STEP 1: IDENTIFY THE REGISTERED PROPRIETOR	
Under the ***Transfer of Land Act 1958*** **(Vic)** ("***TLA***"), the registered proprietor is the legal owner of the land. However, **s42(2)(b)** ***TLA*** provides an exception such that the title is not protected against someone who has obtained title through adverse possession.	
FEE SIMPLE OWNER **OR**	Based on the facts, [title owner] is the original fee simple holder and [possessor] is trying to claim adverse possession of the land. The possessor has rights enforceable in rem (***Perry v Clissold***) subject only to those with better rights in relation to the property (***Armory v Delaware***).
LEASEHOLDER	[Title owner] owns the fee simple estate in [land]. In [year / date], [leaseholder] obtained a lease over [the land] from [title owner]. This gives [him / her / them] a leasehold estate (a proprietary interest). [S/he is / They are] entitled to exclusive possession during the lease term, subject to lease's terms. [Possessor] had no legal or equitable interest at the start. S/he simply entered and occupied the land without permission (a trespasser).
STEP 2: WORK OUT WHEN THE CAUSE OF ACTION AROSE	
• This means identifying the date when the registered owner's right to recover possession first began – usually when the adverse possessor **first took possession without consent** • From that date, the ***LAA*** starts running	
Time starts to run when [title owner] [dispossed / ceased possession of] the land on [insert date] (**s9(1)** ***LAA***) and [the possessor] commenced his/her possession of the property on [date of possession] satisfying **s14(1)** ***LAA***. These two requirements being satisfied resulted in the 15-year limitation period commencing.	
STEP 3: CHECK FOR PERMISSION FROM TITLE OWNER	
WITHOUT PERMISSION **OR**	There is no evidence that [title owner] gave [the possessor] permission to be in possession of the land. Possession by [the possessor] is therefore adverse.
WITH PERMISSION	In [year / date], [title owner] gave [possessor] permission to use the land. This converts the occupation from adverse to permissive. Time does not run against the true owner when occupation is with permission (***JA Pye (Oxford) Ltd v Graham***).
STEP 4: WAS THERE FACTUAL POSSESSION?	
• The possession must be continuous, uninterrupted and exclusive • Mere use of the land falls short of possession (such as casual acts of trespass) (***Abbatangelo***) • Possession needs to be "open not by secret; peaceful not by force; and adverse, not by consent of the true owner" (***Mulcahy v Curramore***) ○ Peaceful means that possession must have occurred without violence	

⭐ ACQUISITION OF PROPRIETARY INTERESTS ⭐

POSSIBLE ISSUES:
➢ **Sale / Gift of Land**
➢ **Formal Requirements to Transfer a Legal Interest in Land**
➢ **Statutory Regulations of Land Sales (e.g. terms contracts, deposits, cooling off provisions, vendor's statement, insurance provisions and conduct of auctions)**

PROCESS OF SALE OF LAND

STEP 1: HAVE THE LEGAL REQUIREMENTS FOR SALE BEEN COMPLIED WITH?	
GENERAL LAW LAND	The legal requirements for the sale of land has not been complied with as there is no completed deed under the general law land system as per s52 *PLA*. Therefore, [buyer] does not have a legal interest in the land as the formalities have not been met. However, [buyer] may still have equitable interest. Deed needs to be signed by the person charged (s73(1) *PLA*), sealed (s73(1) *PLA*), delivered (s73(1) *PLA*).
TORRENS LAND	The legal requirements for the sale of land as the proprietary interest has not been registered under the Torrens land system as per s40 *TLA*. Therefore, [buyer] does not have a legal title and does not have a legal interest in the land as the formalities have not been met. However, [buyer] may still have equitable interest.
STEP 2: ELEMENTS TO BE SATISFIED FOR EQUITABLE INTEREST IN LAND There are three elements that need to be satisfied for there to be an equitable interest in the land.	
1. NEEDS TO BE A VALID CONTRACT	The first is whether there is a valid contract for the sale of land. The agreement between the [seller] and [buyer] is likely to have clear offer, acceptance, consideration and intention to create legal relations.
2. EVIDENCE OF CONTRACT **a. EVIDENCE IN WRITING (s126 *Instruments Act*)**	The second is where there is evidence of the contract. As this agreement concerns the sale (or other disposition) of an interest in land, the agreement on which the action is brought must be in writing and signed by the person to be charged as per s126 *Instruments Act*. [Insert facts on any written agreement for sale of land], as such there [is a / is no] record of an agreement in writing [**and / but**] it [is / is not] signed by [seller i.e. by the person you are trying to enforce it against], who is the party to be charged. Therefore, s126 [is / is not] likely to be satisfied to constitute evidence in writing. **OR** There are multiple memos/notes that can be used in combination to piece together enough written evidence of an agreement in writing since [insert facts regarding multiple memos in writing] pursuant to

To look for in a question:

- ➔ Does it say lease or licence?
  - ◆ Even if it says licence, it may still be a lease:
    - Dates
    - Rental payment
    - Exclusive possession of property

1. IS THERE A LEASE?

★ Reminder – the **objective** intention of each party AT THE TIME the agreement was made*

STEP 1: HAS THE LEGAL REQUIREMENTS FOR A LEASE BEEN COMPLIED WITH?

UNDER 3 YEARS IN LENGTH	This agreement is not registered on Torrens and it does not need to be registered to be legal since the lease is under 3 years in length (**s54(2) *PLA***).
OVER 3 YEARS IN LENGTH	The agreement is not registered on Torrens (**s66(1) *TLA***) but an equitable lease may be created by a specifically enforceable agreement under the principle of ***Walsh v Lonsdale***, provided that the agreement complies with **s126 *Instruments Act*** or if it is enforceable under the doctrine of part performance.

STEP 2: INTRO / RENT

The agreement will be considered a lease if all the requirements have been met; payment of rent, certainty of duration and exclusive possession. There [is / is not] regular payments of rent from [lessee] to [lessor / landlord].

STEP 3: ELEMENT 1 – CERTAINTY OF DURATION

Next, a valid lease must have a duration that is certain or capable of being rendered certain (***Lace v Chantler***). This means that the date of commencement and termination must be expressed and be capable of being ascertained.

FIXED TERM LEASE:	[Agreement based on facts] between the parties specifies that the start date is [start date] and the end date being [end date], this satisfies certainty of duration for a fixed term lease. [Tenant] will argue… [Landlord] will argue…
PERIODIC LEASE:	There is certainty of duration in this periodic lease as demonstrated by the payment of rent [weekly / monthly / yearly] can imply [weekly / monthly / yearly] duration.

STEP 4: ELEMENT 2 – EXCLUSIVE POSSESSION

Most importantly, [lessee] must prove that s/he has exclusive possession of [property name]. In determining the intention of the parties as to the provision of exclusive possession, the court will

look at the objective intention of the parties at the time of the agreement and give regard to the surrounding circumstances (***Street v Mountford***).

Indicators of Exclusive Possession:

- Physical control of entry – The physical control of entry [control lessor has based on facts e.g. can lock gate aka has keys] points against exclusive possession for the lessee (***Radaich***).
- Right to quiet enjoyment – Lessee being granted the right to quiet enjoyment in an area enclosed with walls points towards exclusive possession (***Street v Mountford***).
- Tenant has the right to exclude others – If the lessee is able to exclude others from entering their land, this points towards exclusive possession (***Street v Mountford***).
    - In the event of AirBnB: Similar to the AirBnB agreement in ***Swan v Uecker***, [agreement based on facts] did confer exclusive possession and did constitute a lease.
- Parties are in an arm's length commercial relationship rather than a domestic relationship – The parties' arm's length commercial relationship points towards there being exclusive possession (***Radaich v Smith***).
- Strong presumption in residential premises – There is a strong presumption of there being an exclusive possession in residential premises (***Street v Mountford***).

Arguing FOR a Lease:

[Party arguing for lease] must prove that they are the only person that has possession of the property (exclusive possession) that is enforceable against the world including [landlord] (***Radaich v Smith***). Based on the indicators and facts discussed, it is likely that [tenant] [would / would not] be considered to have exclusive possession given the circumstance on which their tenancy has.

Arguing AGAINST a Lease:

[Party arguing licence] will argue that the agreement states that it is a 'licence' and refers to the tenant as 'licencee' and the [landlord] as a 'licensor' to prove that this is not a lease.

However, [party arguing for lease] will argue that it does not matter whether an agreement calls it a licence, the relationship is determined by law and not by the label that is put on it (***Radaich v Smith***).

CONCLUSION (FOR UNDER 3 YEARS)

Therefore, based on the facts, the characteristics of this type of lease [are / are not] sufficiently satisfied and therefore [is / is not] valid and binding.

(CONTINUE: FOR OVER 3 YEARS)
STEP 5: IS THERE EVIDENCE OF A CONTRACT?

Since this lease is longer than 3 years in length, there needs to be evidence of a contract for there to be an equitable lease.

1. EVIDENCE IN WRITING (s126 INSTRUMENTS ACT)	There [is a / is no] record of agreement in writing since [insert facts regarding agreement in writing] pursuant to **s126 *Instruments Act***. The agreement [specifies / does not specify] the property in question **and** [is / is not] signed by [party to be charged i.e. by the person you are trying to enforce it against] who is the party to be charged. Therefore, s126 [is / is not] likely to be satisfied to constitute evidence in writing. **OR**

⭐ SERVITUDE INTERESTS – EASEMENTS ⭐

POSSIBLE ISSUES:
- ➢ **Validity of Easements**
- ➢ **Scope of an Easement**
- ➢ **How an Easement is Created**

GENERAL PRINCIPLES

- Easement is a type of servitude interest which is a right that one person with an interest in property has to make a particular use of another person's property.
- A person with an easement (owner of DT) has the right to:
  - Use / Carry out some activity short of taking possession (positive); or
  - More rarely, restrict the use of land in which another person has a freehold / leasehold interest, in a particular way (negative).
- **An easement is a right which is enjoyed by the dominant tenement (DT) over a piece of land on the servient tenement (ST)** (i.e. it is a right of passage for DT to cross ST's land)
  - DT – gets benefit
  - ST – gets burdened
  - NOTE: DT and ST are pieces of land, NOT individuals

To look for in a question:

➔ Whether one party actually has an easement (i.e. right of passage) over another party's land – DT will argue they do while ST will argue they do not

1. The right alleged to be an easement must satisfy the characteristics of an easement.
2. The easement must actually have been properly created.
   If 1 and 2 are satisfied, an easement has been created and will run with the land
3. What rights does the easement actually confer and is the owner of the DT trying to exceed the rights that were created and contemplated?
4. Has easement been extinguished (cessation)?

IS THERE AN EASEMENT?

Easements are grants that give a person the right to use the land of another person (servient owner) in a particular manner. The easement allows the owner of the land (dominant tenement = DT) to make use of another person's land (servient tenement = ST). They are incorporeal rights that run with the land. In this case, the arrangement in question is [alleged easement]. This arrangement is not a lease or a licence, but [owner of DT]'s use of [owner of ST]'s land. For this to be considered an easement, it has to have the four elements as per ***Ellenborough Park***.

STEP 1: GO THROUGH THE 4 CHARACTERISTICS (*ELLENBOROUGH PARK*)

1. THERE MUST BE A DT AND ST	Based on the facts, [land of party who is benefitting from the easement e.g. Lot A] is the DT as and [land of party who is getting burdened e.g. Lot B].

2. EASEMENT MUST BE FOR THE BENEFIT OF THE DT	The easement must accommodate the DT through its amenity and value and be reasonably necessary for the enjoyment of the land (***Ellenborough Park***). [apply facts on what amenity and value is provided to the DT]. **A right which accommodates a business run on the DT's land may not be created as an easement as this is just a personal benefit (***Copeland***). However, a valid easement may indirectly benefit a business (***Copeland***; ***Clos Farming***). **An easement over the use of chattels on the DT is also a valid easement (***Regency Villas***). – rights to use facilities in ST that were graded to accommodate the DT. (UK case) The connection between DT and ST must be real and intelligible and there must be some type of natural connection, which means there would need to be a proximity between DT and ST (***Clos Farming***). The easement needs to be reasonably necessary for the enjoyment of the land. [apply facts on whether there is a real and intelligible connection to the land, if no then it may just be a personal benefit to DT].
3. DT AND ST MUST BE OWNED AND OCCUPIED BY SEPARATE PEOPLE	DT and ST are owned by different people. DT is owned by [owner of DT] and ST is owned by [owner of ST]. One cannot acquire rights against themselves; however if they lease out an adjacent property then they can grant an easement as they are no longer occupying both.
4. RIGHT MUST BE CAPABLE OF FORMING THE SUBJECT MATTER OF THE GRANT	(a) The rights expressed in the easement **cannot be too wide or vague** and hence be capable of description (***Riley v Pentilla***). [apply facts on how the easement is /is not too wide and vague]. (b) The rights **cannot constitute mere recreation**, but instead provide utility and benefit to DT (***Regency Villas***). [apply facts if applicable]. (c) The rights **cannot amount to joint occupation** nor can it deprive the ST of its exclusive possession and enjoyment of the land (***Copeland***; ***Clos Farming***). [apply facts if applicable]. ● As per ***Copeland***, an easement would have amounted to a joint use of land as well so there is no valid easement. ● As per ***Clos Farming***, the rights in this case were not capable of forming the subject matter of the grant as otherwise the ST would be left a 'mere shadow' of ownership and would no longer have amounted to exclusive possession.