FRAUD AS AN EXCEPTION
For fraud to make a title defeasible, it must be actual fraud or dishonesty of some sort and is not constructive or equitable fraud.

APPLY TLA SECTIONS BELOW
Fraud as an express exception to indefeasibility (s 42 TLA).

- TLA s 42(1)(a): An exception to indefeasibility that protects an earlier registered proprietor where there are competing registrations over the same land.
- TLA s 42(1)(b): Indefeasibility does not protect a registered proprietor where land has been incorrectly included in their title due to a wrong description of boundaries or parcels, particularly where they are not a purchaser for valuable consideration.

Under s 42(1)(a) TLA, a registered proprietor's title is defeasible in cases of fraud. For fraud to render title defeasible, there must be actual fraud or dishonesty amounting to moral turpitude; constructive or equitable fraud is insufficient (Assets Co Ltd v Mere Roihi).

PRELIMINARY STEP 1: IDENTIFY THE PARTIES
Which registered interest is being challenges as invalid or indefeasible?
Not just about whose interest is affected but who is asserting their title as infeasible.

1. WHO IS COMPLAINING
    a. *Who is upset and wants the land/mortgage/interest removed?*
2. WHICH REGISTERED TITLE IS BEING ATTACKED?
    a. *Which registered mortgage/transfer/title does the unhappy person want the court to get rid of?*
3. The fraudster is often NOT one of the parties.

The person who is complaining will usually be attacking someone's registered title or registered interest.

STEP 1: IDENTIFY ACTS OF FRAUD

Based on the facts, categorise fraudulent acts.

- Think: *how can aggrieved party try get their interest back?*

Can be both fraud and fraud by an agent/employee.

STEP 2: ANALYSIS FOR GENERAL FRAUD

2.1 Principle: Fraud requires actual dishonesty or moral turpitude. Mere notice, negligence, carelessness or unfair conduct is insufficient (Assets Co Ltd v Mere Roihi).
LINK TO FACTS: Here, X has dishonesty [insert act] which amounts/doesn't amount to moral turpitude.

- Consider threshold requirements.

2.2 Can Fraud be Brought Home to RP?
Fraud only defeats indefeasibility where it is brought home to the registered proprietor.

Option 1: Fraudster & RP are the same person

- Uncontentious, would be brought home.
- Title defeasible.

Option 2: Fraudster & RP are different people
As [fraudster] is not an agent or employee of the bank the fraud cannot be brought home to FB unless there is a link.

- Established if it can be brought home as a link using either:
  - RP's actual knowledge (high threshold);
  - RP's wilful blindness; or
  - attribution of an agent's or employee's fraud (if applicable - make out below).

WILFUL BLINDNESS (FRAUD**)**
Fraud may be established where [Party A]'s suspicions were aroused but they deliberately refrained from making further inquiries to avoid learning the truth.
Pyramid Building Society

- Similar to *Pyramid Building Society*, where a mortgage was fraudulently executed but the mortgagee was merely careless rather than dishonest, [Party A]'s failure to make further inquiries is unlikely to constitute fraud unless it amounts to wilful blindness or deliberate avoidance of the truth.

STEP 3: Fraud by Agents or Employees (if applicable)

3.1 PRINCIPLE: Fraudulent acts or knowledge of an agent may affect the registered proprietor if the fraud can be "brought home" to the registered proprietor (Asset Co Ltd).

3.2 ESTABLISH AGENCY RELATIONSHIP: Agency is a relationship where one person, the agent, has authority or capacity to create or affect legal relations between another person, the principal and third parties.

- Agent has authority to act on behalf of the principal.

3.3 WAS AGENT FRAUDULENT: It must be established that the agent engaged in actual dishonesty or moral turpitude amounting to Torrens fraud.

Consider whether the agent had their own **personal interest** and discuss.

NOTICE (NOT FRAUD**)**
While [Party A] may have been aware of [Party B]'s unregistered interest, knowledge of an unregistered interest does not, by itself, amount to fraud. Consistent with s 43 TLA, a person dealing with a registered proprietor is not affected by notice, and therefore more than mere notice is required to defeat the protection afforded by the Torrens system.
Loke v Yew

- Consistent with *Loke Yew v Port Swettenham Rubber Co Ltd*, mere notice of a prior unregistered interest does not constitute fraud. However, fraud may be established where a person knowingly undertakes to respect that interest and subsequently relies upon registration to dishonestly defeat it.

MERE FAILURE TO INQUIRE/CARELESSNESS (TYPICALLY NOT FRAUD**)**
While it may be argued that [Party A] could have discovered the fraud had they made further inquiries, mere failure to investigate does not amount to fraud unless it rises to the level of actual dishonesty or wilful blindness (Pyramid).

WILFUL BLINDNESS (FRAUD**)**

Fraud may be established where [Party A]'s suspicions were aroused but they deliberately refrained from making further inquiries to avoid learning the truth.
Pyramid Building Society

- Similar to *Pyramid Building Society*, where a mortgage was fraudulently executed but the mortgagee was merely careless rather than dishonest, [Party A]'s failure to make further inquiries is unlikely to constitute fraud unless it amounts to wilful blindness or deliberate avoidance of the truth.

ALWAYS: Even if fraud is not made out. Discuss 'on the assumption that it was to be made out, and establish whether it would be brought home'

3.4 PRINCIPLE OF SCOPE

Under Schultz v Corwill Properties Pty Ltd, an agent's fraud may only be attributed to a registered proprietor where it is committed within the scope of the agent's actual or apparent authority.
Unlike New Zealand, where an agent's fraud may be attributed to the principal if it is merely a mode of carrying out an authorised task (*Nathan v Dollars & Sense*), Australian courts take a narrower approach and will not automatically attribute another person's fraud to the registered proprietor without an agency relationship or sufficient connection to the fraud (*Cassegrain*).

- *Australian authority and when concluding, must use authority of Schultz.*

3.5 ESTABLISH SCOPE

1. Actual Authority

Legal authority that an agent **truly receives** from the principal to act on their behalf. It arises from the agreement or relationship between the principal and the agent, meaning the agent is genuinely authorised to bind the principal in dealings with others.

- **Express**: where the authority is specifically communicated by the principal, either orally or in writing
    - E.g. a term in an employment contract authorising an employee to sign contracts.
- **Implied**: where the authority is not expressly stated by inferred from he agent's role, the surrounding circumstances, past conduct, or what is reasonably necessary to perform their job.
    - E.g. a 'loans officer' having authority to approve standard loans.

2. Apparent Authority

Arises where a person creates the impression, through words or conduct, that another person is authorised to act on their behalf, and a third party reasonably relies on that appearance of authority when entering a transaction.

LINK: Apply to facts whether conduct fell within/outside of the scope of their authority.
*the RP must know what authority they are giving agent- 'truly receives'.

IRREBUTTABLE PRESUMPTION OF COMMUNICATION

- Under *Schultz v Corwill Properties*, where an agency relationship exists and the agent has a duty to communicate relevant information to the principal, the agent's knowledge of the fraud will generally be attributed to the principal on the basis of an irrebuttable presumption that the information was communicated. However, this