Creation of Legal Interests

A. GENERAL LAW LAND

Step	Relevant Law to Apply
Step 0: Identify the System	
0. Is this General Law or Torrens land?	**Before analysing the creation of a legal interest, first determine which system governs the land.** **General law land (also called 'old system' land):** title is derived from a chain of deeds going back to the original Crown grant. There is no state-maintained register that guarantees title. The validity of title depends on the integrity of every link in the chain. **Torrens land:** title is created by registration on a state-maintained register. The register is conclusive evidence of title (Breskvar v Wall). s 23B(3) CA expressly provides that the deed requirement in s 23B(1) does NOT apply to land under the Real Property Act 1900 (NSW). If the land is Torrens land → skip to Section B below.
SENTENCE	*"The land in question is [general law / Torrens] land. [If general law]: Under s 23B(1) of the Conveyancing Act 1919 (NSW) ('CA'), no assurance of land is valid to pass an interest at law unless made by a deed. [If Torrens]: Under s 23B(3) CA, the deed requirement in s 23B(1) does not apply to land under the Real Property Act 1900 (NSW) ('RPA'). Instead, legal title is acquired through registration."*
Step 1: Is there a s 23B deed?	
1a. Identify the <u>transaction</u>	**Rule:** Under s 23B(1) CA, no assurance of land is valid to pass an interest at law unless made by a deed. "Assurance" is defined in s 7(1) CA as any conveyance, contract, or disposition made otherwise than by will. **Application:** Identify the specific transaction in the fact scenario — is it a sale, a mortgage, a lease, the grant of an easement, a gift? All of these are 'assurances' that require a deed to create a legal interest.
SENTENCE	*"The [sale/mortgage/lease/grant of easement] between [X] and [Y] constitutes an 'assurance' within the meaning of s 7(1) CA. As the land is general law land, s 23B(1) CA requires this assurance to be made by deed in order to pass an interest at law."*
1b. Does the document satisfy the formal requirements of a deed?	The formal requirements of a valid deed are set out in s 38 CA. ALL of the following must be satisfied: **(i) Written and signed** (s 23D(1) CA): The deed must be in writing and signed by the person creating the interest, or by their agent lawfully authorised in writing. **(ii) Signed and sealed** (s 38(1) CA): The deed must be signed and sealed by the executing party. However, under s 38(3), a document that is expressed to be

	a deed and that is signed and attested is deemed to be sealed. So in practice, the 'sealing' requirement is effectively satisfied by expressing the document to be a deed + signing + attestation. **(iii) Attested** (s 38(1) CA): The deed must be attested (witnessed) by at least one person who is NOT a party to the deed. **(iv) Indenting not necessary** (s 38(2) CA): Execution in parts (indenting) is not required. **(v) Intention and capacity:** The executing party must have the intention to create the deed and the legal capacity to do so. : No: "The document does not satisfy s 38 CA because [specify]. Therefore, no legal interest has been created. The interest is equitable at best."
1c. Is the deed otherwise valid?	Even if the formal requirements of s 38 are met, the deed may still be ineffective if: **(i) Property description errors:** There are errors or inconsistencies in the description of the property in the deed, such that the property cannot be properly identified. **(ii) Chain of title broken:** The chain of title is irremediably broken — e.g., a prior deed has been lost or destroyed, or the legal interest previously created by deed has been extinguished by adverse possession for the limitation period (12 years under ss 27-28 Limitation Act 1969 (NSW)). **(iii) Conveyancing defects:** There are errors in the conveyancing process (e.g., overlooking defects in the vendor's title makes the title insecure). "Even if the [deed/document] satisfies the formal requirements of s 38 CA, it may be ineffective to pass a legal interest. Under the nemo dat quod non habet principle, [Grantor] cannot pass a greater interest than [he/she] holds. On the facts, [Grantor]'s fee simple was previously conveyed to [Mortgagee] by way of mortgage — [Grantor] retains only an equity of redemption, which is an equitable interest. Accordingly, the [easement/lease/transfer] purportedly granted by [Grantor] does not create a legal interest; at best, it creates an equitable interest over [Grantor]'s equity of redemption." **Fraud / undue influence / mistake** "Although the [deed] satisfies s 38 CA in form, its validity may be impeached on the basis that it was procured by [fraud / undue influence / mistake]. If established, the deed is voidable — [Affected Party] may seek to have it set aside in equity. Until set aside, the deed remains effective at law; however, [Affected Party] holds a mere equity (the right to rescind), which may be enforced against all parties except a bona fide purchaser for value without notice of the defect." **Lack of power to grant** "The [deed] is ineffective to create a legal [easement/lease/interest] because [Grantor] did not have the power to make this grant. [Specify reason: e.g., [Grantor] holds only a life estate and cannot grant an interest exceeding the duration of [his/her] own estate / [Grantor]'s interest is subject to a condition that

	prohibits alienation / [Grantor] is not the registered proprietor and has no authority from the RP]. Therefore, no legal interest has been created. [Grantee]'s interest, if any, is equitable only."
SENTENCE	**If deed IS valid:** *"The [document] satisfies the formal requirements of a deed under s 38 CA: it is in writing, signed by [X], expressed to be a deed, and attested by [witness] who is not a party to the deed (s 38(1)). Under s 38(3), it is therefore deemed to be sealed. Accordingly, the deed requirement of s 23B(1) CA is satisfied, and [X] has passed a legal interest in [the property] to [Y]."* **If deed is NOT valid:** *"The [document] does not satisfy the requirements of a valid deed because [specify defect: e.g., it was not attested by a witness / it was not expressed to be a deed / the executing party lacked capacity]. As s 23B(1) CA requires a deed to pass a legal interest, [Y] does not hold a legal interest in the land. The interest, if any, is equitable only — see Creation of Equitable Interests."*
EXAM TIP	**Examiner expectation:** Always write out the negative conclusion explicitly when a deed is defective. Don't just say 'no deed'. State: 'Therefore, no legal interest has been created. The interest is equitable at best.' **Common exam trap:** Check whether the person purporting to grant the interest actually has the power to do so. E.g., someone holding only an equity of redemption (general law mortgage) cannot grant a legal easement because they don't hold the legal estate — the mortgagee does.
Step 2: Are there any exceptions to the deed requirement?	
2a. Wills	**s 23E(a) CA / s 7(2)(a) CA:** A disposition by will does not require a deed to transfer a legal interest. A will that operates as a 'settlement' under s 7(2)(a) is treated as sufficient to pass a legal interest without a deed. **Application:** If the fact scenario involves a testamentary disposition, a deed is not required. The legal interest passes to the beneficiary upon the testator's death, subject to the administration of the estate.
2b. Interest acquired by taking possession (adverse possession)	**s 23E(c) CA:** The right to acquire an interest in land by virtue of taking possession is preserved. No deed is required for the acquisition of a legal interest by adverse possession. **Application:** If someone has been in adverse possession for the limitation period (**12 years**: ss 27-28 Limitation Act 1969 (NSW)), they acquire a legal interest in the land without needing a deed. See Adverse Possession scaffold for full analysis.
2c. Short-term leases (s 23D(2) CA)	**s 23D(2) CA:** A deed is NOT required for the creation of a legal lease where ALL of the following sub-requirements are met: **(i) Best rent:** The rent being paid must be 'the best rent which can reasonably be obtained without taking a fine'. 'Fine' means a premium or lump-sum payment

	to acquire the tenancy. In other words, the lease must be at market rent with no upfront premium. **(ii) Taking effect in possession:** The lease must take effect in possession immediately (not a future lease). **(iii) Term not exceeding 3 years:** The total length of the lease, **INCLUDING any option to renew**, must not exceed three years. If a 2-year lease has a 2-year renewal option, the total is 4 years → the exception does NOT apply. Authority: Leitz Leeholme Stud Pty Ltd v Robinson [1977] NSWCA.
SENTENCE	*"Under s 23D(2) CA, a deed is not required for a lease at the best rent reasonably obtainable without taking a fine, taking effect in possession, for a term not exceeding three years (including any option to renew). On the facts, [the lease is for [duration], at [market rent / not market rent], with [no option to renew / an option to renew of [X] years, giving a total term of [Y] years]. [Therefore, s 23D(2) is / is not satisfied], and [X] holds a legal lease [without the need for a deed / the lease does not create a legal interest absent a deed]."*
2d. Implied leases and easements	**s 23B(2) CA:** The deed requirement does not affect the creation of implied leases (leases arising by operation of law, e.g., implied periodic tenancies where a tenant holds over and pays rent) or implied easements (e.g., easements of necessity). **s 23E(c) CA:** An implied legal lease may also arise under the 'taking possession' exception where the elements of a lease (exclusive possession, certainty of duration) are satisfied even without formal documentation. See Lease scaffold for detailed analysis.
2e. Part performance	**s 23E(d) CA:** The operation of the law relating to part performance is preserved. **IMPORTANT CLARIFICATION:** Part performance does NOT directly create a legal interest. It operates to make an otherwise unenforceable agreement (one that fails writing requirements) enforceable in equity. The result is typically an equitable interest, not a legal interest. However, where the agreement is for a transaction that would, once completed, create a legal interest (e.g., a specifically enforceable contract for sale), part performance can be the gateway to eventual legal title. See Contract / Part Performance / Estoppel scaffold for full analysis.
EXAM TIP	**Exam strategy:** If the fact scenario shows a transaction on general law land without a deed, don't just conclude 'no legal interest'. Always check the exceptions in sequence: (1) Is it a will? (2) Is it adverse possession? (3) Is it a short-term lease under s 23D(2)? (4) Is it an implied lease/easement? Only after ruling out all exceptions should you conclude that the interest is equitable only.
Step 3: Conclusion (General Law)	
3. State the conclusion	**Positive conclusion:** If a valid deed exists (or an exception applies), [X] holds a legal interest in the land. **Negative conclusion:** If there is no valid deed and no exception applies, [X] does not hold a legal interest. Analyse whether an equitable interest exists under

	Creation of Equitable Interests. **Specify the nature of the legal interest:** fee simple, life estate, lease, mortgage, easement, etc. "X holds a **legal fee simple** / **legal lease** / **legal mortgage** / **legal easement**".
SENTENCE	**Positive:** *"Accordingly, [X] holds a legal [fee simple / life estate / lease / mortgage / easement] over [the Property] by virtue of [the valid deed / the s 23D(2) short lease exception / adverse possession under s 23E(c)]."* **Negative:** *"As the [document] does not constitute a valid deed under s 23B(1) CA, and no exception to the deed requirement applies, [X] does not hold a legal interest in [the Property]. [X]'s interest, if any, is equitable only. It is therefore necessary to consider whether an equitable interest has been created — see below."*

B. TORRENS LAND

Step	Relevant Law to Apply
Step 1: Is there a registrable dealing?	
1a. Identify the dealing	Under the Torrens system, legal title is NOT acquired through a deed (s 23B(3) CA excludes Torrens land from s 23B(1)). Instead, legal title is acquired through registration of a dealing. **"Dealing"** is defined broadly. Under s 74A RPA, a dealing includes a plan. Generally, a dealing encompasses any conveyance, contract, or disposition of an interest in Torrens land. **Registrable dealings** are dealings with land for which the RPA makes express provision for registration. These include: • Transfers of the registered interest (fee simple or Crown lease) • Leases and subleases (if tenant transfers → transfer form) • Mortgages (if mortgagee transfers → transfer form) • Easements and profits (via transfer/grant form)
1b. Is the dealing in writing? (s 54A CA)	**s 54A CA:** A contract for the sale of land (or any disposition of an interest in land) must be in writing. The writing must: (i) Be signed by the party to be charged (or their agent authorised in writing). (ii) Contain all material terms — identification of the parties, description of the property, and the price/consideration. **Note: s 54A(4) CA** expressly extends 'writing' to include **electronic text** and electronic signatures. **If s 54A is NOT satisfied:** the contract is unenforceable at law. No equitable interest arises from the contract unless part performance (Pipikos v Trayans) or proprietary

	estoppel (Kramer v Stone [2024] HCA 48) can be established.
SENTENCE	*"Under s 54A CA, a contract for the sale of land must be in writing, signed by the party to be charged, and contain all material terms. On the facts, [the agreement between X and Y is / is not] in writing and [does / does not] identify the parties, the property, and the price. [Therefore, s 54A is / is not satisfied.]"*
1c. Is the dealing in registrable form?	For a dealing to be registered, it must be: **(i) In an approved form** (s 36(6)(a) RPA): The dealing must be in the form approved by the Registrar-General. Standard approved forms exist for transfers, leases, mortgages, and easements. **(ii) Free from defects requiring correction/amendment** (s 36(6)(b) RPA): The dealing must not require correction or amendment (other than corrections made by the Registrar-General under s 39(3) RPA). **Note — Confirmation of identity:** For mortgages specifically, s 56C RPA requires confirmation of the identity of the mortgagor.
EXAM TIP	**s 43A connection:** The concept of a 'dealing registrable' is critical for s 43A RPA analysis in priority disputes. If a party has a dealing that is in registrable form but has not yet been registered (e.g., settlement has occurred but registration has not), s 43A may operate to deem them as having the 'legal estate' for priority purposes — but only if they are also a BFPVWN dealing with the RP. See Priority Disputes scaffold. **PEXA connection:** In electronic conveyancing (PEXA), settlement, lodgement and registration occur simultaneously online, so s 43A effectively cannot arise — there is no gap between settlement and registration.
Step 2: Has registration occurred?	
2. Registration by the Registrar-General	Registration occurs when the Registrar-General makes the appropriate recording in the Register and (usually) issues a copy of the Certificate of Title (CT). **Effect of registration:** Upon registration, the dealing is effective according to its terms, even if the underlying instrument was void or defective (Breskvar v Wall [1971] HCA, per Barwick CJ). This is the principle of immediate indefeasibility — the Torrens system is not a system of registration of title, but a system of title by registration (Breskvar v Wall; Frazer v Walker [1967] PC). **Registration cures defects:** If a transaction creating a registered interest is defective in some way, registration cures the defect. This is one of the key differences between registration and mere recording (which does NOT cure defects). **Indefeasibility:** Once registered, the proprietor's title is protected by s 42(1) RPA (immediate indefeasibility), subject only to the exceptions in ss 42(1), 42(3), and 45(2) RPA. See Indefeasibility scaffold. **Prevention of registration:** Registration can be prevented by a caveat (s 74F(1) RPA) or injunction lodged by someone claiming an unregistered interest. A priority notice under s 74T RPA can also prevent inconsistent registrations for 60 days (extendable to 90 days).

SENTENCE	**If registered:** *"[X]'s interest has been registered on the folio by the Registrar-General. Accordingly, [X] holds indefeasible title to [the Property / the lease / the mortgage] under s 42(1) RPA (Frazer v Walker; Breskvar v Wall). [X]'s title is conclusive and can only be impeached if an exception to indefeasibility applies — see below."* **If NOT registered:** *"[X]'s dealing has not yet been registered on the folio. As the Torrens system is a system of title by registration (Breskvar v Wall, Barwick CJ), [X] does not hold a legal (registered) interest. [X]'s interest is unregistered and equitable only. It is necessary to consider: (i) whether s 43A RPA deems [X] to hold the legal estate; and (ii) [X]'s priority position vis-à-vis other interest holders."*
EXAM TIP	**Key distinction — registered vs recorded vs unregistered:** Registration = on the register + cures defects + indefeasibility. Recording (e.g., restrictive covenants, trusts via caveat under s 82 RPA) = on the register + warns third parties + binds RP, but does NOT cure defects. Unregistered = not on the register at all (e.g., Bunny Industries equitable interest, Walsh v Lonsdale equitable lease, equitable mortgage by deposit of CT, proprietary estoppel interest, unpaid vendor's lien).
Step 3: Conclusion (Torrens)	
3. State the conclusion	**Positive:** [X] holds a registered (legal) interest → protected by indefeasibility. Proceed to consider whether any exceptions apply (fraud, in personam, etc.). **Negative:** [X]'s dealing is not registered → [X] holds an unregistered (equitable) interest only. Proceed to consider: (i) s 43A deemed legal estate; (ii) priority position under the URI v URI rules (first in time unless equities unequal: Lapin).
SENTENCE	*"In conclusion, [X] holds a [registered / unregistered] interest in [the Property]. [If registered]: This interest is protected by immediate indefeasibility under s 42(1) RPA, subject to the statutory exceptions. [If unregistered]: As the interest is unregistered, it does not enjoy the protection of indefeasibility. [X]'s position in any priority dispute must be analysed under the applicable priority rules."*

C. RIGHTS OF LEGAL INTEREST HOLDERS (Millirrpum)

Right	Content & Application
1. Right to use and enjoy	The holder of a legal interest has the right to use and enjoy the land in any manner consistent with the nature of their interest (Millirrpum v Nabalco Pty Ltd (1971)). A fee simple holder can use the land for any lawful purpose. A leaseholder can use the land within the terms of the lease. A mortgagee's right to use is limited to protection of their security interest.
2. Right to exclude others	The holder of a legal interest has the right to exclude others from the use and enjoyment of the land (Millirrpum). This is one of the defining characteristics that distinguishes a

	proprietary right from a personal right. This right is enforceable against the world (in rem), not merely against specific individuals (in personam). A person who interferes with this right may be liable in trespass. **Exam relevance:** This right is particularly important in the lease/licence distinction (Radaich v Smith) — exclusive possession is the hallmark of a lease (a proprietary interest), as opposed to a licence (a personal permission). If a party has only a licence, they cannot exclude others and cannot participate in priority disputes.
3. Right to alienate	The holder of a legal interest has the right to transfer (alienate) that interest to another person (Millirrpum). This includes the right to sell, gift, mortgage, lease, or otherwise dispose of the interest. The alienation must comply with the applicable formalities: • General law: by deed (s 23B(1) CA) • Torrens: by registered transfer • Equitable interest: in writing signed by the transferor (s 23C(1)(c) CA) **Restraints on alienation:** A condition in a grant that completely prohibits alienation of a fee simple is void as repugnant to the nature of the estate. Partial restraints (e.g., requiring consent before alienation) may be valid depending on their reasonableness.
SENTENCE	*"As the holder of a legal [fee simple / lease / mortgage] over [the Property], [X] has the rights identified in Millirrpum v Nabalco: the right to use and enjoy the land, the right to exclude others from use and enjoyment, and the right to alienate the interest. [X] may therefore [sell / mortgage / lease / grant an easement over] the property, provided the applicable formalities are complied with."*
EXAM TIP	**Practical exam use:** You typically don't need to list all three Millirrpum rights unless the question specifically asks 'What rights does X have?'. More commonly, you'll use individual rights as building blocks — e.g., citing the right to alienate when analysing whether a party can grant a sub-interest, or citing the right to exclude when distinguishing a lease from a licence.

Creation of Equitable Interests

A. EQUITABLE INTEREST BY SPECIFICALLY ENFORCEABLE CONTRACT (Bunny Industries)

Step	Relevant Law to Apply
Step 1: Is there a valid contract?	
1a. Intention to create legal relations	**Rule:** A contract requires intention to create legal relations. Commercial/arms-length dealings are presumed to have this intention. **Family and domestic arrangements carry a rebuttable presumption AGAINST intention to create legal relations.** **Family context (exam trap):** Dealings between family members are often characterised as 'mere permission' (Sandland, at 78) or motivated by 'love and affection' (Ogilvie v Ryan), not contractual intent. To rebut: look for specificity of terms, commercial-like conduct, mutual obligations, and seriousness of arrangement.
1b. Consideration	**Rule:** Both parties must provide consideration. Identify what each party is giving/receiving. **Common examples:** Purchaser pays purchase price / pays off mortgage / makes improvements to land. Vendor promises to transfer fee simple / grant lease / convey interest. **Note:** If there is no consideration (e.g., a gratuitous promise), there is no contract. Consider instead whether a gift via deed, express trust, or proprietary estoppel applies.
1c. Certainty	**Rule:** The terms of the contract must be sufficiently certain — i.e., you must be able to identify what is being promised by each party. Key terms: identification of parties, identification of property, price/consideration, nature of interest to be transferred.
SENTENCE	*"The first requirement is a valid contract. On the facts, [X] and [Y] [agreed that / entered into an arrangement whereby] [specify terms]. As to consideration, [X] promised [specify], and [Y] promised [specify]. The terms are sufficiently certain to identify the parties, the property, and the nature of the interest. [However, as [X] and [Y] are family members, there is a rebuttable presumption against intention to create legal relations (Sandland). On the facts, [specify facts rebutting/supporting presumption]. Therefore, a valid contract [does / does not] exist."*
Step 2: Is the contract in writing or saved by part performance?	
2a. In writing? (s 54A(1) CA)	**s 54A(1) CA:** A contract for the sale or disposition of any interest in land must be in writing, signed by the party to be charged or their agent authorised in writing, and must contain all material terms (parties, property, price). **s 54A(4):** Writing includes electronic text; signatures include electronic

	signatures. If the contract IS in writing → skip to Step 3. If the contract is NOT in writing → go to Step 2b (part performance).
2b. Saved by part performance? (s 54A(2), s 23E(d) CA)	**s 54A(2) CA:** The writing requirement 'does not affect the law relating to part performance'. An oral contract may be enforceable if the doctrine of part performance applies. **Test (Pipikos v Trayans [2018] HCA 39):** The acts relied upon must, on the balance of probabilities, be 'unequivocally referable to some such agreement as that alleged'. The acts must point to the existence of a contract of the general nature alleged, not necessarily to the precise terms. **Also expressed as:** acts referable to a contract of the 'general nature' of that alleged (Phung; Hill J in ANZ Banking Group). **Sufficient acts of part performance:** • Exchange/taking of possession between strangers is generally sufficient (Pipikos; Phung [67]). • Payment of purchase price or part thereof. • Making substantial improvements to the property in reliance on the agreement. **Insufficient acts (especially in family context):** • Living with family members: may be 'mere permission' (Sandland, at 78) or 'love and affection' (Ogilvie v Ryan), not referable to a contract. • General domestic contributions without specific contractual nexus. -Mere payment of money (partly) **Additional requirements:** • Damages must be inadequate as a remedy (i.e., specific performance must be necessary). • The party claiming part performance must be willing and able to perform the contract. **Li v Tao [2023] NSWCA 310 [53]-[62]:** Recent authority confirming and applying Pipikos in the family context.
SENTENCE	*"The contract between [X] and [Y] is oral and does not satisfy s 54A(1) CA. However, s 54A(2) preserves the doctrine of part performance. Under Pipikos v Trayans, the acts relied upon must be unequivocally referable to an agreement of the general nature alleged. Here, [X] [took possession of the property / paid off the mortgage / made improvements worth $[amount]]. [In a commercial context, the taking of possession is generally sufficient (Pipikos; Phung).] [However, as [X] and [Y] are family members, [X]'s occupation of the property may be characterised as 'mere permission' rather than referable to a contract (Sandland; Ogilvie v Ryan).] Therefore, part performance [is / is not] established."*
EXAM TIP	**This is where most exam marks are won or lost.** The tutor emphasized: in family scenarios, don't just say 'part performance is satisfied because they moved in.' You must grapple with the Sandland/Ogilvie presumption and explain why the

	facts in your scenario are distinguishable (e.g., the arrangement had commercial-like specificity, mutual obligations, or the family member gave up their own home).
Step 3: Are the equitable requirements for specific performance met?	
3. Specific performance available?	Even if there is a valid contract in writing (or saved by part performance), specific performance must be available as a remedy for the equitable interest to arise. Factors include: **(i) Ready, willing and able:** The purchaser must be ready, willing and able to perform their obligations under the contract (Bunny Industries). If the purchaser is unable to pay or has defaulted, specific performance may be refused. **(ii) Clean hands:** The party seeking equity must come with clean hands — they must not have engaged in unconscionable or inequitable conduct. **(iii) Laches:** Unreasonable delay in asserting the equitable right may bar specific performance. **(iv) Time of the essence:** Where time is stipulated to be of the essence and the purchaser fails to settle b y the due date, the vendor may terminate and the purchaser loses the equitable interest (Tanwar v Cauchi). **Tanwar v Cauchi [2003] HCA:** The HCA questioned the constructive trust analogy for the doctrine of conversion but confirmed that a specifically enforceable contract still gives rise to an equitable interest. The purchaser's interest is 'commensurate with their ability to obtain specific performance'. In Tanwar, the purchaser was not ready/willing/able (failed to pay by time-of-essence deadline), so no equitable interest survived termination.
SENTENCE	*"The equitable doctrine of conversion provides that where there is a specifically enforceable contract for the sale of land, the purchaser acquires an equitable interest in the land (Lysaght v Edwards; Bunny Industries). Although the constructive trust analogy was questioned by the HCA in Tanwar ([53]), it is clear that a specifically enforceable contract still gives rise to an equitable interest. Here, [X] was [ready, willing and able / not ready, willing and able] to perform the contract because [specify facts]. [X] comes to equity with [clean / unclean] hands. There is [no issue of laches / an issue of laches because [specify delay]]. Therefore, specific performance [is / is not] available, and [X] [does / does not] hold an equitable interest in [the Property]."*
Step 4: Characterise the equitable interest	
4. What type of equitable interest?	**Equitable fee simple:** arises from a specifically enforceable contract for sale of the fee simple (Bunny Industries). **Equitable lease:** arises from a specifically enforceable agreement for lease where the formal deed has not been executed (Walsh v Lonsdale (1882); applied in Australia in Chan v Cresdon (1989) HCA). Also known as a 'Walsh v Lonsdale lease'. **Equitable mortgage:** arises from a specifically enforceable contract for mortgage (Barry v Heider). May also arise from deposit of title deeds with