the contract	
Equity and Trusts and Land Law	
Client's legal rights or remedies are inadequate	• Specific performance is an equitable remedy which enables the purchaser to acquire the land where the vendor refuses to sell it to them after entering a contract • Equitable interest in land: legally complete contract for sale of land + in writing = purchaser receiving an equitable interest in land • Land contracts are always specifically enforceable because land is unique
Client has not acquired any legal rights of remedies	• Equity may step in where there was a common intention or detrimental reliance (equitable estoppel) by a party without any legal interest in the land • The court may find that they have an equitable interest ○ e.g. equitable life estate (<i>Ogilvie</i>) or equitable charge or lien (<i>Giumelli</i>) • Part performance occurs where the contractual agreement has been formed but is not effective at law because it does not comply with the legal requirement for contracts for land to be in writing ○ This occurs when someone performs acts referable to the kind of contract alleged and the only rational explanation is that they had contractually agreed with someone to grant them an interest in the land
Contract, Land Law and Equity	
Contracts for the sale of land	• ***A legally complete contract for the sale of land + in writing = the purchaser gets an equitable interest in land (applies to all interests, i.e. easements, mortgages, restrictive covenants, leases, fee simple) • E.g.: ○ a specifically enforceable contract to sell someone the legal fee simple gives them the equitable fee simple (<i>Bunny Industries</i>); ○ a specifically enforceable agreement to grant someone a lease will give them an equitable lease (<i>Walsh v Lonsdale</i>) • The equitable interest acquired is a proprietary right.

TORRENS TITLE

I. Old Systems Title

Conveying Old Systems Title - Deeds

- Old system land: between 1792 and 1863 land was assigned via land grants
- **Land was transferred via the execution of a deed** which recorded the intention of the owner of land to convey an interest in the land and give it to another
- In Old System title the **execution of the deed conveyed the legal title (s 23B CA)**
- Derivative title required vendors to prove that they had legal title when conveying the property by producing title deeds dating back 30 years
- This is based on the rule called **nemo dat quod non habet - you cannot give what have not got**
- **Old System:** transfers of land occurred through deeds, the **only way a person could verify title was through tracing the history of the dealings** (a big task). The inadequacy of Old System title deeds system was the dependent nature of titles – one weak link in the chain could destroy/impair title.
- Torrens system designed to create certainty and security in relation to land title. **Addresses 2 main problems with Old System title:**
 - 1) Who owns the land? Look to the deposited plan (DP)
 - 2) What is the land? Look to register

Benefits	• Accuracy in relation to physical boundaries; • Certainty of land and registered owner; • Register always complete and up to date; • Save time - don't have to look beyond the register.
Objectives	• Provide a register from which persons who propose to deal with land can discover all the facts relative to the title • Ensure a person dealing with land is not adversely affected by any infirmities in the vendor's title which do not appear on the register, saving the time and expense of going behind the register to investigate the title • Provide a guarantee by state that the picture of the register book is true and complete

Competing or Incompatible Interest in Land – Priority Rules

Earlier Legal Interest vs Later Legal Interest	- C grants deed of lease for 25 years to X - C conveys legal fee simple to V - V conveys legal fee simple to P - Despite being unaware of legal lease owned by X, X will be able to stay on the land - P will only have rights against V for breach of contract and V in turn will have rights against C for breach of contract	
Earlier Equitable Interest vs Later Legal Interest (no longer applies)	- A right to have an interest set aside for fraud is an earlier equitable interest in land - No longer applies see ss 42-43	
	Lease: - Earlier equitable lease has priority over late legal fee simple - This is because land law assumes that any purchaser will physically inspect the land and thus see someone other than the vendor is in possession of the land	Mortgage: - Later legal fee simple has priority over earlier equitable mortgage - This is because the bona fide purchaser has no notice of the equitable mortgage and thus the mortgage as an