**Property CAN**

Law 231

Fall 2016

General Property Law Notes 1

Airspace 4

Strata Property 5

Fixtures & Chattels 6

Water Rights 8

Accretion and Erosion 12

Support 13

Equity 14

Freedom of Alienation 15

Crown Grant 16

Sale of Land 17

Inter Vivos Trusts / Gifts (between living people) 18

Incomplete Gifts 19

Testate (with a will) 20

Intestate Disposition 20

Proprietary Estoppel 21

Remedies 23

The Torrens System 24

Registrable Charges 27

Fee Simple 28

General Property Law Notes

**Property**

* Ordinary meaning - ownership of things
* Legal meaning - rights in things
* Rights continue indefinitely “in perpetuity”
* LAND ownership - Goes up in the air, down under the surface
* EASEMENT – access to your property by way of another person’s property

**Types of property**

* Real property – tangible and intangible
  + Land, real estate, immovables
  + Things attached to land (fixtures, buildings, structures)
  + Rights to air, surface, and minerals exist
* Personal property
  + Chattels - movable, not permanently fixed, resting on the floor
  + **Rules governing real property generally apply to personal property**
  + Intangible – goodwill, trademarks, cash, patents, software, intellectual property
* Leaseholds – element of contract, “a chattle real” straddling both personal prop and real prop
* *Interpretation Act* BC s. 29 “land” includes any interest in land, including any right, title or estate in it of any tenure, with all buildings and houses unless there are words to exclude buildings and houses, or to restrict the meaning

**Bundle of Rights of Property Owners**:

* *Possession* – owned by whomever holds title
* *Control* – controls use of property
* *Exclusion* – others can be excluded
* *Enjoyment* – use the property in any legal manner
* *Disposition* – can sell, rent, or transfer ownership

**Property Law**

* Regulates ownership and use of property
* Sources of law:
  + common law – legal rights and remedies, damages in compensation
  + equity – principle of fairness in law, damages in prohibitory or mandatory injunction, specific performance
* **Principle: If there is a conflict between common law and equity, equitable approach prevails.**

**Philosophical views:**

* **Legal positivism** – property rights created by govt (legislature and court). Laws should only be enforceable.
* **Natural law theory** – property rights arise in nature as a matter of fundamental justice. We have certain fundamental rights as humans, so we naturally get the rights of property ownership. Laws could be unenforceable if immoral or harming man. Dignity, constitutional rights,
* **Utilitarianism** – property rights serve a useful societal purpose. Jeremy Bentham “The greatest good for the greatest number”. Laws can be unenforceable if they obstruct social development or not in public interest.

Torrens (transfer) system

**Dispositions**

* **Transfer of property interest either through** 
  + transaction (gift or sale) OR
  + on death (will, intestacy - estate without will, joint tenancy by right of survivorship
* **Ownership of property with other**
  + **Joint tenants** – each shares ownership of the whole property (ie spouses)
    - On death one person’s share passes to the other joint tenants
    - Cannot leave to another party by will or estate
  + **Tenants in common** – each owns a defined portion of the whole
    - On death, their share passes to whoever their will states, or on the rules of intestate succession

**Use of Land**

* Ownership of land conveys right to use it
* Limits on use – preventing interference with others use of their property
  + **Common law** - Torts of nuisance etc for interfering with quiet enjoyment of property. See Rylands v Fletcher 1868 LR HL 330
  + **Private arrangements** (contracts)– personal rights - only binding between two people in the contract – have no effect on 3rd parties – would not be binding on a purchaser of a property UNLESS it is registered on title as a **legal easement** (permission to use another’s property ie beach path or driveway) or **restrictive covenant** (agreement to restrict the use of your property)
  + **Legislation** – federal and provincial statutory restraints on use of land, municipal zoning laws, *Agricultural Land Commission Act SBC 2002 c 36* designates land as “agricultural land reserve”, cannot be used for other purposes.

**Principles of Land Law**

* **Tenure** – **Crown is absolute owner of land**
  + System of how land was held (owned, parceled, given out by King) – related to feudalism – main social bond is between Lord and man – Lord gives protection, man gives reverence and service
  + Crown takes ownership – tenure owner has an interest in land *for a time*
  + Theoretical basis of land law today
  + *Tenure Abolition Act*, 1660, replaced tenure with taxation
* **Corporeal Interests – possession of land**
  + *“The land itself is one thing, and the estate in the land is another thing, for an estate in the land is a time in the land, or land for a time”* – *Walsingham’s Case 1579* – you get to hold land, for a time, but the Crown is the absolute owner of land.
  + **Fee Simple Ownership (freehold)** - Land is owned until the end of time, can be passed from one to another through estate, sale, etc. If person did not dispose of estate by will, it would revert to ownership of Crown.
    - **Indefeasibility** – you don’t have to worry about the defects of the previous title holder, you get a clean new title when you are the newly registered owner
  + **Life estate (freehold)** – time in the land for the lifetime of the holder of the estate, comes to an end at death.
  + **Estate pur ature vie (freehold)** – variation of life estate – time in the land for the length of the life of another person.
  + **Leasehold** **estates** – fixed term of possession of property
  + **Fee tail** – abolished
* **Incorporeal** **interests** – easement or restrictive covenant  
  - a temporary right to use, NOT the estate or right of possession of property (corporeal)

**Legal and Equitable Interests** –

* **Historical origins of property law:**
* Two separate parallel courts, merged into one Superior court in 1873 (England) 1879 (BC)
* *Kelsen* looks at the new combination of two courts in one – looked at whether legal or equitable remedy – result equitable not damages (injunction removal of sign)
* ***If there is a conflict between common law and equity, equitable approach prevails*.**
  + **Common law courts** – Royal Courts of Justice 12th-13th centuries
    - legal rights and remedies - damages
  + **Equity courts** – Court of Chancery “a court of conscience” 14th century
    - Issues that people were unhappy with legal remedies of common law were referred to this court by king for consideration of equitable remedies
    - Lord Chancellor would resolve these issues using equity to correct defects of common law
    - To mitigate harsh and inflexible rules of law
    - Created new and improved remedies for property law - can include injunction and specific performance
    - Equitable damages under 1858 *Lord Carins’ Act* s 2
      * Equity court can award damages AND/OR injunction or specific performance issues “and such damages may be assessed in such Manner as the Court shall direct”
      * *Lord Cairns Act* is part of BC’s *Law and Equity Act*
      * Prohibitory injunction – quite easy to get – quit doing something
      * Mandatory injunction – must do something (will take effort and money)

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| **The Register**  method of conveying property ownership (purchase, transfer)  Used by tax dept to determine tax owing  Title is searched for interests on property  Can buy title insurance (not used a lot in Canada) – mortgagee can get | |
| **Interests**  Mortgage, other charges  Failing to register a charge would be considered equitable interest, but likely to be SOL because new owner would be innocent being bona fide purchaser who paid for property without notice of your interest. | |
| **Indefeasibility**  Upon registration you are given a title that cannot be defeated (applies only to fee simple holder not those with interests in property (ie bank mortgagers) | **Priority**  Ranking of all different interests in property. Land may not be worth enough to settle all interests on property |

Airspace

1. Airspace rights belong to owner of land below (Kelsen)
2. Rights extend only to height of ordinary use and enjoyment (Bernstein)
3. Airspace is land, and may be sold, subdivided, etc. (Land Title Act - below)

**Misc. class notes:**

* Air space parcels may project over water (e.g. Vancouver terminal) or may be underground
* Things that require easement/license for use of airspace:
  + Signs over sidewalks, cranes above property, Utility lines (generally have statutory easements)

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| Kelsen v Imperial Tobacco  Tobacco shop sign; D had permission from owner, not lessee; injunction granted. |
| Airspace rights belong to owner of land below  **Shelfer test to determine whether equitable damages should be substituted for an injunction or specific performance:**     1. Is the injury to the plaintiff's legal rights small? (Yes) 2. Is it capable of being estimated in money? (Yes) 3. Can it be adequately compensated by a small money payment? (No) 4. Would it be oppressive to the defendant to grant an injunction? (No - Imperial Tobacco had received good value for its investment in the sign.)   All requirements must be met. Most cases where damages are granted are accidental trespasses.  **Lord Cairn’s Act:** Equitable damages (damages that deal with the future and past) can substitute for an injunction.  **Laches**: Because the situation had changed (from 4" to 8" encroachment), his delay was not unreasonable 🡪 waiting too long to have right remedied. |

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| Bernstein v Skyviews  Aerial photos; P sues D for trespass; no trespass found. |
| **Air space rights extend only to the height necessary for ordinary use and enjoyment of land and structures on it.**  Above that height, property owner has no greater right to the airspace than members of the general public. Vague standard. Above this limit, could be **nuisance**. |

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| Land Title Act |
| **Air space parcels:**   * are land (139) * do not automatically grant an easement for access to parcel – requires an easement (140) * can be created by registering plan (141(1)) * may be transferred, leased, mortgaged, etc. (141(2)) * may be subdivided (141(3)) * may be created above highways by the Crown (1) or municipality (2-3).   Rules for depositing an air space plan (143) |

Strata Property

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| **Strata Property Act** |
| * **Parcel of land** = unit + share of common property/assets (67) * **Boundary** of the lot is midway through the wall, floor, or ceiling (68(1)) OR as shown on the strata plan (68(2)) * **Implied easements:** Property owners and strata corp. have implied easements through walls to inspect, maintain, repair, and replace structural supports, water, sewage, gas, electric, etc., as necessary (69) * **Combining lots:** Allowed w/approval of the strata corp. unless it violates gov’t regs or interferes with provision of services to other lots. Corp must approve (70). * **Significant changes** to appearance or use of common property requires ¾ vote at AGM (unless necessary for safety) (71) * **Maintenance** to common property presumptively done by strata corp., unless bylaws assign maintenance to owners (72)   + “Limited common property”: e.g. balconies & decks 🡪 common property, but accessible only by one unit owner. |

**Misc. Strata Notes:**

* Strata **disputes** can be settled through agreement of the parties, litigation, or arbitration. In 2014, the Civil Resolution Tribunal was created as to provide online negotiation and settlement assistance for strata owners and corporations in a number of dispute categories.
* **Common property** - co-owned by unit holders “ownership in common” - inseparable from units – shares in common property proportionate to size of unit owned
* **Limited common property** – balconies, patios, parking space- co-owned but restricted access to unit owner, inseparable from the common property or the unit
* **Governance**:
  + Strata council passes bylaws binding unit holders
  + Charges fees to unit holders for common expenses
  + Prepares depreciation report: outlines upcoming major expenses, available for prospective purchasers.
  + Special assessments: fees for special projects.
* **Bylaws** can restrict:
  + Rental conditions (based on age, family status)
  + Pet ownership (by type, weight, size, etc.)
  + Noise and behaviours (e.g. smoking)
  + External appearance standards (curtain colours etc.)
* **Remedies** for bylaw violations:
  + Restrict use of common property
  + Impose fines

Fixtures & Chattels

**Fixtures:** part of the land. Real property.

* Presumed to be included in sale/mortgage.
* *Quicquid plantatur solo, solo credit*: Whatever is attached to the soil becomes part of the soil

**Chattels:** not part of the land. Personal property.

* Presumed to be excluded in sale/mortgage.

**Appurtenances:** things attached to a fixture (e.g. vacuum hose). Have no use without something attached to the property.

* Presumed to be included in sale/mortgage.

**Re Davis [1954] OWN 187 (HC)**

1. **Degree** of affixation / annexation
   1. How securely?
   2. Permanent/temporary?
   3. Ease of removal? Will it damage ground or object to remove?
2. **Object/purpose** of affixation / annexation
   1. To improve freehold – fixture
   2. To enjoy the item – chattel
   3. Subjective intention vs objective intention (facts confirm intention of item)

**Stack v Eaton 1902 Test (referred in Zellstoff Celgar 2014 at para 9; CMIC v Rodriguez)**

1. Attached only by own weight: presumed to be chattels
2. Attached (even slightly): presumed to be fixtures
3. Presumptions above can be rebutted by circumstances which indicate otherwise

* To better enjoy chattels: presumed to be chattels (Davis)
* To better enjoy realty: presumed to be fixtures (Davis)
* Intended to remain affixed for the duration of their reasonable life (e.g. carpets): presumed to be fixtures (La Salle)

1. Intention of owner relevant only so far as it can be presumed from degree/object of annexation
2. Tenants fixtures for the purpose of trade are part of freehold, but can be removed

Examples:

* Carpets in hotels, intended to be used for duration of usable life, are fixtures in spite of small degree of affixation. (La Salle, qtd. in Zellstoff Celgar at paras 19-21)
* Bowling alleys are affixed in order that bowling might be more efficiently carried on (Re Davis).

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| Re Davis (1954)  Bolted down bowling alleys: **chattels** or fixtures? CHATTELS |
| Pre-Stack v Eaton, but uses **object** test:   * Where object of affixation is to improve freehold, it’s a fixture. * Where object of affixation is to better enjoy chattel, it’s a chattel. |

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| Zellstoff Celgar v BC (2014)  Pulp mill equipment: chattel or **fixture**? Fixtures. |
| Industrial equipment is a fixture because **degree of affixation** is substantial. The **object** of affixation is to better use land as pulp mill.  Items are fixtures if they are intended to remain affixed for the duration of their reasonable life. (E.g. carpets are a fixture.) (LaSalle) |

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| CMIC Mortgage Investments Corp v Rodriguez (2010)  Tent that is not fixed in cement blocks: chattels or fixtures? Chattels. |
| **Evidence** demonstrates that owner **intended** tent to remain as chattel.   * Cover-All 1: Bolted to concrete * Cover-All 2: Not bolted, intended to be portable   Backs owners stated **intention**. |

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| Elitestone v Morris (1997) HL  Bungalow resting on concrete pillars. Been there since 1945. Chattel or fixture? Neither. |
| “Part and parcel”: chattels that are effectively part of the land 🡪 marginally persuasive in Canada. |

Water Rights

**Summary:**

* **Ownership vested in Crown**
* Ownership and use rights are vested in the Crown. (WSA 5; WPA 3)
* Percolating/ground water is owned by the government.
* Rain, snow owned by Crown as soon as they hit the ground; before that, up for grabs.
* Riparian rights areenforceable to the extent that they do not conflict with licenses (Johnson v Anderson; Steadman v Erickson)
* A party using/diverting water unlawfully cannot collect damages for interference with use (Schillinger v H Williamson Blacktop)
* Pollution is never lawful (Steadman v Erickson Gold Mining Corp.)
* Water licence passes with land when it’s sold (where notice is given to water manager before sale) (WSA 25)

**Riparian Rights:**

**Current riparian rights (indefeasible):**

1. Right of access (to and from the water)
2. Right of drainage (flood-proofing land)
3. Right to undiminished quality of water (unpolluted)

**Permissions (defeasible by licence):**

1. Right to reasonable use of water for domestic purposes

* Use/divert any unrecorded (i.e., unlicenced) water for domestic purposes [WSA 6(3)]
  + “Domestic Purposes”(Water Sustainability Act s 2):
    - Single family dwellings only
    - Drinking water, food prep, sanitation, fire prevention, water for animals (pets or household use), and irrigation (plot under 1000 m2)
* Other uses require licence [WSA 6(1)]

1. Right to undiminished/unaltered flow for domestic purposes

**Extinguished rights:**

1. Right of ownership of bed (up to midpoint)

* Crown owns beds, no private ownership [LTA 55-56]

**Precedence of licences** (Water Sustainability Act s 22)**:**

1. Date of authorization; then
2. Type of use:

* Domestic;
* Waterworks
* Irrigation
* Mineralized water

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| **Water Sustainability Act** |
| **Domestic use:**  6(3) A person is not prohibited from diverting, in accordance with any applicable regulations, and beneficially using unrecorded water  (a) from a stream for domestic purpose or for prospecting for a mineral, or  (b) from an aquifer for prospecting for a mineral.  6(4) A person may, in accordance with the regulations, divert, and **beneficially** use, including store, groundwater from an aquifer for domestic purpose  **Other use:**   * No diversion of water from streams or aquifers without a license or regulatory authorization (2) or it’s used for fighting a fire (6) * Water licence passes with land when it’s sold (where notice is given to water manager before sale) (25)   **Licensee rights: 7(1)**   * Divert & use water; * Construct works required to divert water/create hydro; * Make changes in the stream necessary for the diversion; * Construct fences/screens to conserve fish or wildlife   **Precedence of licences: 22**   1. Date of authorization; then 2. Type of use:    1. domestic    2. waterworks    3. irrigation    4. mineralized water   Where both date and use are the same, precedence is equal.  Property and use rights of streams, aquifers, and groundwater belong to the government, except where authorizations for use have been given. (WSA 5; WPA 3) |

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| Johnson v Anderson [1937] BCSC  **Unlawful stream diversion interferes w/unlicensed riparian right** |
| **Ratio:**  **Common law riparian rights stand to the extent that they do not conflict with licences.**   * “Unless and until records or licenses have been granted for all the water flowing by or through the plaintiff’s land, which I find is not the case here, the plaintiff still has the right to use the water flowing by or through his land subject of course to any rights granted.”   Facts:   * D diverted the flow of a stream that flowed through P’s property. * P used water from stream for domestic and stock-watering purposes. * P sought damages, an order for the demolition of the works diverting the flow, and an injunction. * P had no water license. The D had a license, but it did not authorize the diversion in question.   Issues: Does the traditional riparian right to make use of the water flowing by a property owner’s land in a way that does not interfere with recorded rights of other parties still hold? If it does, did the D’s actions interfere with P’s right to use the stream?  Decision: For the P  Remedy: Order to demolish dam (=positive injunction) + prohibit it from being rebuilt (=negative injunction) granted, no damages.  Reasoning:  The D had no license to divert the flow of the stream, and, as such, the P’s riparian rights hold. |

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| Schillinger v H Williamson Blacktop [1977] BCCA  **P using creek illegally. D pollutes creek. No remedy**. |
| Ratio  1**. A party using water unlawfully cannot collect damages for the pollution of that water.**  **2. Siltation is never lawful.**  Facts   * P used Barre creek for commercial fish cultivation. * P has a water use licence, but it only authorized use of Hairsine Creek (a tributary of Barre). * D (upstream from P) deposited silt into the water, which killed off P’s fish. * P brings negligence and nuisance suit against D. * P’s licence did not cover the location of his diversion. Riparian owners are entitled to use water, but not divert it. * The siltation was a consequence of P’s diversion of Barres creek, which was unlawful under the Water Act.   Decision: P is not entitled to damages. |

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| Steadman v Erickson Gold Mining Corp [1989] BCCA  P uses water domestically. D pollutes water. Remedy. |
| **1. Riparian rights are enforceable, unless the rights of a licencee supersede them.**  **2. You cannot contaminate water.**  Facts:   * P’s home was supplied with water from a spring-fed dugout, which was lawful. * P did not have a licence. * D built a road uphill from P, the construction of which caused silt and mud to contaminate the water system. * P operated a diamond saw commercially, but only used a bit of the water so okay.   Action: P sued for damages  Decision: D found liable for contamination of the water   * Groundwater: **“The authorities are clear that you can use ground water even to the extent that it causes your neighbour’s well to go dry, but you cannot contaminate it.”** * Surface water: P’s riparian right is enforceable (though can be superseded by a licence).   **NB**: once WSA comes into affect, you will need a licence to dig a well (unless domestic user). |

Accretion and Erosion

**Natural boundary**: wavy line on plan

**Fixed boundary**: straight line on plan

**Doctrine of accretion** (Theosophy):

* If accretion/erosion is “gradual and imperceptible,” rights given/taken away to/from riparian owner.
  + Imperceptibility measured on a day-to-day scale. (Theosophy)
* Applies to both natural and manmade changes, except intentional changes made by the claimant (Theosophy)
* To benefit from accretion, owner must own “wavy line” property as opposed to “fixed strip” property (as drawn on plan in LTO).
* The doctrine can be overridden by a contractual exclusion, but that exclusion must be explicit.

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| Southern Centre of Theosophy v South Australia [1982]  **Lake boundaries move, property lines do not move.**  **Property boundaries are tethered to high water mark.** |
| Facts:   * P’s land abutted the shore of Lake George when it was purchased in 1911. * The lake’s high water mark receded by 20 acres over the years. * The P gets declaration that the property boundary is tethered to the high water mark. * P = perpetual leaseholder.   Doctrine of accretion:  Where land is bounded by water, the forces of nature are likely to cause changes in the boundary between the land and the water. Where these changes are gradual and imperceptible, the law considers the title to the land as applicable to the land as it may be so changed from time to time.  Decision: For the P  Remedy: Declaration that property boundary is tethered to high water mark.  Misc. Findings:   * The doctrine can apply to inland lakes; * There is no reason why the doctrine cannot apply to land leased by the Crown; * The doctrine can be overridden by a contractual exclusion, but that exclusion must be explicit. * The doctrine applies to all natural (fluvial or wind action) and man-made changes to the high water mark (except those brought about by deliberate actions of the claimant). * What is ‘imperceptible’ can be subject to dispute; measured on a day-to-day scale, not changes over long periods of time. |

Support

Neighbour’s removal of lateral support is *actionable per se in property law* **if land is in its natural state.**

Not if there is a building on it (in which case would be actionable in tort law for negligence, nuisance or trespass – removal of vertical support**).**

**Natural state –** common law of property. Adjoining owners must support that land and not do anything to cause subsidence of others property.

No prescriptive rights to other’s property in BC – abolished by torrens system.

**Lateral support:**

* **Natural state:** absolute liability (no need to show negligence)
* **Improved:** tort liability for loss of support,onus on P to show proof of negligence (land would not have collapsed w/o removal of lateral support (Gillies v Bortoluzzi)

**Vertical support**:

* **Natural or Improved**: is an absolute liability tort regardless of whether the property is improved or in natural state.
* Requires **authorization**; otherwise, trespass
* Discharge of water that undermines vertical support = trespass

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| Gillies v Bortoluzzi, 1953, Manitoba QB  **If land is developed, must show that land would have subsided regardless of extra weight of structure.** |
| Facts:   * D (= two parties) excavated basement next to building P leased. * Following the excavation, the wall of P’s store parallel to site collapsed. * P sued for damages, claiming that the excavation was done negligently. * D says it was the P’s own negligence which led to the damages. * Trial Judge finds that D dug under the bottom of Ps wall, thereby undermining both its **lateral and vertical** support.   Decision: For the P against both D’s under tort law of negligence; damages assessed. |

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| Rytter v Schmitz  **Right to vertical support and right to lateral support of your land in its natural state** |
| **Removal of lateral support: must show causation and fault**  **Removal of vertical support: absolute liability – don’t have to show causation, action = harm**   * D excavated next to P’s building, which caused the building to partially collapse. * D excavated over property line and didn’t underpin as he went. * P had right to vertical support. Damages assessed. |

Equity

# Equitable Interests

* The interests that can be created in equity are the same as those that can be created at common law.
* **Trusts –** Court of Chancery added obligations toward the trust asset to the trustee for the benefit of the beneficiary**.** Trustee holds legal title, beneficiary has benefit of it.   
  Trustee holds legal tile, beneficiary holds equitable title.
* **If you register as a trust beneficiary, no third party can purchase the title of the property irrebuttably.**
* ***Bona fide purchaser for value without notic*e** – beneficiary is vulnerable, transfer is in breach of trust, if unregistered! The purchaser would get the property. The BFPFVWN is“Equity’s darling”
* **Trust beneficiary is recognized by the Court of Chancery, wasn’t recognized in common law.**
* **Unregistered interests** (e.g. before title is registered, but after document of transfer is signed) has an equitable interest in the property. Under torrens system need to get on title registry
* **Donee of an imperfect gift**
* **Proprietary Estoppel**
* **Restrictive Covenant**

# Equitable Maxims

* Equity follows the law (as in Zwicker)
* Equity will not assist a volunteer (MacLeod; Ross)
* Where equities are equal the law prevails
* Parties must come to equity with clean hands 🡪 unconscionability
* ***Nemo dat quod non habet*: no one can transfer a better title in property than he or she has. The true owner can always get the ownership back if someone else sold it – the fraudulent transferor had no title to sell.**
* Equity will not force a donor to complete that which is incomplete (MacLeod)
* Equity regards as done that which ought to be done (Ross v Ross)
* Equity looks to the substance rather than the form (Ross v Ross

Legal owner Innocent purchaser

protected at common law

Thief / possessor of stolen property

Innocence of the purchaser is irrelevant (to common law)

Property goes back to **original legal owner** at common law – nemo dat quod non habet

Stolen assets are recoverable to be returned to the original legal owner

If you only have an EQUITABLE interest, not a LEGAL interest, you wouldn’t necessarily get it back

Freedom of Alienation

## General policy of the common law

* Interests in land are **freely alienable** (i.e. may be sold/given away/mortgaged)
* Torrens system facilitates getting money out of property – land registry system creates security of title
* Gift of cash – bequest
* Gift of property under will – donor/donee

## Requirements for freedom of alienation/disposition

1. Owner must have technical freedom of disposition.
2. Transferor must not have the power to impose excessive restrictions on the freedom of alienation of transferee – property owner must have right to sell their interest.
3. The mechanics of transfer must be as simple as possible.

**Direct restraints: PROHIBITED** (One exception: a lessor may restrain a lessee from alienating or disposing his leasehold).

**Indirect restraints: PERMITTED**

* **Trusts**: Cannot dispose of property held in trust without permission from trust beneficiary. To do so is breach of trust.
* **Future interests** (e.g. life estate remainderman)
  + Rule against perpetuities: max. 80 years of granting rights
* **Certificate of pending litigation** (“lis pendens”): Signals that litigant may own the property. Purchase is subject to outcome of litigation.
* **Caveat**: Caveator is a warning that registrant intends to claim interest in property.
* **Land (Spouse Protection) Act**: Allows spouses to put notation on title requiring their permission for disposition of land.
* **WESA**: Prevents disinheritance of spouse/child, except with permission of court
* **Family Law Act**:
  + Provides for allocation of resources in case of divorce
  + Lis pendens will be filed on title to notify of pending litigation

**BFPFVw/oN**

* **Good faith**
* **Give consideration (not volunteer or recipient of gift)**
* **Purchase a legal title at common law**
* **After you have passing title you are the legal holder**
* **Equity’s darling**

**Registration doesn’t turn an equitable interest into a legal interest**

Crown Grant

* Document that changes public land to private.
  + Usually fee simple, but could be other estate.
  + May be subject to land use requirements (e.g. must be used as a ski hill)
* Usually, owner of the property gets surface rights (access rights, agriculture and timber rights, development rights, and air rights), and the government gets riparian rights and mineral rights
* Initial crown grant must be registered; subsequent transfers do not need to be (but should).

## Rights reserved [Land Act 50(1)(a)]:

1. **Resume any part of the land** necessary for making roads, canals, bridges or other public works.

* Not more than 1/20 part of the whole land
* No right to resumption on which a building or garden exists
* No compensation

1. **Subsurface rights:** Enter, raise, and get out of land any geothermal resources, minerals, coal, petroleum, and gas or gases.

* Compensation

1. **Water** + carrying water through land as required for mining or agricultural purposes in the vicinity.

* Compensation

1. **Public works materials:** Gravel, sand, stone, lime, timber or other material that may be required in the construction, maintenance or repair of a road, ferry, bridge or other public work

* No compensation

(b) No subsurface rights conveyed.

(c) If **highway** through land at time of grant, no rights.

**NB: Crown can alter above terms by expressly stating it is doing so on grant [LA (3) & (4)], but will otherwise reserve rights described in Act.**

**Law and Equity Act RSBC 1996 c 253** (previously s.1(1) *Statute of Frauds RSBC 1979 c 393*)

* Land transactions trusts/wills s. 59(1)

**Interpretation Act s 29**

* Land includes any interest in land, including any rigt, title or estate in it of any tensure

**LAND ACT**

* Contract/disposition s 59(3)
* Transferring interest in land

**Property Law Act RSBC 1996 c 377**

* Lease > 3 years should be registered in the Land Title Office can be informal s. 59(2)

**Short-term Lease =< 3 years**

* Not registerable PLA s 5(1)
* If the tenant actually occupies the property, the purchaser must honour the lease
* Creates a legal interest in the property in favour of the tenant

Inter Vivos Trusts / Gifts (between living people)

**NB: In the absence of proof, equity applies a rebuttable presumption that the transferor intended to create a trust, not to give property away. [19(3) Property Law Act] – exception: spouses, kids**

* Voluntary transfer of owner who has intention to dispose of property
* For purposes of granting we go from date of application – first in time, first in right
* Common law, used to be from date of execution, but now in Torrens system it is ranked by date and time of application to register – gap between date of application and register date don’t matter because the registration will go back and be effective from date of application
* If transferred legally, A has beneficial trust interest (presumed, rebuttable), B has not given consideration so becomes a “volunteer” property owner, incurs duties of legal ownership
* Equity makes an assumption as gift (*presumption of advancement)* not of trust in parent to minor child/husband to wife etc
* If transferor wishes to refute the presumed intention must prove on BOP that intention for transferee is to be a trust / or gift if presumed to be otherwise

**Requirements:**

* Intention to donate immediately, not on death (Zwicker)
* Sufficient act of delivery to the donee (PLA 5)
  + Registrable instrument of transfer (Form A) [LTA 5(1)]
  + Unregistered instrument is enforceable against the person making it, but not against the whole world [LTA 20(1)]
* Acceptance by the donee 🡪 donee can refuse the gift
* The donor has the right to revoke the gift prior to completion
* NB: s 59 does not apply.
* Check for proprietary estoppel!

1. Donor delivers a registrable transfer PLA ss 4, 5, 7
2. Donee obtains registration LTO LTA s. 20

**Gifts on Death:**

* Transmission occurs in the law. Must follow WESA.
* Property passes on death under the terms of a will, trust, or intestate laws.
* LIFE ESTATES EXPIRE ON DEATH AS NOT A LEGAL INTEREST
* Equity will not enforce a gift made on death unless it complies with WESA (“equity follows the law”) Zwicker v Dorey (1975) 58 DLR (3d) 317

***Donatio Mortis Cause* (DMC):** Deathbed gift **– no ability to register a formal trust or gift, equity recognizes the intent of the persons in their circumstances**

* “I won’t need \_\_\_\_\_\_ anymore”
* Requirements:
  + Intention to make gift in contemplation of imminent death
  + Sufficient delivery to donee
  + Must be made conditional on death
  + Death as contemplated (i.e., of same cause)
* Courts view DMC with suspicion.
* If DMC is found to be valid, it will be given effect over will
* If donor recover’s, gift reverts to donor’s

**Electronics Act s 29**

Exchange of emails between parties did not make an enforceable agreement of purchase and sale

*Druet v Girouard 2012 NBCA 40*

Incomplete Gifts

* Retaining possession of a deed will not render it inoperative, as long as there is strong evidence that the transferor’s intention was to be immediately and unconditionally bound to gift (Ross)
* An inter vivos gift cannot take effect on death. If a person wants to give a gift upon death, must make a will (Zwicker)
* Where there is evidence that a transferor did not intend to complete gift, court will not give effect to it (MacLeod)

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| Ross v Ross 1977 NSSC (NB: pre-Torrens – PLA requires delivery)  Woman signed deed to house over to grandson, deed signed, witnessed, and attested to, but not delivered (or accepted formally by grandson). Discovered upon death – daughter and grandson argued who got the property. |
| **Maxims**:   * Equity looks to the intent * Equity regards as done that which ought to be done * Equity looks to the substance (intent) rather than the form (delivery) * Equity may complete an incomplete gift if it can be shown that there was an intention to be immediately and unconditionally bound by the gift.   **Ratio:**   * **Retaining possession of a deed will not render it inoperative, unless there is strong evidence that the transferor’s intention was to do so.** * **“She was immediately and unconditionally bound by the deed which she had made in favour of the P”**   **Reasoning:**  Deed held to be valid on the basis of intention to give immediate gift, but retain life estate:   * Close relationship w/grandson * Her wish to remain in house until death * Kept it w/important documents, carried it with her. * Opportunity to change her mind but made no effort to revoke the gift. |

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| Zwicker v Dorey  **Gift to take effect on death not sufficient to pass title unless clear evidence of intent for immediate and unconditional transfer at time deed was transferred.** |
| Facts: Mr. Zwicker conveyed land to Dorey, gave him deed of conveyance, accepted by Dorey but included clause: “not to be recorded until after my passing away.” Later conveyed same land to himself & his wife. Gift invalid as a result. Hard to determine Mr. Zwicker’s true intention – inconsistent transfers to current wife and others.  **Delivery of a deed without recording is usually sufficient to pass title. However, an inter vivos gift cannot take effect on death. If a person wants to give a gift upon their own death, they must make a will.**  **Court cannot find he was intended to be immediately and unconditionally bound by the deed to Mr Dorey.** |

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| MacLeod (granddaughter donee) v Montgomery (donor) – POST-Torrens – fussier with registration |
| **Gives transfer form but doesn’t deposit duplicate**  **Duplicate certificate of title freezes title.**  **Where there is evidence that the D did not intend to complete a gift, the court will not give effect to it.**  Maxims:   * **Equity will not assist a volunteer, equity will infer the equitable beneficial interest remains with donor** * **Donor must do what can be done** (“everything that could be done to perfect the gift”)   Facts:  D gives P transfer form. D can’t register because P’s solicitor has duplicate certificate of title, which prevents transfers/registration on title. **Court won’t enforce transfer, no evidence D did intended to complete gift. Didn’t instruct solicitor to give P duplicate.** |

Testate (with a will)

* Will **speaks at death**, not date of execution
* Everything is sold and cash distributed to next of kin
* **Disinheritance** of a spouse or child is subject to judicial review: WESA ss 60-72.
* Changes by “**codicil**” 🡪 document executed as a will that changes 1 provision of a will
* **Revocable** during testator’s lifetime.
* “To X, his heirs” creates fee simple
* If testamentary gift lapses because of death of donee, it will pass according to WESA, s 46(1)(b)

## Validity Requirements: WESA s 37-39

* In writing [37(1)(a)]
* Signed at the end by the will-maker [37(1)(b)] or signed elsewhere in way that intent of will-maker is clear [39(1)]
* Signed by 2+ witnesses [37(1)(c)] OR, the court orders it to be effective under s 58 [37(2)(a)]

## Witnesses: WESA s 40

* Witness must be 19+ [40(1)]
* Witnesses may take a gift, but gift may be void under s 43 [40(2)]
* Will is not invalidated by incapacity of witness [40(3)]

## Court order curing deficiencies: WESA s 58

* If a court determines that a record represents the testamentary intentions of deceased/ intention to revoke/alter of will [58(2)], it may be declared to be a will under 58(3)
* Record incl. docs that are electronic & can be read by a person [58(1)]

## Joint Tenancy (Joint Survivorship): WESA s 162

* 162(1) “Unless right by survivorship, on death the land devolves to personal repr in the same manner as personal property” 🡪 Property goes through estate, through probate, before transferring to intended beneficiary
* **JOINT TENANTS** – treated as one owner in law 🡪 Right of survivorship 🡪 share of property held by deceased joint tenant passes automatically to other joint tenant(s). Does not go to probate.
* **TENANTS IN COMMON** do not enjoy right of survivorship. Portion of property held by deceased tenant passes in accordance with will.

## Lapsed Gifts: WESA s 46

(1) If a gift in a will cannot take effect for **any reason**, including because a beneficiary dies before will-maker, property that is the subject of gift must, **subject to a contrary intention appearing in the will**, be distributed according to the following:

* To the alternative beneficiary of the gift, if any, named or described by the will-maker
* If the beneficiary was a brother, sister or descendant of the will-maker, to their descendants
* To the surviving residuary beneficiaries, if any, named in the will, in proportion to their interests.

(2) Applies whether the beneficiary's death occurs before or after the will is made.

Intestate Disposition

## Intestacy

* Property disposed of in accordance with WESA (part 3)
* If no family member can be found: Real property **escheats**, Personal property becomes **bona vacantia**. Both mean they are returned to Crown.
* Financial assets like pensions and life insurance can be disposed of by designating a beneficiary. This avoids probate (in the case of a will) and administration (in the case of intestacy).

## Partial Intestacy

* Some property disposed of by will
* Some property disposed of in accordance with WESA

Proprietary Estoppel

**Cause of action – sword v shield - can be used as a sword**

Promisory estoppel – in High trees – didn’t have to pay higher rent during wartime, was held to promise by court

**Acquiescence or encouragement to believe**

**Equitable interest in someone else’s property**

**Summary of Principles Governing Proprietary Estoppel Based on the Modern Approach**

* Proprietary estoppel may form the basis of a cause of action
* Not essential that the five probanda must be satisfied
* Three elements must be established through: *Schwark* principles
* Detriment inc. expenditures but countervailing benefits may also be considered
* Reliance may be express or inferred
* If an equity arises, the court has a broad discretion to fashion an appropriate remedy
* Up to now, all transfers covered has some intention: intention on part of the transferor to make a transfer, and if there was a deficiency with transfer, court of equity can overlook if there is an intent to transfer according to L&EA
* Equitable interest in someone else’s property: Equity can create interest in other people’s property
  + “Acquiescence” (Apparent Assent)

or

* + Estoppel by “encouragement”: that leads the other person to have an expectation that they will get something b/c of their efforts

**“Cause of Action”: Proprietary Estoppel is a basis of civil claim**

* Sword v Shield (p4-41):
  + Shield [ D’s Defence to civil claim/ cause of action]
  + Sword [P’s claim for interest]
  + Promissory estoppel is a shield
  + Propriety estoppel is a sword: creates a right in someone else’s property
* Common Law-estoppel by representation [statements of fact]
* Equity – equitable estoppel [promise of future intention]
  + Promissory estoppel (Contracts)
  + Proprietary estoppel (Contracts or Land)

Estoppels

* Common law – estoppel by representation [statements of fact]
* Equity – equitable estoppel [promises of future intention]: determined by the intentions of the parties
  + Promissory estoppel (Contract)
  + Proprietary estoppel (contracts or land)
* **Acquiescent (Estoppel by Standing By)** – standing by *while* a wrong is done: the ordinary person would vocalize any complaint but they stand by and allow a wrong to continue even though they know full well it’s intrusive on their right
  + Expectation of a property interest “standing by”
* **Laches** – delay in proceeding *after* a wrong: Delay seeking a remedy, this is an offense that can be resulting in the deduction or denial of the remedy
* Knowledge of wrong:
  + Violation of legal right with “permission”
  + (During the wrongdoing): “encouragement” 🡪 detrimental reliance on the encouragement
    - Renege on: permission = unconscionability

## Requirements – “modern approach”: Clarke v Johnson

**1. Establish the Equity/Estoppel:**

1. Owner of land induces, encourages, or allows claimant to believe that he has/will have some right/benefit over land.
2. In reliance on this belief, claimant acts to his detriment to the knowledgeof the owner.
3. Includes expenditures and countervailing benefits
4. May be express or inferred
5. Owner seeks to take unconscionable advantage of claimant by denying him the right or benefit.

**2. Remedy**

The court has broad discretion to fashion an appropriate remedy.

1. must be proportionate to balance the interest of the parties
2. “minimum equity to do justice in the circumstances” para 81
3. could be fee simple, damages, etc. Clarke got permission to be on property.

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| Clarke v Johnson 2014 ONCA 237  Clarke and Johnson’s daughter own camp on Johnson’s island for 20 years, maintained at own expense, on land of Johnson and siblings. Clarke seeks to evict Johnson claiming a proprietary interest in the property with her encouragement he had lived there for 20 years and operated a business and paid taxes.  ON CA🡪 Clarke had an equitable license to occupy the camp for life, subject to conditions  He was entitled to occupy the shack on Johnson’s island because of proprietary estoppel, but didn’t have a legal interest in the property. |
| Finds **proprietary estoppel** on the basis of test above:   1. The appellant **induced** and **encouraged** the respondent to believe he would own the camp by **acquiescing** in his use of it. 2. In **reliance**, the respondent contributed significantly to the construction, maintenance, and improvement of the camp with the **knowledge** and consent of the appellant. 3. Denying the respondent use of the camp would be **unconscionable** because he invested significant emotional and financial resources in the property in belief that his usage would continue. |

# Unjust Enrichment

## Requirements (Clarke v Johnson – Proprietary Estoppel):

1. Enrichment – Johnson made significant contributions to the camp
2. Corresponding deprivation – the benefit of the camp did not offset contributions
3. Absence of a juristic reason for enrichment
   1. “No reason in law or justice for the defendant’s retention of the benefit conferred by the plaintiff, making its retention ‘unjust’ in the circumstances of the case.”
   2. May take into account parties’ expectations.

Remedies

# Equitable damages vs. injunction/specific performance

**Lord Cairn’s Act:** Equitable damages (damages that deal with the future and past) can be given in substitution for an injunction.

## A. Building/fence encroaching on land/airspace (Property Law Act, 36)

If party A builds structure/fence built on party B’s land, the Court may:

* Grant an easement to A and compensation to B (for a period to be determined by the court);
* Vest title to the encroached land to A and compensation to B
* Order that A removes the encroachment/enclosure

## B. Any other situation: injunction, unless… (Shelfer Test) 🡪 Kelsen

1. Is the **injury** to the plaintiff's legal rights **small**?
2. Is it capable of being **estimated in money**?
3. Can it be adequately compensated by a **small money payment**?
4. Would it be **oppressive** to the defendant to grant an injunction? (No - Imperial Tobacco had received good value for its investment in the sign.)

All requirements must be met. Most cases where damages are granted are accidental trespasses.

## C. Unjust enrichment

1. First, consider monetary award.
2. If monetary award is inappropriate or insufficient, proprietary award (incl. license, fee simple, constructive trust, etc.) is available.

## D. Proprietary estoppel

1. Equitable remedies are **flexible**, and should be chosen to “respond appropriately to the substance of the problem put before [the court].” (Clarke v Johnson)
2. “The court must look at the circumstances in each case to decide in what way the **equity can be satisfied**.” (Clarke v Johnson)
3. Award should be **minimally intrusive**.

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| Clarke v Johnson |
| Remedy for proprietary estoppel   * Reimbursement would be inadequate b/c of **emotional** attachment to camp. * Constructive trust reflects **legitimate expectations** of parties * Minimally intrusive award. * Awarded a personal license, which would not be effective if the owner sold the property. |

**The Torrens System**

Land title act – Administers Torrens system in BC

Property Law Act – Changes to substantive law, legal and equitable interest, fee tail, p 2-8

Land Act – Provincial Crown land – applies to 90% of BC owned by Crown

Strata Property Act – condominiums p 5-3

## Advantages:

1. **Equitable interests not vulnerable to BFPFVw/oN**
   * Registered interests = constructive notice

* Everyone has right to register their interest (except leases, which aren’t vulnerable)

1. **Title by registration/certainty of title**

* Not vulnerable to defects = security of tenure
* Improvement from system of deeds
* In deed systems, registered charge holders were vulnerable to nemo dat
  + - If there was a “break in the chain” the registered owner would have nothing

1. **Simplification of transfer**

* Livery of seisen is ridiculous
* Deeds are no longer necessary (they are replaced by “agreements of transfer and sale”)
  + - “Transferring” as opposed to “conveyancing”
    - There are “short forms” which are very straightforward

1. **Efficiency**

* Searching for the title is no longer necessary

1. **Fairness and justice**

* Unregistered interests are not enforced (except in equity)

1. **Land can be used as collateral security for credit (e.g. mortgages)**

* A duplicate indefeasible title cannot be issued if the title is subject to either a registered mortgage or an agreement for sale

# Torrens Process

1. After closing date, the purchaser applies to the LTO for registration
2. The purchaser gets a **certificate of indefeasible title** from the Registrar
   1. This certificate is from the province “BC Land Title And Survey Registry”, not the vendor
      1. Each registered owners essentially gets a new Crown Grant
   2. Any missing links/documents are irrelevant
   3. Offers no guarantee or compensation for errors in boundaries
3. **The title includes:**
   1. The registered owner(s)
   2. Charges – interests less than a fee simple (mortgages, life estates, easements, restrictive covenants – binds both sides, runs with the land and binding upon the grantees, their successors, and or assigns forever)
      1. Don’t get indefeasibility, but give notice to the world of their interests
   3. Ranked chronologically by order of the applications to register (“Race to the register”)
      1. It’s important to register early FIRST IN TIME FIRST IN RIGHT
      2. At common law and equity it was by the date of execution, now it is by date of application
4. Certificate holder is the registered owner and has the fee simple
5. Register includes:
   1. Date of application, owner identities, properties identity, charges (not determinative of validity-lawyers would determine validity), register of **instruments** **rather than interests**, rank chronologically (unless otherwise agreed)
6. Instruments – documents noted on title

## Transfer Inver Vivos 5-20

(LTA 188-190) – procedure same as for initial registration. Registrar must be satisfied there is sufficient description of land, instruments on the basis of which the applicant has applied are valid. Must also include the duplicate indefeasible title if one has been issued s 189

## The Cadastral Concept

* Digital records
* Each parcel of land has a separate title (and a separate parcel identifier number) and can have separate ownership
* Title gives dimensions of lot
  + Not guaranteed/indefeasible (LTA 23(2)) (Winrob v Street)

# Previous Systems:

## Common law conveyancing:

* + Expensive because necessary work had to be repeated each time a transfer occurred.
  + Transfers were delayed while root of title was established.
  + Subject to defects in prior transactions.
  + No central place to hold all deeds. Left with legal titleholder. As a result, could be lost.
  + *Nemo dat* – invalid title, seller couldn’t sell

## The recording system:

* + No scrutiny of deeds by staff, so *nemo dat* continues.
  + Requires title insurance.
  + However, solves issue of holding documents centrally.

## Title by registration (Torrens)

* Originally, registration of title was a 2 step process:
  + Registration of absolute fee: title was registered, but subject to a 7 year holding period during which title could be disputed.
  + Registration of indefeasible fee: if absolute fee was not disputed, title would become indefeasible.
* Absolute fee no longer exists

# What can be registered?

Registration is for interests in land, not anything that merely affects title (Kessler)

* Legal estates
* Equitable interests
* Easements – registered on title at LTO by evidence of agreeance (contract) by fee simple holder
* Trusts
  + Trustee can register title. “In trust” noted on title. (LTA 180 (3))
  + Beneficial interests/other particulars of trust are not registered on the title.
  + Trust instrument number also noted on title. Instrument held by LTO.
  + Trustee can be compelled to register trust on title.
  + Registration protects beneficiaries from BFPVWON
* Caveats – charges – warning/caution: claim of registrable but unregistered interest expires after 2 months in BC, may continue indefinitely in other jurisdictions
* Restrictive covenants – binds both sides, runs with the land and binding upon the grantees, their successors, and or assigns forever
* Money judgments (in tort or contract) – can be registered on title and enforced by execution (voluntary payment or seizure and sale of debtors assets)
* Foreclosures – mortgagee in default, land is collateral security
* ALR designation
* Land (Spouse) Protection Act/Family Law Act, s 99 claim by spouse on family property – registration of pending litigation placed on title of house considering upcoming division of assets
* “Green Zone” designation
* Heritage designation – heritage register under Heritage Conservation Act, prov and municipal statutes provide heritage designation, limits development can occur on the property
* Builder’s lien – unpaid contractor on a project may file a lien within 45 or so days on completion of the project

What cannot be registered?

* Personal licenses
  + Exclusive or shared occupation
  + No interest in property
  + Personal, not transferrable.
* Short term lease LTA ss 1 23(2)(d) – not registrable, actual occupation replaces registration
* Claim of Aboriginal Title (Skeetchestn) Constitution Act s 35(1) recognition of existing aboriginal rights through litigation or by treaty. Crown grants governed by LTA, but aboriginal title based on occupation.
* Zoning bylaws (Kessler)
* Property taxes (are they up to date?)
* Equitable mortgages/lien (LTA s 33)
  + There is a notation on title, because of withdrawal of duplicate indefeasible title. However, mortgage is not registered.
  + No right to file caveat or CPL, because you must be claiming a registrable interest in the property to do so (Skeetchestn)
* Particulars of trust (beyond trustee, “in trust”, reference to trust instrument number)
* Federal Crown Lands (First Nations Reserves) 🡪 not part of the Torrens system, in spite of the fact that Crown is trustee

Registrable Charges

# Short-term lease (<3 years)

* Cannot be registered
* Vulnerable to BFPFVWON if actually occupied by tenant
* **Actual occupation is the substitute for registration in the context of a short term lease**
* If there is actual occupation, not vulnerable to BFPFVWON (LTA 20(3))
* Does not need to be in writing (Law and Equity Act s 59 (2))

# Long term lease (>3 years)

* Landlord must deliver a registrable instrument (PLA 5(2))
* If unregistered, vulnerable to BFPFV (Serving for Success)
  + To be given effect after sale, purchaser must have:
    - Notice
    - Dishonesty + immorality (i.e. deliberately misleading vendor about intent)
  + Example: Serving for Success: lease extinguished by purchaser w/notice

# Caveat

* Can be lodged by:
  + Any person who claims to be entitled to an interest in registered land (LTA 282)
  + Registered owner (LTA 283)
  + Registrar (LTA 285)
* Expires after 60 days (LTA 293)
* Title holder may force person filing caveat to file suit within 21 days or withdraw the caveat (LTA 293)
* Can only be lodged in respect of registrable common law, equitable, or statutory interest in property (Skeetchestn).

Effect of Caveat (LTA s 288 (1))

* Prevents registration of any instrument affecting the land described in the caveat
  + Exception: if the instrument is expressed to be subject to the claim of the caveator
    - Exception to the exception: an instrument expressed to be subject to the claim of the caveator may be registered unless the claim of the caveator, if successful, would destroy the root of title of the person against whose title the caveat has been lodged
* Prevents any change in boundaries affecting the land described in the caveat, unless consented to by caveator.

Purposes of lodging caveat:

* Protects unregistered, equitable, and other vulnerable interests
* Gives notice of the estate or interest claimed.

# Certificate of Pending Litigation

**Registration of CPL** (LTA 215)

* Gives notice to the world of litigation 215(3)
* An estate or interest in land 215(1)(a)
* Another enactment 215(1)(b)
* Gives you a fee simple until litigation is complete
* If starting with caveat, must be filed while caveat still effective
* Can be filed by claiming a registrable estate or interest in land
* Registration done in same manner as charges.
* Must file supporting documents.
* Must mail a copy of CPL to owner against whose title CPL has been registered.

Fee Simple

* Essence of Torrens system of registration of title is that once a fee simple interest is entered on the register, that is conclusive evidence that the person named on the register is the owner of the interest.
* Only Crown can create fee simples through Crown grant or by registration of a new title, owner of surface can create air space parcels (LTA 141)
* Registration confers indefeasibility “conclusive evidence”, can’t be rebutted or challenged
* Favours the interests of the purchaser over other interests
* Purchaser bound be registered interests on the title (unless invalid) – not held to unregistered equitable interests
* Fee simple owner = owner of land surface. (LTA 179 (1))
* Owner of land above or below surface can only register as a charge. (LTA 179 (1))
  + - Strata lots are registrable if they comply with SPA (Strata Property Act 239(2))

## Indefeasibility

**Fee simple is guaranteed/indefeasible** (LTA s 23(2))

* Indefeasibility granted to BFPFV on registration (regardless of whether instrument is valid/void) (LTA 25.1(2))
* Crown grants must be registered first time granted, unless issued before April 6, 1968 (LTA 54)
* Indefeasibility means that registered owner is not subject to defects in history of title (Creelman v HBC: the fact that HBC took its title contrary to its rules of incorporation does not affect its title once issued.)

**Registration of a volunteer does not confer indefeasibility:** (LTA 25.1(2)(b))

* This is debatable – no cases have dealt with it yet

# Registration

**Crown grant must be registered**

* This is the only statute that compels registration; otherwise, owner can decide whether they want to register or not. (Land Act s 54)

**Effect of Registration** “conclusive evidence at law & in equity” that person is “indefeasibly entitled to estate” (LTA S 23(2))

**Date of Registration** date/time application was received (LTA s 37)

**Priority of Registration d**ate application was received (LTA 153)

# Duplicate Certificate of Title

* If an application for a mortgage/agreement for sale is received when duplicate is withdrawn, duplicate must be returned before it will be registered (LTA 195)
* Criteria for issuance (LTA 176)

(1) Registrar must issue duplicate upon application, unless the title is subject to either a registered mortgage or agreement for sale.

(2) Contains all the information in the register relating to the land in question, including all conditions, exceptions, reservation, charges, liens, or other interests to which the title may be subject.

**When duplicate is withdrawn, the title is frozen – nothing will be registered on it. (MacLoed v Montgomery)**