**Rights to Property**

-ad coelum/ad inferos (only to the height and depth necessary for reasonable use and enjoyment of the surface –Kelson, Berstein)  
-right to exclude  
-right to exclusive occupation  
-right of access

**Nuisance/trespass**  
-something happens on property we don’t own that affects the use and enjoyment of our property  
-must prove damage  
-trespass is strict liability, don’t need to prove damage  
-Kelson: equity steps in where the common law remedy is insufficient/unfair

**Airspace**  
-volumetric parcels, can be subdivided into further parcels  
-owners can apply to have a separate title to air space plan  
-s.140: grant of an air space parcel does not transfer an easement

**Strata**  
-strata corporation becomes distinct legal entity upon registration of strata plan  
-air space is registered, subdivided, individual units have individual titles  
-one vote per unit, regardless of number of occupants  
-common costs are proportional to square footage ownede  
-s.66 of Strata property act: unit owner owns common assets and common property of the strata corporation in a share relative to the unit’s square footage’s of the building’s total.  
-limited common ownership means exclusive use of that common property  
-implied easements – strata council has access to your unit to make repairs  
-Strata corporation levies charges on unit holders for repairs, if strata council incurs expenses they can’t pay. Monthly fees take care of regular expenses, special assessments/extra fees for bigger stuff  
-major decisions must be passed by a ¾ vote  
-strata corporation must keep common property in reasonable shape, though may make user responsible for limited common property. If a user abuses common property, complaints can be filed with the strata council and fines put on the user by bylaw

**Fixture/Chattel**  
-“whatever is affixed to the soil, belongs to the soil” – if you bring chattels onto the property and affix them, ownership of chattel passes to ownership of the land.  
-if the article is just resting on its own weight, it’s presumed to be a chattel unless intention is for it to be part of the land. Articiles affixed even slightly to the land are considered part of the land unless circumstances show person attached them intended to be owned by chattel owner.  
-Commercial property owners, if still under lease, can convert fixtures back to chattels as long as they repair damage to the building from removal  
-Re Davis (Stack/Eaton): determine the degree of affixation and the object/purpose of affixing  
-Le Salle: object/purpose consideration trumped the degree of affixation consideration where object/purpose was fixture but degree of affixation was slight  
-CMIC: in determining purpose, figure out what the subjective intent was then look objectively at the facts/circumstances, and see if they jive.

**Riparian Rights**  
-current riparian rights: access to and from the water, protection of property from erosion, acquisition from accretion, use of water of undiminished flow and quality for “domestic purposes”, right of drainage  
-Unrecorded water is up for grabs, but for domestic use only  
-Domestic purpose: household purposes, sanitation, fire prevention, feeding livestock, irrigation of garden not exceeding 1012 square metres.  
-water licenses do not run with the land  
-Property boundary: high watermark – seabed is owned by the Crown  
-licensed use>riparian for domestic>unlicensed use  
-riparian rights are limited to waterflow in a natural watercourse, not man-made  
-Province expropriated rights to groundwater and percolating water  
-Johnson: an exceeded license is treated as unrecorded use. Domestic use unlicensed trumps commercial use that is unlicensed.  
-Schillinger: cannot file any complaints at all if you are an unlicensed commercial user

**Accretion/Erosion**  
-fixed boundary line doesn’t get this, must be moving boundary line  
-once your property is underwater, belongs to the crown  
-must take place by gradual and imperceptible means (not tides, not a calamity). No compensation for erosion. (Southern Theosophy Society – example of how property increases and ecreases as lake disappears in drought)  
-causes: fluvial action, wind, precipitation/evaporation, man-made operations (other than deliberate actions of the claimant)

**Support**  
-goes back to ad inferos  
-vertical support: if someone digs under your surface, goes over the property line, that’s trespass and leads to strict liability, no proof of fault is needed  
-Lateral support: strict liability if the subsidence is on bare, unimproved land.  
-Lateral support: if the land is improved, you must prove negligence, otherwise can only claim nuisance  
-Gillies, Rytter: went over the line and removed vertical support (also negligent)  
-no right to support by water

**Easements**  
-Restrictive: allows person to restrict what someone else can do on their land  
-Positive: allows someone to enter their property  
-runs with the land  
-Easement in gross is not tied to property, like a utility easement or railway  
-Appurtement easement: servient tenement cannot build on easement or block it  
-Property Law Act s.35: court has power to remove or modify easements that have become an impediment to the property owners and outlived their usefulness

**Life estate**  
-possessoin for life, created out of a fee simple owner. When they die, interest terminates and right of reversion: it goes back to fee simple owner or the specified remainder. Can’t dispose in will  
-if owner doesn’t want right of reversion, specify a remainder interest  
-life estate can be sold, leads to estate pur autre vie  
-remainderman can also sell their interest – it’s a vested interest upon death.  
-Conditional Interests are not vested interest “To A for life and then to C if he graduates”. Cnditional interests cannot be sold, as they’re just expetenancy.

**Crown Grant**  
-all ownership goes to the Crown, people are just given interests in land  
-if I die with no heirs or property is abandoned, goes back to Crown

**Trusts**  
-settlor disposes of property to trustee who holds it for benefit of beneficiary. Trustee holds legal title while beneficiary holds equitable interest. Settlor/testator is gone  
-can be registered on the title as “X in trust,” though name of beneficiary not listed  
-trustee has fiduciary duties, must put beneficiary ahead of themselves and administrate in their interest  
-if trustee goes bankrupt, creditors cannot take the property – it’ll go to receiver to administrate for the beneficiary. However, if beneficiary is in dept, creditor can go after.  
-beneficiary can order trustee to account, show expenses, put back misappropriated money  
-Cestui que trust: trustee can sell/transfer title to third party. Test of good conscience.   
-if third party is a volunteer, they are bound by trust. Otherwise, it depends on their knowledge at the time of transfer (doctrine of notice). If no notice, they are bona fide and take free of trust.  
-notice is reasonable person test. If reasonable person would know or if third party has done the investigation/inquiry a reasonable person would do, obligation of inquiry in sketchy deal.  
-Equity trumps nemo dat: even though trustee didn’t have beneficial interest to sell, if purchaser is bona fide, they get the whole thing and beneficiary’s interest is gone.  
-where equities are equal the law prevails: innocent purchaser and beneficiary are both innocent parties, but purchaser has the legal title.  
-equities must be equal though – if circumstances were suspicious or purchaser didn’t take a simple additional step, it would favour beneficiary

**Limits to Alienation**  
-Wife Protection Act: declaring a homestead – can’t sell without spouse’s consent  
-Wills Variation Act: if start proceeding within 6 months, a disinherited spouse or child can make a claim on estate. Court can overrule the testator’s will and redistribute based on moral claim.  
-Family relations act (marital breakdown)

**Torrens principles**  
-Mirror Principle: register accurate reflects the title, all charges are on title. Exception is when you know about something not on the register, this is notice of unregistered interest  
-Curtain Principle: all necessary info is on the certificate of title, don’t have to look behind it for unregisterd instruments you’re not aware of  
-Insurance Principle: province stands behind the system

**Wills**  
-legal incapacity: will is void unless made before the person was deemed incapable. Testator must be 19, witnesses must be 14. If no capacity, appoint a committee to handle decisions/transactions  
-testator and two witnesses, sign at the end of the will, all in presence of each other  
-can be attacked by Wills Variation Act (inter vivos only through mental capacity)  
-will does not speak until death. Only catches what is in the testator’s estate at that time.  
-Remains revocable throughout testator’s lifetime and beneficiaries get no interest from it until after death. Will see can be revoked or changed by codicil.  
-it’s the most recent will that takes effect.  
Donatio Mortis Causa: gift in contemplation of death, condition on the donor’s death as contemplated. Oral statement on deathbed that supersedes will if it conflicts. Requires intention and something of sufficient delivery to donee.  
-If person gets better, gift is revoked and property goes back to owner  
-must be in paper form  
-Residuary clause: everything not listed as a specific gift goes to named person.  
-witnesses can’t receive gifts from will (these are struck out and go under residuary clause.  
-Executor acquires title and assets and holds it for beneficiaries named in will. Has one year, the Executor’s Year, to distribute net assets once debts/expenses are settled.

**Intestacy**  
-no will or no residuary clause, passes under state administration rules  
-court appoints a state administrator who pays debts/expenses and distributes net assets

**Crown Grant’s Exceptions and Reservations**  
Reservations: rights Crown retains, but less than title  
-run with the land  
-Crown right of resumption: can take back from purchaser of the grant up to 1/20th of the land for public works without compensation. Can only take back vacant, unimproved land.  
-Exceptions: subsurface minerals, geothermal resources are owned by the Crown  
-Reservations: agricultural and timber rights of surface owner – unless the Crown exercises it, the stuff belongs to the surface owner, who can sell it or treat it like their own

**Inter Vivos Transfer**  
-agreement of purchase/sale is the first step, with a deposit paid and a date for completion specified. Need not have the full contract laid out, just an indication that there is a contract and a reasonable. Will contain completion date, costs, possession date, adjustments. indication of the subject matter.  
-next is completion – transfer documents are signed and purchase money goes to Vendor. Before deal goes through, vendor must have clear title.  
-then registration. So execution (completion), then application, then registration.  
-all must be in writing and signed by the party charged  
-no contract for gifts, just go right to the transfer documents, Form A.  
-as of 12:01 of the completion date, insurance is purchaser’s responsibility. NOT possession date.  
-even if there isn’t an interim agreement/contract in writing, vendor may nonetheless be estopped if payment has been made or acquiescence  
-nothing in writing for leases of less than 3 years. For longer leases, landlord is supposed to give registrable form of lease unless contrary term in lease says it’s not registrable (usually the case).  
-even if not yet registered, transfer is effective against the person who signed it.  
-interim agreement/contract is a private document, not registrable, only transfer documents are.

**Requirements of a valid inter vivos gift**  
-intention to donate (immediate and not on death)  
-sufficient act of delivery to the donee  
-acceptance by the donee  
-for gifts of land, donor must provide a registrable form of transfer (completed Form A)  
-donee applies and receives registration (completes the gift.  
-donor cannot retain a right of revocation.  
-if donor passes away and steps are not completed, goes back to the estate unless equity looks at intent of donor and salvages it if helps the donor. Does not care about recipient’s interests.  
-Ross: for incomplete gifts, court will look at the donor’s subjective state of mind, looks at intent over the form.  
-Zwicker: cannot give a gift that does not vest an interest until death, still retaining ownership and power over it while alive. Must be immediate. Conditional gifts are possible, but not if that condition is death.  
-MacLeod: for equity to complete the gift, the donor must have done as much as they possibly could to complete the gift up to the point of death.  
-when intention can’t be determined, court uses rebuttable presumptions. Presumption of resulting trust (where there’s no intention or relationship established, the donee becomes a bare trustee with the beneficial interest bouncing back to the estate of the donor.) Presumption of advancement (from parent to dependent child (no set age) or between spouses).

**Proprietary Estoppel** (estoppels by encouragement or estoppels of standing by (acquiescence))  
5 Probanda of Willmot v. Barber  
-Plaintiff must have made a mistake as to his legal rights  
-Plaintiff must have done some act of reliance  
-Defendant must know of the existence of his own right tht is inconsistent with that claimed by the plaintiff.  
-defendant must know of plaintiff’s mistaken belief  
-defendant must have encouraged it

**3 Probanda of Zelmers**  
-must be a belief by the plaintiff in the existence of a right and that belief is created or encouraged by words or actions of the defendant  
-look at the reasonable expectations of the plaintiff. Was it reasonable?  
-determine the remedy: the minimum equity necessary to do justice to the plaintiff

**Aboriginal title**

-Delga: requirements to establish: prior occupation before 1846, continuity (though it can be interrupted), and exclusivity (at least have had ability to do so.   
-Delga: abo title is not marketable, not individual ownership but communal, no individual parcels, held communally by band as stewards for descendants  
-Delga: abo title is inalienable, cannot be transferred, only surrendered to federal Crown.  
-Delga: it’s not absolute, fed and prov can infringe, but only if justified and bands must be consulted and accommodated as far as possible  
-Skeechestn: sui generis – unique and doesn’t fit common law model of ownership. Therefore, abo title cannot be registered as a claim against land. So it can’t be the basis of a caveat, which requires the person filing to be claiming a registrable interest. It cannot be a charge or encumbrance because it precedes the fee simple. Bands cannot file claims through torrens system.   
-Skeetchestn: ancestors occupied prior to sovereignty in 1846 and show continuity to present. The band’s occupation must also be exclusive.  
-Prov cannot extinguish or reserve it.  
-Delga – shouldn’t be bound by traditional rules of evidence.  
-Mitchell: evidencemust be useful, reasonably reliable, and may be excluded at judicial discretion, use general principles of common sense in weighing the evidence and give equal and due treatment to it and the govn’ts evidence  
-Delga: a proven aboriginal title precedes sovereignty, and hence Crown ownership, and runs with the land. It is not defeated by bona fide or equitable claims. Nemo dat: Crown cannot give better title than it had.

**Duty to Consult/Infringements**  
-Delga: if gov wishes to develop the land with abo claim of title (doesn’t have to be proven), they have duty to consult and accomdoate their concerns as far as possible. Negotiation over litigation.  
-band doesn’t have veto, govn’t can override if demands are impractical  
-accommodation can mean payment of fair compensation.  
-duty to consult does not extend to private developers  
-Haida Nation: arises once you know about the claim or have reasonable basis to suspect one will arise  
-Haida: consultation must be “meaningful,” meaningfulness releative to the strength of claim and extent of infringement.  
-no duty to reach agreement  
-cannot delegate duty to negotiate to third parties.  
-Rio Tinto Alcan: consultation only occurs where govn’t is approving a future development or a change that has adverse effect, must be additional adverse effects, not just more of the same or continuations of prior infringements; past wrongs do not suffice

**Aboriginal Rights**-Mitchell: must establish ancestral practice/tradition/custom that existed before 1846  
-practice must be integral, unique, or distinctive to the culture, a central attribute of their cultural identity  
-must be reasonable continuity  
-Marshall/Bernard: show that the pre-sovereignty practice translates into a modern legal right

**Adverse Possessions (squatters)**-cannot acquire title to Crown land by possession, nor can you acquire title by possession against registered owner. The one window is after Crown grants land, but before the grantee has registered. Race to register if you’ve lived on the land for an undetermined period of time (common law said 20 yrs)

**Charges**  
-registration just gives a rebuttable presumption of validity  
-ranked in chronological order from the time of their respective applications to register

**Registration**  
-must be marketable title, not so defective that a purchaser could refuse it  
-boundaries are not guaranteed

**Caveat**  
-does not create an interest, just a warning to the world  
-claim of a registrable interest in property  
-registrar cannot register any other instrument affecting the land described  
-caveat lasts 60 days, or 21 days if the fee simple holder demands the other party to start litigation. Not renewable. If claim is dismissed, caveat is discharged. Caveator can withdraw it or Caveatee can test it.  
-chronological order of application register the caveat, not date of the wrongoing. Relates back to this. So later interests know they are bound by the ultimate outcome of the caveat/litigation  
-register a CPL once you commence or a party to a proceeding. Title is frozen again, notice is given tot he owner. The owner may dispute the PCL, which must be for a registrable interest in land.  
-CPL has no time limit. Lasts as long as the proceeding  
-Rudland: title is frozen, but applications of interests/transfers made before the registration of the caveat/CPL nonetheless go through. Basic equity means the person filing this had no notice of the CPL/caveat. So things can be registered in the 6 day gap between the application of a caveat/CPL and its registration. This does not apply if the person with the prior application is a party to the proceeding, in which case they have notice.

**Money Judgments**  
-way for unsecured creditors to establish link between debt and the property  
-debtor doesn’t pay, so get a judgment from the court. If still don’t pay, must take further steps to enforce it.  
-registration on the title is just first step towards execution, doesn’t create security interest  
-turn file over to debt collectors and if thi still doesn’t work, go to court to get execution  
-Execution = taking proceedings against assets to collect money  
-subject to prior creditors coming forward – proceeds do not go to debtor  
-money judgment lasts 10 yrs and is valid on the title for 2 years, can be renewed in 2 yr periods. While judgment is on the title, interest is accruing and debtor can apply for court order of sale.  
-compensatoin will be owed if it’s a wrongful filing.  
-money judgments rank ahead of later mortgages and transfers but are subject to prior registered OR unregistered charges/mortgages/transfers  
-if someone buys a property with judgment on it, they have to pay it off if theyw ant clear title.

**Execution Purchases**  
-purchaser does not get indefeasibility  
-Creditor has no greater interest than what the judgment debtor owns, which means the purchaser will step into the shoes of the debtor, subject to unregistered interests, and won’t be bona fide  
-if judgment debtor, unknown to creditor, sold the property, the sale will go through and the money will go to the debtor, creditor will get nothing. However, the purchaser will not have clear title and will have to pay the judgment.  
-for joint tenancy, right of survivorship goes above money judgment on title and judgment does not pass to surviving joint tenant. However if the other joint tenant dies first, whole property is for benefit of creditor. For tenancy in common, creditor can only get an order for the sale of that person’s 1/3 or whatever interest, again, creditor only can sell what the debtor has.  
-Martin Commercial Fueling: regarding prior interests – a registered judgment that is registered between agreement and completion does not bind the purchaser (too late)

**Assurance Fund**  
-only compensates for profits, not make profits  
-mortgagees get no protection (Gill), only covers losing the fee simple, not charges (Gill)  
-to recover, have to lost solely because of your reliance on the register. If you also relied on the word of a fraudster, for instance, you won’t recover (Gill)  
-remedy of last resort: must get as much as you can from the wrongdoer or law society first  
-only purchasers are covered, not volunteers or fraudsters, only innocent parties  
-must have lost your titole because of the Torrens system, due to concept of indefeasibility of registered ownership. If you could not have recovered under the old common law system either, you can’t get anything from assurance fund, even if your reason for not succeeding under the old system would be different (McCaig). In McCaig, couldn’t get title back because Jabim is indefeasible, in common law, couldn’t get it back because Jabim is bona fide.  
-only 3 years after discovery of fraud to bring claim on fund.  
-another way of claiming on fund beyond indefeasibility – error by the land registry staff. However, if the registrar can point to anyone else having made a mistake, they are off the hook. They must be the ONLY cause of the loss (Royal Bank, who bypassed and took shortcut of equitable mortgage).  
-don’t expect to recover if you didn’t pay into it (Royal Bank)

**Fraud**  
-where there are two innocent victims of fraud, the holder of the legal title prevails (McCaig)  
-fraud by lawyer or agent is imputed to the principal. Must have been acting in the scope of authority of the principal. (McCaig, Assets Company)  
-title may be defeasible if fraudster forged innocent owner’s signature on transfer documents an got themselves registered. Statute doesn’t protect fraudsters.   
- For title to be defeasible, the fraud must be by the registered owner, the guy who got himself on the title or his agent. Indefeasible title is conferred subject to right or person deprived of land to show fraud that registered owner has participated in to any degree.  
-McCaig, Gill: if the fraudster passes the title to the innocent purchaser, innocent purchaser is indefeasible and title cannot be attacked for fraud. No deferred indefeasibility from Gibbs.

**Fraud to Unregistered Interests**

-two kinds of fraud: forgery/impersonation of registered owner to get a mortgage on the property or transfer it, and deliberately defeating an unregistered interest  
-Assets Company/Mere Roihi/Vancouver City Savings: must be an element of dishonest, actual fraud. It’s not just behaving negligently or carelessly. Must be deliberate carrying out of purpose.  
-Assets Company: fraud has to start beforethe purchaser buys property and registers.  
-Critical date: the signing of the agreement of purchase and sale – knowledge of an interest before this point can lead to fraud. Finding out afterwards and going through to completion is not fraud.  
-fraud is the one area where doctrine of notice still applies – it is fraud to buy property knowing of an interest and then trying to hide behind indeafesibility.   
-Vancouver City Savings says the crucial time is notice before closing, but after signing of interim agreement. This goes aginst prior cases.  
-Kearns: must be actual knowledge of the unregistered interest with malice animus, real dishonesty and fraudulent intent respecting the unregistered interest. Vancity says being put on inquiry by suspicious circumstances is enough, but Kearns is the higher court  
-actual fraud = full knowledge before agreeing to purchase plus either subsequent deception or deliberately carrying out the purchase. Full knowledge, not just suspicion of unregistered interest  
-if you have good reason for thinking that the unregistered interest is defective, you are entitled to disregard it, do not have dishonest intent (Graveling, Re Saville Row)

**Exceptions to Indefeasibility:** zoning restrictions, public utilities easements, pre-1973 Agricultural Land Reserves, exceptions and reservations to the Crown grant, Crown right of resumption, public easements/right of way, crown right of expropriation (like resumption, but govn’t pays compensation),

**Wrong Boundaries**  
-Torrens system does not guarantee boundaries, indefeasible title is subject to some showing error (Winrob)  
-Winrob: conveyance/lawyer is not responsible for checking boundaries, that’s surveyor’s job

**Short-Term Leases**  
-less than three years with tenant in actual occupation, visible to the purchaser, binds the purchaser despite indefeasibility. All options and renewals are included in determining length  
-even if purchaser doesn’t inspect, presumed to have knowledge  
-binding interest on the purchaser to honour the lease  
-longer leases: if the purchaser had notice of it, it’s fraud. Must be actual knowledge.

**Taxes**  
-taxes in arrears, even if not on register, attach to the title and pass to the person who acquires title. For prov and fed tax, they’re cut off if you’re a bona fide purchaser, but not for volunteers. Property taxes in arrears, or local improvement charges, are binding on the purchaser though.

**Liens**  
-intervening charge that can take precedence over purchaser’s registration and retroactively rank ahead.   
-filed within 45 days of completion of the work  
-binding on the purchaser, who would only have cause of action against the vendor  
-Carr: builder’s lean is exception to indefeasibility, new owner has to pay to get clear title, lien can be filed after the person becomes register. Carr has one year to start lien action in BCSC. Can get a lien on property despite getting a personal judgment against the prior owner (who’s responsible) as well, so he has two people he can collect from  
-new owner’s liability is limited to 10% if acting in good faith, but if they were in bad faith (knew contractor was not paid), liable for full cost

**In Personam Claims**-registered owner is indefeasible and protected against prior transactions, but they can bind themselves by personal obligations regarding the property. Bound by their own conduct (McRae, L&C Lumber). This applies as well for assignees (L&C Lumber) – owner is bound to assignee if they promised assignor  
-volunteers do not get indefeasibility  
-may be rendered unenforceable due to policy reasons (Top Line) or if it’s an oral understanding related to property and had to be in writing. (Sorenson, easement had to be in writing)

**Agricultural Land Commissions Act**  
-reserved for farm use/occupation  
-not on title pre-1973, after which it started being on the title. However, if land has not been transferred since 1973, it won’t be  
-not absolute – can apply to the Agricultural Land Commission for an exclusion, but approval will only be given to developments that still keep the land open, like golf courses.

**Indefeasibility**  
-Creelman: purchase is always protected regardless of how the vendor got the title, so long as vendor has good title and is registered owner. Once someone is on the register, like a vendor, can’t look behind the title to see if there are prior defects.

**Encroachment**  
-if encroachment is by building or fence, SC has discretion to do whatever necessary to do justice between parties  
-options: declare an easement with compensation, move the property line to accommodate, or require removal of the encroachment.

**Registering charges**  
-gives you a rebuttable presumption of validity, not indefeasibility (Gill)  
-immediate indefeasibility does not affect the mortgagee

**Right of Redemption**  
-mortgagor, in equity, has second opportunity to redeem the property in discretion of court, as long as a third party’s interest has not intervened as bona fide. If mortgagor can make their claim known prior to any purchaser coming on the scene, mortgagee must listen (Pacific Savings)

**Registration of Instruments**  
-Dukart: the title does not show registration of interests, but rather the instruments containing those interests. Words on title may be misleading (“on trust” could indicate an easement if there’s an easement in the trust documents.)

**Mortgages/Mortgage Fraud**  
-Credit Foncier: Mortgages are only security for the amount owing/advanced. If someone buys a mortgage, but there was nothing advanced under it, it’s worthless. Can’t rely on face amount of mortgage in determining its worth.  
-subordination clauses can change ranking, otherwise priority is according to date and time of application to registration of charges.  
-if mortgages default, they wipe out any mortgages below them, redeemed in order of precedence  
-Foreclose down: earliest mortgage is paid first, subsequent mortgage out of whatever’s left  
-Redeem up: you pay off the most recent one first

**Novation**  
-one party to a contract bows out and, with consent of the other party, assigns his obligations to a third party. If the third party doesn’t perform, no rights against the discharged party. Basically, third party substitutes and takes the place of the discharged party.  
-forged discharge is effective in discharging a mortgagee and advancing another (Canadian Commercial Bank)

**Assignment**  
-a person transfers a contractual obligation to someone else, or sells it to someone else. Assignor remains liable on the contract, even though obligation has been transferred. Unlike novation, an assigned mortgage that was obtained by forgery is void (Credit foncier)

**Unregistered interests**  
-unenforceable against innocent third persons, defeated by sale to bona fide purchasers. Notice meaning actual knowledge, not investigate (Sorenson).  
-exception: “as against the person making it”

**Fraudulent Conveyance**  
-conveyance by person who anticipates a judgment being registered against their property  
-doesn’t have to have specific creditor in mind – business going under or financial problems ahead is enough.   
-attempt to defeat future creditors, even those that aren’t known at the time.  
-purchaser being complicit is an indicator, and property must be sold for less than market value.

**Unregistered Purchasers**  
-Breskvar: higher equitable interest – ranks after legal interests but before other equitable interests. Where equitable interests conflict, the person closest to bona fide purchaser will prevail.

**Ranking Equitable Interests**  
-where the equities are equal, the first in time prevails. Chronological order.   
-Breskvar: first assess relative equitable positions of the two parties and see if claims are equally valid – was a person partly responsible for the screw-up? Otherwise, first in time.  
-Breskvar: the longer the time between a fraud and the filing of a caveat, the weaker the court will find their equitable position.  
-where the bona fide purchaser is the holder of legal title, he should prevail – equity follows the law.  
-Canadian Permanent Mortgage: these principles apply to mortgagees, treated as equivalent to purchasers in this respect.

**Words of Limitation**  
-modern presumption is in favour of the fee simple. Life estate must be stated explicitly  
-Reservations “during, while, until” that if they don’t maintain the reservation, goes back to Crown  
-Conditions: fee simple will end if something happens  
-Tottrup v. Ottewell: “and” is conjunctive, “or” is disjunctive. “And” means if intended recipient dies, it lapses, while “or” is disjunctive” and indicates a possible substitution. Use of unnecessary words led to conclusion of ambiguous phrase lacking either word to be conjunctive

**Lapse**  
-a gift has nothing to attach to, like if I leave a house in my will, but sell it before I die, or if the recipient pre-deceases the testator.  
-lapsed gifts go into residuary  
-if residuary lapses (pre-decease), it goes intestacy  
-substitutional clauses can cover for lapse

**Repugnancy**  
-legal impossibility of testator trying to do something that can’t be done  
-Absolute and remainder gifts conundrum: giving someone a fee simple, then trying to take away one of the core attributes of the fee simple, like in this case, the ability to dispose of it on death.  
-Remedies: a life estate and a remainder (if the second-named is preferred), a fee simple and nothing (if second is preferred), or a life estate with power to encroach and a remainder. (re Walker)  
-Salim: can’t give someone a fee simple and then not let them keep proceeds of a sale.  
-Re Walker: third option is better done in trust situations,w here there’s a trustee to scrutinize the attempts to sell the property based on whether they really need the money.  
-rules of construction were that the first-named is preferred in inter vivos gifts and the last named in will, but these have been abandoned  
-Re Shamas: instead, testator’s armchair – look at situation of testator when he or she made the will, look at the will in light of circumstances in which it was made. Must still follow the wording of the will though – can’t rewrite it.

**Life Estate Rights**  
-entitled to income earned off the property, but no access to the capital (can’t sell it)  
-right to possession and personal occupation  
-can transfer the life estate to make estate pur autre vie.  
-on death, it vanishes. Right of reversion, unless there’s a remainder interest

**Intestacy Presumptions**  
-if a spouse dies intestate, property will pass to surviving spouse and children of the deceased, shared equally. Spouse will get all household furnishings and a life estate in the matrimonial home. Being a spouse only requires 2 yrs in a marriage-like relationship.

**Law of Waste**  
-those entitled to reversion or remainder have right to receive property in substantially the same condition that the life tenant received it in.  
-Permissive Waste: normal wear and tear. Acts of God. Life tenant not responsible  
-Voluntary waste: waste that results from the activity of the life tenant. Responsible. Not responsible for actions of third parties  
-Ameliorating Waste: waste that changes property for the better. Not liable.  
-can be exempt from this waste if expressly made “unimpeachable for waste.” No legal remedy  
-Vane: Still liable to equitable waste (unless this is also expressly provided for): can’t trash the place, can be subject to mandatory injunction to repair the place and prohibitory to stop trashing it.   
-New Westminster v. Kennedy: stopped from using legal power in a manner that is unconscionable or destructive in creating waste.

**Life Tenant’s Fiduciary duties**  
-pay for minor upkeep and ordinary repairs, property taxes, and mortgage interest payments.  
-pay the carrying charges.  
-Remainder or reversionary interest pays the mortgage principal amount  
-Life tenant pays occupier’s insurance,, but not fire insurance of insurance for protection of structures on property (that’s for remainder).  
-No obligation to pay for major repairs or upgrades or insurance premiums.  
-cannot benefit from own wrongoing – these are fiduciary obligations (Mayo)

**Tenancy in Common**  
-two or more people have equal and full rights of possession and occupation of the entire property. Unity of possession.  
-treated by court as single, separate owners  
-can give or sell their interest and can pass it under their will  
-presumption is for tenancy in common  
-commercial partnerships are presumed to be tenancy in common  
-Robb v Robb: this presumption is only for land transfers of the fee simple. Anything other than a fee simple (trusts, leaseholds) are presumed to be joint tenancy. This can be overcome if equity deems this inadequate, but if it’s a wife/husband, equity will let it go.  
-if pay the common purchase price in unequal amounts, their proportionate interests reflect this, as well as unequal proceeds of sale.  
-identical rights of possession regardless of proportion of ownership.  
-one TiC cannot exclude the other without compensation (pay rent)  
-Carrying costs are borne in proportion to their shares

**Partition**  
-separate parcels , partition between their proportions, this ends the TiC and unity pof possession as each becomes sole owner of their share.   
-if TiCs won’t agree to this, can get a court order for partition or for sale.   
-the sole remedy available for recalcitrant co-tenants – upon sale of the property, court will adjust the shares in the proceeds to reflect unpaid expenses and disparities in revenues received.

**Joint Tenancy**  
-right of survivorship, interest does not pass under will unless it is last surviving joint tenant.  
-Need unity of possession, but also unity of interest, unity of title, and unity of time.  
-must explicitly say “as joint tenants.”  
-shares must be equal  
-Severance ends it: sell joint tenancy to a third party, and that share becomes a tenancy in common while the remaning joint tenants remain joint. All will still have equal shares. Property Law Act makes it so that you can also sell property to yourself, so sever by selling your joint tenancy to yourself, even in secret.