1. Principles of the Torrens System
   a. Aimed to establish title by registration not registration by title *Breskvar v Wall*
   b. All unalienated Crown land is deemed to be under the operation of the Torrens System s8 TLA
   c. Principles:
      i. The mirror principle: the register reflect accurately and completely the current state of the title
      ii. The curtain principle: purchasers can rely on the register and need not investigate how the grantor acquired his or her registered title
      iii. The insurance principle: a person who suffers loss through registry error or a rule of the system should receive an indemnity or compensation

2. Conveyancing and Electronic Conveyancing
   a. Basic Conveyancing Steps:
      i. Contract of sale/Conveyancing: signed by parties and deposit paid to purchaser.
      • Probably would lodge a caveat to say that you have a legal interest in the land.
      ii. Settlement: usually 30, 60 or 90 days
      • Purchase pays balance of purchase price
      • Vendor provides certificate of title and executed transfer of land
      iii. Registration: Transfer (and discharge of mortgage and new mortgage) and certificate of title lodged for registration at Land Victoria.
      iv. Under Part IIIA of the TLA, electronic lodgement of electronic instruments is allowed.

3. Principle of indefeasibility:
   a. Introduction
      i. The principle of indefeasibility is a convenient description of the immunity of attack by adverse claim to the land or interest in respect of which is registered.
      ii. Different types of interests:
         • Registered interest
         • Unregistered paramount interest e.g. adverse possession
         • Unregistered non-paramount – equitable interests under the general law
   b. Sterility provisions s40 TLA
      i. Unless the instrument is registered under the TLA, nothing shall vary/extinguish/pass any estate or interest in land (or any encumbrance in or over land) (1)
      ii. Every instrument when registered shall be the same as if it was under seal (2)
   c. Conclusive evidence provisions s41 TLA
      i. If you have a certificate of title or crown grant this is conclusive evidence that the person named on the certificate or grant has possession of that interest in land
   d. Paramountcy/indefeasibility provision: s42(1) TLA
      i. RP Interest is held subject to: encumbrances that are recorded on the relevant folio i.e. easements
      • But is also subject to (2)
         a. Any reservations in the crown grant of the land
         b. Any adverse possession claims
         c. Any public rights of way
         d. Any easements
         e. The interest of a tenant in possession of a land
         f. Any unpaid land tax or unpaid rates
      • Limitations
         a. Except in the case of fraud
      ii. RP will hold their interest free from all other encumbrances
      • Limitations:
a. Estate or interest of a proprietor claiming the same land under a prior folio of the register (1)(a)
b. Because of a wrong description of boundaries in the folio (1)(b)

e. Notice provision 43TLA
i. Once RP you are not affected by any notice, actual or constructive of any trust or unregistered interest
ii. NB: knowledge of an unregistered interest or trust is NOT regarded as fraud

f. Protection of purchaser provision 44TLA
i. Fraudsters: shall not benefit from their actions. Any part of the register procured or made by fraud shall be void as against any person defrauded and thereby no party privy to the fraud will get any benefit 44(1) TLA
ii. Bona fide purchaser: shall not be punished for the wrongdoer of a fraudster. 44(2) TLA

4. Deferred and immediate indefeasibility:
   a. Definitions:
      i. Deferred indefeasibility: title of purchaser who registers forged instrument is defeasible, ie it can be set aside by the court at the suit of the registered owner
         Exception: if the purchaser sell the land to P2, before his title is set aside, then P2’s title is indefeasible provided it was registered in good faith
      ii. Immediate indefeasibility: confers good title on P immediately upon registering a forged instrument. Thus P’s title cannot be set aside, even though it was procured by registration of a forged instrument provided that P has acted without fraud 44(1) TLA

   b. Victoria has adopted the doctrine of immediate indefeasibility
      i. Why? The TS is not a system of registration by title but a system by which title is registered. Therefore, registering a void instrument is effective regardless of the fact that it is void Fraser v Walker

5. Priority Disputes:
   a. Situations of two competing registered interests s 34TLA
      i. Instruments are distributed based on date of lodgement: s34(1)
         • Example: A’s instrument is lodged at 2pm and B’s instrument is lodge at 2:01pm.
         • A’s instrument is given priority
      ii. What if there are two identical instruments signed by the same proprietor 34(2)
         • Registrar will register the instrument lodged by the person submitting the certificate of title
      iii. What if multiple instruments are lodged for the same land? 34(3)
         • Registrar will register instrument in order which will give effect to the intentions of all parties, as expressed in or apparent to the registrar for those instruments
      iv. Same rules apply for electronic lodgement 44E

   b. Situation on unregistered and registered instruments:
      i. Right of a registered proprietor:
         • See above to s42(1) under indefeasibility
      ii. What unregistered interests will prevail over registered Proprietor: s 42(2)
         • See above under indefeasibility provision – ‘other interests RP is affected by’
6. Scope of indefeasibility:
   a. Introduction:
      i. Just because a document is registered, it doesn’t mean IDF is attached to all parts of it.
   b. Leases:
      i. Scope: only covenants which are effectively part of the estate or interest in the land or are intimately connected (touch and concern or run with the land) with the interest attract indefeasibility [Mercantile Credits]
         • Just because a covenants is contained in a registered document does not make it indefeasible i.e. personal covenants
      ii. Factors to consider to determine if intimately connected Mercantile
         • Unjust and inconvenient:
            a. In Mercantile, the right to renew a lease attracted indefeasibility because it would be unjust and inconvenient if a subsequent mortgage registered could defeat a renewal clause in a registered lease
      iii. Examples of indefeasible covenants:
         • Option to renew Mercantile
            a. NOT option to purchase
   c. Mortgages:
      i. What is it: a charge on land, which secured performance of personal obligations, usually arising for a K of loan or guarantee e.g. home loan
      ii. Types of mortgages:
         • Traditional:
            a. Specified amount to be lend and the interest
            b. Contains acknowledgment advance received by borrowed=it
         • All moneys mortgage:
            a. No specific amount lent
            b. No specific acknowledgment receipt of advances
            c. Attempts to secure all current and future debts owed by borrowed to lender
            d. To determine the amount of a debt you must look to the loan agreement
         • Note: the personal covenant to pay may be contained in the registered mortgage or may be located in a separate loan agreement (likely to be the case for an all moneys mortgage)
      iii. Does an indefeasible registered mortgage validate an off register loan agreement which is forged? Different views, it will depend on the construction of the document and whether the off registered loan agreement is somehow incorporated and is thus indefeasible too.
         • Traditional mortgage [Tsai]
            a. If the mortgage document contains a statement of the sum lent, the production of the mortgage constitutes prima facie evidence of the existence of the debt.
         • All moneys mortgage:
            a. Loan agreement unregistered but mortgage registered
               i. Tsai: When the mortgage secures all money but doesn’t incorporate an extrinsic loan agreement, it won’t be enforceable (unless they can prove monies have been advanced)
            b. Reference to off register documents [Solak]
               i. Mortgage was indefeasible because the ‘you’ referred to in the unregistered loan document was the same you’ referred to in the mortgage agreement
ii. NB: criticised heavily because it means you need to look outside of the register to determine the real security interest in the land.

Solak continued

iv. Does the IDF of the covenant to pay in a forged mortgage make the landowner personally liable for the debt, entitling the mortgagee to recover from the landowner’s other assets if a sale of the property does not realise enough money to pay the mortgage debt.

- Ergie – NSW: not liable for additional moneys secured under the mortgage, where the mortgaged land is insufficient.

- CF Pyramid (obiter) – VIC: The indefeasibility of a mortgage extended to the mortgagor’s personal covenant to pay. However, in this case there was no suggestion that the property could not cover the debt.

- English: A personal covenant in a registered forged mortgage will not cover the debt where it exceeds the value of the property. If both parties fail to sign the loan agreement (and they are expressed jointly in the document) it never even came into existence. Registration of a mortgage does not necessarily ensure the validity of every term of the mortgage.

a. If two parties under the agreement as expressed jointly and separately, and the mortgage refers to this distinction, the forger can be liable.

v. What remedies can we have against the forger? English

- Equitable mortgage can be made against the forger via estoppel.

- The courts imply an agreement between the forger and mortgagee for the forger to mortgage his/her interest as security for the loan AND an estoppel arises from the representation made by the forger, relied on by the mortgagee, that the spouse’s signature is genuine.

- NB: the claim is NOT enforceable against the land as there is not legal mortgage.