TOPIC 7 – EXCEPTIONS TO INDEFEASIBILITY OF TITLE

MASTER RULE

TLA s 42: A registered proprietor (RP) generally has indefeasible title, unless a recognised exception applies.
Important: Unfairness alone is NOT an exception to indefeasibility.
Exceptions balance two objectives:

- Security of title: Protecting registered ownership.
- Security of transactions: Allowing purchasers to rely on the Register.

EXAM APPROACH: Establish registered protection under Topic 6 INDEFEASIBILITY (TLA s 42, Frazer v Walker) FIRST. Then apply only triggered exceptions in this Topic 7. Each legal TEST is written ONCE in its specialist row; do not repeat it elsewhere.

	FRAUD	
ISSUE / TRIGGER	**CORE SCRIPT**	**APPLY / STOP**
STATUTORY FRAUD – DID RP / BANK ACT DISHONESTLY? *RP or bank gets/keeps registered interest through dishonesty or wilful blindness*	Two-stage test: 1. Actual dishonesty: The RP acted dishonestly or deliberately ignored known warning signs (wilful blindness). 2. Fraud attributable to RP: The dishonesty must be committed by the RP/mortgagee or an agent whose fraud is legally attributable to them. Important: - Negligence, carelessness, suspicion or mere knowledge of another interest is NOT enough. - Fraud must be operative, meaning connected to obtaining or maintaining the challenged registration. - Unfair conduct alone does NOT establish statutory fraud. Scenario 1 (No fraud): ANZ negligently registers a forged mortgage over Sarah's property without knowing it was forged → no statutory fraud. Scenario 2 (Fraud): An ANZ employee knowingly uses Sarah's forged signature to register the mortgage, and the dishonesty is attributable to ANZ → statutory fraud established. ▪ APPLY: Under Assets Co v Mere Roihi, [RP] [knew/deliberately ignored] [fraudulent fact]. This [establishes/does not establish] actual dishonesty attributable to [RP], rather than mere suspicion or notice. ▪ APPLY – NEGLIGENCE ≠ FRAUD: Under Pyramid Building Society v Scorpion Hotels, [bank staff] noticed [signature discrepancies] but failed to [contact RP/investigate]. This is relevant NEGLIGENCE, NOT automatically actual dishonesty. Statutory fraud [is/is not] established only because [specific evidence of conscious dishonesty/wilful blindness]. ▪ APPLY: Under Bank of South Australia v Ferguson, [dishonest act] [was/was not] operative in obtaining or maintaining [registration]. Therefore, the fraud exception [applies/does not apply]. ▪ CONCLUDE: [Conduct] [establishes/does not establish] actual dishonesty, [is/is not] operative, and [can/cannot] be attributed to [RP]. Therefore, the statutory fraud exception [applies/does not apply]. **NEXT: Deliberately false witness? → FALSE ATTESTATION; dishonest solicitor/staff? → AGENT / EMPLOYEE FRAUD; ID/authority checks neglected? → VOI (separate test, no dishonesty required).**	Dishonesty? Wilful blindness? Operative? Whose fraud?
PRIOR INTEREST + FRAUD – DID BUYER LIE ABOUT RESPECTING IT? *Buyer knows of an earlier unregistered interest → mere knowledge, dishonest promise or genuine promise later broken?*	**STEP 1 – REGISTERED TITLE** TLA s 42(1): A registered purchaser generally obtains indefeasible title, subject to recognised exceptions. TLA s 43 – MERE NOTICE: Knowledge of an earlier unregistered interest does NOT, by itself, constitute statutory fraud or defeat registration. ▪ APPLY – NOTICE: [Buyer] [knew/did not know] of [earlier unregistered interest] before registration because [facts]. However, under TLA s 43, mere knowledge does NOT itself establish statutory fraud or defeat indefeasibility. Accordingly, [buyer's] registered title generally remains protected, subject to recognised exceptions. **STEP 2 – DISHONEST PROMISE: STATUTORY FRAUD** Loke Yew v Port Swettenham Rubber: Where a purchaser deliberately makes a dishonest promise or representation to respect an earlier interest, intending to induce the earlier holder not to protect it and thereby secure registration, statutory fraud may be established. ▪ APPLY – FRAUD: [Buyer] promised to preserve [claimant]'s [earlier interest] to [prevent protective action/obtain registration], despite having NO intention of honouring that promise WHEN MADE. Under Loke Yew, this may establish operative statutory fraud under TLA ss 42 and 44, allowing [claimant] to challenge [buyer's] registered interest.	**Knowledge alone is protected by s 43.** Promise false at time made?

	STEP 3 – GENUINE PROMISE: IN PERSONAM Bahr v Nicolay (No 2): A registered purchaser may be personally bound by an independently enforceable obligation to recognise an earlier interest, even where registration itself remains valid. ▪ APPLY – IN PERSONAM: [Buyer] genuinely undertook to [recognise/preserve/transfer] [claimant]'s [specific interest] through [agreement/representation/conduct]. This may establish [contract/trust/estoppel/other recognised equitable obligation], because [facts showing enforceability]. By later refusing to [perform undertaking], [buyer] may be personally liable under Bahr, despite holding registered title. [Claimant] may seek [specific performance/injunction/appropriate equitable relief]. **STEP 4 – CONCLUSION** ▪ AT LAW: Under TLA ss 42–43, [buyer]'s registration generally protects [title] despite [solicitor/buyer]'s knowledge of [earlier interest]. However, intentionally dishonest conduct under Loke Yew may establish statutory fraud. ▪ IN EQUITY: If [buyer] assumed an independently enforceable personal obligation under Bahr, [claimant] may obtain equitable relief despite registration.	
AGENT / EMPLOYEE FRAUD – IS RP / BANK RESPONSIBLE? *Solicitor, bank employee or agent commits fraud → was it within their authorised role?*	**FIRST establish individual fraud (STATUTORY FRAUD / FALSE ATTESTATION), THEN attribution. An EXTERNAL solicitor is not automatically outside the bank's agency: examine the actual task, authority and close connection.** General rule: Fraud by an agent may defeat the registered proprietor's (RP) or mortgagee's indefeasibility, even if they were personally innocent. Fraud may be attributed where: 1. The agent commits fraud within their actual or apparent authority (authorised role). 2. The agent knows of another person's fraud and has a duty to report it to the principal. Cassegrain v Gerard Cassegrain: Confirms the agency principles from Schultz apply in Australia. APPLY: Under Schultz v Corwill, [agent] committed [fraud] outside their authorised role. Therefore, the fraud is not attributable to [RP/mortgagee], who retains indefeasibility on this basis. APPLY: Under Nathan v Dollars & Sense, [agent] committed [fraud] while performing an authorised task for [RP/mortgagee]. Because the fraud was closely connected to that task, it may be attributed to [RP/mortgagee], potentially defeating indefeasibility. EXAMPLE: ANZ authorises John to obtain Sarah's signed mortgage documents. John forges Sarah's signature instead. If the forgery is sufficiently connected to John's authorised task, his fraud may be attributed to ANZ. KEY DISTINCTION: - Fraud outside the agent's authority → generally NOT attributed (Schultz). - Fraud closely connected to an authorised task → may be attributed (Nathan). Agent's knowledge of another's fraud + duty to report → may be attributed (Schultz/Cassegrain).	Actual/apparent authority? Close connection? Knowledge pathway?
FALSE ATTESTATION – DID WITNESS LIE ABOUT SIGNATURE? *Someone certifies they witnessed a signature when they didn't → did they knowingly lie?*	False attestation occurs when someone falsely certifies that they witnessed a person signing a document. Key rule: False attestation is only statutory fraud where the witness acted dishonestly and understood the significance of the false certification. Negligence alone is insufficient. ▪ APPLY: Under AGC v De Jager, [agent/employee] knowingly falsely certified [RP's] signature to obtain registration. This constitutes fraud on the Registrar and may be attributed to [mortgagee] if the agent acted within their authority. ▪ APPLY: Under Grgic v ANZ, [mortgagee employee] incorrectly verified [RP's] identity but honestly believed the signature was genuine. Mere negligence does NOT constitute statutory fraud. ▪ APPLY: Under Russo v Bendigo Bank, [witness] falsely certified [RP's] signature but [understood/did not understand] the falsity and significance of their actions. Fraud [is/is not] established; separate innocent pieces of knowledge cannot be combined to create dishonesty. **NEXT: If knowingly false and attributable → AGENT / EMPLOYEE FRAUD. If honestly mistaken, no statutory fraud merely for carelessness; separately apply VOI.**	Actual dishonesty? Attestor understanding? Attribution?
CONSEQUENCE OF FRAUD – CAN REGISTERED TITLE BE DEFEATED? *Fraud established → person defrauded challenges title; property may have passed to innocent buyer*	**FIRST: This row gives the CONSEQUENCE only. Prove actual fraud and attribution in the preceding specialist rows.** Fraud makes registered interest **defeasible** (capable of being defeated) by the person defrauded (person who was deceived or whose property rights were affected by the fraud). It does NOT mean ownership was never acquired. A fraudulent registered proprietor (RP) can still transfer the property while registered, and a later innocent registered purchaser may obtain indefeasible title. ▪ APPLY: Under Breskvar v Wall, although [X] obtained registration through fraud, [X] still acquired legal title, which is defeasible against [Y], the person defrauded. If [X] later transfers the property to an innocent registered purchaser [Z], [Z] may obtain indefeasible title. EXAMPLE: James fraudulently becomes registered owner of Sarah's house → Sarah may challenge James's title. However, if James sells to innocent Emma, who becomes registered, Emma may be protected despite James's earlier fraud.	Who is challenging whom?