PROPERTY LAW B IN QUEENSLAND

LAW & JURIS DOCTOR STUDY GUIDE

KNOWLEDGE | ANALYSIS | APPLICATION | SUCCESS

BY DR ADRIAN ADAMS

PREFACE

Preface

BY DR ADRIAN ADAMS

This book is dedicated to helping students studying Law, the Juris Doctor, Masters in Business Law and Legal Studies understand all aspects of Property Law B in Queensland. It has been written to be a clear, practical and reliable companion throughout your studies - from your first lecture to your final examination.

My aim is to bridge the gap between theory and practice by connecting forums, lectures and tutorials with the key legislation, common law, equity, cases and authoritative sources. The tutorials are deliberately treated as a major teaching tool: they demonstrate how to identify the legal issue hidden inside facts, select the correct provision and authority, apply each element and write a reasoned answer.

Property Law B is a rich and challenging subject. It brings together principles of law, practical application and real-world problem solving. My hope is that this book makes the subject more accessible, engaging and manageable, and supports students in developing not only knowledge, but also critical thinking, analytical skills and a genuine interest in the law.

Dedication and Acknowledgements

I dedicate this book to all law students who are striving to achieve their goals. Your curiosity, perseverance and commitment to learning inspire me. I am deeply grateful to the incredible educators who have guided me, especially Dr Tammy Johnson, my educator for Property Law B at Bond University, and to the colleagues and connections I have made during my studies on the Gold Coast, Queensland. Thank you for your inspiration, intellectual guidance, commitment, support and encouragement through challenge and adversity. Your belief in me, your friendship and your willingness to share knowledge have shaped both my academic and personal growth. To everyone who has contributed to my journey - thank you. This book is a reflection of that journey, the collective support I have received and the many people who have made it possible.

May you pursue legal understanding with clarity, discipline and purpose.

Publication and Source Note

This is an independent study guide prepared from course materials, legislation, cases, teaching resources and the author's study materials. It is not an official Bond University publication and is not endorsed by Bond University. Course materials are synthesised for explanation and study rather than reproduced as a substitute for the original materials. Statutory currency should always be checked against the official legislation in force at the time of an assessment.

Current-law transition note. The 2026 course operates under the Property Law Act 2023 (Qld). Where older authorities or course materials refer to the repealed Property Law Act 1974 (Qld), this book explains the modern 2023 Act framework and identifies the historical reference where it assists understanding.[1]

[1] *Property Law Act 2023* (Qld). The principal modern provisions commenced on 1 August 2025, replacing the *Property Law Act 1974* (Qld).

CONTENTS

Table of Contents

Preface....1
How to Use This Book....4
Interactive Glossary of Terms....6
Legal Research: Cases, Legislation and Authorities....16
Chapter 1 - Co-Ownership....20
Chapter 2 - Mortgages: Part 1....41
Chapter 3 - Mortgages: Part 2....60
Chapter 4 - Easements and Profits à Prendre....79
Chapter 5 - Licences....111
Chapter 6 - Negotiation, Property Dispute Resolution and Settlement Deeds 127
Chapter 7 - Leases: Part 1....146
Chapter 8 - Leases: Part 2....162
Chapter 9 - Leases: Part 3 and Retail Shop Leases....179
Chapter 10 - Covenants and Boundaries....211
Chapter 11 - Strata Title, Body Corporate and Community Management....241
Chapter 12 - Native Title and Indigenous Land Interests....262
Chapter 13 - Final Examination Revision....281
Appendix A - Statute Guide....356
Appendix B - Case and Authority Guide....367
Appendix C - Final Exam Attack Sheet....398
Appendix D - AGLC4 Quick Reference for Property Law Students....401
Appendix E - Lecture-Tutorial Alignment and Source Guide....403
Bibliography....406
Index....415
Resources....417

The chapter sequence follows the teaching flow of the supplied Property Law B course materials. Chapter 6 contains the professional negotiation and settlement-deed component taught during the semester.

HOW TO USE THIS BOOK

How to Use This Book

This book is designed to make dense Property Law easier to read, understand and apply. The layout is deliberately clear, spacious and uncluttered so students can focus on the legal principles, authorities, tutorials and worked applications without unnecessary visual distraction.

The learning method

THE CORE METHOD

LECTURE / FORUM -> TUTORIAL -> ISSUE -> RULE -> SECTION -> CASE -> APPLICATION -> CONCLUSION -> REMEDY.

The lecture and forum establish the doctrine. The tutorial then teaches what the doctrine looks like when hidden inside facts. The statute provides the controlling words. Cases show how courts understand the rule. Application is where the student reasons from the facts to a likely legal outcome. Remedies explain what the successful party can actually seek.

Cases and statutes

Every major authority is explained by proposition rather than name-dropping. Statutory provisions are identified at the most useful level available - section, subsection and paragraph - and connected to the factual trigger that makes them relevant. Where the source materials name an authority without supplying full facts or a full citation, the book does not invent those details.

Tutorial Masterclasses

Tutorials are not placed at the back as an afterthought. They are built into the relevant chapter. Each masterclass identifies the legally significant facts, constructs an issue tree, links each issue to legislation and authority, demonstrates detailed application, gives a reasoned conclusion and identifies remedies or protective steps. Each substantive chapter also contains a 20-question mastery bank for its topic, and each chapter includes at least two fully worked High Distinction model problems. The final examination chapter adds six mixed-topic capstones that require students to combine doctrines rather than recognise them in isolation.

AGLC4 legal writing

True footnotes are used through the book to model legal citation. Appendix D provides a quick reference to AGLC4 citation structure, and the bibliography demonstrates how sources are organised by category. The objective is that a student learns Property Law and legal writing at the same time.

DIGITAL & INTERACTIVE EDITION

Property Law B in Queensland is also available as a downloadable electronic edition for desktop computers, PCs, laptops, tablets and mobile phones. The digital edition preserves the complete study guide while adding clickable case, legislation and resource links together with active end-of-chapter crosswords. Students can move directly from the discussion of an authority to an online source, type answers into each crossword square, receive immediate green/red feedback, and use a separate answer page for checking and revision. For the best digital experience, download the complete electronic package and open START_HERE.html.

FUN REVISION RESOURCE

Interactive Glossary of Terms

This glossary brings the Property Law B interactive revision resource into the study guide as a quick alphabetical reference. Use each definition as a revision prompt, then return to the relevant chapter for the full legislation, cases, legal tests, application and remedies.

Source: Bond University, LAWS75-218 Property Law B (May 2026), Fun Revision Resources - Interactive Glossary of Terms.

Online course resources: Interactive Glossary of Terms | Interactive HTML version

Study note: these are short-form revision definitions from the supplied course resource. For an assessment answer, use the current legislation, full authorities and detailed chapter explanations in this book.

A

Abatement *[Easements and Profits a Prendre]* A self-help remedy allowing entry to the servient tenement to remove an interference with an easement.

Acceleration Clause *[Mortgages]* A contractual provision allowing the lender (mortgagee) to demand immediate repayment of the entire loan balance upon default.

Accommodation (of the DT) *[Easements and Profits a Prendre]* Requirement that an easement must benefit the use or enjoyment of the dominant land, not just a personal advantage.

Accounting *[Co-Ownership]* Equitable obligation between co-owners to account for profits derived from the land.

Accretion *[Boundaries]* Gradual addition of land through natural processes like soil deposition.

Alienation *[Co-Ownership]* Transferring one's interest in property to another party often through sale or gift.

Ancillary Easement *[Easements and Profits a Prendre]* A secondary right attached to a primary easement allowing necessary tasks like repairs on the servient land.

Annexation *[Covenants]* Process of attaching the benefit of a covenant to land to ensure it passes to successors.

Apical Ancestor *[Native Title]* Reference point forebear from whom native title claim group members descend.

Artificial Boundary *[Boundaries]* Boundaries defined by man-made markers (fences, survey pegs).

Assignment of Lease *[Licences and Leases]* Transfer of the entire remaining interest in a lease from assignor to assignee.

Avulsion *[Boundaries]* Sudden perceptible change to land (e.g., flood) generally not altering legal boundaries.

B

Bona Fide Purchaser for Value Without Notice *[Mortgages]* Protecting a party who acquires property for valuable consideration in good faith without knowledge of any existing claim.

Burden *[Covenants]* The obligation to comply with a covenant.

By-Law *[Strata Title]* Rules for management, use, and enjoyment of a Community Titles Scheme.

C

Caveat *[Mortgages]* A legal notice registered on the title of a property warning potential buyers of an existing claim or interest in the land.

Co-ownership *[Co-Ownership]* Ownership of real property by two or more individuals either as joint tenants or tenants in common.

Coexistence *[Native Title]* Native title existing alongside other rights, with inconsistent rights prevailing.

Common Property *[Strata Title]* Areas jointly owned by all lot owners, e.g., gardens, driveways.

Community Management Statement (CMS) *[Strata Title]* Legal document establishing rules, by-laws, and entitlements for a CTS.

Community Titles Scheme (CTS) *[Strata Title]* Ownership where individual lots are owned privately, common areas jointly.

Connection (to land) *[Native Title]* Continuing connection to land under traditional laws and customs since sovereignty.

Constructive Possession *[Mortgages]* Exercise of legal control over property without physical occupation, typically by receiving rents or profits.

Contractual Licence *[Licences and Leases]* A licence based on a contract, requiring offer, acceptance, consideration, and intention.

Contribution Schedule Lot Entitlement *[Strata Title]* Assigned number determining the proportion of levies each owner pays.

Covenant *[Licences and Leases]* A promise or agreement in a legal document creating a legal obligation.

D

Damages *[Licences and Leases]* Money awarded to a party suffering loss due to breach of contract.

Decree Absolute *[Co-Ownership]* The final order of a court dissolving a marriage.

Decree Nisi *[Co-Ownership]* A provisional court order in divorce proceedings declaring that the court sees no reason why the marriage should not be dissolved. Effective as final after a specified period.

Deed of Gift *[Co-Ownership]* A legal document transferring ownership of property as a gift without any consideration.

Derogation from Grant *[Licences and Leases]* Act by landlord rendering leased premises less suitable for the intended purpose.

Division *[Co-Ownership]* Legal remedy to divide jointly owned property into separate portions, typically as a last resort for resolving disputes.

Doctrine of Tenure *[Native Title]* Feudal system where all land is ultimately owned by the Crown.

Dominant Tenement *[Easements and Profits a Prendre]* The parcel of land that enjoys the benefit of an easement or profit à prendre.

E

Easement in Gross *[Easements and Profits a Prendre]* A statutory exception where an easement exists without a dominant tenement, usually for public utilities.

Encroachment *[Boundaries]* Building or structure illegally extending onto a neighbouring property.

Equity of Redemption *[Mortgages]* The mortgagor's right to reclaim clear title by fully repaying the debt before the power of sale is exercised.

Erosion *[Boundaries]* Gradual loss of land due to natural forces like water or wind.

Essential Term *[Licences and Leases]* A term of such importance that the parties would not have entered the contract without it.

Exclusive Possession *[Licences and Leases]* The tenant's right to occupy property to the exclusion of others, including the landlord.

Exclusive Use By-Law *[Strata Title]* By-law granting a specific owner rights over an area of common property.

Express Grant *[Easements and Profits a Prendre]* Creation of an easement via a written document (deed) signed and registered on title.

Express Tenancy *[Licences and Leases]* A tenancy explicitly agreed upon with terms in a written or oral agreement.

Extinguishment *[Native Title]* Permanent loss of native title rights due to inconsistent grants or legislation.

Extinguishment (of Easements/Profits) *[Easements and Profits a Prendre]* Termination of rights via release, abandonment, unity of ownership, or statute.

F

Federal Court *[Native Title]* Court with jurisdiction to determine the existence of native title.

Foreclosure *[Mortgages]* A court order terminating the mortgagor's equity of redemption and vesting property absolutely in the mortgagee.

Forfeiture *[Licences and Leases]* Loss of a right or property due to breach of contract.

Four Unities *[Co-Ownership]* Essential elements (possession, interest, title, time) required for the creation and continuation of a joint tenancy.

Frustration (of Lease) *[Licences and Leases]* Relieving parties from obligations if unforeseen circumstances make performance impossible.

Fundamental Breach *[Licences and Leases]* A serious breach going to the root of the contract.

Future Acts *[Native Title]* Dealings with land after 1996 affecting native title.

G

Gratuitous Licence *[Licences and Leases]* Permission to enter land for a specific purpose without payment.

Guarantor *[Licences and Leases]* A person responsible for another's debt if that person fails to meet the commitment.

I

Implied Covenant *[Licences and Leases]* A covenant considered part of the agreement by law or custom rather than explicit statement.

Implied Tenancy *[Licences and Leases]* A tenancy inferred by law based on conduct and circumstances.

Incorporeal Hereditament *[Easements and Profits a Prendre]* An intangible right over land (like an easement) that can be inherited.

Indefeasibility *[Mortgages]* A principle of the Torrens System providing that a registered proprietor's title is conclusive and immune to unregistered interests.

Indigenous Land Use Agreement (ILUA) *[Native Title]* Negotiated agreement regarding land use, development, and management.

Inter Vivos *[Co-Ownership]* Latin term meaning 'between living persons', often referring to transactions or agreements made during one's lifetime.

Interest Schedule Lot Entitlement *[Strata Title]* Determining proportion of ownership, voting rights, and asset distribution.

Intermediate Acts *[Native Title]* Dealings between 1994 and 1996 retrospectively validated.

Intestate *[Co-Ownership]* Dying without a valid will.

J

Joint Tenancy *[Co-Ownership]* A form of co-ownership where each tenant has equal and undivided ownership rights including the right of survivorship.

L

Landlocked *[Easements and Profits a Prendre]* State where a parcel of land has no legal or physical means of access to a public road.

Lease *[Licences and Leases]* An agreement granting exclusive possession for a fixed period in exchange for rent.

Leasehold Estate *[Licences and Leases]* The tenant's legal interest granting possession and use for a specific period.

Lessee/Tenant *[Licences and Leases]* The entity granted the right to occupy and use leased property.

Lessor/Landlord *[Licences and Leases]* The owner of the property granting the lease.

Licence *[Licences and Leases]* Authority granted to a person that prevents them from becoming a trespasser.

Licence Coupled with an Interest *[Licences and Leases]* Proprietary interest combining a licence with the right to remove something from land.

Licensee *[Licences and Leases]* The person or entity receiving the licence.

Licensor *[Licences and Leases]* The person or entity granting the licence.

Loss of Bargain Damages *[Licences and Leases]* Compensation for lost profits the party would have received if performed.

Lot *[Strata Title]* A defined portion of land within a CTS that is individually owned.

M

Mortgagee *[Mortgages]* The lender in a mortgage agreement who holds a security interest in the property.

Mortgagor *[Mortgages]* The borrower in a mortgage agreement who pledges the property as security.

N

National Native Title Tribunal (NNTT) *[Native Title]* Federal body responsible for mediating claims and facilitating negotiations.

Native Title *[Native Title]* Traditional rights and interests of Indigenous people to land and waters.

Native Title Register *[Native Title]* Public register containing approved determinations and registered ILUAs.

Natural Boundary *[Boundaries]* Boundaries defined by natural features like rivers or ridges.

Necessity (Easement of) *[Easements and Profits a Prendre]* An easement implied by law where it is strictly necessary for the reasonable use of land.

Negative Covenant *[Covenants]* Restricting the owner of the servient tenement from performing certain actions.

Non-extinguishment Principle *[Native Title]* Native title suspended rather than extinguished during certain activities.

Notice to Remedy Breach of Covenant *[Licences and Leases]* Formal notice requiring the tenant to fix a breach within a reasonable timeframe.

O

Original Owner *[Strata Title]* Developer or initial owner who establishes the CTS.

Ouster *[Co-Ownership]* Exclusion of a co-owner from possession of jointly owned property.

P

Part Performance *[Licences and Leases]* Acts demonstrating an oral agreement sufficient to enforce in equity despite lack of writing.

Partial Extinguishment *[Native Title]* Situation where some, but not all, native title rights are extinguished.

Past Acts *[Native Title]* Validated dealings with land between 1975 and 1993.

Periodic Tenancy *[Licences and Leases]* Tenancy automatically renewing until terminated by proper notice.

Positive Covenant *[Covenants]* Requiring the owner of the servient tenement to take specific actions.

Possession (Mortgagee's Power of) *[Mortgages]* A right exercisable by a mortgagee upon default to take possession to protect or realise the security.

Power of Sale *[Mortgages]* The mortgagee's right to sell the property to recover the debt if the mortgagor defaults.

Prescribed Mortgage *[Mortgages]* A mortgage secured by a primary residence, subject to additional protection measures.

Privity of Contract *[Licences and Leases]* The legal relationship between parties to a contract.

Privity of Estate *[Licences and Leases]* Legal relationship between parties having a shared interest in the same property.

Profit à Prendre *[Easements and Profits a Prendre]* A proprietary right to enter another's land and take away part of the soil or natural produce.

Proprietary Interest *[Licences and Leases]* Legal right providing rights to possess, use, sell, or transfer property.

Q

Quiet Enjoyment *[Licences and Leases]* Landlord's obligation to ensure tenant can peaceably occupy without interference.

R

Radical Title *[Native Title]* The underlying title to land held by the Crown.

Re-entry *[Licences and Leases]* Right of lessor to take possession after lessee breach.

Receiver *[Mortgages]* A professional appointed to manage a mortgaged property and collect income to repay the debt.

Redemption *[Mortgages]* Repayment of the secured debt resulting in discharge of the mortgage.

Registration Test *[Native Title]* Threshold test to determine if claims obtain procedural rights.

Regulation Module *[Strata Title]* Rules specific to a type of CTS outlining legal and operational requirements.

Repudiation *[Licences and Leases]* Act indicating unwillingness or inability to perform contractual obligations.

Restrictive Covenant *[Covenants]* A promise contained in a deed that restricts the use of the land.

Retail Shop Lease *[Licences and Leases]* Specific lease covered by the Retail Shop Leases Act 1994 (Qld).

Reversion *[Licences and Leases]* Landlord's retained interest reclaiming possession after lease ends.

Right of Survivorship *[Co-Ownership]* In joint tenancy, the automatic transfer of a deceased tenant's interest to the surviving tenant(s).

Rights and Interests (Native Title) *[Native Title]* Specific rights possessed under traditional law and custom (e.g., access, hunting).

Riparian Owner *[Boundaries]* Owner of land bordering a river or natural watercourse.

Running with the land *[Covenants]* Benefit or burden passing automatically to subsequent owners.

S

Scheme of Development *[Covenants]* Equitable concept allowing enforcement among lot owners in a planned development.

Servient Tenement *[Easements and Profits a Prendre]* The parcel of land that is burdened by an easement or profit à prendre.

Set Off *[Licences and Leases]* Legal right to deduct a debt owed from an amount owed to the same party.

Severance *[Co-Ownership]* The act of converting a joint tenancy into a tenancy in common by breaking one or more of the four unities.

Short-term Lease *[Licences and Leases]* Lease with duration of three years or less under the Property Law Act 1974.

Statutory Easement *[Easements and Profits a Prendre]* An easement created or imposed under legislation rather than agreement.

Subrogation *[Mortgages]* Equitable doctrine allowing a lender to step into the shoes of another secured creditor.

Sui Generis *[Native Title]* Latin term meaning 'of its own kind', unique to native title.

Surrender by Operation of Law *[Licences and Leases]* Termination of lease through conduct implying mutual agreement to end.

T

Tenancy at Sufferance *[Licences and Leases]* Tenant remaining in possession after lease expires without landlord consent.

Tenancy at Will *[Licences and Leases]* Tenancy with consent but without rent requirement, terminable anytime.

Tenancy in Common *[Co-Ownership]* A form of co-ownership where each tenant holds a separate and identifiable share which can be disposed of by will.

Terra Nullius *[Native Title]* Wrongly applied 'land belonging to no one' doctrine used to justify colonization.

Testator *[Co-Ownership]* A person who makes a will.

Touch and Concern *[Covenants]* Legal principle requiring a covenant to directly impact the use and enjoyment of land.

Traditional Laws and Customs *[Native Title]* Body of norms giving rise to native title rights, having continuity since sovereignty.

Trespasser *[Licences and Leases]* Person entering property without permission or legal justification.

Tri-partite Agreement *[Covenants]* Contractual arrangement ensuring the passing of the burden of a covenant.

U

Unity of Interest *[Co-Ownership]* Each co-owner holds the same type of interest in the property (e.g., freehold).

Unity of Possession *[Co-Ownership]* Each co-owner has an equal right to possess and enjoy the whole property.

Unity of Time *[Co-Ownership]* All co-owners acquire their interest in the property at the same time.

Unity of Title *[Co-Ownership]* All co-owners derive their title from the same instrument (e.g., deed, will).

W

Waiver *[Licences and Leases]* Voluntary relinquishment of a known right, e.g., ignoring a breach.

Legal Research: Cases, Legislation and Authorities

Property Law is not learned from one textbook, one Act or one jurisdiction alone. A strong law student learns how to find the law, check that it is current, understand the authority behind it and then apply it properly to the facts.

Why legal research matters

Throughout this book you will see Queensland legislation, Commonwealth legislation, common law, equitable principles and cases from Queensland and other jurisdictions. Some older English authorities also remain important because they explain common-law or equitable principles that continue to influence Australian Property Law. The important question is not simply whether a case came from Queensland. The important questions are what legal principle the case establishes, how authoritative it is, whether it is still good law, and why it matters to the problem you are solving.

Research platforms students should know

Westlaw Australia. Use Westlaw when you want detailed legal commentary, annotated legislation, case treatment and secondary sources. It is particularly helpful when you begin with a topic or statutory section and want to identify the leading authorities connected with it.

Lexis+ / LexisNexis Australia. Lexis+ is useful for cases, CaseBase, Halsbury's Laws of Australia, practical guidance, journal articles and legal commentary. It is especially useful for checking how later courts have treated an earlier case.

CCH iKnowConnect. CCH is useful for practical property-law research, including conveyancing and community-schemes material. It can help students connect legislation with practical commentary, forms and related authorities.

AustLII. AustLII is one of the most useful free legal research databases in Australia. Use it to locate legislation and judgments, read the actual reasons for decision and follow related authorities. LawCite can also help you see where a case has been cited.

Supreme Court Library Queensland. The Supreme Court Library Queensland is an important place to locate Queensland judgments and legal research material, particularly when you are working with Queensland courts and Queensland authorities.

Queensland Legislation. When a Queensland statutory provision matters, check the official Queensland Legislation website. It should be your final verification point for the current wording of an Act or regulation and for historical versions where timing matters.

Cases may come from more than Queensland

Property Law problems often rely on authorities from several jurisdictions. A High Court of Australia decision is binding throughout Australia. Decisions of the Queensland Court of Appeal bind lower Queensland courts on the same point of law. Decisions from other States and Territories are not automatically binding in Queensland, but they may be persuasive, especially where they address the same common-law or equitable principle. Older English decisions may also remain influential where Australian law has adopted the principle and later Australian authority or legislation has not displaced it.

This is why every case should be read for its legal proposition, not merely its location. Ask: What court decided it? What rule does it establish? Is that rule common law, equity or statutory interpretation? Has a later case followed, distinguished, criticised or overruled it? Has legislation changed the position since the case was decided?

Know what source of law you are using

Queensland Property Law often requires several sources of law to operate together. Queensland State legislation - such as the *Property Law Act 2023* (Qld) and *Land Title Act 1994* (Qld) - is both State law and statutory law. Commonwealth legislation, such as the *Native Title Act 1993* (Cth), is Commonwealth statutory law. Common law and equity are developed through judicial decisions, subject to legislation. Cases may also interpret statutory provisions and explain how those provisions apply to real facts. Understanding which source you are using helps you explain both the rule and its authority.

A simple research method

1. Identify the legal issue. Work out what the factual problem is really asking about before searching.

2. Find the legislation. Ask whether a Queensland or Commonwealth Act or regulation governs the issue.

3. Find the exact provision. Move beyond the name of the Act and locate the relevant section, subsection and paragraph.

4. Find the leading authorities. Identify the cases that state, explain or apply the legal test.

5. Check the authority. Use a citator or later cases to see whether the decision has been followed, distinguished, criticised or overruled.

6. Read the important part of the judgment. A case summary is useful, but the judgment explains why the court reached the result. Find the passages that contain the rule and reasoning you need.

7. Connect the authority to the facts. Do not collect cases simply because they appeared in a lecture or search result. Explain why the case supports, weakens or helps distinguish the argument before you.

8. Check that the law is current. Legislation changes and authorities develop. Before relying on a provision or case in assessed work, verify the current law.

Do not stop at a case summary

Case summaries are excellent learning tools because they help you identify the facts, issue, rule, reasoning, outcome and significance quickly. But when an authority is important, learn to find and read the actual judgment. A summary tells you what happened; the judgment shows you why the court decided it. That difference is crucial when you are trying to use an authority accurately in an IRAC answer, memorandum, assignment or examination.

Using research in a legal answer

The aim of research is not to produce the longest list of cases. The aim is to find the best authority for the proposition you need and connect it to the facts. The method used throughout this book is: **FACT -> ISSUE -> RULE -> ELEMENT -> SECTION -> CASE / AUTHORITY -> APPLICATION -> CONCLUSION -> REMEDY.** When you can explain why each source belongs in that chain, you are no longer memorising law - you are using it.

The habit to build

For every important authority, train yourself to answer six questions: What happened? What was the legal issue? What did the court decide? What rule or principle comes from the decision? Why does that rule matter? When would I use the authority in a new problem? That habit will make Property Law, common law, equity and statutory interpretation easier to understand and much easier to apply.

The goal is simple: **find the issue -> find the law -> find the authority -> understand the reasoning -> check its status -> apply it to the facts.** This book is designed not only to tell you what the law is, but to help you learn how to find it, understand it and use it with confidence.

CHAPTER 1. CO-OWNERSHIP

Joint tenancy • tenancy in common • survivorship • severance • sale/division • accounting between co-owners

LEARNING OUTCOMES

By the end of this chapter, you should be able to distinguish joint tenancy from tenancy in common; explain the four unities and survivorship; analyse severance, sale/division and co-owner accounting; and apply legal and equitable ownership rules to the supplied tutorial.

How to use this chapter

Read the explanation first. Then connect each rule to the exact statutory provision and authority. The Tutorial Masterclass shows how the lecture and forum material becomes legal analysis: facts are converted into issues, issues into rules, and rules into a reasoned application, conclusion and remedy.

1.1 The basic choice: joint tenancy or tenancy in common

Where land is owned by more than one person, the co-owners hold either as joint tenants (JT) or tenants in common (TIC). The distinction is not merely descriptive: it determines whether an owner has a distinct share, whether survivorship operates on death, how an interest can be transferred, and what happens when the relationship breaks down.

Feature	Joint tenancy	Tenancy in common
Nature of ownership	Each joint tenant is seised of the whole, subject to the equal rights of the other joint tenants. No joint tenant owns a physically severable piece or separate beneficial share while the JT continues.	Each tenant in common owns a distinct undivided proportionate share. The land is not physically divided, but each share is separately disposable.
Shares	Four unities require equal	Shares may be equal or

Feature	Joint tenancy	Tenancy in common
	interests.	unequal.
Death	Right of survivorship (jus accrescendi): the deceased interest is absorbed by the survivor(s). A will cannot dispose of an unsevered JT interest.	No survivorship. The deceased TIC share forms part of the estate and passes under the will or intestacy rules.
Transfer	A joint tenant can sever by an effective dealing with their interest.	A TIC can transfer or otherwise deal with their separate share.
Presumption	Historical common law favoured JT where four unities existed; equity often preferred TIC in circumstances such as unequal contributions.	Current Queensland statutory rules generally favour TIC absent contrary indication: PLA ss 28-29; LTA s 56(2).

1.2 Joint tenancy: the four unities

1. Unity of possession — every joint tenant has an equal right to possess the whole. One JT cannot ordinarily exclude or eject another. Exclusion may generate trespass/accounting/occupation-rent issues.
2. Unity of interest — each must hold the same kind, extent and duration of interest. A freeholder and leaseholder cannot be JTs of the same estate. Shares must be equal.
3. Unity of title — the interests must derive from the same instrument or act. If a share is acquired under a separate dealing, this unity is destroyed.
4. Unity of time — the interests ordinarily vest at the same time. The lecturer notes a testamentary exception where gifts vest at different ages.

1.3 Possession, exclusion and occupation rent

Unity of possession is a frequent problem-question trigger. Every co-owner is entitled to possession of the whole. A person who excludes another may face an accounting or occupation-rent order, but occupation rent is not automatic merely because one co-owner lives on the land. The lecturer identifies Chieco v Evans, Dennis v McDonald and Biviano v Natoli as authorities to consider on co-owner possession, trespass and occupation-rent issues.

Current Queensland law — PLA s 40 — The Property Law Act 2023 now gives the court an express power in co-ownership proceedings to order compensation, reimbursement, an account under s 27, or an adjustment of interests. Under s 40(2), the court considers improvements; maintenance/insurance; damage from unreasonable use; disproportionate payment of rates, mortgage repayments, purchase money, instalments or other outgoings; and whether occupation/use should attract an amount equivalent to rent. Under s 40(3), occupation rent for land is constrained: it is not ordered unless the occupying co-owner seeks compensation/reimbursement/accounting for expenditure, excluded the non-occupier, or the non-occupier suffered detriment because joint occupation was impracticable.

1.4 Survivorship

Survivorship is the defining incident of a joint tenancy. On death, the deceased joint tenant does not transmit a separate share to the estate; the survivor's existing title enlarges automatically. Accordingly, a testamentary gift cannot override survivorship unless the joint tenancy was severed before death. If joint tenants die in circumstances where the order of death is uncertain, the course directs attention to s 65 Succession Act: deaths are deemed to occur in order of seniority, with the oldest deemed to die first. A surviving joint tenant uses the prescribed Titles Office process/record of death to update the register.

A corporation could not traditionally be a joint tenant at common law because survivorship assumed natural death, but the course identifies PLA s 26 as permitting a company to be a joint tenant. Liquidation/deregistration supplies the practical endpoint for the corporate co-owner and the survivor's interest enlarges accordingly.

1.5 Creation and presumptions

At common law, if the four unities were present and the instrument did not reveal a contrary intention, a JT was presumed. Equity could depart from that position and presume a TIC where the parties' beneficial arrangement made equal joint ownership inappropriate—for example unequal purchase-price contributions, unequal mortgage contributions or partnership contributions. The modern statutory position is important in an exam because it displaces the old common-law starting point.

Provision	Rule / operation	Exam use
PLA s 26	Course authority for a company being capable of holding as joint tenant.	Use where one co-owner is a corporation and survivorship/corporate cessation is in issue.
PLA s 28	Absent contrary indication, a disposition of an equitable interest in property to 2 or more persons is presumed to create a tenancy in common. The registrar records TIC unless a contrary holding is shown.	Start here when the instrument is silent/ambiguous about JT versus TIC.
PLA s 29	Course identifies this with the statutory TIC regime.	Read with s 28 where equitable holders become entitled to legal title.
LTA s 56(2)	TIC holders of an equitable interest who become entitled to the legal interest remain TIC subject to contrary agreement.	Torrens registration/equitable-to-legal transition.
Succession Act s 65	Presumption concerning order of death where order uncertain.	Apply before survivorship distribution.
LTA s 59	Registration of a transfer is	Use when a JT signs a transfer

Provision	Rule / operation	Exam use
	required to perfect legal severance by alienation.	but death/other event occurs before registration.
PLA s 192	Course directs attention to equitable assistance where a gift/transfer has not become effective at law.	Use alongside Corin v Patton and the "everything necessary" inquiry.
PLA ss 33-40	Court-ordered sale/division and associated co-owner relief.	Relationship breakdown; one party wants out; adjustment/accounting.
PLA s 35	Course notes a preference in practice for sale and division of proceeds rather than physical partition.	Remedy where subdivision is impractical/costly.
PLA s 40	Compensation, reimbursement, accounts and interest adjustment between co-owners.	Always check in a breakdown problem involving mortgage/rates/improvements/occupation.

1.6 Severance of a joint tenancy

Severance destroys the joint tenancy as to the severed interest by destroying one or more unities. Williams v Hensman is the classic classification: severance by unilateral act operating on one's own share, mutual agreement, or a course of dealing sufficient to show the interests were mutually treated as held in common. Queensland statutory sale/division and some court orders can also produce a result inconsistent with continued joint tenancy.

Method	Legal test / effect	Key authorities
Mutual agreement	All JTs clearly and voluntarily agree to sever and hold as	Sprott v Harper — evidence can establish intention;

Method	Legal test / effect	Key authorities
	TIC. Equity may recognise the agreed severance even before the register is changed.	Saleeba v Wilkie — insufficient evidence/intention will not.
Alienation at law	A JT transfers the interest. Under Torrens title, legal severance requires effective registration.	Wright v Gibbons; LTA s 59.
Equitable severance / gift	An incomplete legal transfer may nevertheless be effective in equity where the donor has done everything necessary within their power to perfect the gift. A mere unilateral declaration that one now wishes to be TIC is not enough.	Corin v Patton; consider PLA s 192.
Homicide	Public policy prevents a killer benefiting by survivorship in the ordinary way; the murderer may take legal title but hold the victim-derived benefit on trust for the victim's estate.	Neubacher v Good [2003] NSWSC 379; Re Stone [1989] 1 Qd R 351.
Court order	An order inconsistent with continued JT may sever; timing depends on construction of the order.	Public Trustee v Grivas [1974] 2 NSWLR 316; Berdal v Burns [1990] WAR 140; Penny Nominees Pty Ltd v Fountain (No 3) (1990) 5 BPR 11,284.

Method	Legal test / effect	Key authorities
Statutory sale/division	Court may order sale and distribution, or physical partition/subdivision.	PLA ss 33-40; practical preference for sale reflected in course discussion of s 35.

1.7 Case authority digest

Case	Issue / rule / outcome used in this course	When to cite
Chieco v Evans	Co-owner possession/occupation dispute; used by the lecturer when testing the consequence of equal possessory rights and possible liability between co-owners.	A co-owner says the other cannot enter, has trespassed, or must pay for sole occupation.
Dennis v McDonald	Authority associated with occupation rent/accounting where co-owners are not jointly occupying.	Occupation rent and exclusion.
Biviano v Natoli	Co-owner accounting/occupation authority identified with unity of possession.	Sole use of commonly owned premises and financial adjustment.
Williams v Hensman	Classic categories of severance of joint tenancy.	Always cite when organising severance analysis.
Sprott v Harper	Evidence of agreement/intention may show consensual severance.	Written/oral conduct suggesting parties agreed to treat shares separately.

Case	Issue / rule / outcome used in this course	When to cite
Saleeba v Wilkie	Contrast authority: alleged conduct did not establish the necessary intention to sever.	Weak/ambiguous evidence of severance.
Wright v Gibbons	Alienation of a JT interest destroys relevant unities and severs.	Registered transfer to third party.
Corin v Patton	Mere intention is insufficient; equity asks whether the donor did everything necessary to perfect the transfer/gift.	Death occurs before registration or transfer is incomplete.
Neubacher v Good [2003] NSWSC 379	Public policy response to homicide and survivorship.	One joint tenant unlawfully kills another.
Re Stone [1989] 1 Qd R 351	Further homicide/severance/public policy authority noted by course.	Same trigger as Neubacher.
Public Trustee v Grivas [1974] 2 NSWLR 316	Court order and severance timing.	Family/property orders affecting co-owned land.
Berdal v Burns [1990] WAR 140	Court order may be inconsistent with continuation of a JT; construction/timing matters.	Orders for sale/adjustment before death.
Penny Nominees Pty Ltd v Fountain (No 3) (1990) 5 BPR 11,284	Court-order severance authority in the course.	Whether an order has already destroyed survivorship.

1.8 Plain-English summary

A joint tenancy means "we own the whole together and the survivor takes". A tenancy in common means "we each own a defined share and that share can pass through our estate". In every co-ownership problem ask: (1) what form of co-ownership exists; (2) if JT, are all four unities present; (3) has a death triggered survivorship; (4) did severance occur before the death; and (5) is a financial adjustment/order needed between co-owners under PLA ss 33-40, especially s 40?

HIGH DISTINCTION MODEL PROBLEM 1 AND MODEL ANSWER

Problem — Alex, Brooke and Casey are registered joint tenants of a Queensland investment property. Brooke paid 70% of the deposit and has paid most mortgage instalments. After a dispute, Alex excludes Brooke from the property. Casey signs a transfer of Casey's interest to Casey personally "as tenant in common" and lodges it for registration. Casey dies after lodgement but before Brooke learns of the dealing. Alex claims survivorship gives Alex and Brooke the whole property equally. Advise the parties, including financial adjustments and remedies.

I — ISSUE

Main issue: whether the JT continued at Casey's death or had been severed.

Sub-issues: statutory/equitable presumptions; legal/equitable effectiveness of Casey's self-dealing; survivorship; exclusion/occupation rent; mortgage/deposit contributions; sale/division remedies.

II — RULE / LAW

Begin with the registered JT and four unities. Survivorship operates unless severance was effective before death. Organise severance under Williams v Hensman. A legal transfer requires registration under the LTA; if not registered at the critical time, consider Corin v Patton and whether Casey did everything necessary to perfect the dealing, together with the statutory/equitable framework identified by the course. For financial adjustment, apply PLA ss 33-40 and specifically s 40(1)-(3): reimbursement/accounting, mortgage/purchase/outgoings, exclusion and occupation-rent limitations.

III — APPLICATION

Casey’s signed/lodged instrument is powerful evidence of an immediate objective dealing with Casey’s share, not merely a statement of future intention. Whether legal severance preceded death depends on registration timing; if registration was incomplete, equity becomes decisive. Alex’s exclusion of Brooke activates the possession/accounting analysis and strongly engages s 40(3)(b). Brooke’s disproportionate mortgage and purchase contributions are expressly relevant under s 40(2)(d). The historic JT label does not prevent the court adjusting accounts between co-owners.

IV — REMEDIES / DAMAGES

Seek declarations as to the post-death shares, an account/reimbursement/interest adjustment under s 40, possible occupation-rent adjustment because Brooke was excluded, and if co-ownership is no longer workable an order for sale/division under ss 33-40. Costs and consequential orders may follow.

V — CONCLUSION

The outcome turns on whether Casey’s severance was legally or equitably complete before death. Brooke has a strong separate claim for financial adjustment regardless. The HD answer must not jump straight to survivorship without resolving severance timing and must separately analyse the s 40 accounting remedy.

Tutorial Masterclass - Max, Alex and Sam: co-ownership, expenditure and accounting

Tutorial problem - adapted from the supplied course problem. The supplied tutorial uses a Toowoomba investment property purchased by Max, Alex and Sam for $1.6 million. Max contributed $400,000 and Alex and Sam $200,000 each, with an informal understanding that shares and expenses would reflect those contributions. Max later paid for termite and structural repairs, electrical compliance work, smoke alarms and an upgraded roof. Alex and Sam stopped contributing to the mortgage, rates and insurance. Max leased the property, used the rent toward outgoings, and now wants a sale without their cooperation.[2]

WHAT THE TUTORIAL IS TEACHING

Start by separating five questions: legal title; equitable shares; compulsory sale or division; contribution for mortgage/outgoings and works; and accounting for rent. Do not merge them into one broad question about fairness.

Rule / Law

Use the Queensland co-ownership framework in the Property Law Act 2023 (Qld), particularly ss 28-29 and ss 33-40, together with the Land Title Act 1994 (Qld) for registered title. For severance, survivorship and the character of joint tenancy use the common-law authorities, especially Williams v Hensman. For financial adjustment, distinguish necessary preservation and legally required expenditure from voluntary improvement and then account for rent received.[3]

Application - how a High Distinction answer reasons

The unequal purchase contributions are highly relevant to beneficial ownership, but they do not by themselves rewrite the registered title. A strong answer therefore states the legal title first and then asks whether equity recognises unequal beneficial interests. The pre-purchase understanding that shares and expenses would reflect contributions is important evidence. On expenditure, termite structural work, dangerous electrical work and legally required smoke alarms have a stronger claim to contribution than the higher-quality roof upgrade, because the first group protects, preserves or legally enables use of the property while the roof choice

[2] *Property Law Act 2023* (Qld) ss 28-29, 33-40; *Land Title Act 1994* (Qld) s 56(2).
[3] *Williams v Hensman* (1861) 1 J & H 546; 70 ER 862.

contains an improvement element. Mortgage repayments, rates and insurance are also analytically distinct from improvements because they preserve the common asset and the mortgage security. Rent cannot simply be treated as Max's personal income: it must be brought into the co-owner account before any net adjustment is calculated.

Conclusion and remedies

Max has a strong basis to seek court-assisted sale/division if cooperation cannot be obtained, together with accounting and appropriate financial adjustments. The precise beneficial shares and reimbursement figures depend on the title, the proven agreement and the classification of each expenditure. The exam lesson is to calculate only after establishing the legal category of each amount.

EXAM TRANSFER

When the names and facts change, keep the method: identify the legal relationship first, break the problem into sub-issues, state the exact provision and authority, apply each element to a fact, address the strongest counterargument, and only then state the remedy.

FREQUENTLY ASKED QUESTIONS

What is co-ownership of real property and why is it becoming more common?

Co-ownership refers to a situation where two or more individuals own real property together.

It is becoming more common due to:

- The high cost of housing
- Increased difficulty for individuals to purchase property alone
- Parents contributing to property purchases for adult children

What are the main types of co-ownership?

The two main types are:

- **Joint Tenancy (JT):** Co-owners are treated as owning the whole property together, with rights of survivorship.
- **Tenancy in Common (TIC):** Each co-owner holds a defined share that can be transferred independently.

What are the four unities in a joint tenancy?

- **Possession:** Equal right to occupy the whole property
- **Interest:** Equal ownership interests
- **Title:** Interests arise from the same document
- **Time:** Interests commence at the same time

All four must exist for a joint tenancy to continue.

What is the right of survivorship?

In a joint tenancy, when one co-owner dies, their share automatically passes to the surviving co-owner(s).

In contrast, under a tenancy in common, a co-owner's share passes through their will or intestacy laws.

How can a joint tenancy be severed?

A joint tenancy may be severed by:

- Mutual agreement
- Transfer of a share (alienation)
- Unilateral action in equity
- Bankruptcy or court order

Examples include divorce settlements, property transfers, or insolvency.

How do common law and equity treat co-ownership differently?

- **Common law:** Presumes joint tenancy where the four unities exist
- **Equity:** Prefers tenancy in common, especially where contributions are unequal
- **Modern legislation:** Typically defaults to tenancy in common unless stated otherwise

What responsibilities do co-owners have?

- Shared responsibility for mortgage, rates, and insurance (if applicable)
- No right to exclude another co-owner
- Must respect shared possession rights

Legal remedies include:

- Ouster (removal of wrongful exclusion)
- Court-ordered sale or division

What happens if co-owners disagree?

The court may order:

- Division (physical separation of the property)
- Sale of the property

Chapter Quiz

1. What is the defining incident of a joint tenancy?

Answer: The right of survivorship.

2. Name the four unities.

Answer: Possession, interest, title and time.

3. Can tenants in common hold unequal shares?

Answer: Yes. Tenants in common may hold equal or unequal undivided shares.

4. Which case provides the classic categories of severance?

Answer: Williams v Hensman.

5. Which PLA provisions govern court sale/division and related co-owner relief?

Answer: Property Law Act 2023 (Qld) ss 33-40.

6. When may occupation rent be especially relevant under PLA s 40?

Answer: Where a co-owner seeks reimbursement/accounting, excludes another co-owner, or joint occupation is impracticable and causes detriment.

MASTERY QUIZ - CO-OWNERSHIP - 20 QUESTIONS AND ANSWERS

These questions are deliberately mixed between recall, distinction, issue spotting, application and remedies. They are additional to the shorter chapter quiz and are designed for repeated revision.

Question 1. What is the practical difference between a joint tenancy and a tenancy in common?

Answer: A joint tenancy carries survivorship and does not divide the legal estate into separate shares while it continues. A tenancy in common gives each co-owner a distinct undivided share that can pass through the owner's estate.

Question 2. Why must a student distinguish registered legal title from beneficial ownership?

Answer: Because the register determines the legal title, while equity may recognise different beneficial proportions arising from the parties' agreement, contributions or other equitable principles.

Question 3. What are the four unities associated with a joint tenancy?

Answer: Possession, interest, title and time.

Question 4. What does the right of survivorship do?

Answer: On the death of a joint tenant, the deceased's interest is absorbed by the surviving joint tenant or joint tenants rather than passing under the deceased's will.

Question 5. What is severance?

Answer: Severance ends the joint tenancy as to the affected share so that survivorship no longer operates for that share.

Question 6. Which authority provides the classic three routes to severance?

Answer: Williams v Hensman (1861) 1 J & H 546; 70 ER 862.

Question 7. What are the three Williams v Hensman routes?

Answer: An act operating on a joint tenant's own share; mutual agreement; and a course of dealing showing that the parties treated their interests as separate.

Question 8. Why is the timing of severance critical when one joint tenant dies?

Answer: Because survivorship operates at death unless severance was legally or equitably effective before death.

Question 9. What does PLA s 27 broadly require where one co-owner receives more than a just share?

Answer: It requires accounting between co-owners so that one co-owner cannot retain more than the proper proportion without adjustment.

Question 10. What is the significance of PLA ss 33-40 in a co-ownership dispute?

Answer: They provide the statutory pathway for court orders concerning sale or division and related financial adjustments.

Question 11. Can unequal purchase contributions automatically change the registered title?

Answer: No. They may be relevant to equitable ownership, but registered title and beneficial ownership must be analysed separately.

Question 12. Why may mortgage repayments be relevant to an accounting between co-owners?

Answer: Because one co-owner who pays more than the agreed or proportionate burden may seek reimbursement or adjustment when the accounts are taken.

Question 13. How should necessary repairs be distinguished from improvements?

Answer: Necessary repairs preserve or make the property safe or usable; improvements go beyond preservation and enhance the property. Recoverability may differ.

Question 14. Why can occupation rent arise between co-owners?

Answer: It may be relevant where one co-owner has exclusive occupation, especially where another is excluded or where accounting and reimbursement are being adjusted.

Question 15. Does one co-owner ordinarily own a physically defined part of the land?

Answer: No. Co-ownership concerns undivided interests in the whole land unless the land is later partitioned or otherwise divided.

Question 16. What exam fact should immediately make you think about severance?

Answer: A transfer, contract to transfer, mutual agreement, course of dealing, court order, bankruptcy-type event or death occurring while the parties are registered as joint tenants.

Question 17. What exam fact should make you think about equitable accounting?

Answer: Unequal mortgage payments, rates, insurance, repairs, improvements, rental receipts or exclusive occupation.

Question 18. Why should remedies not be discussed before the form of co-ownership is identified?

Answer: Because the parties' proprietary interests and the availability or effect of sale, survivorship and accounting depend on the legal and equitable ownership structure.

Question 19. What is a strong first sentence in a co-ownership problem?

Answer: Identify whether the parties are joint tenants or tenants in common at law, then state that beneficial ownership and financial adjustment must be considered separately.

Question 20. What should a final co-ownership conclusion state?

Answer: Who holds what interest, whether severance occurred, whether sale or division is available, and what accounting or reimbursement is likely.

HIGH DISTINCTION MODEL PROBLEM 2 AND MODEL ANSWER - Severance, survivorship and accounting

Question — Jordan and Taylor are registered joint tenants of a Gold Coast unit. Jordan pays 80% of the mortgage and all rates. After a relationship breakdown, Taylor signs a contract to transfer Taylor’s interest to Morgan but dies before registration. Jordan has excluded Taylor from the unit for six months before death. Morgan claims the transfer severed the joint tenancy; Jordan claims survivorship. Advise Jordan, Morgan and Taylor’s estate.

I — ISSUE

The primary issue is whether Taylor's dealing severed the joint tenancy before death. Subsidiary issues are whether an equitable severance arose despite non-registration, the effect of survivorship, and whether financial adjustments are available for mortgage, rates and exclusion.

II — RULE / LAW

Start with the registered joint tenancy and survivorship. Organise severance using Williams v Hensman. A legal Torrens transfer requires registration, but an incomplete dealing may be effective in equity where the transferor has done everything necessary, applying Corin v Patton and the relevant Queensland statutory framework. For financial adjustment, apply PLA ss 33-40, especially s 40(2)-(3).

III — APPLICATION

The contract demonstrates a serious objective dealing with Taylor's share, but the decisive question is whether Taylor had done everything necessary for equity to treat the transfer as complete before death. If further acts remained within Taylor's control, the joint tenancy likely survived and Jordan takes by survivorship. If the equitable transfer was complete, severance likely occurred and Morgan may take Taylor's equitable share. Jordan's disproportionate mortgage and rates payments are relevant to reimbursement, while Jordan's exclusion of Taylor directly activates the occupation-rent considerations in s 40(3).

IV — CONCLUSION

The likely proprietary result depends on completion of the equitable transfer before death. Whatever the survivorship outcome, the court can separately adjust accounts under PLA s 40 so that ownership proportions do not mechanically determine the final financial position.

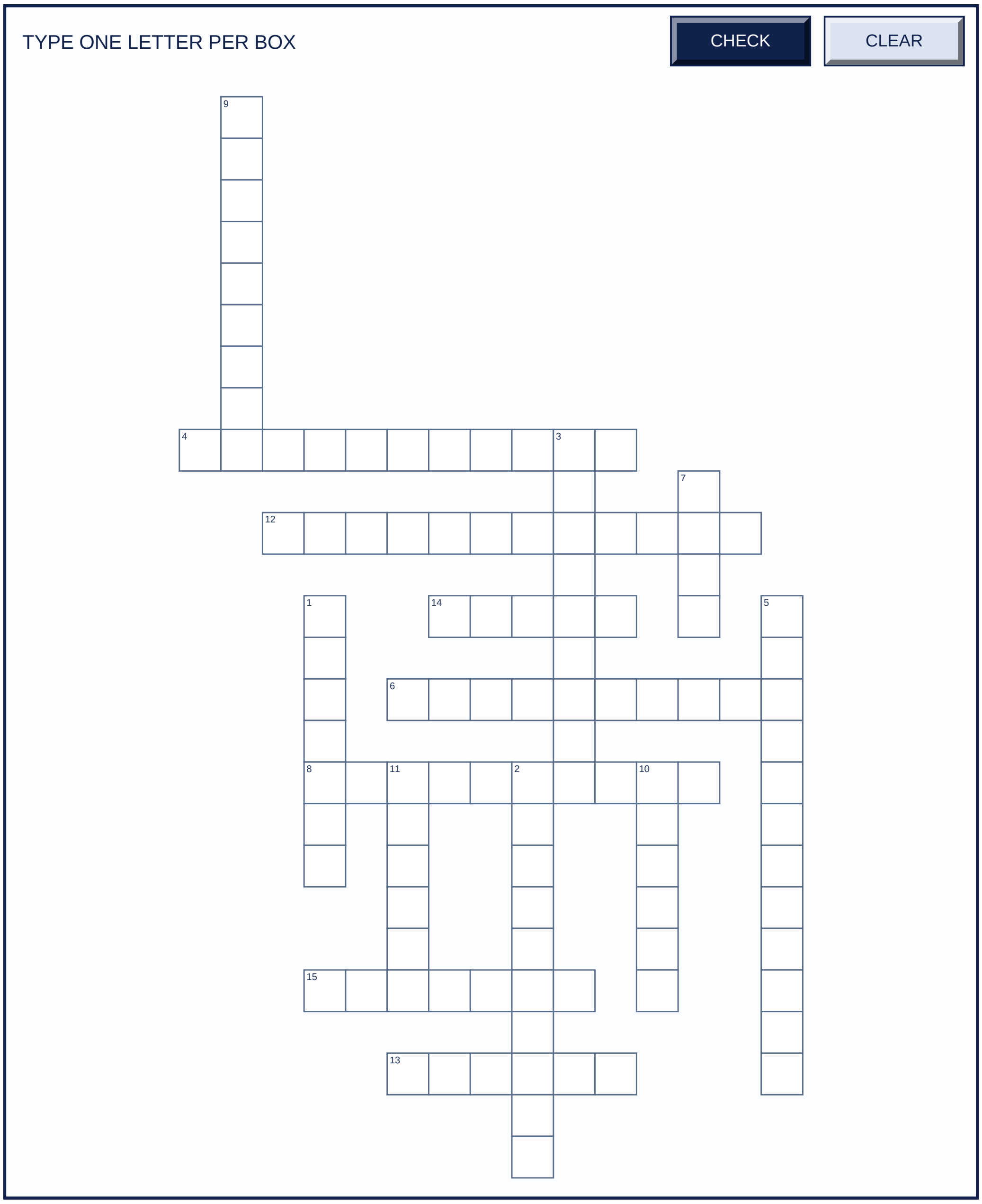
V — REMEDIES / ORDERS

Possible orders include declarations as to ownership, registration-related relief if Morgan proves an equitable interest, sale/division orders under PLA ss 33-40, reimbursement/accounting and occupation-rent adjustment.

CROSSWORD - CHAPTER 1: CO-OWNERSHIP

INTERACTIVE CROSSWORD: *Open the active version to type directly into the grid, check each answer, and receive immediate green/red feedback.* [***Launch Chapter 1 Active Crossword***]

Instructions: Complete the crossword using the chapter material, glossary, cases and authorities. Spaces, hyphens and punctuation are omitted from entries.



Across

4. Mutual-agreement severance must show a clear and _______ intention.

6. The unity common to joint tenancy and tenancy in common.

8. The type of rent that may arise when a co-owner has been denied possessory rights: ______ rent.

12. The rule that applies to joint tenancies when one joint tenant dies.

13. If severance is ineffective at law, this may assist.

14. You need to do this to one of the four unities to end a joint tenancy.

15. The classic severance authority is Williams v ______.

Down

1. The three-sisters case illustrating severance by alienation: Wright v ______.

2. The act of disposing of one's interest in a joint tenancy.

3. Sprott v Harper is used in the course in relation to severance by mutual ______.

5. Possession may be actual or ______.

7. Survivorship means a joint tenant cannot pass the continuing joint interest through this document.

9. This involves subdividing the property.

10. The denial or exclusion of a co-owner's possessory rights.

11. The type of tenancy where owners may hold disproportionate shares: tenancy in ______.

Use the chapter text to check each answer before moving to the next topic.

CROSSWORD ANSWERS - CHAPTER 1: CO-OWNERSHIP

Separate answer page - use this only after attempting the crossword.

4 Across - UNEQUIVOCAL	2 Down - ALIENATION
6 Across - POSSESSION	3 Down - AGREEMENT
8 Across - OCCUPATION	5 Down - CONSTRUCTIVE
12 Across - SURVIVORSHIP	7 Down - WILL
13 Across - EQUITY	9 Down - PARTITION
14 Across - SEVER	10 Down - OUSTER
15 Across - HENSMAN	11 Down - COMMON
1 Down - GIBBONS	

CHAPTER 2. MORTGAGES - PART 1

Nature • legal and equitable mortgages • National Credit Code • mortgagor rights • redemption and clogs

LEARNING OUTCOMES

By the end of this chapter, you should be able to classify legal and equitable mortgages; work through the National Credit Code threshold; explain mortgagor rights, redemption and clogs; and separate debt obligations from proprietary security.

How to use this chapter

Read the explanation first. Then connect each rule to the exact statutory provision and authority. The Tutorial Masterclass shows how the lecture and forum material becomes legal analysis: facts are converted into issues, issues into rules, and rules into a reasoned application, conclusion and remedy.

2.1 Nature of a mortgage

A mortgage is both a contractual relationship and an interest/charge over land securing payment or performance. The course adopts the High Court formulation in English, Scottish and Australian Bank Ltd v Phillips: a mortgage is a charge over property created by contract to secure future payment, with the mortgagee's security rights extinguished when the secured obligation is performed and enforceable against the property upon default. Under Queensland Torrens title, a registered mortgage is a charge rather than a transfer of title: the mortgagor remains registered owner, subject to the registered mortgage.

Concept	Rule	Exam significance
Personal covenant	Mortgagor promises to repay principal, interest and other agreed obligations.	Supports contractual debt claim independent of proprietary enforcement.
Security interest	Mortgage charges the	Supports possession, sale,

Concept	Rule	Exam significance
	mortgagor’s land interest.	foreclosure and other proprietary remedies on default.
Legal mortgage	Created by compliant instrument and registration.	Mortgagee becomes registered proprietor of the mortgage interest; indefeasibility issues may arise.
Equitable mortgage	Binding intention to create security, but legal formalities/registration not completed.	Enforceable in equity against appropriate parties; priority/indefeasibility becomes critical.

2.2 Writing, registration and indefeasibility

Provision	Rule	Use
PLA s 8	Creation of a legal or equitable interest in land must be in writing and signed by the person creating the interest.	Threshold formality for mortgages and other land interests.
LTA ss 72-73	Legal mortgage created through registration of a compliant mortgage instrument.	Creation/form of Torrens mortgage.
LTA s 74	Registered mortgage constitutes a charge; title is not transferred to mortgagee.	Explain proprietary nature.
LTA s 181	Registration creates a legal interest in land.	Legal versus equitable classification.

Provision	Rule	Use
LTA s 182	Registered legal interest vests in the registered person.	Identify mortgagee's registered proprietary position.
LTA s 37	Section 37 creates the indefeasible title on recording; s 184 states the quality and protective effect of a registered interest, subject to ss 185-187 and fraud.	Creation of title; for the protective effect of registration and exceptions, apply ss 184-187.
LTA ss 184-187	Indefeasibility and exceptions.	Post-registration disputes.
LTA Sch 2	Definitions include registered owner/registered proprietor concepts.	Terminology.

2.3 Equitable mortgages

Swiss Bank Corporation v Lloyds Bank Ltd supplies the course definition: an equitable mortgage arises where the legal owner does an act or executes an instrument that is insufficient to transfer/create the legal title but demonstrates a binding intention to create security. Examples in the slides are an unregistered prescribed mortgage, an agreement to grant a mortgage, or an ineffective attempt to create a legal mortgage. In an exam, separate "is there a binding security in equity?" from "is there a registered legal mortgage?" and then address priority against later registered interests.

2.4 National Credit Code: the s 5 application test

The National Credit Code (NCC) is Schedule 1 to the National Consumer Credit Protection Act 2009 (Cth). It is included in the Queensland course because it regulates qualifying credit contracts and related mortgages nationally. Do not assume it applies to every mortgage: establish the threshold first.

Debtor must be a natural person or strata corporation.

Credit must be provided or intended to be provided wholly or predominantly for personal, domestic or household purposes; to purchase, renovate or improve residential investment property; or to refinance credit previously used for residential investment property.

Under NCC s 5(4), “predominant” means more than half of the credit, or (for goods/services used for different purposes) the purpose for which they are intended to be most used.

A charge must be made for providing the credit.

The credit provider must provide credit in the course of a business of providing credit in the jurisdiction (including incidentally to another business).

Check s 6 exceptions. For a mortgage, then check s 7: it must secure obligations under a regulated credit contract or related guarantee and the mortgagor must be a natural person; where mixed obligations are secured, NCC protection applies only to the regulated obligations.

MAG Financial and Investment Ventures Pty Ltd v El-Saafin is the authority specifically linked by the lecture to identifying the purpose of credit. Use it where the loan has mixed or disputed business/personal/investment purposes.

2.5 NCC formation and disclosure provisions

Provision	Content / exam function
NCC s 3	Definition of credit.
NCC s 204	Principal definitions.
NCC Part 2	Credit contracts framework.
NCC s 14	Credit contract must satisfy writing/signature mechanism described in the Code.
NCC s 16	Pre-contractual statement and information disclosure.
NCC s 17	Required contents of contract document.

Provision	Content / exam function
NCC ss 20, 43	Copies of specified documents to debtor.
NCC s 30	Default interest restrictions: drafting cannot turn a default uplift into an impermissible penalty; a higher rate limited to the period of default is treated differently.
NCC s 26	Course notes a right to make early repayments unless the contract lawfully provides otherwise.
NCC s 82	Repayment of mortgage/credit on the Code conditions.

2.6 Default interest and penalties

Wanner v Caruana is used twice in the mortgage lectures. The key exam idea is substance over label. A term that retrospectively or permanently increases the interest burden because of default may be penal and unenforceable. The slide contrasts: (a) 5% rising permanently to 7.5% on default — unenforceable penalty; (b) 7.5% contract rate discounted to 5% if no default — framed as incentive; and (c) 5% rising to 7.5% only during actual default — potentially enforceable as compensation for breach. Always analyse the actual operation of the clause, NCC s 30 if the NCC applies, and general penalty doctrine.

2.7 Mortgagor obligations and rights

Provision / principle	Rule
LTA s 78	On default, the mortgagee has statutory powers including possession, foreclosure and obtaining a court-ordered sale (as developed further in Part 2).
PLA s 128	Implied mortgagor obligations (subject to mortgage terms): pay principal/interest; keep

Provision / principle	Rule
	buildings/improvements in good and substantial repair as at mortgage date; permit inspection of repair.
PLA s 125	A mortgagor may grant a second or subsequent mortgage; doing so does not of itself breach, forfeit, penalise or accelerate the first mortgage, despite any agreement to the contrary.
PLA s 129	Mortgagor may inspect documents relating to mortgaged property.
PLA s 130	Relief against accelerated payment where default is remedied; developed in Ch 3.
PLA s 132	Mortgagor may require transfer of mortgage to a third party in lieu of discharge, subject to statutory conditions.
Common law — Hyde Management Services Pty Ltd v FAI Insurances Ltd	No general common-law right to repay before the contractually specified date; check contract and statute.

2.8 Redemption and the equity of redemption

The right of redemption means the mortgagor can free the property from the mortgage after satisfying the secured obligation. Under Torrens title, redemption involves release of the registered charge rather than retransferring title. Equity historically intervened so that failure to pay exactly on the contractual date did not automatically destroy the owner's interest; the equitable right to redeem persists after the contractual date until lawfully extinguished. The broader "equity of redemption" is also the residual proprietary value the mortgagor retains from the date of mortgage and can itself support later dealings.

2.9 Clogs on the equity of redemption

The maxim "once a mortgage, always a mortgage" prevents terms that make redemption illusory or confer an impermissible collateral advantage. The doctrine is nuanced: a collateral benefit is not automatically invalid merely because it benefits the mortgagee; ask whether it unfairly prevents, postpones or survives redemption in a way inconsistent with the mortgage relationship.

Authority	Course proposition	Fact trigger
Sun North Investments Pty Ltd as trustee v Dale	Mortgagee option/purchase arrangement may operate as a clog where it effectively makes the security irredeemable.	Option to purchase mortgaged property tied to mortgage.
Wanner v Caruana	Accelerated/default payment may be penal.	Default interest/acceleration.
Samuel v Jarrah Timber & Wood Paving Corp Ltd	Classic invalid mortgagee purchase option/clog principle.	Mortgage gives lender option to acquire property.
Fairclough v Swan Brewery Co Ltd	Undue postponement of redemption can be invalid.	Very long postponement beyond commercial justification.
Knightsbridge Estates Trust Ltd v Byrne	Long redemption postponement may be upheld in a commercial context where the bargain is not oppressive and redemption remains real.	Contrast to Fairclough.
Noakes & Co Ltd v Rice	Collateral trade tie continuing after redemption invalid.	Obligation tied to mortgage survives repayment.
Biggs v Hoddinott	Trade tie during mortgage term can be valid depending on scope.	Collateral advantage limited to security period.
Kreglinger v New Patagonia	Collateral advantages are not	Framework for collateral

Authority	Course proposition	Fact trigger
Meat & Cold Storage Co Ltd	inherently invalid; invalidity turns on unfairness, penalty/oppression or inconsistency with redemption.	benefits.

2.10 Plain-English mortgage Part 1 checklist

Is there a mortgage/security at all?

Is it legal (registered) or equitable (unregistered/incomplete)?

Do PLA s 8 and LTA registration rules apply?

Does the NCC apply? Work through s 5, s 5(4), s 6 and s 7—do not assume.

What contractual/statutory obligations does the mortgagor owe?

Has a term imposed default interest/acceleration that may be a penalty?

Can the mortgagor redeem, and is there an invalid clog/collateral advantage?

HIGH DISTINCTION MODEL PROBLEM 1 AND MODEL ANSWER

Problem — A lender advances $900,000 to Priya, a natural person. Sixty per cent is intended to buy a residential investment unit and forty per cent to fund Priya's consulting business. Priya signs a mortgage instrument but it is not registered. The loan states interest is 5% but becomes 9% for the entire remaining ten-year term if any instalment is late. The lender also receives an option to purchase the unit for a fixed price at any time until five years after the loan is repaid. Priya defaults for ten days and then tenders the missed instalment. Advise.

I — ISSUE

Whether an equitable mortgage exists; whether the NCC applies; enforceability of default-interest term; whether the purchase option is a clog; rights on cure/redemption.

II — RULE / LAW

PLA s 8 writing/signature; LTA registration rules distinguish legal from equitable mortgage; Swiss Bank for binding equitable security. Apply NCC s 5 and s 5(4) predominant-purpose test, s 6 exceptions and s 7 for mortgage coverage. Apply NCC s 30 and Wanner to default interest. Apply redemption/clog authorities Samuel, Kreglinger, Noakes/Biggs and the course’s Sun North authority to the purchase option.

III — APPLICATION

The signed but unregistered instrument strongly supports an equitable mortgage but not a registered legal mortgage. With 60% intended for residential investment, the predominant-purpose limb is likely met unless an exclusion applies; therefore the NCC likely governs the regulated credit/mortgage. A permanent jump from 5% to 9% after a ten-day default resembles the penal model in Wanner rather than compensation limited to actual default. The post-redemption purchase option is particularly vulnerable because it continues after the debt is repaid and may sterilise full redemption.

IV — REMEDIES / DAMAGES

Priya can seek declarations/injunction against enforcement of an unlawful/penal term, exercise statutory cure/redemption rights, and resist the collateral option if it is an invalid clog. Any damages depend on actual wrongful enforcement/loss.

V — CONCLUSION

The lender has an equitable security, but the default-interest and purchase-option provisions are substantially more vulnerable than the underlying debt. A strong answer separates validity of the mortgage from validity of individual enforcement terms.

Tutorial Bridge - using the Toowoomba transaction to understand Mortgage Part 1

Tutorial problem - adapted from the supplied course problem. The same Toowoomba transaction is a useful bridge into mortgages. The owners borrowed the balance of the purchase price and granted a registered first mortgage. The chapter asks students to pause before enforcement and first classify the security: who is mortgagor, who is mortgagee, what interest is created, what formalities and registration rules apply, whether the National Credit Code is engaged, and what rights remain with the borrower before default remedies are considered.[4]

WHAT THE TUTORIAL IS TEACHING

The threshold questions are classification and statutory application. Is the mortgage legal or equitable? Is it registered? What does Torrens registration do? Does the National Credit Code apply to the credit and, if so, why? What contractual provisions govern early repayment, default interest and redemption?

Rule / Law

Read the Property Law Act 2023 (Qld), Land Title Act 1994 (Qld) and National Credit Code together. The NCC threshold requires careful attention to the debtor, the provision of credit, the charge and the purpose of the credit. Mixed or investment purposes cannot be assumed to be consumer credit. Equity also insists that a mortgage remain genuinely redeemable and will scrutinise clogs or collateral advantages that are inconsistent with the right to redeem.[5]

Application - how a High Distinction answer reasons

A student should resist jumping immediately to power of sale merely because the facts contain a bank. First identify the mortgage as a registered security interest and separate the contractual debt from the proprietary security. Then work through the NCC threshold element by element. If the predominant purpose is investment rather than personal, domestic or household use, that fact can be decisive. If the instrument contains default interest or an acceleration clause, ask whether the clause protects a legitimate interest or operates punitively. If it gives the lender an

[4] *National Credit Code* ss 5-7; *Property Law Act 2023* (Qld); *Land Title Act 1994* (Qld).
[5] *Wanner v Caruana* [1974] 2 NSWLR 301.

option or collateral right that effectively prevents genuine redemption, identify the equitable-clog issue.

Conclusion and remedies

Mortgage Part 1 is about building the classification framework correctly. Once the student can identify the security, the governing statutes, the NCC threshold and the equity of redemption, the enforcement questions in Chapter 3 become much easier.

EXAM TRANSFER

When the names and facts change, keep the method: identify the legal relationship first, break the problem into sub-issues, state the exact provision and authority, apply each element to a fact, address the strongest counterargument, and only then state the remedy.

FREQUENTLY ASKED QUESTIONS

Part 1: Foundations of Mortgages

What is a mortgage?

A mortgage is a **security interest in land** created by contract to secure repayment of a loan.

- A contractual relationship between borrower and lender
- An interest in land used as collateral

What is the difference between a legal and an equitable mortgage?

- **Legal mortgage:** Properly registered
- **Equitable mortgage:** Not fully compliant but intention to create security exists

The key difference is **registration**.

What is the equity of redemption?

The mortgagor's right to repay the loan and recover full ownership of the property.

This right is strongly protected and **cannot be 'clogged'**.

When does the National Credit Code (NCC) apply?

The NCC applies where:

- The borrower is a natural person
- The loan is primarily for personal/domestic purposes
- Interest or fees are charged
- The lender is in the business of lending

What disclosure obligations exist under the NCC?

- Pre-contractual statement with loan details
- Information statement
- Copy of the contract within 14 days
- Copy of the mortgage within 14 days

What are the mortgagor’s key rights and obligations?

- Repay loan and maintain property
- Right to redeem property
- Right to transfer property (subject to mortgage)
- Right to inspect documents

What does it mean to ‘clog’ the equity of redemption?

A clog is any term that prevents or restricts the mortgagor from regaining the property.

Examples include:

- Restrictions on repayment
- Purchase options favouring the mortgagee
- Ongoing obligations after repayment

What happens on default?

The mortgagee may:

- Take possession
- Collect rents
- Exercise power of sale

However, strict statutory procedures must be followed.

Chapter Quiz

1. What is the difference between a legal and equitable mortgage?

Answer: A legal Torrens mortgage is registered; an equitable mortgage is an enforceable security in equity where legal formalities or registration are incomplete.

2. What does LTA s 74 say about a registered mortgage?

Answer: It operates as a charge rather than transferring title to the mortgagee.

3. What is the threshold NCC provision?

Answer: National Credit Code s 5, read with s 5(4), s 6 and s 7 where relevant.

4. What is the equity of redemption?

Answer: The mortgagor’s residual proprietary interest and equitable ability to redeem after the contractual date until lawfully extinguished.

5. What is a clog on the equity of redemption?

Answer: A term or collateral advantage that impermissibly prevents, postpones or survives redemption inconsistently with the mortgage relationship.

6. Which case is important for penal default-interest analysis in the course?

Answer: Wanner v Caruana.

MASTERY QUIZ - MORTGAGES PART 1 - 20 QUESTIONS AND ANSWERS

These questions are deliberately mixed between recall, distinction, issue spotting, application and remedies. They are additional to the shorter chapter quiz and are designed for repeated revision.

Question 1. What is the basic function of a mortgage?

Answer: It secures repayment or performance of an obligation by creating a proprietary security interest over land.

Question 2. How does a registered Torrens mortgage operate in Queensland?

Answer: It operates as a registered charge over the land rather than transferring ownership of the land to the mortgagee.

Question 3. What is an equitable mortgage?

Answer: A security interest recognised in equity where the parties have a binding intention to create security but legal formality or registration is incomplete.

Question 4. Why should the debt and the proprietary security be analysed separately?

Answer: Because the personal obligation to repay and the proprietary right over land are related but legally distinct.

Question 5. What does the equity of redemption protect?

Answer: The mortgagor's right to recover the property free of the mortgage upon proper repayment until the right is lawfully extinguished.

Question 6. What is a clog on the equity of redemption?

Answer: A term or collateral arrangement that impermissibly prevents, postpones or survives redemption in a way inconsistent with the mortgage relationship.

Question 7. Which case is a leading authority against a mortgagee purchase option that survives redemption?

Answer: Samuel v Jarrah Timber & Wood Paving Corp Ltd.

Question 8. Why is Fairclough v Swan Brewery important?

Answer: It illustrates that an excessive postponement of redemption can be invalid.

Question 9. Why is Knightsbridge Estates useful as a contrast?

Answer: It shows that a long commercial redemption period may be upheld where the bargain is genuinely commercial and redemption remains real rather than illusory.

Question 10. What is the threshold question before applying the National Credit Code?

Answer: Whether the transaction falls within the Code's debtor, credit, charge and purpose requirements and is not excluded.

Question 11. Why does the predominant-purpose test matter for mixed-purpose credit?

Answer: It helps determine whether a loan with both regulated and unregulated purposes falls within the Code.

Question 12. What does PLA s 125 broadly protect?

Answer: It permits a mortgagor to grant a second or subsequent mortgage and prevents that fact alone from automatically producing breach, forfeiture, penalty or acceleration.

Question 13. What type of clause may raise the penalty doctrine after mortgage default?

Answer: A default-interest or acceleration provision that imposes a burden out of proportion to the lender's legitimate interest in performance.

Question 14. Which course case is important for penal default-interest analysis?

Answer: Wanner v Caruana [1974] 2 NSWLR 301.

Question 15. Is there a general common-law right to repay every fixed-term mortgage early?

Answer: No. The contractual terms and any applicable statute must be considered; Hyde Management Services v FAI Insurances is relevant to the common-law position.

Question 16. Why does registration matter to priority?

Answer: Registration generally gives the registered interest Torrens priority and the statutory protection associated with registration, subject to recognised exceptions.

Question 17. What should a student identify before discussing mortgage enforcement?

Answer: Whether the mortgage is legal or equitable, whether the loan is regulated, what terms govern default, and what redemption rights remain.

Question 18. What exam fact suggests an equitable mortgage issue?

Answer: A signed security agreement, deposited title documents or other binding security arrangement that has not been registered as a legal mortgage.

Question 19. What exam fact suggests a clog issue?

Answer: A lender option to purchase, a collateral benefit lasting after repayment, or an extremely delayed right to redeem.

Question 20. What should a Mortgage Part 1 conclusion separate?

Answer: Validity and classification of the security, regulatory coverage, validity of particular mortgage terms, and the mortgagor's continuing redemption rights.

HIGH DISTINCTION MODEL PROBLEM 2 AND MODEL ANSWER - NCC purpose and redemption

Question — Nora borrows $1.2 million from a finance company. Fifty-five per cent will renovate a residential investment property and forty-five per cent will purchase equipment for her architecture business. The mortgage is signed but not registered. It grants the lender an option to buy the property at market value for two years after the debt is fully repaid. Nora asks whether the NCC applies and whether the option is enforceable.

I — ISSUE

The issues are whether an equitable mortgage exists, whether the NCC applies to the mixed-purpose credit, and whether the post-redemption purchase option is an invalid clog or collateral advantage.

II — RULE / LAW

A signed but unregistered security can constitute an equitable mortgage where there is a binding intention to create security. Apply NCC s 5, especially the predominant-purpose rule in s 5(4), together with ss 6-7. For redemption, apply the equitable principle that a mortgage must remain redeemable and the authorities Samuel v Jarrah Timber, Noakes, Biggs, Kreglinger and the course's Sun North authority.

III — APPLICATION

Because more than half of the credit is intended for residential investment property, the predominant-purpose limb is likely satisfied, subject to any statutory exception. The post-redemption option is more vulnerable than a collateral benefit limited to the mortgage term because it continues after the secured debt has been discharged. Even a market-value option may be inconsistent with the mortgagor obtaining the property fully freed from the mortgage bargain.

IV — CONCLUSION

The NCC is likely to apply on the stated purpose split, and the lender likely has an equitable mortgage. The option presents a substantial clog risk because it survives repayment.

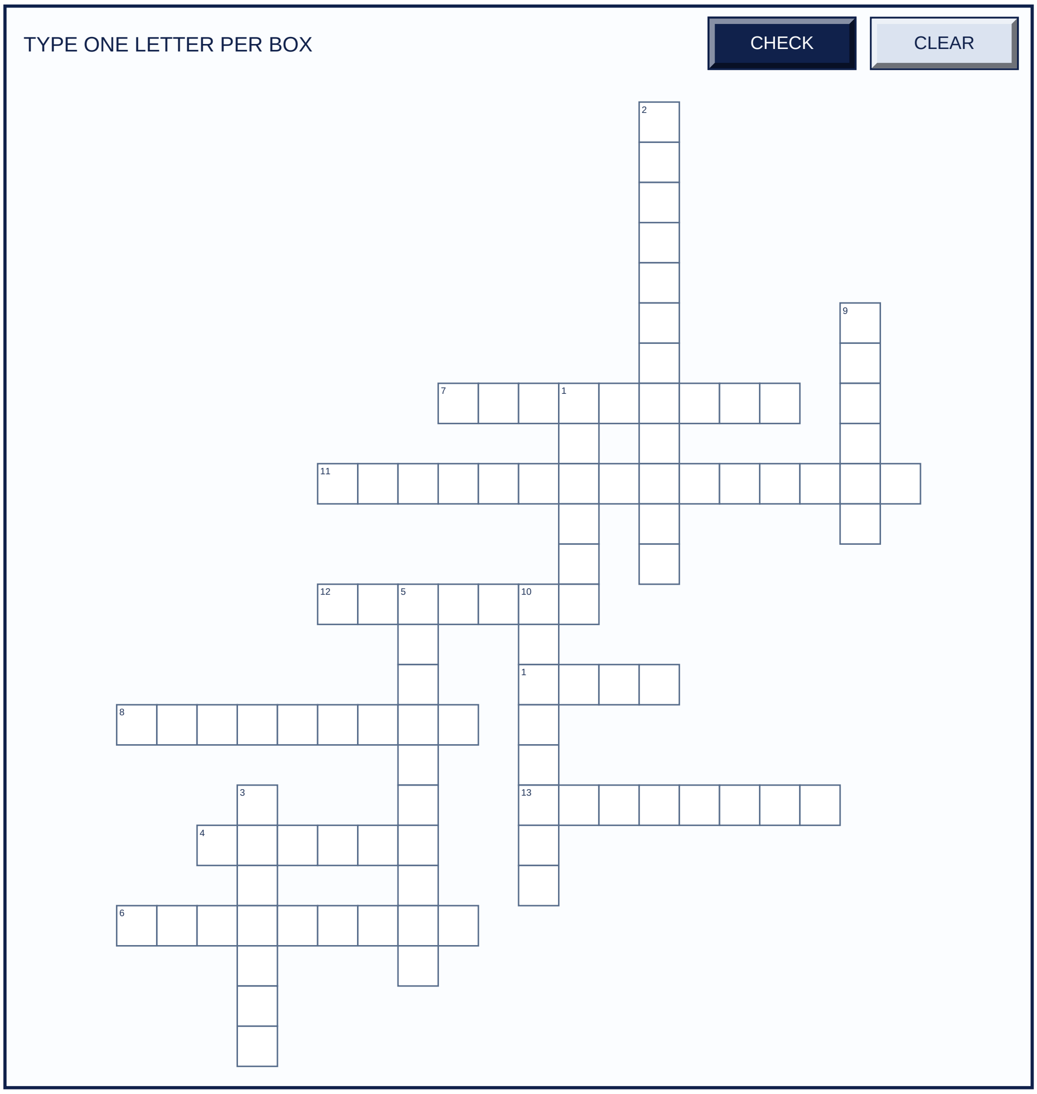
V — REMEDIES / ORDERS

Nora may seek a declaration that the option is unenforceable, an injunction against its exercise, and appropriate redemption/discharge relief. Damages depend on actual loss from attempted enforcement.

CROSSWORD - CHAPTER 2: MORTGAGES - PART 1

INTERACTIVE CROSSWORD: *Open the active version to type directly into the grid, check each answer, and receive immediate green/red feedback.* ***Launch Chapter 2 Active Crossword***

Instructions: Complete the crossword using the chapter material, glossary, cases and authorities. Spaces, hyphens and punctuation are omitted from entries.



Across

1. An invalid restraint on the equity of redemption is traditionally called a ______.
4. The National ______ Code may regulate qualifying consumer lending.
6. The borrower who grants security over land.
7. The result/document used to remove a mortgage from title after repayment.

8. The lender who holds the mortgage security.

11. The Torrens principle protecting registered interests, subject to recognised exceptions.

12. NCC application requires analysis of the credit's predominant ______.

13. A mortgage secures an ______ in land rather than transferring the fee simple to the mortgagee.

Down

1. Under Torrens title, a registered mortgage operates as this rather than transferring title.

2. The step that creates a legal Torrens mortgage.

3. PLA s 8 generally requires creation of an interest in land to be in this form and signed.

5. The mortgagor's right to free the property by satisfying the secured obligation.

9. A mortgage may exist in ______ where legal registration is incomplete but the security intention is binding.

10. The central function of a mortgage is to provide this for repayment.

Use the chapter text to check each answer before moving to the next topic.

CROSSWORD ANSWERS - CHAPTER 2: MORTGAGES: PART 1

Separate answer page - use this only after attempting the crossword.

1 Across - CLOG	13 Across - INTEREST
4 Across - CREDIT	1 Down - CHARGE
6 Across - MORTGAGOR	2 Down - REGISTRATION
7 Across - DISCHARGE	3 Down - WRITING
8 Across - MORTGAGEE	5 Down - REDEMPTION
11 Across - INDEFEASIBILITY	9 Down - EQUITY
12 Across - PURPOSE	10 Down - SECURITY

CHAPTER 3. MORTGAGES - PART 2

Default • acceleration • possession • receiver • foreclosure • power of sale • mortgagor remedies

LEARNING OUTCOMES

By the end of this chapter, you should be able to identify default and enforcement options; apply the statutory power-of-sale sequence; analyse market-value duties and purchaser/registration issues; and select urgent and post-sale remedies.

How to use this chapter

Read the explanation first. Then connect each rule to the exact statutory provision and authority. The Tutorial Masterclass shows how the lecture and forum material becomes legal analysis: facts are converted into issues, issues into rules, and rules into a reasoned application, conclusion and remedy.

3.1 Mortgagee enforcement menu

On default, a mortgagee may have several overlapping rights: acceleration of the debt, possession, appointment of a receiver, foreclosure, power of sale and action on the personal covenant. In an exam, the most important branch is usually power of sale because it requires you to test (1) source of power, (2) preconditions/notice, (3) duties in the manner of sale, (4) effect on buyer, and (5) mortgagor remedies before and after registration.

3.2 Acceleration

Provision / authority	Rule
PLA s 130(2)	Right to relief against payment of an accelerated sum if the mortgagor pays the overdue amount plus reasonable expenses or performs the breached covenant/obligation.
PLA s 130(3)	Relief may be sought defensively or by mortgagor action, but timing matters: application

Provision / authority	Rule
	must precede exercise of power of sale or enforcement proceedings as specified; court has discretion.
NCC s 88	If NCC applies, 30-day default notice regime.
NCC s 88(3)	Required contents of default notice.
NCC s 88(5)	Exception to ordinary notice rule in specified circumstances.
NCC ss 94-96	Postponement of enforcement machinery; negotiation and possible court postponement.
NCC s 89	Course identifies this as the Code analogue allowing relief when the outstanding obligation is satisfied.
Reg 86 / Sch 1 Form 12	Course directs attention to prescribed postponement form/process.
Wanner v Caruana	Acceleration plus future interest can amount to an unenforceable penalty depending on operation.

3.3 Possession and receiver

A mortgagee in possession assumes significant duties. Under LTA s 78(2)(b), the mortgagee must account for rents and profits actually received and, according to the course, those that would have been received but for wilful default; liability can arise for gross lack of diligence/culpable negligence and damage caused by negligence, though not for an honest reasonable mistake. Possession may also carry rates/land-tax exposure. This is why commercial mortgagees often prefer a receiver.

PLA s 113 supplies implied mortgagee powers, including sale/granting interests, insurance, appointment of receiver, granting easements/rights/privileges, specified timber/mineral powers and acts necessary or convenient to exercise the statutory powers. A receiver may be appointed when the mortgagee is entitled to exercise sale, under the mortgage, court order or s 113(1)(c). Under s 123(4), the receiver is deemed the mortgagor's agent, reducing the mortgagee's possession liabilities; the receiver must act in good faith, within appointment and account appropriately.

3.4 Power of sale: the five-stage exam checklist

Does the mortgagee have a power of sale? Look to the mortgage, PLA s 113(1)(a), and court powers such as LTA s 78(2)(c)(iii)/PLA s 134.

Have statutory preconditions been satisfied? PLA s 114 requires a default notice and continuation of default for 30 days after service. Calculate time correctly under Acts Interpretation Act 1954 ss 38-39. If NCC applies, also deal with NCC s 88 and related postponement provisions.

Was the sale conducted in accordance with statutory and common-law duties? PLA s 116(2) requires reasonable care to ensure market value; common law requires good faith. Consider agent, advertising, valuation, reserve, timing and location.

Can the sale be restrained or set aside? The timing—before contract, after contract before registration, or after registration—and buyer knowledge/indefeasibility are critical.

What monetary relief remains? PLA s 117 permits damages against mortgagee; the innocent buyer receives strong statutory protection.

3.5 Market value and good faith

PLA s 116(2) imposes a positive reasonable-care duty to ensure the property is sold at market value. The course uses Emerson v Custom Credit Corp Ltd and Spencer v Commonwealth for the hypothetical willing-but-not-anxious vendor/purchaser concept, Cameron v Brisbane Fleet Sales as a Queensland market-value authority, and Pendlebury v Colonial Mutual Life Assurance Society for voluntary bargaining at a fair price. This statutory duty is more demanding than the historical common-law good-faith floor.

At common law, Kennedy v De Trafford establishes the mortgagee's duty of good faith. Cuckmere Brick Co v Mutual Finance and Commercial and General Acceptance Ltd v Nixon illustrate that a mortgagee must not act fraudulently or wilfully/recklessly sacrifice the mortgagor's interests. Nixon is particularly important in the course because delegating the sale to reputable agents does not allow the mortgagee to escape the statutory duty.

Sale-conduct factor	Why it matters
Advertising	Inadequate or late advertising may suppress the competitive market and breach s 116(2).
Valuation	Stale/unreliable evidence may show lack of reasonable care. For prescribed home mortgages s 116(3) and Property Law Regulation 2024 reg 11 impose further safeguards.
Reserve	Must be informed by reliable market evidence rather than the mortgagee's desire for rapid recovery.
Auction timing/location	A poorly chosen holiday/date/location can reduce attendance and market exposure.
Agent	The mortgagee remains responsible; Nixon prevents delegation from becoming a defence.
Sale to mortgagee/associate	Requires genuine independent bargain; scrutinise conflict/self-dealing.

3.6 Sale to mortgagee or associate

The course flags Farrar v Farrar, ANZ v Bangadilly Pastoral Co Pty Ltd, Latec Investments Ltd v Hotel Terrigal Pty Ltd and Reynolds v Aluma-Lite Products Pty Ltd. The unifying exam concern is self-dealing or a non-genuine bargain. A mortgagee cannot engineer a sale to itself or an associate at an undervalue and rely on formal sale machinery; an independent genuine sale and good-faith/market-value compliance are required.

3.7 Prescribed mortgage/home safeguards

For a prescribed mortgage over the mortgagor's home, PLA s 116(3), together with Property Law Regulation 2024 reg 11, adds concrete sale-process duties unless there is reasonable excuse: adequate advertising, reliable evidence of value, maintenance including reasonable repairs, auction unless another method is appropriate, and any further prescribed matters. Even where s 116(3) does not apply, s 116(2) remains the general reasonable-care standard.

3.8 Effect of sale and distribution of proceeds

Provision	Effect
LTA s 79	On registration of a transfer following mortgagee sale, the transferee takes the mortgagor's interest free from the selling mortgage and later registered mortgages as provided by the section.
PLA s 118(2)	Sale proceeds are applied in order: reasonable sale costs; discharge of selling mortgage; subsequent mortgages; balance to owner/mortgagor.
PLA s 116(4)	Mortgagee must notify mortgagor in prescribed form about the sale within 28 days after completion.
PLA s 117	Purchaser is protected from responsibility for loss/misapplication/non-application of purchase money and need not investigate regularity; person suffering loss can claim damages from mortgagee.

3.9 Foreclosure and personal covenant

Foreclosure removes the mortgagor's right of redemption and is available under LTA s 78/express mortgage provisions, but the course emphasises its expense, delay and uncertainty compared with sale. The process described is Supreme Court order nisi, later order absolute and vesting order. PLA s 134 is relevant to the court's jurisdiction. Because a mortgage also contains the personal covenant, the lender may sue in contract for any remaining debt; this is commonly pursued after sale if the proceeds are insufficient, subject to NCC s 88(2) notice where applicable.

3.10 Mortgagor remedies by timing

Stage	Possible remedy	Key law
Before sale	Caveat (where a caveatable interest exists); injunction restraining sale; cure/default relief; damages if loss already suffered.	PLA ss 114, 117; NCC where applicable.
After contract but before completion/registration	Caveat; injunction to prevent completion; in an appropriate case set aside for improper exercise and buyer involvement/knowledge; damages.	Re McKean's Caveat; Swanston Mortgage v Trepan Investment; Breskvar v Wall.
After registration	Indefeasibility generally protects buyer unless an exception applies; damages against mortgagee often becomes primary.	LTA ss 184-187; PLA s 117.
Caveat mechanics	Mortgagor as registered owner can lodge as allowed; buyer/mortgagee may seek removal/lapse.	LTA s 122(1)(c); s 126(1A)(b)(ii); McKean v Maloney.

3.11 Core power-of-sale authorities

Case	Rule / why it matters
Emerson v Custom Credit Corp Ltd	Links mortgagee duty to market-value concept; course quotes Spencer.
Spencer v Commonwealth	Classic willing but not anxious hypothetical market transaction.
Cameron v Brisbane Fleet Sales	Queensland authority used for market-value assessment.
Pendlebury v Colonial Mutual Life Assurance Society Ltd	Market value reflects voluntary bargaining without either side ignoring ordinary business considerations.
Kennedy v De Trafford	Common-law good-faith duty in mortgagee sale.
Cuckmere Brick Co v Mutual Finance	Failure to take proper steps exposing important development/value potential can breach sale duty; course contrasts negligence/good faith/statutory duty.
Commercial and General Acceptance Ltd v Nixon	No fraud/wilful or reckless sacrifice; mortgagee cannot avoid responsibility by leaving everything to agent.
Farrar v Farrar	Self-dealing restrictions.
ANZ v Bangadilly Pastoral Co Pty Ltd	Associated-party/non-arm's-length mortgagee sale scrutiny.
Latec Investments Ltd v Hotel Terrigal Pty Ltd	Improper mortgagee sale and equitable priorities; genuine exercise of sale power matters.

Case	Rule / why it matters
Reynolds v Aluma-Lite Products Pty Ltd	Course authority on genuine sale/associated dealings.
Re McKean's Caveat	Whether mortgagor's equitable challenge to sale supports caveat.
Swanston Mortgage v Trepan Investment	Contrast on caveatable rights after sale contract.
Breskvar v Wall	Torrens title is title by registration; post-registration indefeasibility framework.
McKean v Maloney	Caveat mechanics/registered-owner claim in mortgagee sale context.

3.12 Plain-English power-of-sale formula

Memorise — POWER → NOTICE → 30 DAYS → SALE DUTY → BUYER STATUS → REMEDY. If you skip any one of those steps, the analysis is incomplete.

HIGH DISTINCTION MODEL PROBLEM 1 AND MODEL ANSWER

Problem — A bank holds a registered mortgage over commercial land. After three missed payments it posts a default notice demanding all monies within 30 days. It then tells a reputable agent to "handle everything". The auction is held two days before a week-long major local holiday. Advertising consists of a sign on the land and online listings only one week before auction. The reserve relies on a six-month-old valuation. The land sells $250,000 below current market value to an unrelated genuine buyer. The contract is signed but transfer is not yet registered. Advise the mortgagor.

I — ISSUE

Validity/timing of power of sale; adequacy of notice; reasonable care/market value; delegation to agent; available interim and damages remedies; buyer protection before/after registration.

II — RULE / LAW

Source of power: mortgage, PLA s 113(1)(a), LTA s 78/PLA s 134 if relevant. Preconditions: PLA s 114 and correct calculation under AIA ss 38-39; NCC s 88 only if NCC s 5/s 7 threshold is met. Conduct: PLA s 116(2); Emerson/Spencer/Cameron/Pendlebury. Good faith: Kennedy, Cuckmere, Nixon. Remedies: caveat/injunction/set-aside where available before registration and PLA s 117 damages; Torrens indefeasibility after registration.

III — APPLICATION

The clustered facts—late advertising, holiday timing, stale valuation and material undervalue—collectively support breach of s 116(2). The bank cannot answer that it retained reputable agents: Nixon makes the duty non-delegable in substance. The buyer is unrelated, so self-dealing authorities are less significant, but buyer innocence affects whether equitable set-aside is realistic. Because registration has not occurred, urgent caveat/injunction relief is more meaningful now than after registration.

IV — REMEDIES / DAMAGES

Urgent injunction/caveat to prevent completion if a sustainable proprietary/equitable basis exists; application to set aside if the legal threshold for improper sale and buyer involvement is met; otherwise or additionally damages under s 117 for loss caused by breach of s 116. If the buyer becomes registered without an indefeasibility exception, restoration of land becomes much harder and damages against bank becomes central.

V — CONCLUSION

There is a strong case that the sale process failed the statutory reasonable-care standard. The answer should recommend immediate pre-registration relief while preserving a damages claim. The mortgagee’s right to recover the debt does not excuse a careless sale at undervalue.

Tutorial Masterclass - Resi-Bank power of sale

Tutorial problem - adapted from the supplied course problem. The mortgage tutorial puts enforcement under pressure. Resi sent a notice headed as a s 114 power-of-sale notice to the address used for correspondence. It arrived on 23 March, although Max did not personally read it until 3 May. Resi then engaged a Sunshine Coast boutique agent whose principal was related to Resi's regional manager. Marketing was limited and described the property as a bargain requiring a quick sale. A 2022 in-house valuation was used for the reserve. The property sold for $1.9 million to a company controlled by the agent-owner's spouse, while two independent valuations put market value at least $2.6 million. The transfer had not yet been registered.[6]

WHAT THE TUTORIAL IS TEACHING

Separate validity of notice and timing from the later manner of sale. Then analyse the market-value duty, agency/conflict facts, purchaser relationship, effect of an unregistered transfer and the mortgagors' immediate remedies.

Rule / Law

The statutory sequence is critical: default -> compliant notice -> expiry of the statutory period -> exercise of the power -> sale conducted consistently with the mortgagee's duties -> consequences of contract, settlement and registration. Property Law Act 2023 (Qld) ss 114-118 are central in the course, with s 116 requiring the mortgagee's sale duty to be addressed. Torrens consequences under the Land Title Act 1994 (Qld) must be analysed separately from whether Resi breached its duty.[7]

Application - how a High Distinction answer reasons

The date Max actually read the notice is not automatically the legal service date; service and calculation must be analysed according to the statutory framework and the permitted method. Even if the power became exercisable, the sale process raises a separate and serious duty question. Limited marketing, "bargain" language, reliance on an old in-house valuation, only three bidders, a sale around $700,000 below the independent valuation evidence and the close relationship between agent

[6] *Property Law Act 2023 (Qld)* ss 114-118.
[7] *Cuckmere Brick Co Ltd v Mutual Finance Ltd* [1971] Ch 949.

and purchaser are cumulative warning signs. A mortgagee is not a trustee required to postpone indefinitely for the best imaginable price, but it cannot conduct a careless or self-protective sale. Because registration has not yet occurred, the timing also matters: protective relief such as an injunction or caveat may still have practical force that could disappear or change after registration.

Conclusion and remedies

The owners cannot avoid the underlying debt merely because the sale process is questionable. Their strongest position is to challenge the exercise and seek urgent protective relief before registration, while preserving a damages claim for breach of the mortgagee's sale duty if the sale ultimately proceeds.

EXAM TRANSFER

When the names and facts change, keep the method: identify the legal relationship first, break the problem into sub-issues, state the exact provision and authority, apply each element to a fact, address the strongest counterargument, and only then state the remedy.

FREQUENTLY ASKED QUESTIONS

Part 2: Mortgagee Rights and Remedies

What is an acceleration clause?

This allows the lender to demand full repayment if the borrower defaults.

Statutory protections may allow the borrower time to remedy default.

What is the mortgagee's right of possession?

Although available, it is rarely used because it carries:

- Accounting obligations
- Maintenance responsibilities
- Practical difficulties

What is the mortgagee’s primary power?

The **power of sale** is the key remedy.

The mortgagee must take **reasonable care** to achieve market value.

What does ‘reasonable care’ require?

- Proper valuation
- Competent agent
- Adequate advertising
- Transparent sale process

Can property be sold to a related party?

Yes, but courts scrutinise closely to ensure:

- Arm’s length dealing
- Fair market value
- No collusion

What if the sale does not cover the debt?

The mortgagee may sue the mortgagor for the shortfall through an **action on the personal covenant**.

Can a mortgagor challenge a sale?

Yes, if reasonable care was not exercised.

Early action (e.g. caveat) is often critical.

What protection does a purchaser receive?

A good faith purchaser who registers title generally receives **indefeasible title**.

The mortgagor’s remedy is usually damages against the mortgagee.

Chapter Quiz

1. Which PLA section contains the implied mortgagee power of sale?

Answer: PLA s 113(1)(a).

2. What is the statutory notice precondition before sale?

Answer: PLA s 114: default notice and continuation of default for 30 days after service.

3. What is the sale-duty standard?

Answer: PLA s 116(2): reasonable care to ensure sale at market value.

4. Which case is the classic market-value formulation?

Answer: Spencer v Commonwealth.

5. Can a mortgagee avoid its duty by appointing an agent?

Answer: No; Commercial and General Acceptance Ltd v Nixon is used to show the duty cannot be escaped by delegation.

6. What is the usual post-registration remedy where an innocent buyer obtains indefeasible title?

Answer: Damages against the mortgagee, including under PLA s 117 where applicable.

MASTERY QUIZ - MORTGAGES PART 2 - 20 QUESTIONS AND ANSWERS

These questions are deliberately mixed between recall, distinction, issue spotting, application and remedies. They are additional to the shorter chapter quiz and are designed for repeated revision.

Question 1. Which PLA provision contains the implied mortgagee power of sale?

Answer: PLA s 113.

Question 2. What must ordinarily occur before the statutory power of sale is exercised?

Answer: There must be a relevant default, a compliant notice under PLA s 114, and continuation of the default for the required period after service.

Question 3. Why does service matter independently of whether the mortgagor actually reads the notice?

Answer: The statutory question is whether notice was validly served in the required manner and time; actual reading may not control service.

Question 4. What is the core sale-duty standard in PLA s 116(2)?

Answer: The mortgagee must take reasonable care to ensure that the property is sold at market value.

Question 5. Why is a stale valuation dangerous in a mortgagee sale?

Answer: It may show that the mortgagee did not take reasonable steps to assess current market value.

Question 6. Why can inadequate advertising breach the sale duty?

Answer: Poor market exposure may reduce competition and prevent the property from achieving market value.

Question 7. Why is sale to an associate or connected purchaser a red flag?

Answer: It raises conflict and arm's-length concerns and can support close scrutiny of whether the mortgagee acted consistently with its duties.

Question 8. Can a mortgagee avoid responsibility by leaving the sale entirely to an agent?

Answer: No. Appointment of an agent does not eliminate the mortgagee's own legal duties in exercising the power of sale.

Question 9. Which case is commonly associated with proper care to obtain the true market value?

Answer: Cuckmere Brick Co Ltd v Mutual Finance Ltd [1971] Ch 949.

Question 10. Why is Spencer v Commonwealth relevant?

Answer: It supplies the classic market-value concept of a willing but not anxious seller and willing but not anxious buyer in an open market context.

Question 11. What does PLA s 117 provide in broad terms?

Answer: A damages remedy for loss caused by a mortgagee's contravention of the statutory sale duties, subject to the provision's terms.

Question 12. Why does the purchaser's registration status matter to remedies?

Answer: Before registration, proprietary relief such as an injunction may still be practically important; after an innocent purchaser obtains indefeasible title, damages may become the primary remedy.

Question 13. What immediate step should be considered if a defective sale has contracted but not settled or registered?

Answer: Urgent injunctive relief and any properly founded caveat or proceeding to prevent completion should be considered.

Question 14. Does a low sale price alone automatically prove breach?

Answer: No. It is evidence, but the court examines the sale process, market exposure, valuation, timing and surrounding circumstances.

Question 15. What additional source may apply to prescribed home mortgages?

Answer: The Property Law Regulation 2024 (Qld), including the prescribed safeguards identified in the course materials.

Question 16. Why must notice timing be calculated carefully?

Answer: A mortgagee cannot exercise the power prematurely; statutory time-calculation rules may affect when the period expires.

Question 17. What exam fact suggests a pre-registration proprietary remedy?

Answer: A purchaser has signed a contract under a challenged mortgagee sale but transfer has not yet been registered.

Question 18. What exam fact suggests a strong damages argument?

Answer: Reliable evidence that the property was sold materially below market value after poor marketing, stale valuation or conflicted sale conduct.

Question 19. What should a Mortgage Part 2 answer distinguish?

Answer: Whether the power of sale arose, whether the sale was conducted lawfully, whether the purchaser is protected, and what remedy remains.

Question 20. What should the conclusion identify after a defective mortgagee sale?

Answer: The likely breach, whether the sale can still be restrained or set aside, and the damages or other relief available if title has passed.

HIGH DISTINCTION MODEL PROBLEM 2 AND MODEL ANSWER - Home mortgage sale

Question — A lender holds a registered mortgage over Mei's home. After default it serves a notice, waits 30 days, obtains a valuation, but does not repair a leaking roof and sells privately to an associate at a price 12% below the valuation without broad advertising. Mei challenges the sale before registration.

I — ISSUE

The issues are whether the power of sale was validly enlivened, whether the lender complied with the general market-value duty and the additional prescribed-home safeguards, whether the associate sale is genuine, and what interim remedies Mei can obtain before registration.

II — RULE / LAW

Apply PLA ss 113-114 and 116, including s 116(2)-(3), and Property Law Regulation 2024 reg 11 for a prescribed mortgage over the mortgagor's home. Use Spencer, Cuckmere, Nixon and the self-dealing authorities Farrar, ANZ v Bangadilly, Latec and Reynolds. Remedies turn on timing and PLA s 117 together with Torrens principles.

III — APPLICATION

The notice period appears satisfied, but compliance with sale duties is doubtful. The failure to undertake reasonable repairs, absence of adequate market exposure and sale to an associate materially increase the risk that the lender did not take reasonable care to ensure market value. The associate relationship demands close scrutiny of independence and genuine bargaining. Because registration has not occurred, Mei has a stronger practical opportunity to preserve the status quo than she would after an innocent purchaser obtained indefeasible title.

IV — CONCLUSION

Mei has a strong argument that the manner of sale was defective even if the power itself had arisen. The associate transaction is especially vulnerable if it was not a genuine arm's-length sale at market value.

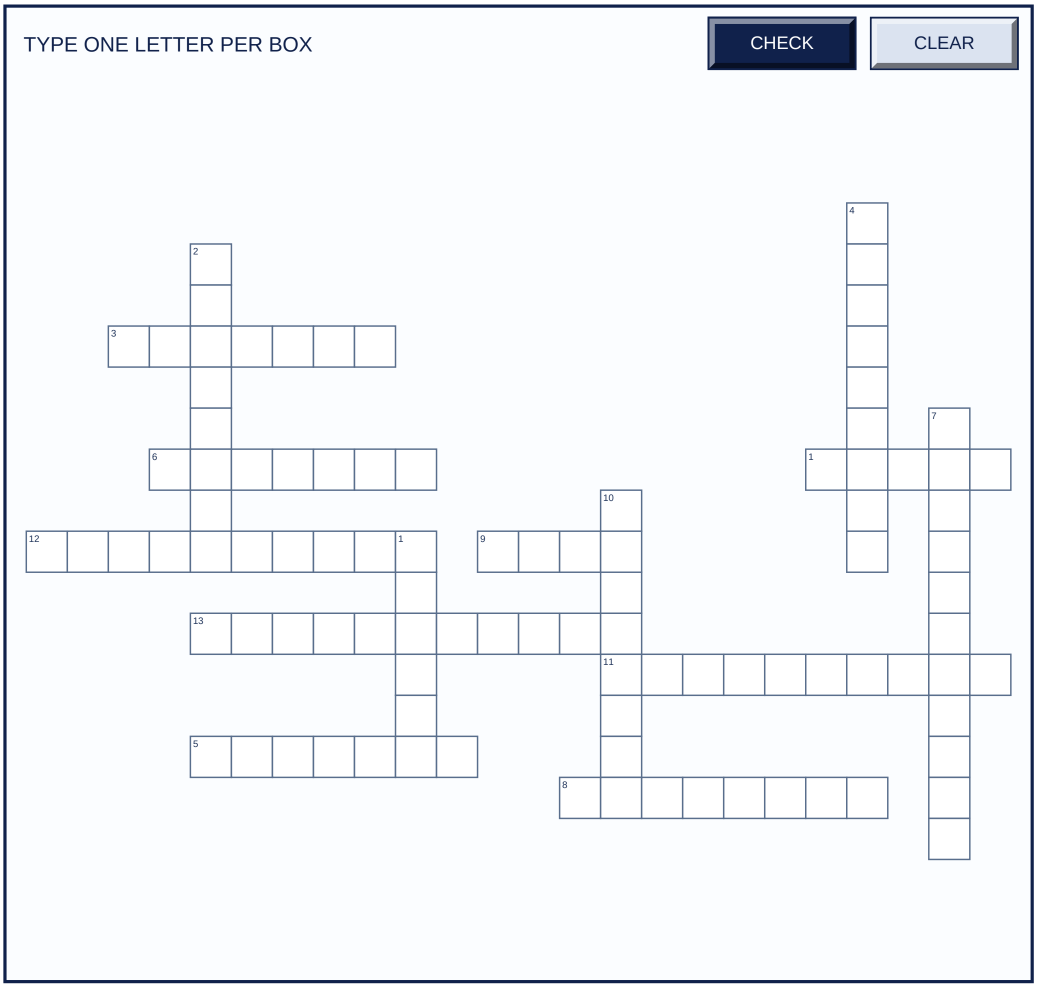
V — REMEDIES / ORDERS

Urgent injunction and any sustainable caveat or proceeding to restrain completion should be considered. Mei may seek to set aside the transaction where equitable requirements are met and claim damages under PLA s 117 for loss caused by breach.

CROSSWORD - CHAPTER 3: MORTGAGES - PART 2

INTERACTIVE CROSSWORD: *Open the active version to type directly into the grid, check each answer, and receive immediate green/red feedback.* ***[Launch Chapter 3 Active Crossword]***

Instructions: Complete the crossword using the chapter material, glossary, cases and authorities. Spaces, hyphens and punctuation are omitted from entries.



Across

1. Commercial and General Acceptance Ltd v _______ confirms the sale duty cannot be escaped by delegation.

3. Method normally contemplated for a prescribed home mortgage unless another method is appropriate.

5. Monetary relief available for breach of the mortgagee sale duty.

6. The event that usually triggers enforcement powers under a mortgage.

8. Money received from a mortgagee sale and distributed according to statutory priorities.

9. The remedy mortgagees usually prefer to foreclosure.

11. Urgent equitable relief that may be sought to restrain an improper sale before completion.

12. A mortgagee may take this of the mortgaged property after default.

13. The benchmark relevant to a mortgagee's duty when selling the security.

Down

1. Before exercising certain statutory remedies, the mortgagee commonly must give this.

2. Leading authority on reasonable care in mortgagee sale: ______ Brick Co v Mutual Finance.

4. Evidence commonly obtained to support a proper sale process.

7. Court process that extinguishes the mortgagor's equity of redemption.

10. A person appointed to manage the mortgaged property and collect income.

Use the chapter text to check each answer before moving to the next topic.

CROSSWORD ANSWERS - CHAPTER 3: MORTGAGES: PART 2

Separate answer page - use this only after attempting the crossword.

1 Across - NIXON	12 Across - POSSESSION
3 Across - AUCTION	13 Across - MARKETVALUE
5 Across - DAMAGES	1 Down - NOTICE
6 Across - DEFAULT	2 Down - CUCKMERE
8 Across - PROCEEDS	4 Down - VALUATION
9 Across - SALE	7 Down - FORECLOSURE
11 Across - INJUNCTION	10 Down - RECEIVER

CHAPTER 4. EASEMENTS AND PROFITS À PRENDRE

Creation • essential elements • construction • interference • modification and extinguishment

LEARNING OUTCOMES

By the end of this chapter, you should be able to apply the elements, creation and construction of easements; analyse interference and extinguishment; classify and create profits à prendre; and distinguish a proprietary profit from contractual permission.

How to use this chapter

Read the explanation first. Then connect each rule to the exact statutory provision and authority. The Tutorial Masterclass shows how the lecture and forum material becomes legal analysis: facts are converted into issues, issues into rules, and rules into a reasoned application, conclusion and remedy.

4.1 Nature and terminology

An easement is an incorporeal proprietary interest: a right attached to one parcel of land to use land in different ownership in a particular way, or in the case of a recognised negative easement to restrain a particular use of the burdened land. The benefited land is the dominant tenement (DT); the burdened land is the servient tenement (ST). A positive easement permits an act on the ST (for example access); a negative easement restrains the ST owner from a defined activity.

Type / example	Course treatment
Right of way	Classic positive easement.
Support	Common-law easement concept now supplemented by PLA s 179.
Light and air	Historic easement category; course notes former PLA provision repealed in 2023 and directs attention to s 179/Hare v van Brugge in

Type / example	Course treatment
	the support context.
Water courses	Potential easement subject to property/water-law limits.
Fencing easements / quasi-easements	Course-recognised categories.
Statutory right of user	PLA s 180; Hoy v Allerton identified by course.
Public utility easement in gross	Statutory exception to common-law requirement for DT: LTA s 89 read with s 81A.

4.2 Ways an easement can arise

Method	Requirements / consequence
Express grant	Contractual creation; must satisfy PLA s 8 writing/signature and LTA registration. LTA s 82(1) and s 181 make registration decisive for a legal easement.
Express reservation	On subdivision, vendor reserves rights over land sold for land retained. Under Torrens system, use the same writing/registration logic as express grant.
Equitable easement	Unregistered but otherwise binding arrangement may be enforceable in equity between appropriate parties. It generally does not bind a later registered ST owner absent an exception to indefeasibility.
Estoppel	Equity can recognise an easement-like proprietary entitlement where representation/assumption/reliance makes

Method	Requirements / consequence
	denial unconscionable; course identifies Rixon v Horseshoe Pastoral Co Pty Ltd.
Easement of necessity	May arise on subdivision where land becomes landlocked; traditionally access and reciprocal support. The course warns of tension between Pryce v McGuinness [1966] Qd R 591 and later Torrens indefeasibility principles in Breskvar v Wall.
Implied grant/reservation	May arise from circumstances/previous use under common-law doctrine; scrutinise Torrens registration consequences.

4.3 The Re Ellenborough Park four-element test

There must be a dominant tenement and a servient tenement. At common law an easement in gross is not recognised; statutory public-utility exceptions exist (LTA s 89; s 81A).

The easement must accommodate or benefit the dominant tenement. The right cannot be merely personal. Clos Farming Estates v Easton is used by the course: there must be a natural connection/nexus, and the right must make the DT a better or more convenient property; adjacency is not essential.

The DT and ST must be owned/possessed by different persons at common law because one cannot hold an easement against oneself. LTA ss 86-88 modify this by allowing registration/continuation in specified same-owner situations.

The right must be capable of forming the subject matter of a grant: sufficiently certain, legally recognisable as property, and not so extensive that it effectively gives exclusive possession of the ST. The course links Phipps v Pears, Riley v Penttila and Tujilo v Watts.

Exam discipline — Do not say “there is an easement because there is a driveway”. Work through all four Re Ellenborough Park elements, then separately prove creation/formality/registration.

4.4 Formal statutory framework

Provision	What it does / when to use
PLA s 8	Writing and signature requirement for creation of a legal/equitable land interest.
LTA s 82(1)	Creation of easement by registration.
LTA s 82(2)	Course directs attention to benefited/burdened land requirements.
LTA s 181	Registration creates legal interest.
LTA s 81A	Definitions for easement division, including public utility context.
LTA ss 86-88	Same registered owner situations and effects on benefited/burdened lots.
LTA s 89	Public utility easements / statutory in-gross exception.
PLA s 179	Statutory right of support.
PLA s 180	Statutory rights of user.
PLA s 181	Supreme Court modification/extinguishment jurisdiction.
LTA s 90	Registered surrender; consents of registered mortgagees/lessees of DT may be required.
LTA s 91	Limited amendment of registered easement.
LTA s 87	Merger is not simply assumed; statutory rules

Provision	What it does / when to use
	govern where same person becomes owner of both lots.

4.5 Easements of necessity and Torrens title

An easement of necessity is most likely where subdivision leaves one parcel landlocked. The course notes that Pryce v McGuinness [1966] Qd R 591 treated an implied easement of necessity as enforceable against a subsequent Torrens proprietor on the reasoning that the Torrens statute eliminated unregistered interests required to be registered, not rights incapable of registration. The lecturer expressly warns that the case is old and predates the High Court's strong title-by-registration analysis in Breskvar v Wall. In an exam, identify this tension rather than stating Pryce as an unqualified modern exception to indefeasibility.

4.6 Interpretation: what does the easement permit?

Once validity is established, construction is a separate question. Examine the instrument's text, purpose, dimensions, the nature of DT and ST, and circumstances existing when granted. Westfield Management Ltd v Perpetual Trustee Co Ltd is a central Torrens easement construction authority: the registered instrument and objective context matter, and courts should be cautious about importing unregistered subjective intentions that undermine the register. The course also lists Hare v Van Brugge, St Edmundsbury and Ipswich Diocesan Board of Finance v Clark (No 2), Elliott v Renner, SS & M Ceramics Pty Ltd v Kin and Hoy v Allerton for scope and interference issues.

4.7 Interference and remedies

Substantial interference with an easement can sound in nuisance. Remedies include common-law damages, equitable damages and injunction.
Self-help/abatement can sometimes be available, permitting the DT owner to enter the ST to remove an interference, but the lecturer warns it is restricted and discouraged because disproportionate self-help can itself become tortious.

4.8 Modification and extinguishment

Method	Law / test
Court order — PLA s 181(1)	Supreme Court may modify/extinguish a registered easement where it is obsolete due to changes; impedes reasonable use of ST and compensation is adequate; parties agree/abandon/waive; or DT will suffer no substantial injury, within statutory criteria. Course cases: Rollwell Australia; Eucalypt Group Pty Ltd v Robin.
Express surrender/release	Register instrument under LTA s 90; check consent requirements; also consider s 91 for amendment.
Merger	Same person acquires DT and ST. Not automatically treated as extinction under Torrens; consider LTA s 87.
Implied release/abandonment	Mere non-use is not enough. Treweeke v 36 Oosley Road Pty Ltd requires a fixed intention never to assert or transmit the right.

4.9 Case authority digest

Case	Course proposition / outcome significance	Use when
Re Ellenborough Park	Canonical four requirements for an easement.	Any validity question.
Smith & Snipes Hall Farm Ltd v River Douglas Catchment Board	Equitable easement/benefit capable of passing; also used in covenant materials for land-	Unregistered rights and successor to DT.

Case	Course proposition / outcome significance	Use when
	benefit principles.	
Rixon v Horseshoe Pastoral Co Pty Ltd	Estoppel as a basis for recognising easement rights.	Reliance on promised access/use.
Pryce v McGuinness [1966] Qd R 591	Old Queensland authority recognising necessity easement in Torrens context; lecturer flags later indefeasibility tension.	Landlocked Torrens land with no registered easement.
Breskvar v Wall	Torrens is title by registration; strong indefeasibility principle.	Any attempt to bind later registered proprietor with unregistered interest.
Gallagher v Rainbow	Course authority concerning need for DT/ST / easement in gross.	Alleged personal/in-gross easement.
Clos Farming Estates v Easton	Benefit/accommodation requires real nexus and reasonable connection to enjoyment of DT; also important to profits/licences.	Right benefits person rather than land, or claimed profit.
Phipps v Pears	Not every useful restriction is a recognised negative easement; right must be capable subject matter.	Novel negative easement.
Riley v Penttila	Course authority on sufficiently defined/capable easement rights.	Vagueness or excessive use.
Tujilo v Watts	Course authority on subject	Right may effectively

Case	Course proposition / outcome significance	Use when
	matter/scope and exclusive-possession limit.	dispossess ST owner.
Westfield Management Ltd v Perpetual Trustee Co Ltd	Construction of registered easement focuses on registered terms/objective context.	Scope dispute under Torrens title.
Hare v Van Brugge	Course authority on scope/support/easement rights.	Interpreting right/support.
St Edmundsbury and Ipswich Diocesan Board of Finance v Clark (No 2)	Course construction authority.	Extent of easement use.
Elliott v Renner	Course construction/interference authority.	Change/intensification of use.
SS & M Ceramics Pty Ltd v Kin	Course construction authority.	Scope of rights over ST.
Hoy v Allerton	Course authority tied to statutory user/interference.	Statutory access/right of user.
In the matter of an application by Rollwell Australia Pty Ltd	PLA modification/extinguishment factors.	ST seeks discharge/variation.
Eucalypt Group Pty Ltd v Robin	Modification/extinguishment authority.	Obsolete/burdensome easement.
Treweeke v 36 Oosley Road Pty Ltd	Non-use alone insufficient; fixed intention to abandon required.	Long dormancy argument.

4.10 Plain-English easement formula

EASEMENT — VALID RIGHT? → FOUR ELEMENTS → CREATION/REGISTRATION → SCOPE → INTERFERENCE → REMEDY/EXTINCTION.

HIGH DISTINCTION MODEL PROBLEM 1 AND MODEL ANSWER

Problem — Lot A has a registered right of way over Lot B "for all reasonable access purposes". When granted in 1970 it served a small public park and was rarely used for decades. Lot A is later redeveloped into a six-lot commercial scheme. Delivery trucks now use the paved easement daily and sometimes stop partly within the easement to unload. The Lot B owner says the easement was intended only for pedestrians and has been abandoned by 25 years of non-use. Advise.

I — ISSUE

Scope of registered easement; whether commercial vehicular use is within grant; whether loading is an unreasonable interference/excess; abandonment/extinguishment through non-use.

II — RULE / LAW

Interpret registered words objectively using Westfield and the instrument/context. A right of way may adapt to ordinary development if within language/purpose, but use cannot impose a materially different burden beyond grant. Non-use alone does not extinguish: Treweeke requires fixed intention to abandon. For modification/extinguishment consider PLA s 181; surrender/amendment LTA ss 90-91.

III — APPLICATION

"All reasonable access purposes" is broader than pedestrian-only language. The paved road-like character and absence of textual restriction weaken the owner's claimed private oral understanding. Modern commercial vehicle access may be a foreseeable intensification, but stopping/loading may go beyond mere passage if it materially obstructs the ST. Twenty-five years of dormancy, without evidence of a fixed intention never to assert the right, is inadequate for abandonment.

IV — REMEDIES / DAMAGES

If obstruction/interference occurs, injunction/damages in nuisance may be sought. The ST owner may seek statutory modification under PLA s 181 if the easement has become obsolete or seriously impedes reasonable ST use and statutory criteria are met, but cannot simply block access.

V — CONCLUSION

The easement likely survives. Vehicular access is likely permitted by the broad registered wording, subject to a factual limit against unreasonable loading/standing that exceeds access or substantially interferes with the ST.

Tutorial Masterclass - registered easement over the lake pathway

Tutorial problem - adapted from the supplied course problem. The easement tutorial concerns a registered 1.2 metre pedestrian pathway over Michael's Lot 2 benefiting Lot 1. The instrument allows reasonable passage, requires the path to remain safe and unobstructed, shares repair costs equally and prohibits interference and permanent barriers. Tree roots distorted the path. Max, Alex and Sam carried out root removal and concrete stabilisation despite Michael's objection; Michael alleges protected-tree damage and refuses half the invoice. The Lot 1 owners then installed a lockable gate on their own land without giving Michael a key, while Michael placed heavy pots on the pathway and narrowed access.[8]

WHAT THE TUTORIAL IS TEACHING

The question is not simply who behaved badly. Interpret the registered easement objectively, identify the scope of the right, classify the repair power and cost obligation, then separately analyse obstruction by the gate and pots and the available remedies.

Rule / Law

Start with the four Re Ellenborough Park requirements when validity is in issue. For a registered easement, the words of the instrument and objective context govern scope. Westfield Management is the leading modern reminder not to rewrite a registered easement by reference to subjective intention. Interference is assessed by whether the servient-owner conduct substantially impairs the reasonable exercise of the granted right. Modification/extinguishment and surrender are governed by the statutory Torrens framework.[9]

Application - how a High Distinction answer reasons

The express obligation to keep the path safe and share repair costs supports some remedial work, but it does not give an unlimited right to redesign Michael's land or disregard environmental constraints. The necessity and proportionality of root removal and concrete work therefore matter. Michael's potted plants appear more directly inconsistent with the express promise to keep the path unobstructed if they

[8] *Re Ellenborough Park* [1956] Ch 131.

[9] *Westfield Management Ltd v Perpetual Trustee Co Ltd* (2007) 233 CLR 528.

materially narrow safe passage. The lockable gate is more nuanced because it is placed on Lot 1: ask whether it prevents Michael from performing reciprocal obligations or otherwise contradicts the shared-use terms. Each alleged interference should be linked to the precise registered words rather than a general notion of reasonableness.

Conclusion and remedies

The Lot 1 owners have a strong case against substantial obstruction by the pots and a plausible claim for an appropriate share of genuinely necessary repair costs. Their position is weaker to the extent the works exceeded reasonable repair or caused avoidable damage. Injunction, damages and carefully limited declaratory relief should be considered before self-help.

EXAM TRANSFER

When the names and facts change, keep the method: identify the legal relationship first, break the problem into sub-issues, state the exact provision and authority, apply each element to a fact, address the strongest counterargument, and only then state the remedy.

PART B - PROFITS À PRENDRE

Non-possessory proprietary right to take natural products from another's land

4.11 Nature

A profit à prendre is a proprietary, non-possessory interest that permits the holder to enter another person's land and take something naturally occurring there. Unlike an easement, the right includes taking part of the soil or its natural produce. It can bind successors and third parties, may exist for a fixed term or perpetually, and interference is treated as interference with a proprietary right, commonly through nuisance principles.

4.12 What may be the subject of a profit?

Potential subject	Course position / explanation
Wild animals / fish	Can support a profit because they are naturally

Potential subject	Course position / explanation
	occurring resources capable of being taken, subject to public/statutory regulation.
Naturally occurring plants / turf / timber / gravel / sand / minerals / slate / mallee roots	Classic subject matter if the right is to take natural produce/substance of land.
Water	Course says not a common-law profit because flowing water is not owned as property by riparian landowner; water rights are instead heavily statutory.
Cultivated crops requiring ongoing tending	Generally not the proper subject of a profit because they result from human industry rather than simply natural produce. Clos Farming distinguishes crops requiring continued attention.
Grazing / keeping sheep	Course flags as invalid as a claimed profit in the relevant context: a right to use land for grazing is not necessarily a right to take natural produce.
Commercial planting/harvesting venture	May be contractual/business arrangement rather than a profit if it depends on cultivation and active enterprise.

4.13 Creation and registration

The lecture directs attention to LTA ss 97E-97M. A profit can be expressly created by mutual intention evidenced in writing and registered to obtain legal status. It may also arise by implied grant/reservation in appropriate circumstances. The course states that a profit is not implied merely from a descriptive label such as “hunting ground”, does not arise by necessity, and prescription is rare. A profit may be “in common” (shared with owner/others) or “in severalty” (exclusive).

An unregistered written and signed arrangement may be enforceable in equity against appropriate parties; an oral agreement may potentially be supported by part performance. Because the interest is proprietary, an equitable profit can support a caveat. As always under Torrens title, priority against later registered interests requires separate indefeasibility analysis.

Provision	Use
PLA s 8	Writing/signature for creation of land interest.
LTA ss 97E-97M	Statutory framework for profits à prendre.
LTA s 97L	Release/extinguishment including registered release; course also links expiry and exhaustion under s 97L(3).
LTA s 97I	Merger/same-owner consequences under statutory framework.

4.14 Clos Farming Estates v Easton

Clos Farming is a key bridge authority used in both easement and profit topics. For an easement, the right must accommodate the DT. For a profit, the case helps distinguish a true right to take natural produce from a broader agricultural or commercial licence/arrangement. The exam question is not simply “does the agreement mention plants/animals?” but “is the grantee taking a legally recognised natural product of the land as a proprietary right?”

4.15 Interference and extinguishment

Issue	Rule / remedy
Interference	Nuisance; common-law damages; equitable damages; injunction; limited self-help/abatement.
Express release	Parties may release; register under LTA s 97L

Issue	Rule / remedy
	where required.
Expiry	Fixed term ends; course cites s 97L(3)(a).
Exhaustion	Subject matter is exhausted; course cites s 97L(3)(b).
Abandonment	Requires evidence of abandonment, not merely irregular exercise.
Merger	Statutory same-owner treatment under LTA s 97I.

HIGH DISTINCTION MODEL PROBLEM 1 AND MODEL ANSWER

Problem — Wally owns Merino Station. He orally agrees that Nigel may enter a defined corner for three years and remove up to 50 tonnes of naturally occurring rock each month for $1,000 per tonne, and promises nobody else may take rock during that period. Nigel wants to protect the right against a purchaser of Merino Station. Advise.

I — ISSUE

Characterisation as profit à prendre; legal/equitable creation; exclusivity ("in severalty"); formality/registration; caveat; third-party effect.

II — RULE / LAW

A profit is a proprietary non-possessory right to enter and take naturally occurring substances. Rock/gravel is classic subject matter. Apply PLA s 8 and LTA ss 97E-97M for writing/registration. Without legal formality, consider equitable enforceability/part performance and caveatable interest; later registered purchaser raises indefeasibility.

III — APPLICATION

The right is not merely permission to stand on land; its substance is to take a natural part of the land. The promise excluding other extractors suggests a profit in severalty. However, the oral form is a major weakness for legal creation. Payment and extraction may support equitable arguments, but Nigel should formalise in writing and register before any dealing with a purchaser.

IV — REMEDIES / DAMAGES

Nigel should seek execution and registration of the profit; before registration an equitable caveat may protect the claimed interest if sufficiently established. Injunction/damages may be available if Wally breaches the exclusive grant.

V — CONCLUSION

The arrangement is substantively capable of being a profit à prendre, but its proprietary protection against third parties depends on satisfying formal and Torrens registration requirements.

Tutorial Masterclass - mushrooms on The Downs: profit à prendre or licence?

Tutorial problem - adapted from the supplied course problem. Vanessa owns a macadamia farm on which native edible mushrooms grow naturally. A written email arrangement gives James, a chef, an exclusive five-year winter right to enter the farm and collect the mushrooms for an annual fee. He may bring assistants and must respect the macadamia operation. He has also lightly managed the mushroom-producing areas between seasons. The classification matters if the land is transferred and the new owner wants to stop him.[10]

WHAT THE TUTORIAL IS TEACHING

Ask what James is legally authorised to take, whether the subject matter is naturally occurring, whether the right is proprietary or merely contractual, how it was created, whether registration or equitable protection matters, and whether James's cultivation-like activities alter the character of the right.

Rule / Law

A profit à prendre is a non-possessory proprietary right to enter another's land and take part of the land or something naturally occurring on it. The Land Title Act 1994 (Qld) provisions on profits, including ss 97E-97M, are central. Clos Farming Estates v Easton is a key course authority for distinguishing valid natural-product rights from arrangements involving cultivation or production that do not fit the orthodox profit category.[11]

Application - how a High Distinction answer reasons

The naturally occurring mushrooms point strongly toward the proper subject matter of a profit, and exclusivity does not by itself destroy that classification. The email provides written evidence of the grant, term, fee and scope. However, James's responsibility for "maintaining or improving" production and his later clearing/redistributing organic matter create a factual argument about whether he is merely harvesting naturally occurring produce or participating in cultivation. That distinction should be analysed rather than assumed. If the right is a valid proprietary

[10] *Land Title Act 1994* (Qld) ss 97E-97M.
[11] *Clos Farming Estates Pty Ltd v Easton* [2002] NSWCA 389; (2002) 11 BPR 20,605.

profit, a later purchaser is in a very different position from a purchaser who encounters only Vanessa's personal contractual promise.

Conclusion and remedies

James has a substantial argument that the arrangement is a profit because its central object is entry to take naturally occurring mushrooms. The cultivation facts are the main counterargument. The exam answer should classify first, then address creation/registration, third-party enforceability and remedies.

EXAM TRANSFER

When the names and facts change, keep the method: identify the legal relationship first, break the problem into sub-issues, state the exact provision and authority, apply each element to a fact, address the strongest counterargument, and only then state the remedy.

Chapter 4 Knowledge Checks and Practice Problems

FREQUENTLY ASKED QUESTIONS

Easements

What is an easement?

An easement is a **proprietary right attached to land** that allows one landowner to use another person's land for a specific purpose.

It benefits the **dominant land** and burdens the **servient land**.

What types of easements exist?

- **Positive easements:** Allow use (e.g. right of way)
- **Negative easements:** Restrict use (largely abolished in Queensland)
- **Express easements:** Created in writing and registered
- **Implied easements:** Arise from necessity or prior use
- **Easements in gross:** Benefit a person or authority (e.g. utilities)

What are the requirements for a valid easement?

- There must be dominant and servient land
- The easement must benefit (accommodate) the dominant land
- The land must be owned by different parties
- The right must be capable of forming the subject matter of a grant

How is the scope of an easement determined?

The scope is primarily determined by the **registered instrument**.

Where unclear, courts interpret intention and usually construe easements **narrowly** to preserve certainty.

Can easements be extinguished?

- Agreement between parties
- Merger (same ownership of both lands)
- Abandonment (requires clear intention)
- Obsolescence (no longer useful)
- Statutory processes

What happens if an easement is interfered with?

Interference may amount to **nuisance**.

Remedies include:

- Damages
- Injunctions
- Declarations of rights

Profits à Prendre

What is a profit à prendre?

A profit à prendre is a right to **enter another person's land and take natural resources**.

This may include timber, minerals, crops, or wild animals.

How is a profit different from an easement?

- **Easement:** Right to use land
- **Profit:** Right to take something from the land

The key distinction is **removal of resources**.

How are profits created?

- **Expressly:** Usually by deed or written agreement
- **Impliedly:** Rare, but may arise from circumstances

How are profits extinguished?

- Resource exhaustion (nothing left to take)
- Abandonment
- Merger of ownership
- Express release

What happens if a profit is interfered with?

Interference is treated similarly to easements, as a form of **nuisance**.

Available remedies include:

- Damages
- Injunctions
- Declarations

Chapter Quiz

1. What are the four Re Ellenborough Park requirements?

Answer: Dominant and servient tenements; accommodation of the dominant tenement; different ownership/possession; and a right capable of forming the subject matter of a grant.

2. What is the effect of registration under LTA s 82(1)?

Answer: It creates the registered easement in the Torrens system.

3. Which case is central to construing a registered easement?

Answer: Westfield Management Ltd v Perpetual Trustee Co Ltd.

4. Does non-use alone extinguish an easement?

Answer: No. Treweeke requires evidence of a fixed intention to abandon.

5. Which PLA section provides modification/extinguishment jurisdiction?

Answer: PLA s 181.

6. What remedies may follow substantial interference?

Answer: Injunction, common-law or equitable damages, nuisance remedies and limited self-help/abatement in appropriate cases.

MASTERY QUIZ - EASEMENTS - 20 QUESTIONS AND ANSWERS

These questions are deliberately mixed between recall, distinction, issue spotting, application and remedies. They are additional to the shorter chapter quiz and are designed for repeated revision.

Question 1. What is an easement?

Answer: A proprietary right attached to land that permits a limited use of, or restriction over, other land without giving possession of it.

Question 2. What are the four Re Ellenborough Park requirements?

Answer: A dominant and servient tenement; the right accommodates the dominant land; the tenements are held by different owners or occupiers subject to statutory modification; and the right is capable of forming the subject matter of a grant.

Question 3. What is the dominant tenement?

Answer: The land that receives the benefit of the easement.

Question 4. What is the servient tenement?

Answer: The land burdened by the easement.

Question 5. What does it mean for an easement to accommodate the dominant land?

Answer: The right must benefit the land itself in a real and reasonably connected way, not merely confer a personal advantage on the owner.

Question 6. Why is Clos Farming Estates v Easton useful?

Answer: It helps distinguish a right benefiting land from a merely personal or different proprietary right, and is also important to profits à prendre.

Question 7. Which case is central to interpreting a registered easement?

Answer: Westfield Management Ltd v Perpetual Trustee Co Ltd (2007) 233 CLR 528.

Question 8. How is a registered easement construed?

Answer: Objectively from the registered instrument, its language and permissible surrounding context, without rewriting the grant by subjective intention.

Question 9. Can the servient owner install a gate?

Answer: Potentially, if the gate does not substantially or unreasonably interfere with the granted right; the answer depends on the instrument and practical effect.

Question 10. What is excessive use of an easement?

Answer: Use that goes beyond the scope, purpose or intensity authorised by the grant.

Question 11. What is substantial interference?

Answer: Conduct by the servient owner that materially impairs the reasonable exercise of the easement.

Question 12. What remedies can follow interference?

Answer: Injunction, damages, equitable relief and, in limited appropriate circumstances, self-help or abatement.

Question 13. Why is self-help discouraged?

Answer: Because disproportionate entry or removal can itself become wrongful or tortious and may create additional liability.

Question 14. Which LTA provision is central to registration of an easement?

Answer: LTA s 82.

Question 15. What does PLA s 180 permit in broad terms?

Answer: The court may impose a statutory right of use where the statutory conditions are satisfied.

Question 16. What does PLA s 181 permit?

Answer: The court may modify or extinguish an easement or covenant within the statutory criteria.

Question 17. Does long non-use automatically extinguish an easement?

Answer: No. Treweeke shows that abandonment requires more than non-use; there must be a fixed intention not to assert or transmit the right.

Question 18. How may an easement be expressly surrendered?

Answer: By the appropriate registered instrument under the Land Title Act, with required consents.

Question 19. What exam facts suggest an easement scope dispute?

Answer: Gates, locked access, weight limits, changed use, increased traffic, obstructions, repairs or attempts to widen the physical route.

Question 20. What should an easement conclusion state?

Answer: Whether the easement is valid, its proper scope, whether conduct amounts to excessive use or interference, and the appropriate remedy.

HIGH DISTINCTION MODEL PROBLEM 2 AND MODEL ANSWER - Easement scope and obstruction

Question — A registered easement over Lot B is described as a ‘right of way at all times for vehicles and pedestrians’. The Lot B owner installs an electronically controlled gate that delays every entry by several minutes and prohibits vehicles over 3 tonnes. The dominant land is now used by a medical clinic requiring ambulance and delivery access. Advise the dominant owner.

I — ISSUE

The central issue is whether the gate and weight restriction substantially interfere with the registered easement and whether the modern clinic use remains within the scope of the grant.

II — RULE / LAW

Interpret the registered instrument objectively under Westfield, having regard to its language, dimensions and purpose. The broad words ‘at all times for vehicles and pedestrians’ support substantial access rights. Interference is actionable where it materially impairs convenient exercise of the easement. Remedies include injunction and damages; modification under PLA s 181 is for the servient owner to pursue if statutory grounds exist.

III — APPLICATION

A security gate is not automatically inconsistent with an easement, but repeated delay and an arbitrary 3-tonne restriction may materially diminish the expressly granted vehicular right, particularly where ambulances and ordinary commercial deliveries are foreseeable forms of access. The clinic does not necessarily enlarge the easement beyond its wording; rather, the broad registered wording may accommodate normal evolution in use. The servient owner cannot unilaterally rewrite the grant because present use is more intensive.

IV — CONCLUSION

The dominant owner has a strong interference claim if the restrictions materially impede the reasonable exercise of the registered access right.

V — REMEDIES / ORDERS

An injunction may require removal or alteration of the gate regime and weight restriction. Damages may be available for proven loss. The parties could also agree to amend the easement under LTA s 91, or the servient owner may seek statutory modification under PLA s 181 if the criteria are satisfied.

Chapter Quiz

1. What does a profit à prendre permit?

Answer: Entry onto another's land to take naturally occurring products or substances from it.

2. Can naturally occurring rock be the subject of a profit?

Answer: Yes.

3. Can flowing water ordinarily be the subject of a common-law profit?

Answer: Generally no; water rights are substantially statutory.

4. Where is the statutory LTA framework for profits?

Answer: LTA ss 97E-97M.

5. What is a profit in severalty?

Answer: An exclusive profit, as opposed to one exercised in common with the owner or others.

6. Can an equitable profit support a caveat?

Answer: Potentially yes, if a sufficient equitable proprietary interest is established.

MASTERY QUIZ - PROFITS À PRENDRE - 20 QUESTIONS AND ANSWERS

These questions are deliberately mixed between recall, distinction, issue spotting, application and remedies. They are additional to the shorter chapter quiz and are designed for repeated revision.

Question 1. What is a profit à prendre?

Answer: A non-possessory proprietary right to enter another person's land and take part of the land or something naturally occurring on it.

Question 2. How does a profit differ from an easement?

Answer: A profit includes the right to take a natural product or substance from the servient land; an easement ordinarily permits use without taking the land's natural produce.

Question 3. How does a profit differ from a contractual licence?

Answer: A profit is proprietary and can bind successors when properly created and protected; a licence is ordinarily personal permission.

Question 4. Can naturally occurring gravel be the subject of a profit?

Answer: Yes. Gravel, stone, timber, turf and some naturally occurring plants or wild animals are classic potential subject matter.

Question 5. Can flowing water ordinarily be the subject of a common-law profit?

Answer: Generally no; water rights are substantially governed by statute and flowing water is not treated simply as the landowner's chattel.

Question 6. Why do cultivated crops create a characterisation difficulty?

Answer: A profit traditionally concerns natural produce; a right involving ongoing cultivation or farming by the grantee may look more like another contractual or proprietary arrangement.

Question 7. Which case is important to the natural-produce distinction?

Answer: Clos Farming Estates Pty Ltd v Easton.

Question 8. What is a profit in severalty?

Answer: An exclusive profit exercisable to the exclusion of the landowner or other persons within the scope of the grant.

Question 9. What is a profit in common?

Answer: A profit exercised together with the landowner or other authorised persons.

Question 10. Where is the Queensland Torrens framework for profits found?

Answer: Land Title Act 1994 (Qld) ss 97E-97M.

Question 11. Why is registration important?

Answer: Registration gives the profit legal Torrens status and stronger priority against later interests.

Question 12. Can a signed but unregistered grant create an equitable profit?

Answer: Potentially yes, subject to the usual requirements of equity and the particular facts.

Question 13. Can an equitable profit support a caveat?

Answer: Potentially, where the claimed interest is sufficiently proprietary and otherwise caveatable.

Question 14. What is the main tortious response to interference with a profit?

Answer: Nuisance-type relief may be available because the profit is an interest in land.

Question 15. What equitable remedy is often important for threatened interference?

Answer: An injunction.

Question 16. How can a fixed-term profit end?

Answer: By expiry of the term, express release, abandonment, merger or exhaustion of the subject matter, depending on the nature of the grant.

Question 17. What does exhaustion mean?

Answer: The thing authorised to be taken has been exhausted so that the subject matter of the profit no longer remains.

Question 18. What exam fact strongly suggests a profit rather than a licence?

Answer: The holder may enter land and remove naturally occurring mushrooms, gravel, timber, stone or wild resources for personal or commercial use.

Question 19. Why does the label used by the parties not determine characterisation?

Answer: The court looks to the substance of the rights granted, not merely whether the document calls them a licence, lease or profit.

Question 20. What should a profit conclusion state?

Answer: Whether the right is substantively a profit, whether it is legal or equitable, its scope and exclusivity, priority against third parties, and available remedies.

HIGH DISTINCTION MODEL PROBLEM 2 AND MODEL ANSWER - Profit or contractual licence

Question — A landowner signs a document allowing a landscaping company to enter a quarry paddock for five years and remove up to 5,000 tonnes of naturally occurring gravel annually. The document calls the arrangement a 'licence' and gives the company exclusive extraction rights. It is not registered. The landowner later contracts to sell the land. Advise the company.

I — ISSUE

The issue is whether the arrangement is substantively a profit à prendre, whether it exists only in equity because it is unregistered, and how the company can protect it against the purchaser.

II — RULE / LAW

Characterisation depends on substance rather than label. A right to enter land and take naturally occurring gravel is classic profit subject matter. Apply PLA s 8 and LTA ss 97E-97M. A signed but unregistered grant may support an equitable profit against the grantor and potentially a caveat, but effect against a later registered purchaser requires Torrens priority analysis.

III — APPLICATION

The extraction right is much more than personal permission: the company is authorised to sever and take part of the land's natural substance for a fixed term, and the exclusivity clause is consistent with a profit in severalty. The written instrument satisfies a strong equitable-formality foundation, but lack of registration leaves the company exposed if the purchaser becomes registered without a recognised exception.

IV — CONCLUSION

The company likely has at least an equitable profit against the current owner but should not rely on the word ‘licence’ or on the purchaser’s mere knowledge.

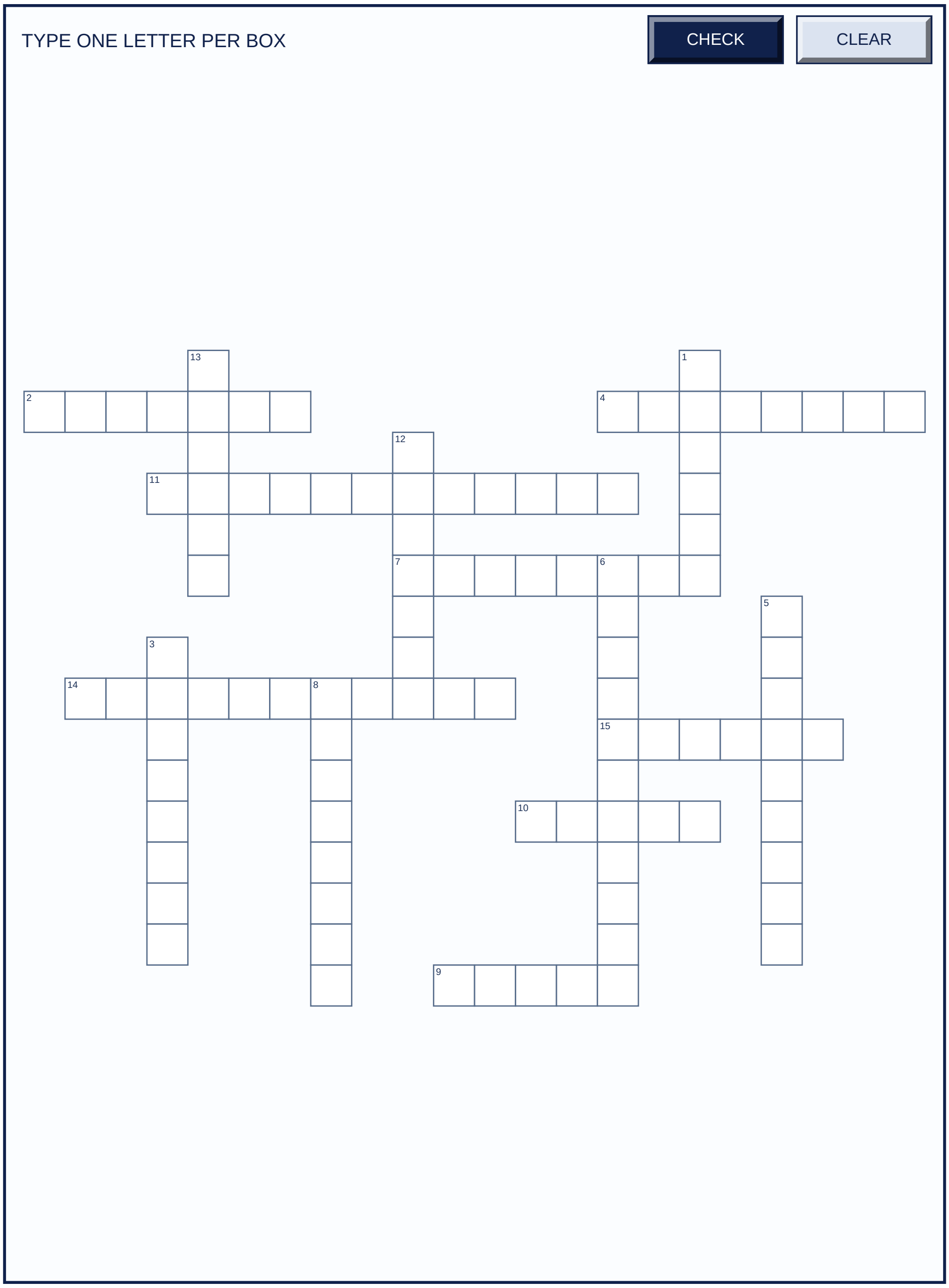
V — REMEDIES / ORDERS

The company should urgently seek execution and registration of the appropriate profit instrument and consider lodging a caveat if the equitable interest is sufficiently established. Injunction and damages may be available for breach of the grant.

CROSSWORD - CHAPTER 4: EASEMENTS AND PROFITS À PRENDRE

***INTERACTIVE CROSSWORD:** Open the active version to type directly into the grid, check each answer, and receive immediate green/red feedback. [Launch Chapter 4 Active Crossword]*

Instructions: Complete the crossword using the chapter material, glossary, cases and authorities. Spaces, hyphens and punctuation are omitted from entries.



Across

2. One method of extinguishing an easement or profit by agreement.

4. The tenement burdened by an easement.

7. The tenement that receives the benefit of an easement.

9. The permitted extent of use under an easement.

10. A statutory easement without a dominant tenement may be described as an easement in ______.

11. The Torrens step commonly used to create and protect an express easement.

14. Conduct showing an intention to give up an easement may support this form of extinguishment.

15. Extinguishment that can occur when the relevant rights and ownership combine.

Down

1. A right to enter land and take natural produce is a ______ à prendre.

3. A proprietary right over another's land that does not confer possession.

5. A basis on which an easement may be implied where access is strictly required.

6. An easement must ______ the dominant tenement.

8. Interference with an easement that may justify injunctive or other relief.

12. What a profit à prendre permits the holder to remove: soil or natural ______.

13. An equitable holder may consider lodging this to protect an unregistered proprietary claim.

Use the chapter text to check each answer before moving to the next topic.

CROSSWORD ANSWERS - CHAPTER 4: EASEMENTS AND PROFITS À PRENDRE

Separate answer page - use this only after attempting the crossword.

2 Across - RELEASE	1 Down - PROFIT
4 Across - SERVIENT	3 Down - EASEMENT
7 Across - DOMINANT	5 Down - NECESSITY
9 Across - SCOPE	6 Down - ACCOMMODATE
10 Across - GROSS	8 Down - NUISANCE
11 Across - REGISTRATION	12 Down - PRODUCE
14 Across - ABANDONMENT	13 Down - CAVEAT
15 Across - MERGER	

CHAPTER 5. LICENCES

Bare/gratuitous • contractual • coupled with an interest • distinction from easements and leases

LEARNING OUTCOMES

By the end of this chapter, you should be able to identify bare, contractual and proprietary-linked licences; distinguish licence from easement and lease; analyse revocation and third-party effect; and select contractual or equitable remedies.

How to use this chapter

Read the explanation first. Then connect each rule to the exact statutory provision and authority. The Tutorial Masterclass shows how the lecture and forum material becomes legal analysis: facts are converted into issues, issues into rules, and rules into a reasoned application, conclusion and remedy.

5.1 Nature and three identifying features

A licence is an authority or permission to enter or occupy land that prevents conduct from being trespass. It is ordinarily personal rather than proprietary and does not confer legal exclusive possession. The lecturer’s three baseline features are: not assignable, revocable, and not binding on successors in title. Particular contractual or proprietary arrangements can qualify those propositions, so characterisation matters more than the label used by the parties.

5.2 Bare or gratuitous licence

A bare licence may be express or implied. Halliday v Nevill is the leading Australian authority for the implied licence of an ordinary person to approach a dwelling by the normal access route for a lawful purpose (for example to speak with the occupier) unless circumstances indicate the licence is excluded. A clear “Keep Out” indication can negate implication; the course identifies Barker v The Queen. Once a bare licence is revoked, the licensee must ordinarily be allowed a reasonable time to leave and remove property; Lincoln Hunt Australia Ltd v Willesee is the course authority.

5.3 Contractual licence

A contractual licence is a creature of contract, so analyse offer/acceptance, intention, consideration, capacity and certainty. It remains important to ask whether the contract has actually created a proprietary interest. Ashburn Anstalt v Arnold is used to resist the proposition that every contractual right concerning land becomes proprietary. Errington v Errington and Woods is a classic authority showing equitable protection of a contractual/licence-like occupation in its special facts, and the course asks students to examine the tension with ordinary revocability.

Cowell v Rosehill Racecourse Co Ltd is the central Australian revocation authority. A paying racecourse patron who held only a contractual licence could be ejected; the majority treated wrongful revocation as sounding in contract rather than conferring a proprietary right to remain. The lecturer specifically directs students to Evatt J’s dissent, which argued for stronger protection against revocation after consideration. In an exam, cite Cowell when a party insists that payment itself makes a licence irrevocable.

5.4 Licence coupled with an interest

A licence coupled with an interest is different because the entry permission is ancillary to a proprietary right. The classic example is a profit à prendre: the holder must be able to enter to exercise the right to take natural produce. Such a licence is irrevocable while necessary to enjoy the proprietary interest and equitable relief can restrain improper revocation. The course contrasts Cowell with Clos Farming Estates v Easton.

The expression is also sometimes used more broadly for an unusual proprietary right that does not fit another conventional category, such as a right connected with burial/grave occupation. The course identifies Smith v Tamworth City Council, Beard v Baulkham Hills Shire Council and Reid v Moreland Timber Company for these questions.

5.5 Licence versus easement versus lease

Feature	Licence	Easement	Lease
Exclusive possession	No legal right to exclusive possession.	No possession of ST; limited use right.	Yes: tenant has right to exclusive

Feature	Licence	Easement	Lease
			possession subject to reserved entries.
Proprietary interest	Ordinarily no.	Yes, interest in ST.	Yes, leasehold estate/interests plus contract.
Successors	Ordinarily not binding.	Can bind successors once legal/registered, subject to system rules.	Registered/legal and some equitable leases can bind successors according to LTA/PLA.
Registration	No registration as licence.	Registrable under LTA.	Long/legal leases registrable under LTA.
Enforcement against third party	Usually contractual only.	Proprietary enforcement possible.	Proprietary/contractual framework.
Primary test	Permission only?	Re Ellenborough Park + creation?	Exclusive possession + certainty + intention to create leasehold interest?

5.6 Case digest

Case	Principle / outcome	Exam trigger
Halliday v Nevill	Implied licence to approach private dwelling by ordinary access for lawful communication, absent contrary indication.	Police/salesperson/visitor enters driveway or path.
Lincoln Hunt Australia Ltd v Willesee	After revocation, reasonable time may be required to	Immediate ejection after

Case	Principle / outcome	Exam trigger
	leave/remove property.	permission withdrawn.
Barker v The Queen	Clear exclusion/“keep out” circumstances negate implied licence.	Signs, gates or express restrictions.
Ashburn Anstalt v Arnold	Contractual occupation/licence does not become proprietary merely because contract relates to land.	Successor in title dispute.
Errington v Errington and Woods	Equity protected occupation under unilateral contractual arrangement while conditions performed; course contrasts simple revocability.	Reliance/performance and purported revocation.
Cowell v Rosehill Racecourse Co Ltd	Majority: contractual licence remains revocable, with contractual damages; Evatt J dissent argued stronger right to stay.	Ticket/payment and ejection.
Clos Farming Estates v Easton	Used to identify proprietary interest/profit and ancillary right of entry.	Licence coupled with profit.
Smith v Tamworth City Council	Course authority for unusual proprietary burial/grave right.	Rights that do not neatly fit lease/easement.
Beard v Baulkham Hills Shire Council	Course authority concerning grave/burial proprietary characterisation.	Same.
Reid v Moreland Timber Company	Course authority on licence coupled with interest /	Permission accompanies

Case	Principle / outcome	Exam trigger
	proprietary entry right.	separate property interest.

HIGH DISTINCTION MODEL PROBLEM 1 AND MODEL ANSWER

Problem — A venue sells Dana a non-refundable five-day pass allowing entry to a fenced viewing platform. The pass calls Dana a "licensee". On day two, after Dana criticises management, security revokes the pass and orders Dana to leave immediately. Dana has stored expensive equipment on the platform with management's consent. Dana says payment gives a proprietary right to remain for all five days. Advise.

I — ISSUE

Characterisation; whether payment creates lease/proprietary interest; revocability of contractual licence; reasonable time to remove equipment; remedies.

II — RULE / LAW

A licence is personal permission without exclusive possession. Contractual licence requires ordinary contract elements. Cowell supports revocability despite consideration, with contractual remedies; Lincoln Hunt supports reasonable time after revocation to leave/remove property. A lease would require exclusive possession and the lease elements; an easement would require land-benefit/proprietary elements absent here.

III — APPLICATION

Dana has access to a platform but no facts suggesting exclusive possession of a defined estate or a DT benefited by an easement. The five-day pass is therefore strongly a contractual licence. Payment does not itself make it proprietary. Management may have power to revoke physically, but immediate expulsion without a reasonable opportunity to remove authorised equipment is problematic and may compound contractual loss.

IV — REMEDIES / DAMAGES

Contract damages for wrongful early termination/revocation, including foreseeable loss subject to ordinary contract limits; possible injunction only in unusual circumstances because a personal licence is not ordinarily specifically enforced as a proprietary right. Reasonable time to collect equipment should be allowed.

V — CONCLUSION

Dana is unlikely to establish a proprietary right to remain. The strongest claims are contractual and for a reasonable exit/removal period, not ownership-like possession.

Tutorial Masterclass - the same mushroom arrangement through the licence lens

Tutorial problem - adapted from the supplied course problem. The Profits and Licences tutorial is deliberately useful twice. After asking whether James has a profit, the student should ask the alternative: if the proprietary requirements fail, what contractual licence remains? The email still authorises entry, limits the purpose and duration, and contains reciprocal obligations supported by payment.[12]

WHAT THE TUTORIAL IS TEACHING

Classify the permission as bare, contractual or coupled with an interest. Then ask whether it is revocable, whether it binds a successor, whether James has exclusive possession, and what remedies follow from wrongful exclusion.

Rule / Law

A licence is ordinarily personal permission preventing entry from being trespass. A contractual licence is enforceable between the parties but is not automatically a proprietary interest binding successors. Cowell v Rosehill Racecourse is a core course authority on contractual licence and revocation; Ashburn Anstalt and Errington are used to test whether contractual rights become proprietary. A licence coupled with an interest is different because the entry right supports another proprietary right, with the classic example being entry necessary to exercise a profit.[13]

Application - how a High Distinction answer reasons

James has no general possession of The Downs: Vanessa continues the macadamia business and can take steps necessary for crop quality. That fact points away from a lease. If the mushroom right is a valid profit, the permission to enter may be ancillary to that proprietary interest. If the profit fails, the five-year paid agreement still looks contractual and may generate contractual remedies against Vanessa for premature revocation. But that does not automatically make the permission enforceable against a later registered owner. The student must resist using the label “exclusive” as a shortcut to exclusive possession.

[12] *Cowell v Rosehill Racecourse Co Ltd* (1937) 56 CLR 605.
[13] *Ashburn Anstalt v Arnold* [1989] Ch 1.

Conclusion and remedies

The best answer pleads classification in the alternative: profit plus ancillary entry right if the proprietary requirements are satisfied; contractual licence if they are not. The remedy and third-party consequences follow from that classification.

EXAM TRANSFER

When the names and facts change, keep the method: identify the legal relationship first, break the problem into sub-issues, state the exact provision and authority, apply each element to a fact, address the strongest counterargument, and only then state the remedy.

FREQUENTLY ASKED QUESTIONS

Licences

What is a licence in land law?

A licence is permission or authority to enter or remain on land so that conduct which would otherwise be trespass is lawful.

A licence is ordinarily **personal rather than proprietary** and does not itself confer exclusive possession.

What are the main types of licence?

- **Bare or gratuitous licence:** Permission given without contractual consideration
- **Contractual licence:** Permission granted as part of an enforceable contract
- **Licence coupled with an interest:** Entry permission that is ancillary to a separate proprietary right

When can a bare licence be implied?

A bare licence may be implied from ordinary social or practical circumstances.

The chapter uses **Halliday v Nevill** to illustrate the implied permission to approach a dwelling by the normal access route for a lawful purpose, unless that permission is excluded.

Does payment automatically make a licence proprietary?

No. Payment may support a **contractual licence**, but contractual enforceability does not by itself create an interest in land.

The chapter uses **Cowell v Rosehill Racecourse Co Ltd** and **Ashburn Anstalt v Arnold** to reinforce that distinction.

Can a contractual licence be revoked?

A contractual licence may be physically revoked, but wrongful revocation can produce contractual consequences.

The key question is whether the licensee has a personal contractual remedy or a separate proprietary right to remain.

What is a licence coupled with an interest?

It is permission to enter land that is necessary to enjoy a separate proprietary interest, such as the entry needed to exercise a profit à prendre.

Because the licence supports the proprietary right, it is not treated like an ordinary revocable personal licence while the interest continues.

How is a licence distinguished from a lease?

A lease ordinarily confers **exclusive possession** of defined premises for a term.

A licence ordinarily gives permission to use or enter land without the proprietary estate of a lessee.

How is a licence distinguished from an easement?

An easement is a proprietary right attached to land and may bind successors when properly created.

A licence is ordinarily personal, non-assignable and not binding on successors unless another proprietary or equitable doctrine applies.

What remedies can follow wrongful revocation of a licence?

The strongest remedy is often **contract damages** where the licence is contractual.

In appropriate cases a licensee should also be allowed a reasonable opportunity to leave and remove property. Proprietary-style injunctions are exceptional unless a separate proprietary interest exists.

Chapter Quiz

1. What is a bare licence?

Answer: A revocable personal permission to enter or occupy land without a proprietary interest.

2. What case recognises an implied licence to approach a dwelling?

Answer: Halliday v Nevill.

3. Does payment automatically make a licence proprietary?

Answer: No. Cowell v Rosehill Racecourse illustrates that a contractual licence may remain personal.

4. What is a licence coupled with an interest?

Answer: Permission to enter that is ancillary to a proprietary interest, such as a profit à prendre.

5. What is the key distinction between lease and licence?

Answer: A lease confers exclusive possession; a licence ordinarily confers permission only.

6. Does a licence ordinarily bind successors?

Answer: No, unless some separate proprietary/equitable doctrine applies.

MASTERY QUIZ - LICENCES - 20 QUESTIONS AND ANSWERS

These questions are deliberately mixed between recall, distinction, issue spotting, application and remedies. They are additional to the shorter chapter quiz and are designed for repeated revision.

Question 1. What is a licence in land law?

Answer: Permission to enter or remain on land that prevents what would otherwise be trespass but ordinarily does not create a proprietary estate.

Question 2. What is a bare licence?

Answer: A gratuitous permission unsupported by contract or proprietary interest.

Question 3. What is a contractual licence?

Answer: Permission granted as part of a contract supported by the ordinary requirements of contract formation.

Question 4. What is a licence coupled with an interest?

Answer: A permission to enter land that is ancillary to a separate proprietary right, such as the entry needed to exercise a profit à prendre.

Question 5. Why is a contractual licence not automatically proprietary?

Answer: Contractual enforceability between the parties does not by itself make the right an interest in land binding on successors.

Question 6. Which case is important to whether a contractual licence binds successors?

Answer: Ashburn Anstalt v Arnold [1989] Ch 1.

Question 7. Which Australian case is central to revocation of a contractual licence?

Answer: Cowell v Rosehill Racecourse Co Ltd (1937) 56 CLR 605.

Question 8. What did the course specifically ask students to consider in Cowell?

Answer: Evatt J's dissenting analysis of the contractual licence.

Question 9. How does a licence differ from a lease?

Answer: A lease gives a proprietary right to exclusive possession for a term; a licence ordinarily gives permission without the lessee's proprietary estate.

Question 10. How does a licence differ from an easement?

Answer: An easement is a proprietary right benefiting land and capable of registration; a licence is ordinarily personal permission.

Question 11. Why is exclusive possession important in characterising lease versus licence?

Answer: Because substance, especially the right to exclude others, is a strong indicator that the arrangement is a lease despite its label.

Question 12. Can a licence be transferred freely?

Answer: Ordinarily not unless the contract or nature of the right permits it; personal licences are generally not alienable like proprietary estates.

Question 13. Can a licence be registered as an easement merely because it concerns land?

Answer: No. It must satisfy the legal characteristics of the proprietary interest claimed.

Question 14. What may happen if a contractual licence is wrongfully revoked?

Answer: The licensee may have contractual remedies and, in an appropriate case, equitable relief depending on the nature of the promise and reliance.

Question 15. Why can reliance matter?

Answer: Substantial reliance may support equitable doctrines such as estoppel where it would be unconscionable to permit revocation.

Question 16. What is the significance of Smith v Tamworth City Council and Beard v Baulkham Hills Shire Council in the course?

Answer: They are used in discussing unusual proprietary rights or licences coupled with an interest, including rights that do not fit neatly within ordinary categories.

Question 17. What exam fact suggests a bare licence?

Answer: Informal permission to enter land without payment, contract or proprietary right.

Question 18. What exam fact suggests a contractual licence?

Answer: Payment or other consideration for permission to enter or use land without exclusive possession.

Question 19. What exam fact suggests the right may actually be a profit?

Answer: The holder may enter and take naturally occurring substances or produce from the land.

Question 20. What should a licence conclusion state?

Answer: The type of licence, whether it is contractual or coupled with an interest, whether it is revocable, whether third parties are bound, and the remedy for wrongful revocation.

HIGH DISTINCTION MODEL PROBLEM 2 AND MODEL ANSWER - Licence, reliance and revocation

Question — A university permits a researcher to use a locked laboratory room for twelve months in return for a monthly fee. The university retains emergency access and provides services. The agreement states ‘no tenancy is created’. Six months later the university revokes access immediately, despite the researcher having installed approved equipment costing $80,000. Advise the researcher.

I — ISSUE

The issues are whether the arrangement is a lease or contractual licence, whether the label controls, whether exclusive possession exists, and what remedies follow from premature revocation and reliance expenditure.

II — RULE / LAW

Characterisation turns on legal rights, not labels. A lease requires exclusive possession for a term; a licence gives permission without a proprietary estate. Apply Radaich, Cowell and the contractual licence authorities. Even if only a licence, its contractual term and approved reliance expenditure may support damages; immediate revocation must also allow a reasonable opportunity to remove property under Lincoln Hunt principles.

III — APPLICATION

The locked room and fixed twelve-month period point toward exclusive possession, while retained emergency access is not necessarily inconsistent with a lease. The continuing provision of services and institutional control may point the other way. If the arrangement is only a contractual licence, the university may possess a physical power to revoke but can still be liable in contract for ending it contrary to the agreed term. The approved equipment makes foreseeable reliance loss especially important.

IV — CONCLUSION

The researcher has a substantial argument for lease characterisation and, alternatively, a strong contractual claim for wrongful early termination of a licence.

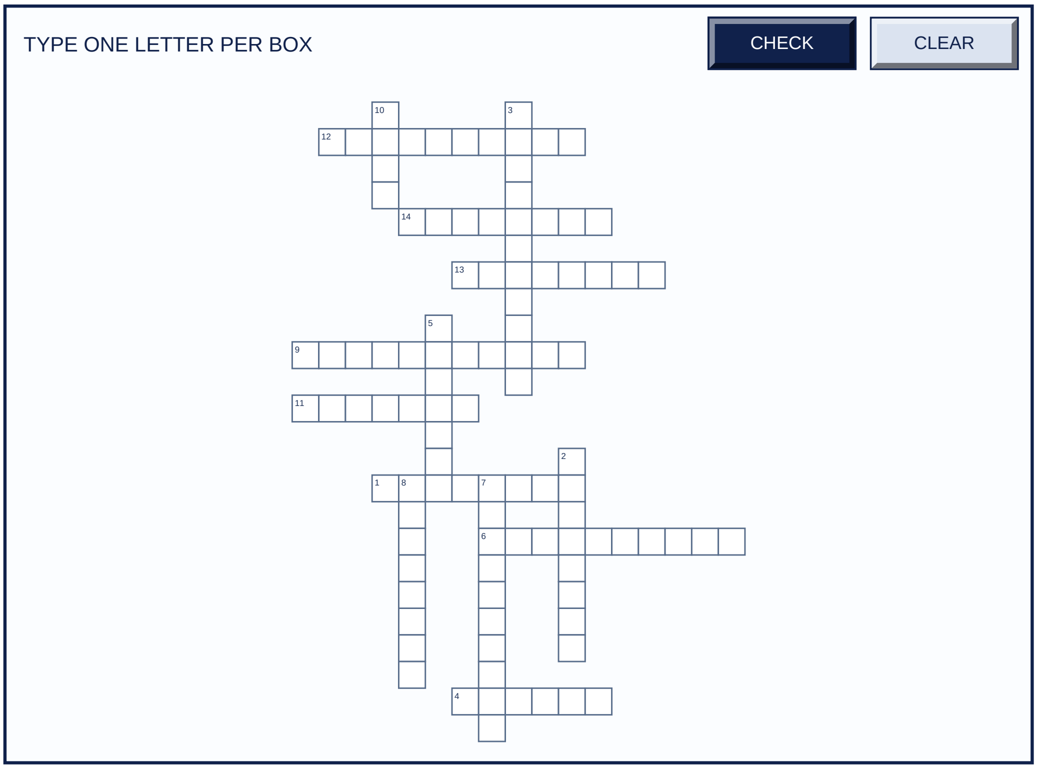
V — REMEDIES / ORDERS

Possible relief includes declaration of the relationship, injunction against immediate exclusion in an appropriate case, contractual damages including foreseeable removal/reinstallation loss, and a reasonable period to remove equipment.

CROSSWORD - CHAPTER 5: LICENCES

INTERACTIVE CROSSWORD: *Open the active version to type directly into the grid, check each answer, and receive immediate green/red feedback.* [***Launch Chapter 5 Active Crossword***]

Instructions: Complete the crossword using the chapter material, glossary, cases and authorities. Spaces, hyphens and punctuation are omitted from entries.



Across

1. A licence prevents authorised entry from amounting to this wrong.
4. Australian authority commonly associated with licences: ______ v Rosehill Racecourse Co Ltd.
6. The act of withdrawing a licence.
9. A bare or contractual licence ordinarily does not itself create this kind of interest in land.
11. Money remedy for breach of a contractual licence.
12. A licence granted without consideration.
13. The person who receives a licence.
14. A licence coupled with an ______ can have stronger legal consequences.

Down

2. Equitable doctrine that may prevent insistence on strict rights after induced reliance.

3. A licence supported by a contract.

5. Permission to enter land that prevents the entrant from being a trespasser.

7. The practical core of a licence.

8. Conduct by the licensee that may matter to equitable protection.

10. A ______ licence is a revocable personal permission unsupported by a proprietary estate.

Use the chapter text to check each answer before moving to the next topic.

CROSSWORD ANSWERS - CHAPTER 5: LICENCES

Separate answer page - use this only after attempting the crossword.

1 Across - TRESPASS	14 Across - INTEREST
4 Across - COWELL	2 Down - ESTOPPEL
6 Across - REVOCATION	3 Down - CONTRACTUAL
9 Across - PROPRIETARY	5 Down - LICENCE
11 Across - DAMAGES	7 Down - PERMISSION
12 Across - GRATUITOUS	8 Down - RELIANCE
13 Across - LICENSEE	10 Down - BARE

CHAPTER 6. NEGOTIATION, PROPERTY DISPUTE RESOLUTION AND SETTLEMENT DEEDS

Preparation • interests and options • ethics/confidentiality • deed vs agreement • recitals • plain English

LEARNING OUTCOMES

By the end of this chapter, you should be able to prepare using interests, BATNA, WATNA and objective criteria; negotiate ethically and professionally; generate commercially useful options; and translate settlement into an enforceable deed.

How to use this chapter

Read the explanation first. Then connect each rule to the exact statutory provision and authority. The Tutorial Masterclass shows how the lecture and forum material becomes legal analysis: facts are converted into issues, issues into rules, and rules into a reasoned application, conclusion and remedy.

6.1 Negotiation is structured problem-solving, not argument

The negotiation lecture focuses on preparation, commercial thinking, client interests and objective criteria. The goal is not to “win every point” but to obtain a result that serves the client’s priorities better than the available alternatives. The lawyer is an agent/adviser: say “our client”, not “we”, and do not substitute your own preferences for the client’s informed instructions.

Concept	Meaning / use
BATNA	Best Alternative To a Negotiated Agreement. The better the BATNA, the greater the party’s negotiation power because walking away is less costly.

Concept	Meaning / use
WATNA	Worst Alternative To a Negotiated Agreement. The worse the WATNA, the more attractive a sensible negotiated settlement becomes.
Interests	Identify what the client actually values—money, timing, confidentiality, certainty, ongoing relationship, release, access, cost, reputation—not merely stated positions.
Options for mutual gain	Trade low-cost concessions for high-value outcomes; generate packages rather than haggle one issue at a time.
Objective criteria	Use market valuation, statutory standards, expert evidence, costs, time and litigation risk to anchor proposals.
Professional participation	Listen, acknowledge, reframe, summarise; be firm and professional; do not dominate or disappear from discussion.

6.2 Listen → acknowledge → reframe → summarise

Listen: demonstrate attention verbally and non-verbally; take accurate notes.

Acknowledge: recognise the other party’s concern without necessarily agreeing.

Reframe: restate an adversarial position as a problem capable of joint solution.

Summarise: record what is agreed and isolate what remains open, preventing accidental disagreement.

6.3 Confidentiality and ethics

Client facts are confidential and may only be disclosed consistently with instructions and professional duties. The assessment materials expressly forbid sharing client facts between groups. In real practice, never bluff by inventing facts or authority, never misstate instructions, and distinguish legitimate negotiation positioning from misleading conduct. “You are not the client” is an important discipline: obtain authority before consequential concessions and document settlement terms accurately.

6.4 Deed versus agreement

A deed is a formal instrument that can make a promise enforceable without consideration, which is why deeds are often used for settlement/release arrangements where consideration might otherwise become disputable. An ordinary agreement relies on contract requirements including consideration. If litigation is already underway, a party’s promise to discontinue/withdraw proceedings can itself constitute consideration, so an agreement may be effective. Choose form for legal reason, not habit.

Limitation caution — The supplied drafting note says deeds and agreements “now generally have a 6-year limitation period”. Do not turn that into a universal exam proposition. Limitation periods depend on the particular cause of action, statute and transitional provisions. If limitation is actually in issue, identify the exact claim and current Limitation of Actions Act provision rather than relying on the shorthand.

Dating: the supplied note correctly flags a practical execution principle—do not insert the deed/agreement date prematurely. The document should be dated when execution/delivery requirements are complete, commonly when the last party signs/delivers as intended. Exact deed execution requirements depend on the parties (individual/corporation) and governing execution legislation, so use the prescribed execution blocks.

6.5 Recitals

Recitals explain background and purpose. They should be neutral, factual and concise. Avoid pleading the dispute inside the recitals. “A dispute arose concerning X” is safer than “B fraudulently refused to perform X” unless the settlement intentionally records an admission. The operative clauses, not rhetorical recitals, should create releases, payments, confidentiality, discontinuance and enforcement rights.

6.6 Plain-English drafting

Use short sentences, active voice and ordinary words. Prefer “must” for obligation rather than ambiguous “shall”; “before” instead of “prior to”; specific dates/amounts instead of vague temporal phrases. Define only terms used repeatedly. Each clause should answer who must do what, by when, to what standard, and what happens if the obligation is not performed.

6.7 Settlement deed issue checklist

Correct parties/capacity and recitals.

Defined dispute/claims and whether liability is admitted or expressly not admitted.

Settlement amount, payment method/date and tax/GST treatment if relevant.

Mutual or unilateral releases: scope, known/unknown claims, carve-outs and enforcement claims.

Discontinuance/withdrawal of proceedings and costs orders.

Confidentiality and permitted disclosures.

Non-disparagement only if lawful/appropriate.

Return/destruction/transfer of property/documents.

Default/enforcement clause, interest and costs—avoid penalties.

Entire agreement, variation, severability, counterparts/electronic execution, governing law/jurisdiction.

Execution as deed or agreement using valid party-specific formalities; date only when properly executed/delivered.

HIGH DISTINCTION MODEL PROBLEM 1 AND MODEL ANSWER

Problem — During a property dispute negotiation, the parties reach a settlement where Owner A will pay $80,000, Tenant B will discontinue Supreme Court proceedings, both will release claims and keep terms confidential. One lawyer proposes an “agreement”; the other insists only a deed can work because no consideration exists. Advise on form and drafting.

I — ISSUE

Whether consideration exists; deed versus agreement; formal enforceability; neutral recitals; operative settlement clauses; default/remedies.

II — RULE / LAW

An agreement requires consideration; a deed does not. B's promised discontinuance/release is capable of consideration for A's payment/release, so an agreement can be supported. A deed remains commercially attractive for formal releases and avoiding consideration arguments. Execution/delivery formalities must be satisfied.

III — APPLICATION

There appears to be reciprocal value: $80,000 and releases in exchange for discontinuance and releases. Therefore “agreement impossible” is too absolute. A deed may still be chosen for certainty. Recitals should identify proceedings/dispute neutrally and avoid admissions unless intended. Operative clauses must specify payment timing, discontinuance, costs, releases, confidentiality, permitted disclosures and enforcement.

IV — REMEDIES / DAMAGES

If payment/default occurs, enforce debt/settlement promise and any properly drafted default interest/costs. Avoid a punitive default sum. Where proceedings exist, settlement can be embodied in consent/discontinuance steps as appropriate.

V — CONCLUSION

Either form may work if correctly drafted, but the choice should reflect execution certainty and risk. The high-quality answer recognises discontinuance/release as consideration rather than treating “settlement = deed only” as a rule.

Professional Skills Masterclass - negotiating the Max, Alex, Sam and Resi dispute

Tutorial problem - adapted from the supplied course problem. The negotiation assessment returns to the Toowoomba property. A former Resi manager had given Max a six-month grace period and confirmed an interest-only arrangement by email. A replacement manager failed to read the file notes and moved toward enforcement. The parties must negotiate under time pressure and document any resolution in a Deed of Settlement.[14]

WHAT THE TUTORIAL IS TEACHING

A legal negotiation requires more than repeating legal positions. Identify the client's interests, the other side's likely interests, BATNA and WATNA, objective criteria, possible trades, authority to settle, confidentiality limits, implementation risks and the clauses required to make the settlement workable.

Rule / Law

The supplied negotiation lecture emphasises preparation, "our client" rather than "we", BATNA/WATNA, commercial thinking, options for mutual gain, objective criteria, confidentiality and the communication sequence listen -> acknowledge -> reframe -> summarise. The assessment culminates in drafting a settlement deed, so the negotiated outcome must be translated into precise obligations, dates, releases and default consequences.[15]

Application - how a High Distinction answer reasons

Max's strongest interests may include stopping immediate sale, preserving the favourable fixed rate and obtaining enough time to resolve co-owner contributions. Resi's interests may include reliable servicing, risk reduction, certainty and avoiding litigation over its staff's earlier promise. A creative package could therefore exchange something inexpensive to one side but valuable to the other: updated financial information, direct-debit controls, staged catch-up payments, sale/refinance milestones or co-owner undertakings in return for temporary enforcement restraint. The team should not disclose confidential client facts merely

[14] Property Law B Negotiation lecture materials supplied for LAWS75-218 (2026).

[15] Rachael Field, *Australian Dispute Resolution* (2022) ch 7.

to appear cooperative. Every concession should have a purpose and every agreed term should be restated before the meeting ends.

Conclusion and remedies

The deed should identify parties and background, define the settlement obligations, specify payment/refinance/sale milestones, state any enforcement standstill, allocate costs, record releases or conditional releases, include no-admission wording where appropriate, create a default mechanism and provide valid execution. The professional lesson is that a good negotiation answer joins Property Law analysis to a commercially executable document.

EXAM TRANSFER

When the names and facts change, keep the method: identify the legal relationship first, break the problem into sub-issues, state the exact provision and authority, apply each element to a fact, address the strongest counterargument, and only then state the remedy.

FREQUENTLY ASKED QUESTIONS

Negotiation, Property Dispute Resolution and Settlement Deeds

What is the purpose of negotiation in a property dispute?

Negotiation is structured problem-solving rather than argument for its own sake.

The aim is to obtain an outcome that serves the client’s priorities better than the available alternatives.

What do BATNA and WATNA mean?

- **BATNA:** Best Alternative To a Negotiated Agreement
- **WATNA:** Worst Alternative To a Negotiated Agreement

They help a party assess whether a proposed settlement is better or worse than walking away.

What communication sequence does the chapter emphasise?

- **Listen:** Understand the concern and record it accurately
- **Acknowledge:** Recognise the concern without necessarily agreeing
- **Reframe:** Restate the dispute as a problem capable of joint solution
- **Summarise:** Record what is agreed and identify what remains open

Why is client authority critical in negotiation?

The lawyer is an agent and adviser, not the client.

Consequential concessions and final settlement terms must stay within the client's actual instructions and authority.

What is the difference between a deed and an ordinary settlement agreement?

A **deed** can make a promise enforceable without the ordinary need to prove consideration, provided the formal requirements are satisfied.

An **agreement** relies on ordinary contract requirements, including consideration.

What should recitals in a settlement document do?

Recitals should state the background and purpose **neutrally, factually and concisely**.

They should not turn into argumentative pleadings or unintended admissions.

What should a well-drafted settlement deed or agreement usually cover?

- Correct parties and capacity
- Defined dispute and settlement obligations
- Payment amount, method and timing
- Releases and any carve-outs
- Discontinuance or withdrawal of proceedings where relevant
- Confidentiality and permitted disclosures
- Default, interest and costs provisions
- Correct execution and delivery formalities

What should a default clause avoid?

It should avoid **punitive or disproportionate consequences** that may amount to an unenforceable penalty.

A default mechanism should be clear, compensatory and connected to the actual settlement obligations.

Why does plain-English drafting matter?

Each clause should make clear **who must do what, by when, to what standard, and what happens if the obligation is not performed**.

Short sentences, active voice and precise dates or amounts reduce ambiguity and later disputes.

When should a deed or settlement agreement be dated?

The chapter cautions against inserting the date prematurely.

The document should be dated when the required execution and delivery steps are complete, commonly when the last party has signed or delivered it as intended.

Chapter Quiz

1. What does BATNA mean?

Answer: Best Alternative To a Negotiated Agreement.

2. What does WATNA mean?

Answer: Worst Alternative To a Negotiated Agreement.

3. Why can a deed be useful in settlement?

Answer: A deed can make promises enforceable without consideration and provides formal certainty for releases and obligations.

4. Can an ordinary agreement still settle a dispute?

Answer: Yes, where consideration exists, such as payment in exchange for discontinuance and releases.

5. What should recitals do?

Answer: State neutral factual background and purpose rather than plead accusations unless admissions are intended.

6. What are the four communication steps stressed in the course?

Answer: Listen, acknowledge, reframe and summarise.

MASTERY QUIZ - NEGOTIATION - 20 QUESTIONS AND ANSWERS

These questions are deliberately mixed between recall, distinction, issue spotting, application and remedies. They are additional to the shorter chapter quiz and are designed for repeated revision.

Question 1. What does BATNA mean?

Answer: Best Alternative To a Negotiated Agreement.

Question 2. Why is a strong BATNA important?

Answer: It increases negotiating power because the client has a credible alternative if agreement is not reached.

Question 3. What does WATNA mean?

Answer: Worst Alternative To a Negotiated Agreement.

Question 4. Why should a negotiator identify the client's interests rather than only stated positions?

Answer: Interests reveal the reasons behind demands and create more room for options that satisfy both sides.

Question 5. What is an objective criterion?

Answer: An external standard such as market value, valuation evidence, industry practice, statutory requirement or expert evidence used to evaluate proposals.

Question 6. Why should lawyers say “our client” rather than “we” in negotiation?

Answer: It preserves professional role clarity and reminds the negotiator that authority and interests belong to the client.

Question 7. What does “invent options for mutual gain” mean?

Answer: Generate possible trades or structures that improve outcomes for both parties rather than treating every issue as fixed-sum.

Question 8. What is a low-cost/high-value trade?

Answer: A concession inexpensive to one party but highly valuable to the other, which can unlock agreement efficiently.

Question 9. Why must client authority be confirmed before acceptance?

Answer: A lawyer cannot properly commit a client beyond the scope of actual instructions.

Question 10. What are the four communication techniques emphasised in the course?

Answer: Listen, acknowledge, reframe and summarise.

Question 11. What does active listening achieve?

Answer: It improves factual accuracy, demonstrates attention and helps uncover underlying interests.

Question 12. What is acknowledgement?

Answer: Recognising the other side's concern or position without necessarily agreeing with it.

Question 13. What is reframing?

Answer: Restating a difficult or adversarial issue in a form that enables constructive problem solving.

Question 14. Why should negotiators summarise during the meeting?

Answer: To confirm agreement, identify unresolved issues and prevent later misunderstanding.

Question 15. Why is confidentiality central to negotiation?

Answer: Client information must be protected and disclosed only consistently with instructions and professional obligations.

Question 16. Why should a negotiator know the facts before generating proposals?

Answer: Options and concessions are only useful if they respond to the actual legal, financial and practical risks.

Question 17. How should legal rights interact with commercial interests?

Answer: The lawyer should understand the legal baseline while also considering time, cost, relationships, finance, risk and implementation.

Question 18. What is a reservation point?

Answer: The least favourable outcome the client is prepared to accept before preferring the BATNA.

Question 19. Why is dominating the negotiation counterproductive?

Answer: It can undermine teamwork, reduce information gathering and prevent colleagues or the other side from contributing useful options.

Question 20. What should a negotiation conclusion identify?

Answer: The agreed and unresolved terms, client authority, implementation steps and what must be documented before the settlement is final.

MASTERY QUIZ - SETTLEMENT DEEDS AND AGREEMENTS - 20 QUESTIONS AND ANSWERS

These questions are deliberately mixed between recall, distinction, issue spotting, application and remedies. They are additional to the shorter chapter quiz and are designed for repeated revision.

Question 1. What is the central practical purpose of a deed of settlement?

Answer: To record and formalise the parties' settlement obligations, releases and implementation steps with high certainty.

Question 2. Why can a deed be useful where consideration is uncertain?

Answer: A properly executed deed can make promises binding without the ordinary need to prove consideration.

Question 3. Can an ordinary contract still settle a dispute?

Answer: Yes. A settlement agreement is enforceable where ordinary contract requirements, including consideration, are satisfied.

Question 4. What should recitals usually contain?

Answer: Neutral background facts explaining the dispute and purpose of settlement, avoiding unnecessary admissions unless intended.

Question 5. What is the function of definitions?

Answer: To give consistent meaning to recurring terms such as Settlement Sum, Property, Completion Date and Released Claims.

Question 6. What should a payment clause specify?

Answer: Amount, payer, payee, method, timing, account details where appropriate and consequences of non-payment.

Question 7. Why should a property settlement deed identify registration steps?

Answer: Because contractual promises do not themselves complete every Torrens dealing; instruments, consents and lodgement responsibilities must be addressed.

Question 8. What is the function of a release?

Answer: To identify the claims or liabilities that a party agrees not to pursue after settlement.

Question 9. Why must releases be drafted carefully?

Answer: An overbroad release may unintentionally waive unrelated rights; an too narrowly drafted release may leave the dispute alive.

Question 10. What is a mutual release?

Answer: Each party releases the other within the defined scope.

Question 11. Why may a no-admission clause be included?

Answer: To make clear that settlement does not necessarily constitute an admission of liability.

Question 12. What should a confidentiality clause define?

Answer: What information is confidential, permitted disclosures, legal or regulatory exceptions and duration.

Question 13. What is a condition precedent?

Answer: An event that must occur before a specified obligation or settlement step becomes effective.

Question 14. Why is a cooperation clause useful in property settlements?

Answer: Registration, refinancing, mortgage discharge, transfer and access may require documents and actions from more than one party.

Question 15. What should a default clause avoid?

Answer: Punitive or uncertain consequences that may be unenforceable or generate a new dispute.

Question 16. What should a costs clause state?

Answer: Whether each party bears its own costs or one party contributes to another's legal or transaction costs.

Question 17. Why should a deed contain execution provisions suited to each party?

Answer: A company, individual and attorney may each have different execution requirements.

Question 18. What is the danger of signing a deed before client authority is final?

Answer: The lawyer or client may become involved in an enforceability dispute over whether the settlement was authorised.

Question 19. Why should settlement drafting follow the negotiated deal rather than introduce new terms?

Answer: The document should accurately implement the authorised bargain, not silently expand or alter it.

Question 20. What should a settlement-deed conclusion check?

Answer: Authority, parties, consideration/deed form, operative obligations, timing, releases, default, registration steps and valid execution.

HIGH DISTINCTION MODEL PROBLEM 2 AND MODEL ANSWER - Settlement authority and drafting

Question — Two co-owners negotiate a settlement through lawyers. During a break one lawyer accepts a $120,000 proposal by email even though the client had authorised settlement only up to $100,000. The draft deed also contains a broad release of unknown tax claims and a punitive $50,000 default fee for any late payment. Advise on enforceability and redrafting.

I — ISSUE

The issues are the lawyer's authority to bind the client, whether the email exchange created a settlement, the scope of the proposed release, and whether the default fee is penal.

II — RULE / LAW

Negotiators must act within actual client instructions and professional obligations. Formation depends on objective agreement and any 'subject to deed' qualification, while authority is separately critical. A deed can operate without consideration but must satisfy execution/delivery requirements. Default provisions remain subject to penalty doctrine; releases should be drafted to match the intended dispute and carve-outs.

III — APPLICATION

The lawyer exceeded the stated monetary authority, creating a serious enforceability and professional issue even if the outward email appeared final. The deed should not silently expand the settlement into unrelated unknown tax liabilities unless the client specifically intends that result. A fixed $50,000 fee for any late payment is disproportionate and vulnerable as a penalty; a reasonable interest/cost recovery mechanism is safer.

IV — CONCLUSION

The settlement should not be finalised until authority and formation are resolved and the operative terms are brought back within the client’s informed instructions.

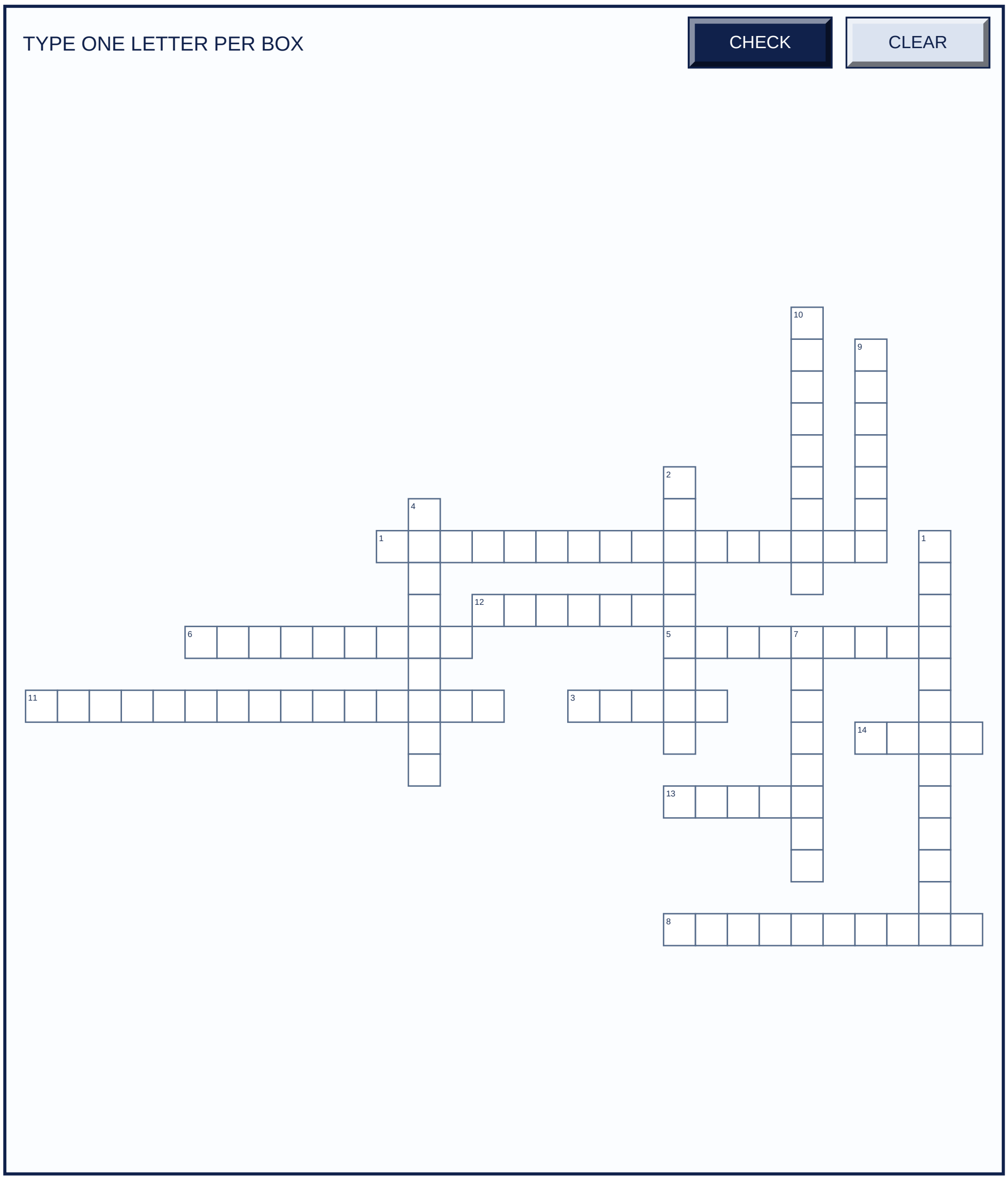
V — REMEDIES / ORDERS

Redraft the release with precise scope and carve-outs, replace the punitive default fee with a lawful compensatory mechanism, document payment/discontinuance/confidentiality/costs clearly, and execute the deed or agreement using correct formalities.

CROSSWORD - CHAPTER 6: NEGOTIATION, PROPERTY DISPUTE RESOLUTION AND SETTLEMENT DEEDS

INTERACTIVE CROSSWORD: *Open the active version to type directly into the grid, check each answer, and receive immediate green/red feedback.* ***Launch Chapter 6 Active Crossword***

Instructions: Complete the crossword using the chapter material, glossary, cases and authorities. Spaces, hyphens and punctuation are omitted from entries.



Across

1. Clause requiring parties to assist with transfers, discharges or registration steps.

3. Best alternative to a negotiated agreement.

5. Underlying needs and concerns that effective negotiation explores.

6. Formal signing requirements that must be satisfied for a deed.

8. An agreement resolving a dispute.

11. Clause controlling disclosure of settlement information.

12. Clause dealing with consequences of non-performance.

13. Worst alternative to a negotiated agreement.

14. Formal instrument that can bind without the ordinary need to prove consideration if validly executed.

Down

1. Ordinary contract concept that may support a settlement agreement.

2. What parties say they want on the surface.

4. A lawyer must confirm client ______ before finalising settlement.

7. Background provisions explaining the dispute and purpose of settlement.

9. Clause by which a party gives up specified claims.

10. Negotiation technique that restates an adversarial position as a problem capable of joint solution.

Use the chapter text to check each answer before moving to the next topic.

CROSSWORD ANSWERS - CHAPTER 6: NEGOTIATION, PROPERTY DISPUTE RESOLUTION AND SETTLEMENT DEEDS

Separate answer page - use this only after attempting the crossword.

1 Across - FURTHERASSURANCE	14 Across - DEED
3 Across - BATNA	1 Down - CONSIDERATION
5 Across - INTERESTS	2 Down - POSITIONS
6 Across - EXECUTION	4 Down - AUTHORITY
8 Across - SETTLEMENT	7 Down - RECITALS
11 Across - CONFIDENTIALITY	9 Down - RELEASE
12 Across - DEFAULT	10 Down - REFRAMING
13 Across - WATNA	

CHAPTER 7. LEASES - PART 1

Nature • exclusive possession • certainty • fixed, periodic and special tenancies

LEARNING OUTCOMES

By the end of this chapter, you should be able to identify a lease through exclusive possession and certainty; distinguish fixed, periodic, at-will and sufferance tenancies; apply formal and statutory tenancy rules; and use the MAS/Aura tutorial as a classification problem.

How to use this chapter

Read the explanation first. Then connect each rule to the exact statutory provision and authority. The Tutorial Masterclass shows how the lecture and forum material becomes legal analysis: facts are converted into issues, issues into rules, and rules into a reasoned application, conclusion and remedy.

7.1 What is a lease?

A lease has a dual nature: it is a contract between lessor and lessee and a proprietary interest in land. The course definition requires a grant of exclusive possession for a fixed or otherwise determinate period, for a term shorter than the grantor's own interest, with an intention to create an interest in land rather than a mere personal permission. The lessor retains the reversion.

7.2 Exclusive possession is the central distinction

Exclusive possession is the legal right to exclude the world, potentially including the landlord except for contractual/statutory rights of entry. It is more than factual occupation. Labels such as "licence" do not decide the matter. If the occupier has genuine exclusive possession of identifiable premises for a term, the arrangement is likely a lease unless the circumstances show some different legal relationship.

Authority	Rule / significance	When to use
Radaich v Smith	Substance controls over label; exclusive possession strongly indicates lease.	Document says “licence” but occupation looks lease-like.
Errington v Errington and Woods	Occupation arrangement may be licence-like rather than conventional lease; also relevant to contractual licences.	Family/reliance occupation.
Lewis v Bell	Course exclusive-possession authority.	Control/access facts.
KJRR v Commissioner of State Revenue	Course authority on lease/licence characterisation.	Commercial occupancy / tax characterisation.
Hamilton Island Enterprises Ltd v Croycom Pty Ltd	Objective legal rights, not terminology, determine characterisation.	Commercial arrangements.
Swan v Uecker	Short-term accommodation can still be lease where exclusive possession conferred.	Online/short stay occupancy.

7.3 Certainty of commencement

A lease commencement must be certain or capable of being rendered certain before the lease takes effect. It may be a calendar date or an objectively ascertainable event. South Coast Oils (Qld & NSW) Pty Ltd v Look Enterprises Pty Ltd is the course authority. If no date is expressly stated, commencement can sometimes be inferred from possession and rent payment. If it cannot be determined, the purported lease is void for uncertainty.

7.4 Certainty of duration

For an ordinary fixed-term lease, the maximum duration must be ascertainable when the lease commences. Special tenancies—life tenancies, tenancy at will and tenancy at sufferance—operate under distinct doctrines and do not require the same fixed maximum term.

Case	Rule
Lace v Chantler	A lease “for the duration of the war” failed because maximum duration was not ascertainable.
Bishop v Taylor	Course duration/certainty authority.
Prudential Assurance Co Ltd v London Residuary Body	Reaffirms certainty of term requirement; practical flexibility does not displace the legal need for ascertainable duration.

7.5 Types of tenancies

Tenancy	Description / creation	Ending
Fixed term	Specified definite term; may be in possession or reversion. Smallwood v Sheppards is the course future/non-continuous term authority.	Expires automatically; no notice ordinarily required.
Periodic	Continues period to period, express or implied from rent cycle, circumstances and intention.	Notice under PLA ss 175-176.
Common-law yearly tenancy	Historically created expressly, by indefinite oral/written agreement, implication, holding	PLA s 172 converts relevant categories to “lease terminable at will”; ss 173-174 govern

Tenancy	Description / creation	Ending
	over, vague term or informal invalid lease.	notice.
Tenancy at will	Occupation with consent but terminable by either party; often pre-formal lease and before rent.	PLA s 176 reasonable notice.
Tenancy at sufferance	Tenant stays after expiry without landlord consent/rent.	Consent may create at will; rent may create periodic; objection permits possession claim.

7.6 Common-law yearly tenancy and PLA reform

The old common-law categories matter because they explain what legal relationship may arise from informal possession. Holding over with rent can imply continuation on relevant lease terms: Brisbane City Council v The Council Club. An informal agreement for lease plus possession/rent may generate an implied tenancy: Moore v Dimond. A signed but legally defective lease may also generate an interim/implied tenancy: Palmdale Insurance Ltd v Spenger. The modern exam step is then to apply PLA s 172 and the statutory notice regime.

Provision	Requirement
PLA s 172	Converts identified common-law yearly tenancy categories into a lease terminable at will.
PLA s 173	Termination notice identifies land, states termination day and is signed; approved form optional.
PLA s 174	At least 20 business days' notice for the s 172 regime.

Provision	Requirement
PLA ss 175-176	Periodic-tenancy notice and reasonable notice for tenancy at will; s 176(3) makes reasonableness contextual.

7.7 Tenancy at will: Bond University Ltd v Limgold Pty Ltd

The course uses Bond University Ltd v Limgold Pty Ltd to reinforce that "at will" does not mean physically immediate eviction. Once the occupation is characterised as a tenancy at will, the Queensland statutory reasonable-notice rule must be applied.

7.8 Plain-English lease Part 1 formula

LEASE OR LICENCE? — EXCLUSIVE POSSESSION → CERTAIN START → CERTAIN DURATION → INTENTION / TERM LESS THAN GRANTOR → TYPE OF TENANCY → CORRECT TERMINATION MECHANISM.

HIGH DISTINCTION MODEL PROBLEM 1 AND MODEL ANSWER

Problem — Owner O gives T the whole ground floor of a commercial building. A document headed "Licence" gives T the only keys, permits O to enter on 48 hours' notice for inspection, requires monthly rent and says the arrangement will run "until the neighbouring redevelopment is complete". Three years later O demands immediate departure. Advise.

I — ISSUE

Lease or licence; exclusive possession; certainty of duration; if fixed-term lease fails, whether another tenancy arose; termination notice.

II — RULE / LAW

Radaich and related exclusive-possession authorities; Lace/Prudential on certainty. If fixed term fails but T occupied and paid rent, consider implied periodic/yearly tenancy and PLA ss 172-176.

III — APPLICATION

T’s sole control and O’s limited reserved entry strongly indicate exclusive possession, so the “licence” label is weak. But an end point tied to redevelopment may fail certainty if no objectively ascertainable maximum. Monthly rent and possession may support a periodic or statutory successor tenancy. Immediate removal is unlikely if notice is required.

IV — REMEDIES / DAMAGES

Declaration/injunction against unlawful eviction; damages for breach if O interferes; correct statutory notice governs lawful termination.

V — CONCLUSION

T likely has tenancy rights notwithstanding the heading. The precise fixed term may fail, but that does not automatically reduce T to a bare licensee.

Tutorial Masterclass - MAS and Aura: Lease Part 1 lens

Tutorial problem - adapted from the supplied course problem. MAS owns a refurbished Brisbane commercial building. Aura signs a three-year lease commencing 1 January with a further option and later occupies the premises. The lease is registered. The same tutorial later raises works, air-conditioning and assignment disputes, but Chapter 7 first uses the facts to identify the lease itself.[16]

WHAT THE TUTORIAL IS TEACHING

Ask whether the arrangement grants exclusive possession, whether the premises and term are sufficiently certain, what tenancy type exists, what formalities are satisfied, and how registration changes the legal status of the interest.

Rule / Law

A lease combines contract and proprietary estate. Radaich v Smith makes substance and exclusive possession central. Certainty of premises and duration must be established. The Property Law Act 2023 (Qld) regulates writing and special tenancy categories, while the Land Title Act 1994 (Qld) governs registration and the legal effect of registered leasehold interests.[17]

Application - how a High Distinction answer reasons

Aura occupies a defined part of the first floor and has a fixed three-year term with specified commencement and rent. Those facts strongly support a lease rather than a personal licence. The registered instrument removes many of the formal uncertainty issues that appear in informal tenancy problems. Students should nevertheless identify the lease elements in order: parties, premises, exclusive possession, commencement and duration. Only after that classification should they move to the covenants and assignment dispute in Chapter 8.

Conclusion and remedies

The MAS/Aura facts demonstrate a straightforward legal lease, which makes them useful as a control example before analysing harder informal leases and periodic or at-will tenancies.

[16] *Radaich v Smith* (1959) 101 CLR 209.
[17] *Property Law Act 2023* (Qld) ss 172-176; *Land Title Act 1994* (Qld) ss 64-71.

EXAM TRANSFER

When the names and facts change, keep the method: identify the legal relationship first, break the problem into sub-issues, state the exact provision and authority, apply each element to a fact, address the strongest counterargument, and only then state the remedy.

FREQUENTLY ASKED QUESTIONS

Leases - Part 1: Creation, Classification and Formalities

What is required for a valid lease?

A valid lease requires:

- **Exclusive possession** of land
- A **fixed or determinable term**
- An intention to create a **proprietary interest** (not merely a licence)

The term must be certain, or capable of being made certain.

What types of leases exist?

- **Fixed term lease:** Defined duration
- **Periodic tenancy:** Continues indefinitely (e.g. weekly, monthly)
- **Tenancy at will:** Terminable at any time with notice
- **Lease determinable at will:** Terminable with required notice
- **Tenancy at sufferance:** Tenant remains after lease expiry without consent
- **Legal lease:** Registered
- **Equitable lease:** Unregistered but potentially enforceable

What are the formal requirements for a lease?

- Leases must generally be **in writing and signed**
- Short leases (up to 3 years) may be valid **without writing** if the tenant takes possession
- Longer leases require **registration under the Land Title Act** to be legal

Even if not legally valid, a lease may still operate **contractually or in equity** in some circumstances.

How do you distinguish a lease from a licence?

Look at the **substance of the rights granted**, especially exclusive possession, rather than the label placed on the document.

A document called a 'licence' can still create a lease if it gives the occupier the legal right to exclude others from defined premises for a term.

Why does certainty of term matter?

A lease must have a commencement and duration that are legally ascertainable.

If the supposed fixed term depends on an uncertain future event, the fixed-term lease may fail even though another tenancy relationship may arise.

What may happen if a fixed-term lease fails but the occupier remains and rent is accepted?

The facts may support a **periodic tenancy or another continuing tenancy relationship**.

The correct statutory termination mechanism must then be identified rather than assuming immediate eviction.

Chapter Quiz

1. What is the central lease/licence distinction?

Answer: Exclusive possession.

2. Which Australian case says substance prevails over the label?

Answer: Radaich v Smith.

3. What must be certain about a lease?

Answer: Its commencement and duration must be certain or objectively ascertainable.

4. Which case illustrates uncertain duration?

Answer: Lace v Chantler.

5. Which PLA sections govern termination notice for relevant periodic/at-will tenancies?

Answer: PLA ss 172-176.

6. Does a tenancy at will permit instantaneous physical eviction?

Answer: No; reasonable notice may be required under the Queensland statutory regime.

MASTERY QUIZ - LEASES PART 1 - 20 QUESTIONS AND ANSWERS

These questions are deliberately mixed between recall, distinction, issue spotting, application and remedies. They are additional to the shorter chapter quiz and are designed for repeated revision.

Question 1. What is the central proprietary characteristic of a lease?

Answer: The right to exclusive possession of defined premises for a certain or sufficiently certain term.

Question 2. Which case is the leading Australian authority on substance and exclusive possession?

Answer: Radaich v Smith (1959) 101 CLR 209.

Question 3. Why does the label “licence” not necessarily prevent a lease?

Answer: Courts characterise the substance of the rights granted, especially exclusive possession, rather than relying only on labels.

Question 4. What does certainty of premises require?

Answer: The leased area must be sufficiently identifiable.

Question 5. What does certainty of term require?

Answer: The commencement and duration must be legally ascertainable.

Question 6. Why is Lace v Chantler important?

Answer: It illustrates the traditional requirement that a lease term be certain.

Question 7. Why is Prudential Assurance relevant?

Answer: It reinforces the certainty-of-term principle for leases.

Question 8. What is a fixed-term lease?

Answer: A lease for a defined period with an ascertainable commencement and end.

Question 9. What is a periodic tenancy?

Answer: A tenancy continuing from period to period, such as monthly, until validly terminated.

Question 10. What is a tenancy at will?

Answer: A tenancy terminable at the will of either party, subject to the statutory rules.

Question 11. What is a tenancy at sufferance?

Answer: Occupation continuing after a lawful lease ends without a fresh tenancy being granted.

Question 12. Which PLA provisions govern termination of informal or periodic tenancies in the course?

Answer: PLA ss 172-176.

Question 13. What does PLA s 173 define?

Answer: A termination notice for the statutory tenancy-termination scheme.

Question 14. What does PLA s 175 concern?

Answer: Termination of a periodic tenancy.

Question 15. Why can payment and acceptance of rent matter after expiry?

Answer: It may support an inference that a periodic tenancy or other continuing tenancy relationship has arisen.

Question 16. Can a lease exist without rent?

Answer: Rent is common but not conceptually indispensable if the arrangement otherwise creates a lease and satisfies applicable formalities.

Question 17. Why must legal and equitable leases be distinguished?

Answer: Registration and formalities determine whether the interest has legal Torrens status, while equity may enforce an agreement to lease in appropriate circumstances.

Question 18. What exam fact suggests a lease/licence classification problem?

Answer: The document is called a licence but gives the occupier exclusive possession of defined premises for a fixed term.

Question 19. What exam fact suggests a periodic tenancy?

Answer: The occupier remains with the owner's consent and rent continues to be paid and accepted by regular periods after expiry.

Question 20. What should a Lease Part 1 conclusion state?

Answer: Whether a lease exists, the tenancy type, the certainty and formality position, and how it may be terminated.

HIGH DISTINCTION MODEL PROBLEM 2 AND MODEL ANSWER - Uncertain term and periodic tenancy

Question — Owner grants Sam exclusive possession of a shop at $4,000 per month ‘until the new light-rail station opens’. The opening date depends on future government approvals and construction. Sam occupies for two years and pays monthly. Owner then orders Sam out in seven days. Advise Sam.

I — ISSUE

The issues are whether the purported fixed term fails for uncertainty, whether a periodic or other tenancy arose from possession and rent, and what notice is required.

II — RULE / LAW

A lease must have a certain or objectively ascertainable maximum duration. Lace v Chantler and Prudential are central. If the fixed term fails, possession plus regular monthly rent can support a periodic tenancy or other statutory tenancy. Apply PLA ss 172-176 to determine the modern termination mechanism.

III — APPLICATION

The light-rail opening is not merely an ascertainable calendar event if its maximum timing cannot be known when the lease begins. That makes the fixed term vulnerable. However, Sam has exclusive possession and has paid monthly rent for two years, so the failure of the fixed-term description does not necessarily reduce Sam to a bare licensee. The monthly payment cycle and conduct strongly support an alternative tenancy requiring statutory notice.

IV — CONCLUSION

The purported fixed term is vulnerable for uncertainty, but Sam likely has continuing tenancy rights and seven days is unlikely to satisfy the applicable notice regime.

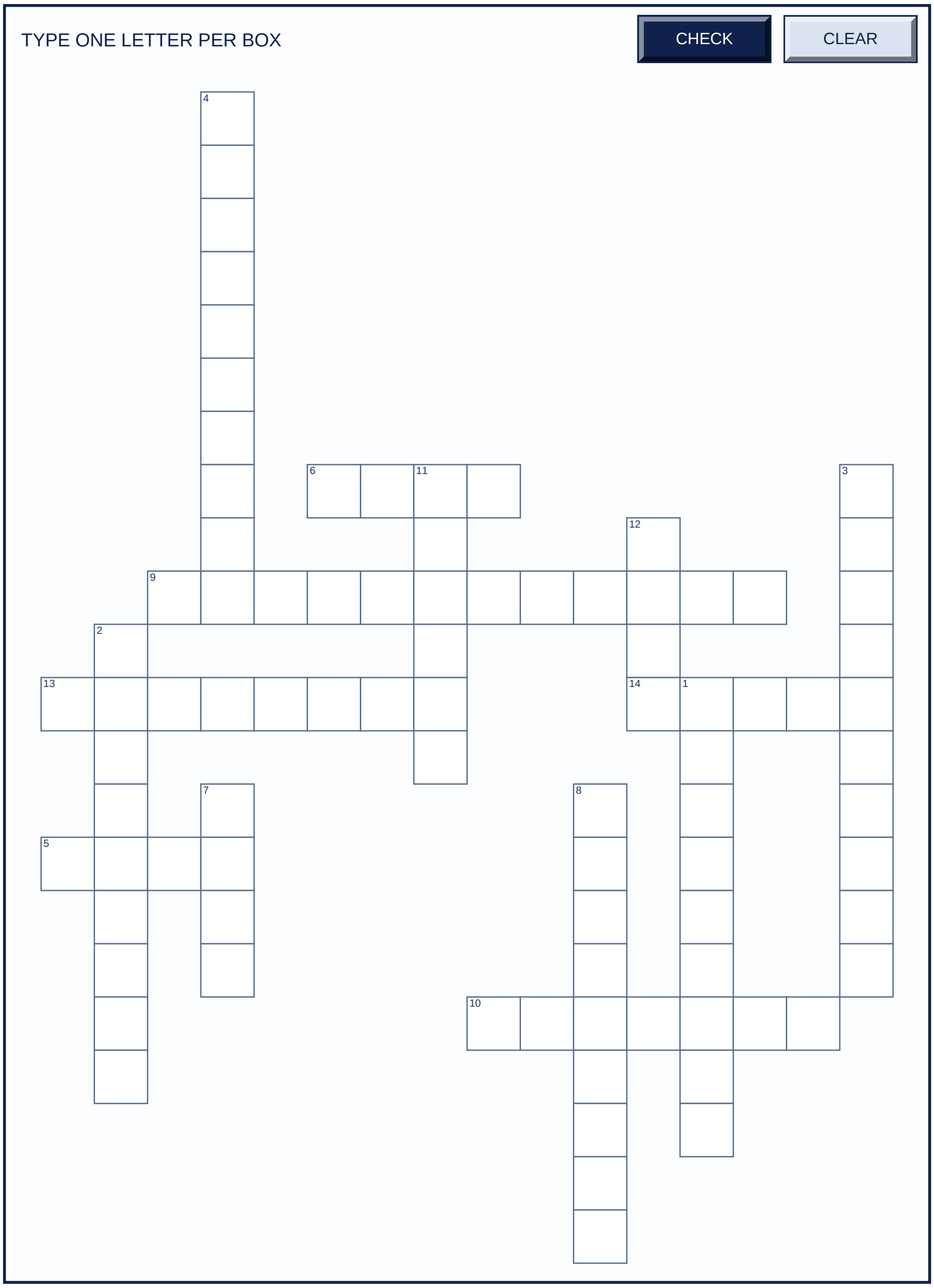
V — REMEDIES / ORDERS

Sam may seek a declaration and injunction against unlawful eviction, plus damages for interference with possession. Owner should serve the correct notice under the PLA rather than rely on the uncertain fixed term.

CROSSWORD - CHAPTER 7: LEASES - PART 1

INTERACTIVE CROSSWORD: *Open the active version to type directly into the grid, check each answer, and receive immediate green/red feedback.* ***Launch Chapter 7 Active Crossword***

Instructions: Complete the crossword using the chapter material, glossary, cases and authorities. Spaces, hyphens and punctuation are omitted from entries.



Across

5. English authority illustrating certainty of term: ______ v Chantler.

6. The common periodic payment made under a lease.

9. The step relevant to obtaining legal Torrens status for a registrable lease.

10. Leading Australian authority on substance and exclusive possession: ______ v Smith.

13. A tenancy continuing from period to period until validly terminated.

14. An interest conferring exclusive possession for a certain or sufficiently certain term.

Down

1. The kind of possession central to characterising a lease.

2. Requirement that the premises and term be legally ascertainable.

3. Authority reinforcing certainty of term: ______ Assurance Co Ltd v London Residuary Body.

4. A tenancy at ______ describes holding over after expiry without a fresh tenancy.

7. The duration of the lease.

8. A lease for a defined duration.

11. The mechanism used to terminate certain periodic tenancies.

12. A tenancy at ______ is terminable by either party subject to applicable notice rules.

Use the chapter text to check each answer before moving to the next topic.

CROSSWORD ANSWERS - CHAPTER 7: LEASES: PART 1

Separate answer page - use this only after attempting the crossword.

5 Across - LACE	2 Down - CERTAINTY
6 Across - RENT	3 Down - PRUDENTIAL
9 Across - REGISTRATION	4 Down - SUFFERANCE
10 Across - RADAICH	7 Down - TERM
13 Across - PERIODIC	8 Down - FIXEDTERM
14 Across - LEASE	11 Down - NOTICE
1 Down - EXCLUSIVE	12 Down - WILL

CHAPTER 8. LEASES - PART 2

Formal creation • legal/equitable leases • covenants • assignment • successors

LEARNING OUTCOMES

By the end of this chapter, you should be able to apply quiet enjoyment and non-derogation; analyse repair and implied lease terms; work through PLA s 142 assignment consent; and separate contractual, proprietary and third-party effects.

How to use this chapter

Read the explanation first. Then connect each rule to the exact statutory provision and authority. The Tutorial Masterclass shows how the lecture and forum material becomes legal analysis: facts are converted into issues, issues into rules, and rules into a reasoned application, conclusion and remedy.

8.1 Formal creation: writing and registration

Provision	Rule / exam use
PLA s 7	Disposition of land in writing and signed by person against whom enforcement sought.
PLA s 8	Creation of legal/equitable land interest in writing and signed by creator.
PLA s 10(1)(a)	Short-lease exception for oral lease with immediate possession for 3 years or less; course says fixed and periodic tenancies, not assignments.
LTA ss 64-65	Registration/form requirements for long leases.
LTA ss 181-182	Legal interest created/vested on registration.
LTA s 71	Unregistered lease not invalid merely because unregistered.

Provision	Rule / exam use
LTA s 66	Lease/amendment after registered mortgage valid against mortgagee only with mortgagee consent before registration.

Crago v Julian is linked to the short-lease exception. Ashton v Hunt, following Chan v Cresdon Pty Ltd, confirms that an unregistered long lease may be enforceable between the parties in equity even though it does not create the legal lease until registration. Laurinda Pty Ltd v Capalaba Park Shopping Centre Pty Ltd is used for an implied obligation to procure/complete a formal registrable lease where parties have agreed to one.

8.2 Non-compliance: law, contract and equity

Plane	Effect
At law	No legal lease/estate if legal formalities/registration absent. Possession plus rent may imply a periodic/yearly tenancy; then consider PLA s 172 and s 174.
In contract	If agreement satisfies PLA s 7, it may be binding contract even though no legal estate passed. Damages: Leitz Leeholme Stud Pty Ltd v Robinson.
In equity	Walsh v Lonsdale: equity treats as done what ought to be done where specifically enforceable agreement for lease exists. Significant part performance may also support relief for an oral agreement.

8.3 Lessor covenant: quiet enjoyment

Schedule 1 cl 8(1) PLA requires the lessor not to interrupt or interfere with the lessee and the lessee's possession. "Quiet" means peaceful/free from substantial disturbance, not silence. Aussie Traveller Pty Ltd v Marklea Pty Ltd is the course authority: if premises were let for a particular purpose, substantial interference with that purpose is protected against prospectively.

Case	Illustration
Lavender v Betts	Removing windows to force tenant out.
Kohua Pty Ltd v Tai Ping Trading Pty Ltd	Cutting central services can breach quiet enjoyment.
Perera v Vandiyar	Course service/interference authority.
Kenny v Preen	Threatening/intimidating/abusive landlord conduct.
Musumeci v Winadell Pty Ltd	Wrongful eviction/removal of tenant property.
J C Berndt Pty Ltd v Walsh	Alterations to adjacent property obstructing potential customers.
Martins Camera Corner Pty Ltd v Hotel Mayfair Ltd	Failure to keep drains clear causing tenant damage may engage covenant depending on control/obligation.

8.4 Not to derogate from grant

Schedule 1 cl 9(2) prevents the lessor taking away in substance what has been granted. It overlaps with quiet enjoyment but focuses on inconsistency between the purpose/benefit of the lease and later landlord conduct.

Case	Course illustration
Aldin v Latimer Clark, Muirhead & Co	Landlord impaired ventilation needed for timber

Case	Course illustration
	business.
Harmer v Jumbil (Nigeria) Tin Areas Ltd	Course example of conduct inconsistent with granted use.
Lend Lease Development Pty Ltd v Zemlicka	Demolition works left premises insecure.
Karaggianis v Malltown Pty Ltd	Stopping lifts/escalators impaired access to upstairs premises.

8.5 Lessee covenants

Covenant	Source / rule
Pay rent	Usually express; if silent Sch 1 cl 1 via PLA s 139. Ell v Cisera: lessee must seek out lessor; non-collection is no defence.
Rent abatement	Sch 1 cl 4 if premises destroyed/substantially damaged, subject to terms.
No voluntary waste	Tenant must not deliberately damage inheritance; consider ameliorating waste.
Repair	Sch 1 cls 3 and 7. Proudfoot v Hart; Lurcott v Wakeley & Wheeler; Graham v Markets Hotel distinguish repair from renewal/reconstruction.
Allow inspection/repairs	Sch 1 cl 10(1)(a), without unreasonable interference.
Yield up	Sch 1 cl 3(1)(b).
Remove tenant fixtures	Sch 1 cl 12.
Tenant-like use	Warren v Keen.

Covenant	Source / rule
Emblements	Kirby v Caruso.

8.6 Terms implied in fact and law

BP Refinery (Westernport) Pty Ltd v Shire of Hastings, accepted in Codelfa Construction Pty Ltd v State Rail Authority of NSW, supplies the five conditions for implication in fact: reasonable/equitable; necessary for business efficacy; obvious; capable of clear expression; and not contradicting express terms. Liverpool City Council v Irwin illustrates terms implied as legal incidents of a class of contract, including landlord obligations concerning common parts.

8.7 Assignment by tenant — PLA s 142

Assignment transfers the whole residue of the tenant's leasehold interest; a sublease leaves the tenant with a reversion. If consent is required, PLA s 142 is a mandatory focal point.

Step	Requirement
Proposal notice	Lessee asks lessor and supplies proposal particulars.
Further information	Lessor may request further information.
Decision notice	Within 1 month after full particulars/further information unless extended by agreement.
Consent	State conditions.
Refusal	State reason.
s 142(8)	Court application if consent unreasonably withheld, condition unreasonable/unnecessary/onerous, or no decision notice.

Step	Requirement
s 142(9)	Court may decide and make appropriate orders.

Pimms Ltd v Tallow Chandlers Co, J A McBeath Nominees Pty Ltd v Jenkins Development Corp Pty Ltd and Tamsco Ltd v Franklins Ltd guide reasonableness. A landlord may protect legitimate property/tenant-mix/solvency interests, but not use consent as arbitrary leverage for collateral advantage. Assignment must satisfy PLA s 7; legal transfer of a registered lease engages LTA ss 60-62. Assignment in breach of covenant is not necessarily void but may expose lease to forfeiture.

8.8 Assignment of reversion / earlier mortgage

PLA s 140 binds an assignee of the reversion to, and gives that person the benefit of, lease terms as specified. Registered leases bind through the register. For a lease made after a registered mortgage, LTA s 66 makes mortgagee consent critical. English, Scottish and Australian Bank Ltd v City National Bank is the course authority for mortgagee/lease priority. Options in unregistered leases require careful Torrens priority analysis.

8.9 Part 2 exam checklist

Valid legal lease? PLA ss 7-10 + LTA registration.

If not legal, contract/equity? Walsh v Lonsdale; part performance.

Which exact lessor/lessee covenant applies?

Assignment? Use PLA s 142 and LTA transfer provisions.

Sale by landlord/earlier mortgage? PLA s 140, LTA s 66, registration/indefeasibility.

Identify appropriate damages, injunction, equitable enforcement, registration or forfeiture consequence.

HIGH DISTINCTION MODEL PROBLEM 1 AND MODEL ANSWER

Problem — Landlord L and Tenant T sign a five-year commercial lease but never register it. T enters and pays rent. L later sells the freehold to P, who knew T was in occupation but says no lease appears on title. T also asks to assign to a solvent experienced operator; L refuses without reasons because L wants a higher rent. Advise T.

I — ISSUE

Status of unregistered lease; equitable/contractual enforceability; effect against purchaser; assignment consent/reasonableness; remedies.

II — RULE / LAW

PLA ss 7-8; LTA ss 64-65, 71, 181-182; Ashton/Chan; Walsh; Laurinda. Against purchaser, Torrens registration and exceptions. Assignment: PLA s 142; Pimms, JA McBeath, Tamsco.

III — APPLICATION

Between L and T, signed agreement plus possession supports contractual/equitable lease. Against P, mere notice is not automatically enough to defeat Torrens registration, so analyse statutory exception/equity rather than assume. L's collateral desire to extract higher rent makes refusal vulnerable under s 142.

IV — REMEDIES / DAMAGES

Against L: damages/specific performance/registration-related relief and s 142 court orders. Against P: declaration/injunction only if recognised exception/priority established; otherwise claim against L.

V — CONCLUSION

T has strong rights against L and a strong assignment case. Rights against P require a separate Torrens analysis.

Tutorial Masterclass - MAS and Aura: covenants, repair and assignment

Tutorial problem - adapted from the supplied course problem. After Aura begins occupation, MAS carries out major undisclosed works on floors directly above it. Noise and vibration disrupt client consultations and damage revenue. A regularly maintained 15-year-old ducted air-conditioning system also requires a $17,500 condenser replacement. Aura then seeks to assign the lease to financially strong Nova, but MAS demands an additional three months' security and a 2% annual rent increase as the price of consent.[18]

> **WHAT THE TUTORIAL IS TEACHING**
>
> The tutorial turns one lease into three distinct disputes: quiet enjoyment/non-derogation; allocation of repair obligations; and statutory control of consent to assignment. Each must be analysed separately.

Rule / Law

The Property Law Act 2023 (Qld) and Schedule 1 contain implied lease obligations, including quiet enjoyment and non-derogation. Repair obligations depend on the lease and the statutory implied terms, with important distinctions between maintenance, repair and renewal/replacement. Consent to assignment is governed by PLA s 142, which requires a structured analysis of the tenant's proposal, information, the landlord's decision, reasons/conditions and possible court relief.[19]

Application - how a High Distinction answer reasons

MAS reserved a right to carry out works elsewhere, but only if undertaken reasonably. That clause does not automatically answer whether persistent noise and vibration substantially interfere with Aura's possession or whether MAS has derogated from the grant. The ageing air-conditioning system requires careful classification of the promised condition and repair obligations; the fact that it was regularly maintained and now needs a major condenser replacement matters. On assignment, Nova's strong financial standing weakens any suggestion that additional security is needed because of credit risk. Conditioning consent on a rent

[18] *Property Law Act 2023* (Qld) s 142 and sch 1.
[19] *Aussie Traveller Pty Ltd v Marklea Pty Ltd* [1997] QCA 2; [1998] 1 Qd R 1.

increase may look like using the consent power to renegotiate the commercial bargain rather than responding to the proposed assignee's suitability.

Conclusion and remedies

Aura has substantial arguments on interference and assignment consent, although the repair cost depends on the precise lease covenants and statutory allocation. A high-scoring answer gives MAS's counterarguments as well as Aura's, then identifies damages, declaratory/injunctive relief and statutory assignment orders where available.

EXAM TRANSFER

When the names and facts change, keep the method: identify the legal relationship first, break the problem into sub-issues, state the exact provision and authority, apply each element to a fact, address the strongest counterargument, and only then state the remedy.

FREQUENTLY ASKED QUESTIONS

Leases - Part 2: Rights, Obligations, Assignment and Sublease

What are a landlord's main obligations?

- **Quiet enjoyment:** Tenant must not be substantially interfered with
- **Non-derogation from grant:** Landlord must not undermine the purpose of the lease

There is generally no obligation to ensure fitness for purpose unless expressly agreed.

What are a tenant's main obligations?

- Pay rent as agreed
- Use premises only for permitted purposes
- Take reasonable care of the premises
- Not commit damage (waste)
- Comply with repair obligations (under the Property Law Act, subject to agreement)
- Return possession at the end of the lease

What is the difference between assignment and sublease?

- **Assignment:** Transfer of the entire remaining lease to a new tenant
- **Sublease:** A new lease carved out for a shorter term

Landlord consent is often required. Under the Property Law Act, consent cannot be unreasonably withheld.

What does the covenant for quiet enjoyment protect?

It protects the tenant's ability to possess and use the premises without substantial interference by the landlord or persons claiming through the landlord.

The focus is practical interference with the tenant's lawful enjoyment of the premises.

What is non-derogation from grant?

A landlord who grants a lease must not later act in a way that substantially defeats the purpose of the grant.

The principle prevents the landlord from giving with one hand and taking away the practical benefit with the other.

Why do privity of contract and privity of estate matter after an assignment?

Assignment can change which parties are connected through the leasehold estate, while the original lease contract may continue to matter separately.

A strong answer identifies which covenant is being enforced and the legal relationship through which it is said to bind the relevant party.

Can a landlord simply refuse consent to an assignment?

Where the lease and applicable statutory rules require consent not to be unreasonably withheld, the landlord must exercise the consent power consistently with that obligation.

The facts should be analysed for the reason given for refusal and the terms of the lease.

Chapter Quiz

1. Which PLA sections are central to lease writing/formality?

Answer: PLA ss 7-10.

2. What is the short-lease exception?

Answer: PLA s 10(1)(a) for qualifying oral leases with immediate possession for 3 years or less.

3. What does Walsh v Lonsdale establish?

Answer: A specifically enforceable agreement for lease may be treated in equity as though the lease had been granted.

4. What is quiet enjoyment?

Answer: Protection against substantial interference by the lessor with the lessee’s possession and enjoyment.

5. Which PLA section controls unreasonable withholding of assignment consent?

Answer: PLA s 142.

6. Why does LTA s 66 matter?

Answer: A lease granted after a registered mortgage generally requires mortgagee consent to bind the mortgagee as specified.

MASTERY QUIZ - LEASES PART 2 - 20 QUESTIONS AND ANSWERS

These questions are deliberately mixed between recall, distinction, issue spotting, application and remedies. They are additional to the shorter chapter quiz and are designed for repeated revision.

Question 1. Why are lease covenants important?

Answer: They allocate ongoing obligations between lessor and lessee concerning use, payment, repair, access, quiet enjoyment and transfer.

Question 2. What is the covenant for quiet enjoyment?

Answer: A promise that the tenant's lawful possession will not be substantially interfered with by the landlord or persons for whom the landlord is responsible.

Question 3. Does quiet enjoyment mean literal silence?

Answer: No. It protects against substantial interference with the tenant's lawful enjoyment, not every noise or inconvenience.

Question 4. What is non-derogation from grant?

Answer: A landlord must not substantially take away the benefit of what was granted by the lease.

Question 5. Why may major landlord construction works breach lease obligations?

Answer: If their manner or effect substantially interferes with the tenant beyond what the lease permits, they may breach quiet enjoyment or non-derogation.

Question 6. Why does an express works clause not give unlimited freedom to the landlord?

Answer: The clause must be construed with its reasonableness or other limits and with applicable implied obligations.

Question 7. How should repair liability be approached?

Answer: Start with the express lease, then applicable implied statutory obligations and the character of the defect or item.

Question 8. Why is Proudfoot v Hart relevant to repair?

Answer: It supplies a classic standard for what keeping premises in repair may require in context.

Question 9. What is assignment of a lease?

Answer: Transfer by the tenant of the leasehold estate to another person.

Question 10. Why is assignment different from subletting?

Answer: Assignment transfers the tenant's remaining estate; a sublease creates a new lesser estate while the original tenant retains a reversion.

Question 11. What does PLA s 142 broadly regulate?

Answer: The lessor's response to requests for consent to assignment or other dealings where the statutory provision applies.

Question 12. Why can demanding extra rent as a condition of assignment be problematic?

Answer: It may be an unreasonable condition unrelated to legitimate assessment of the proposed assignee and inconsistent with statutory limits.

Question 13. Why can an extra security demand be scrutinised?

Answer: The lessor must justify conditions by legitimate risk rather than use consent as an opportunity to rewrite the bargain.

Question 14. What information may legitimately matter when considering an assignee?

Answer: Financial standing, business competence, proposed use and other matters relevant to performance of the lease.

Question 15. Why does registration matter for longer leases?

Answer: Longer terms generally require registration to obtain legal Torrens status, subject to statutory exceptions and equitable doctrines.

Question 16. What is the practical importance of mortgagee consent to a lease?

Answer: A prior mortgage may affect the lease's enforceability or priority against the mortgagee if required consent or priority arrangements are absent.

Question 17. What exam fact suggests quiet enjoyment?

Answer: Persistent construction noise, blocked access, utilities interference or landlord conduct that materially disrupts the tenant's business.

Question 18. What exam fact suggests assignment-consent issues?

Answer: The tenant proposes a financially sound replacement but the landlord demands new rent, extra security or unrelated concessions.

Question 19. What remedies may follow breach of lease covenant?

Answer: Damages, injunction, declaration, specific performance in appropriate circumstances, termination where justified, or statutory relief.

Question 20. What should a Lease Part 2 conclusion state?

Answer: Which covenant applies, whether the conduct breaches it, whether assignment conditions are lawful, and the resulting remedy.

HIGH DISTINCTION MODEL PROBLEM 2 AND MODEL ANSWER - Assignment and quiet enjoyment

Question — A five-year registered lease of a restaurant permits assignment with landlord consent. The landlord refuses consent to a financially stronger assignee unless the tenant pays a $25,000 ‘administration amount’. At the same time, the landlord closes the only public lift to the restaurant level for three months during unrelated renovations. Advise the tenant.

I — ISSUE

The issues are whether assignment consent is unreasonably withheld or conditioned, whether the payment demand is legitimate, and whether loss of lift access breaches quiet enjoyment or derogates from grant.

II — RULE / LAW

Apply PLA s 142 and the reasonableness authorities Pimms, JA McBeath and Tamsco. For interference, apply the implied lessor covenants in PLA Schedule 1 and authorities such as Karaggianis and Aussie Traveller. Quiet enjoyment protects against substantial interference; non-derogation prevents the landlord substantially taking away what the lease granted.

III — APPLICATION

The assignee’s stronger financial position makes refusal difficult to justify on ordinary landlord-protection grounds. A large payment unrelated to genuine evaluation or transaction costs looks like collateral leverage rather than a reasonable condition. Closing the only public lift for months materially impairs customer access to an upstairs restaurant and is closely analogous to authorities where landlord-controlled access or services were withdrawn.

IV — CONCLUSION

The tenant has strong statutory and contractual arguments on both assignment and interference.

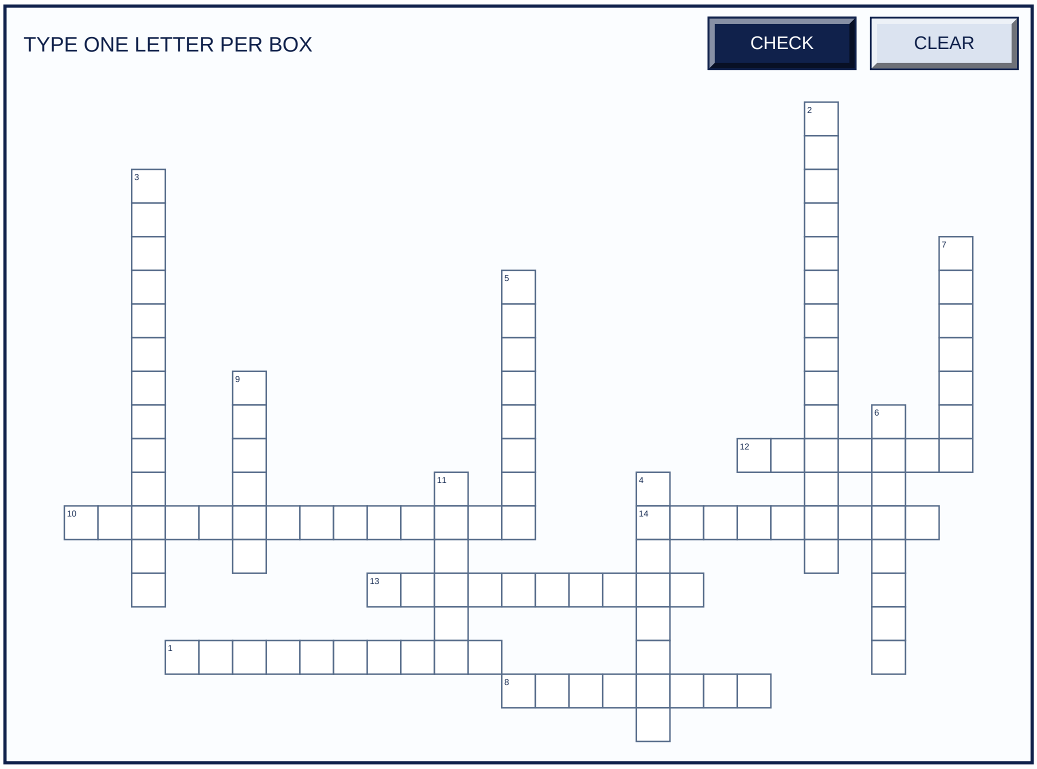
V — REMEDIES / ORDERS

The tenant can seek court orders under s 142, injunction or declaratory relief restoring reasonable access, and damages for business loss caused by breach subject to causation and remoteness.

CROSSWORD - CHAPTER 8: LEASES - PART 2

INTERACTIVE CROSSWORD: *Open the active version to type directly into the grid, check each answer, and receive immediate green/red feedback.* ***Launch Chapter 8 Active Crossword***

Instructions: Complete the crossword using the chapter material, glossary, cases and authorities. Spaces, hyphens and punctuation are omitted from entries.



Across

1. Lease covenants and statutory provisions may affect later assignees or other ______ in title.

8. A grant by the tenant of a lesser estate while retaining a reversion.

10. The lessor's obligation not to substantially interfere with the tenant's lawful possession.

12. Approval that may be required before assignment or subletting.

13. Transfer of the tenant's entire remaining leasehold interest.

14. The landlord's retained interest after granting the lease.

Down

2. Standard central to whether refusal of assignment consent is justified under the course authorities.

3. Doctrine preventing the grantor from substantially undermining the granted use.

4. A dealing moving an interest from one party to another.

5. A promise contained in a lease.

6. A landlord must not substantially ______ from the grant.

7. The advantage side of a covenant.

9. The tenant who takes the lease.

11. The landlord who grants the lease.

Use the chapter text to check each answer before moving to the next topic.

CROSSWORD ANSWERS - CHAPTER 8: LEASES: PART 2

Separate answer page - use this only after attempting the crossword.

1 Across - SUCCESSORS	3 Down - NONDEROGATION
8 Across - SUBLEASE	4 Down - TRANSFER
10 Across - QUIETENJOYMENT	5 Down - COVENANT
12 Across - CONSENT	6 Down - DEROGATE
13 Across - ASSIGNMENT	7 Down - BENEFIT
14 Across - REVERSION	9 Down - LESSEE
2 Down - REASONABLENESS	11 Down - LESSOR

CHAPTER 9. LEASES - PART 3 AND RETAIL SHOP LEASES

Ending leases • forfeiture and relief • damages • RSLA disclosure • minimum lease standards ss 24-50B

LEARNING OUTCOMES

By the end of this chapter, you should be able to explain termination, forfeiture and relief; apply Retail Shop Leases Act thresholds before minimum standards; analyse disclosure, outgoings and rent review; and identify damages and dispute-resolution pathways.

How to use this chapter

Read the explanation first. Then connect each rule to the exact statutory provision and authority. The Tutorial Masterclass shows how the lecture and forum material becomes legal analysis: facts are converted into issues, issues into rules, and rules into a reasoned application, conclusion and remedy.

9.1 How leases end

Method	Rule / authority
Expiry of fixed term	Automatic at end of term; no notice ordinarily required.
Notice to terminate	Used for periodic/statutory tenancies; PLA ss 172-176 from Part 1.
Surrender	Express or by operation of law. Operation of law is estoppel-based and factual: lessee must show lessor accepted conduct inconsistent with continuation, e.g. accepted abandonment/major variation.
Merger	Leasehold and reversion become vested in same person, with intention to merge.

Method	Rule / authority
Frustration	Contract doctrine can in principle apply, but historically leases were resistant because estate in land persists. Course contrasts Minister of State for the Army v Dalziel, Shevill v Builders Licensing Board and Cao v ISPT Pty Ltd.
Forfeiture / re-entry	Termination for qualifying breach, subject to contractual/statutory prerequisites and relief against forfeiture.

9.2 Forfeiture and re-entry

Schedule 1 cl 11(1) PLA gives the lessor a power to terminate where rent is in arrears for one month or breach of an express/implied lease term continues for two months. Termination does not erase the lessee’s accrued liabilities. Before exercising forfeiture, the lessor must normally comply with PLA s 153 notice machinery unless an exception such as abandonment in s 156 applies.

Provision	Requirement / consequence
Sch 1 cl 11(1) PLA	Power to terminate on one-month rent arrears or continuing two-month breach of term.
PLA s 153	Approved-form Notice to Remedy Breach must specify nature/extent; require remedy if capable; require claimed monetary compensation; allow reasonable time. s 153(2): reasonable time assessed in all circumstances.
PLA s 156	Notice not required if lessor reasonably believes lessee has given up possession.
PLA s 157	Re-entry may occur peaceably; if not possible,

Provision	Requirement / consequence
	make written demand for possession.
PLA s 158	If possession refused after demand, court may order possession, forfeiture, amounts owing/compensation and other appropriate relief.
LTA s 68	Following forfeiture of registered lease, lessor can seek removal of lease from title.
PLA s 155	Acceptance of rent/amount after Notice to Remedy Breach is not automatically waiver of right to forfeit, subject to agreement.
PLA s 177	Waiver of benefit of lease term is confined to the particular breach/instance; not a general waiver of future breaches.

9.3 “Reasonable time” in the notice

Suga Pty Ltd v Trust Co of Australia Ltd, McKay v Blumson and BBF Toowoomba Pty Ltd v Nebrean Pty Ltd are the course authorities on reasonable time. The question is practical: what must the tenant do or stop doing, how serious/complex is the breach, and what time is objectively required to cure it? A notice that demands the impossible within an unrealistically short period can be defective.

9.4 Waiver of forfeiture

Matthews v Smallwood states the classic waiver idea used by the course: with actual knowledge of the breach, the lessor performs an unequivocal act recognising continued existence of the lease. Mere inaction is not enough. The modern PLA provisions refine the effect of rent acceptance and confine waiver to the breach concerned.

9.5 Relief against forfeiture

Forfeiture is a powerful security mechanism, but equity and the PLA permit relief where justice requires. PLA s 160 preserves the court's equitable jurisdiction. Shiloh Spinners Ltd v Harding explains the protective purpose of relief against forfeiture: especially where forfeiture secures performance/payment, the court can relieve once the breach is cured/compensated, subject to conduct and circumstances. Under s 161 the court considers the parties' conduct and all circumstances; application timing is strict under the course materials (within one month after re-entry or before possession order). Section 162 allows orders the nature of the case requires, and applying is not an admission.

9.6 Damages after termination — Shevill and Tabali

A landlord can recover accrued rent and ordinary breach damages. Recovery of future rent/loss of bargain depends on whether termination followed repudiation/fundamental breach rather than merely exercise of a contractual forfeiture clause for a non-repudiatory breach. Shevill v Builders Licensing Board illustrates the restriction: exercising a re-entry clause for rent default did not automatically entitle the lessor to damages for the whole future bargain. Progressive Mailing House Pty Ltd v Tabali Pty Ltd shows the contrast where the tenant's conduct amounted to repudiation/fundamental breach, permitting loss-of-bargain damages. In an exam, classify the breach and juridical basis of termination before claiming future rent.

9.7 Retail Shop Leases Act 1994 (Qld): purpose and application

The RSLA imposes mandatory minimum standards and low-cost dispute resolution for qualifying Queensland retail shop leases. The course identifies s 12 (general application), s 16 (contracting out prohibited) and s 17 (Act prevails over inconsistent lease). The threshold is a five-step classification exercise: identify a retail shop lease (s 5A), a retail shop (s 5B), retail business (s 5C and Regulation), and where relevant a retail shopping centre (s 5D), then apply the Act to the dispute. Do not jump to the minimum standards before proving application.

Threshold provision	Purpose
RSLA s 5A	Retail shop lease definition.
s 5B	Retail shop definition.
s 5C	Retail business definition, read with Retail Shop Leases Regulation 2016.
s 5D	Retail shopping centre definition.
s 12	General application to Queensland retail shop leases within the Act.
s 16	Parties cannot contract out of mandatory Act.
s 17	Inconsistent lease term yields to Act / is ineffective to the extent of inconsistency.

9.8 Disclosure before lease, renewal and assignment

Provision	Who → whom / timing / consequence
s 21B	Lessor → prospective lessee: current lessor disclosure statement at least 7 days before entry into lease (subject to statutory mechanism).
s 21E	Lessor → lessee on renewal: within 7 days after lessee renewal notice; lessee may withdraw renewal notice within 14 days after receiving current disclosure statement.
s 21F	Lessor disclosure failure: lessee may have right to terminate within 6 months after entry, subject to statutory defence where lessor acted honestly/reasonably and lessee is substantially

Provision	Who → whom / timing / consequence
	in same position.
s 22A	Lessee → lessor: disclosure at least 7 days before entry.
s 22B(1)	Assignor → assignee: disclosure statement + current lease at least 7 days before earlier of sale-of-business contract or request for lessor consent.
s 22B(2)	Assignee → assignor before lessor asked to consent.
s 22C(1)	Lessor → assignee: disclosure + current lease at least 7 days before assignment.
s 22C(3)	Assignee → lessor before assignment entered.
ss 22D(1)-(2)	Financial and legal advice statements/requirements for relevant assignee transaction as specified by Act.

9.9 Form 7 — what the lessor must put on the table

The uploaded Queensland Government Form 7 v5 is not decorative paperwork; it operationalises disclosure. It requires key commercial facts before commitment: annual base rent, turnover rent, estimated outgoings/marketing costs, term, commencement/handover dates, option(s), permitted-use exclusivity, premises/area/fixtures/services, parking and head lease; fitout and lessor works; rent review; outgoings formulas and estimates; advertising/promotional contributions; alteration/relocation/demolition clauses; trading hours; shopping-centre tenancy mix/traffic information; legal proceedings and other lessor representations.

The lessor acknowledgement is particularly exam-worthy: by signing, the lessor confirms the statement contains the lessor/agent representations, reflects agreements made and does not knowingly withhold information likely to impact the proposed business. The form warns that misleading, false or materially incomplete information may expose the lessor to remedies including termination. This links directly to RSLA s 43AA and disclosure remedies.

9.10 Minimum lease standards — complete ss 24–50B map

Section	Subject	What to say in an exam
s 24	Permitted payment obligations	Lease cannot require payments outside statutory categories: rent; specified outgoings; breach damages; indemnity for loss caused by lessee/agent; stated-rate interest on arrears; and specified reasonable expenses for lessee-requested variation/sublease/licence. Use s 17 to invalidate inconsistent demands (e.g. land tax reimbursement).
s 24A	GST payments	Allows GST amounts attributable to supplies under lease; if treated as outgoing, it is a specific outgoing.
s 25	Turnover rent formula	If rent is based wholly/partly on turnover, lease must state formula.
s 26	Turnover confidentiality	Lessor generally must not disclose tenant turnover

Section	Subject	What to say in an exam
		without agreement, subject to specified exceptions; breach can attract penalty and reasonable compensation for loss.
s 27	Rent review timing/basis	Lease states timing and basis; ordinarily no more than once yearly (first year exception); each review uses only one permitted basis or permitted combined basis.
s 27A	Early determination of current market rent	Mechanism for market-rent determination before option exercise so lessee can make informed renewal decision where statutory conditions met.
s 28	Specialist retail valuer	If parties cannot agree current market rent within statutory period, independent specialist retail valuer agreed or appointed determines it.
s 28A	Submissions to valuer	Valuer must invite submissions; minimum 14-day submission period; copies/responses exchanged as statutory process requires.
s 29	Market-rent criteria	Valuer assesses expected rent for unoccupied comparable use on prescribed effective/gross basis, excludes tenant

Section	Subject	What to say in an exam
		goodwill/fixtures, and considers lease terms, submissions and prescribed matters.
s 30	Information for valuer	Lessor/lessee must provide relevant lease/rental information subject to statutory confidentiality/use framework.
s 31	Market-rent determination mechanics	Governs specialist valuer’s determination, reasons/timing and effect as specified.
s 32	Timing where determination delayed	Statutory mechanism deals with rent payable pending delayed current-market-rent determination and adjustment once fixed.
s 33	Effect of determination	Determined current market rent operates for review in accordance with Act.
s 34	Valuer costs	Parties share specialist retail valuer’s fee as Act directs, absent contrary statutory allocation.
s 35	Valuation confidentiality	Restricts disclosure/use of protected information obtained in current-market-rent process.
s 36	Rent review safeguards	Works with division’s mandatory rent-review controls.

Section	Subject	What to say in an exam
s 36A	Ratchet provisions void	A ratchet term preventing rent decreasing on review is void to statutory extent; critical where lease says rent “must increase” despite falling market.
s 36B	Definitions for outgoings division	Defines apportionable outgoings, maintenance amounts, promotion amounts, estimates/audited statements.
s 37	Outgoings must be specified	Lessee not liable unless lease identifies payable outgoings, determination/apportionment and recovery method.
s 37A	Repealed	Do not treat as operative.
s 38	Proportionate outgoings	Lessee’s share of apportionable outgoings generally cannot exceed leased-area proportion among premises benefiting from outgoing, subject to statutory definitions/exclusions.
s 38A	Annual outgoings estimate	Lessor gives approved-form estimate, generally at least one month before period; itemisation and shopping-centre administration breakdown rules apply.
s 38B	Audited annual statement	Within 3 months after period; registered auditor compares

Section	Subject	What to say in an exam
		estimates with actual expenditure and gives required opinion.
s 38C	Withholding outgoings	Statutory consequence allows withholding in specified non-compliance situations until required estimate/audited statement is supplied.
s 39	Key money/goodwill prohibited	Lessor must not seek/accept key money or tenant business goodwill, subject to listed legitimate exceptions such as investigation/assignment expenses, limited rent in advance, repayable bond and fitout amounts.
s 40	Maintenance sinking fund	Controls maintenance amounts/sinking fund use, caps and proper application; prevents disguised capital recovery outside statutory limits.
s 41	Promotion/advertising amounts	Marketing plan and audited expenditure rules; promotion amounts applied to centre promotion and unspent amounts carried forward.
s 41A	Compensation division definition	Extends “lessee” to assignee for division.

Section	Subject	What to say in an exam
s 42	Compensation provisions implied	Statutorily implies ss 43, 43AA–43AD, 43A and 44 into specified leases; exceptions for certain at-will/periodic tenancies.
s 43	Business disturbance compensation	Reasonable compensation for substantial access/customer-flow restriction, significant trading disruption, unrectified plant/building defects, neglected maintenance, or forced vacation for extension, refurbishment or demolition; notice of loss as soon as practicable.
s 43AA	False/misleading statement compensation	Compensation where lessee enters/renews/accepts assignment on false/misleading lessor/agent statement or shop unavailable on disclosed trading date due to lessor default.
s 43AB	Emergency/statutory compliance defence	No s 43 compensation for reasonable emergency response or action required by law.
s 43AC	Trading-hours limitation	No compensation merely because lessor prevents permitted extension of trading hours in circumstances stated.

Section	Subject	What to say in an exam
s 43AD	Relocation/demolition overlap	Avoids double compensation to extent relocation costs under s 46G or demolition compensation under s 46K already payable.
s 43A	False/misleading disclosure by other parties	Disclosing lessee/assignor/assignee can owe reasonable compensation for false/misleading disclosure under ss 22A–22C.
s 44	Amount of compensation	If parties cannot agree, amount determined through statutory dispute resolution.
s 44A	Limitation of compensation	General advance limitation is void; narrow exception for specifically notified anticipated disturbance within first year with detailed statutory notice.
s 45	Dealings with lease/business assets	Lessor must not improperly hinder security dealings; secured-creditor agreement conditions may apply.
s 46	Option/renewal notice	Where option exists, lessor must notify lessee of option date within statutory window (course: at least 2 and no more than 6 months before option date).
s 46AA	No-option renewal/non-renewal	Regulates lessor notice where

Section	Subject	What to say in an exam
		lease has no option and provides tenant decision time; lessor need not necessarily grant renewal.
s 46AB	Application of unconscionability provisions	Connects statutory unconscionable conduct machinery to relevant lease conduct.
s 46A	Unconscionable conduct	Neither lessor nor lessee may engage in conduct that is unconscionable in all circumstances.
s 46B	QCAT unconscionability factors	Includes bargaining strength, unnecessary conditions, comprehension, undue pressure/unfair tactics, alternatives, consistency, codes, non-disclosure of risks, negotiation willingness and good faith.
ss 46C–46G	Relocation	Minimum protections for relocation clauses, including notice, alternative premises and relocation costs. Check exact facts/notice before advising.
ss 46H–46K	Demolition	Controls early termination for genuine demolition proposal, tenant early-termination rights and compensation including

Section	Subject	What to say in an exam
		fitout and non-genuine/delayed demolition loss.
s 47	Independent legal advice	Tenant/prospective tenant cannot be compelled to use/pay lessor-nominated lawyer; reimbursement consequence if contravened.
s 48	Lease costs	Tenant generally not liable for lessor's legal costs of preparing, renewing or extending a lease, mortgagee consent or Act compliance; survey/registration and narrow aborted-final-lease exception remain.
s 49	Commercial associations	Lease term restricting tenant joining/forming chamber, trade or lessee association is void.
s 50	Assignment disputes	Statutory dispute mechanism for assignment-related controversy.
s 50A	Release on assignment	Course identifies statutory release of assignor in qualifying assignment where disclosure requirements are satisfied.
s 50B	Refurbishment/refitting	A compulsory refurbishment/refit clause is void unless lease gives general

Section	Subject	What to say in an exam
		details of nature, extent and timing.

9.11 Retail rent-review trap: ratchet clause

A clause saying rent “must increase on each review irrespective of market fluctuations” is a classic RSLA issue. Apply s 27 to identify the review basis and s 36A to strike down the ratchet component. Do not treat the entire lease as void: isolate the inconsistent review mechanism and apply the statutory consequence. If current market rent is the basis, ss 28-35 provide the specialist-valuer machinery.

9.12 Disclosure and traffic-flow representations

A retail tenant who says “I thought there would be more customers” does not automatically have a claim. Ask what the lessor/agent represented, what Form 7 disclosed, whether traffic-flow information existed, whether the centre/lease is within the Act, causation/reliance and loss. Section 43AA is powerful if the tenant entered on the basis of a false/misleading statement or misrepresentation. Form 7 item 28 requires other oral/written lessor representations to be disclosed, making pre-contract statements evidentially significant.

9.13 Dispute resolution and renewal

Provision	Course point
s 46	Option date notice; 2–6 month window noted by lecturer.
s 50A	Release of assignor on qualifying assignment.
ss 55–83	Retail tenancy dispute process: mediation then QCAT as appropriate. Queensland Small Business Commissioner provides mediation/dispute-resolution services.

9.14 Part 3 case digest

Case	Rule / use
Minister of State for the Army v Dalziel	Historical lease/property character and frustration context.
Shevill v Builders Licensing Board	Exercise of re-entry clause does not automatically create future-rent/loss-of-bargain damages unless breach is repudiatory/fundamental.
Cao v ISPT Pty Ltd	Course modern frustration/lease authority.
Matthews v Smallwood	Waiver: actual knowledge plus unequivocal act recognising continued lease.
Suga Pty Ltd v Trust Co of Australia Ltd	Reasonable time in remedy-breach notice.
McKay v Blumson	Reasonable cure period depends on breach and required action.
BBF Toowoomba Pty Ltd v Nebrean Pty Ltd	Queensland course authority on reasonable time/notice.
Shiloh Spinners Ltd v Harding	Equitable relief against forfeiture; security purpose and conduct/cure matter.
Progressive Mailing House Pty Ltd v Tabali Pty Ltd	Repudiation/fundamental breach can support termination plus loss-of-bargain damages; contrast Shevill.

9.15 Plain-English Part 3 formula

ENDING / RETAIL — HOW DID LEASE END? → VALID NOTICE? → WAIVER? → RELIEF? → DAMAGES BASIS? → IF RETAIL: APPLICATION → DISCLOSURE → MINIMUM STANDARD → COMPENSATION → QSBC/QCAT.

HIGH DISTINCTION MODEL PROBLEM 1 AND MODEL ANSWER

Problem — Elaine signs a five-year Queensland lease for a ground-floor florist/café at $2,000 per month plus GST. The lease says rent must increase every anniversary and, if market rent falls, rent still rises 2.5%. Before signing, the landlord tells her the street has “excellent constant pedestrian and vehicle traffic”. No such representation appears in the disclosure statement. After fitout Elaine discovers traffic is very low. Advise Elaine, assuming the premises satisfy the retail shop lease threshold.

I — ISSUE

Validity of ratchet rent review; adequacy/accuracy of lessor disclosure; false/misleading representation compensation; contractual/equitable lease issues if registration incomplete; remedies/dispute process.

II — RULE / LAW

RSLA ss 12,16,17; application definitions ss 5A-5D. Disclosure s 21B and consequences s 21F. Minimum standards: s 27 review basis; s 36A ratchet void; s 43AA compensation for false/misleading lessor statement causing entry; s 44 compensation process; Form 7 representation disclosures. If lease is not yet legally registered, separately apply PLA/LTA from Ch 8.

III — APPLICATION

The clause expressly prevents downward movement, so its ratchet component is precisely the sort of mandatory minimum-standard issue s 36A targets. The traffic statement is more fact-sensitive. “Excellent constant traffic” is capable of being factual rather than puff, especially where customer visibility is central to a florist/café and Elaine relied on it in entering/fitout. Its omission from Form 7 strengthens scrutiny but does not by itself prove falsity. Evidence of actual historic traffic data, landlord knowledge and causation will matter.

IV — REMEDIES / DAMAGES

Seek declaration that ratchet component is void and correct rent review. If s 43AA is established, reasonable compensation for caused loss; if disclosure failure meets s 21F, consider termination right within statutory period. Retail disputes proceed through statutory dispute-resolution/mediation and QCAT as applicable. Contract damages may also arise subject to overlap/double recovery.

V — CONCLUSION

Elaine has a strong ratchet-clause argument and a potentially strong disclosure/misrepresentation compensation claim if the traffic statement was false/misleading and induced the lease. The answer must quantify causation rather than simply assert “low profit = damages”.

Course Revision Masterclass - Elaine's Burleigh Heads retail lease

Tutorial problem - adapted from the supplied course problem. A supplied revision problem has James and Elaine sign notebook terms for a five-year ground-floor Burleigh Heads lease at $2,000 per month plus GST, with a 75% outgoings obligation, a florist/cafe use, a future-rent default clause and a rent-review mechanism that prevents rent decreasing. Elaine takes possession and later complains about poor traffic. This is used here because a separate Leases Part 3 tutorial file was not located among the supplied materials.[20]

WHAT THE TUTORIAL IS TEACHING

Work in sequence: creation/formality and registration; whether the Retail Shop Leases Act 1994 (Qld) applies; disclosure; permitted payments/outgoings; rent review and ratchet prohibition; termination/default damages; and any representation about traffic.

Rule / Law

The retail statute is mandatory if its threshold definitions are met. The course emphasises ss 5A-5D, 12, 16 and 17 before moving to disclosure in ss 21B-22D, minimum standards in ss 24-50B, renewal, assignment and dispute resolution. General lease termination and forfeiture must also be kept separate from retail statutory rights. Shevill and Progressive Mailing House are critical to whether future rent is recoverable following termination.[21]

Application - how a High Distinction answer reasons

The signed notebook is unusually detailed and supports a binding agreement between James and Elaine even though a five-year legal lease raises registration issues. If the premises qualify as a retail shop lease, the 75% outgoings term cannot override mandatory statutory apportionment and disclosure rules. A no-decrease rent review should trigger the statutory ratchet analysis. Poor traffic alone is not automatically actionable: identify whether James made a representation or whether required disclosure information was false, misleading or omitted. The

[20] *Retail Shop Leases Act 1994* (Qld) ss 5A-5D, 12, 16, 17, 21B-22D, 24-50B.
[21] *Shevill v Builders Licensing Board* (1982) 149 CLR 620; *Progressive Mailing House Pty Ltd v Tabali Pty Ltd* (1985) 157 CLR 17.

default clause also cannot simply transform every breach into repudiation; classify the breach and termination basis before calculating future-rent damages.

Conclusion and remedies

Elaine's strongest protections come from the mandatory retail framework if the Act applies. The exam technique is to prove statutory application before invoking the minimum standards, and to separate formation, disclosure, rent/outgoings, termination and remedies.

EXAM TRANSFER

When the names and facts change, keep the method: identify the legal relationship first, break the problem into sub-issues, state the exact provision and authority, apply each element to a fact, address the strongest counterargument, and only then state the remedy.

FREQUENTLY ASKED QUESTIONS

Leases - Part 3 and Retail Shop Leases

How can a lease be terminated?

- Expiry of the fixed term
- Surrender (agreement between parties)
- Merger (tenant acquires landlord's interest)
- Frustration (rare)
- Forfeiture for breach

If a tenant breaches the lease, the landlord may issue a notice to remedy breach under the Property Law Act.

What remedies are available for breach?

- Termination (forfeiture of lease)
- Recovery of unpaid rent
- Damages (including future loss in some circumstances)

Tenants may seek **relief against forfeiture** under the Property Law Act.

What is the Retail Shop Leases Act?

The **Retail Shop Leases Act** regulates certain retail leases, particularly in shopping centres.

It provides protections for tenants, including:

- Disclosure requirements
- Rules on rent review
- Rights relating to assignment and renewal
- Dispute resolution mechanisms

Whether it applies depends on the nature and use of the premises.

What is forfeiture?

Forfeiture is the landlord's termination of the lease for a breach that legally justifies re-entry or termination.

Because forfeiture is a serious remedy, the required contractual and statutory steps must be identified and followed.

What is relief against forfeiture?

Relief against forfeiture is an equitable or statutory remedy that can preserve or restore the lease despite a breach in appropriate circumstances.

The court considers matters such as the nature of the breach, whether it has been remedied, prejudice and the overall justice of the case.

Why is a notice to remedy breach important?

A notice identifies the alleged breach and gives the tenant the opportunity required by law to remedy it before stronger enforcement action is taken.

An exam answer should check the notice requirement before assuming that forfeiture is immediately available.

What is repudiation of a lease?

Repudiation occurs where a party objectively demonstrates unwillingness or inability to perform the lease obligations in a fundamental way.

The innocent party must then consider whether to accept the repudiation and terminate or keep the lease on foot, subject to the applicable law.

What is the practical purpose of retail-lease disclosure?

Disclosure is designed to give the parties important information about the proposed retail leasing arrangement before they become fully committed.

Where the Retail Shop Leases Act applies, the timing and content of the required disclosure material should be checked carefully.

Chapter Quiz

1. What notice provision is central before forfeiture?

Answer: PLA s 153 Notice to Remedy Breach.

2. When may notice be unnecessary because the lessee has abandoned?

Answer: PLA s 156.

3. What equitable remedy may restore a forfeited lease?

Answer: Relief against forfeiture under PLA ss 160-162 and equitable jurisdiction.

4. What is the Shevill/Tabali distinction?

Answer: Future loss-of-bargain damages depend on repudiatory/fundamental breach, not merely exercise of a forfeiture clause.

5. Which RSLA provision prohibits contracting out?

Answer: Retail Shop Leases Act 1994 (Qld) s 16.

6. Which RSLA provision voids ratchet clauses?

Answer: s 36A.

MASTERY QUIZ - LEASES PART 3 - 20 QUESTIONS AND ANSWERS

These questions are deliberately mixed between recall, distinction, issue spotting, application and remedies. They are additional to the shorter chapter quiz and are designed for repeated revision.

Question 1. What is forfeiture or re-entry?

Answer: Termination of a lease by the lessor for breach under a contractual or statutory right, subject to required procedure and relief.

Question 2. Which PLA provision is central to a Notice to Remedy Breach?

Answer: PLA s 153.

Question 3. Why must a notice identify the breach with sufficient clarity?

Answer: The tenant must understand what is alleged and what must be done to remedy it where remedy is possible.

Question 4. Why must the cure period be reasonable where the statute requires reasonable time?

Answer: An unrealistically short period may make the enforcement step defective.

Question 5. What does waiver mean in the forfeiture context?

Answer: The lessor, knowing of the breach, acts in a way that recognises the lease as continuing and may lose the right to forfeit for that breach.

Question 6. Why can acceptance of rent after knowledge of breach matter?

Answer: It may constitute or evidence waiver depending on the nature of the breach and circumstances.

Question 7. What is relief against forfeiture?

Answer: Equitable and statutory relief restoring or preserving the lease despite a right of forfeiture, often on conditions such as curing default and paying costs.

Question 8. Which PLA provisions preserve relief against forfeiture in the course?

Answer: PLA ss 160-162.

Question 9. Which case is important to the equitable nature of relief against forfeiture?

Answer: Shiloh Spinners Ltd v Harding.

Question 10. Why is Suga v Trust Company relevant?

Answer: It is a Queensland course authority concerning forfeiture notice and reasonable opportunity to remedy.

Question 11. Why is McKay v Blumson relevant?

Answer: It is another Queensland authority used in the course on notice/remedy requirements before forfeiture.

Question 12. When may abandonment affect the notice requirement?

Answer: PLA s 156 addresses circumstances in which the lessee has abandoned the premises.

Question 13. What is surrender?

Answer: An agreement or operation of law by which the tenant yields the leasehold estate back to the landlord before ordinary expiry.

Question 14. What is merger?

Answer: The leasehold and reversionary interests come into the same ownership in circumstances that may extinguish the lease.

Question 15. Can frustration ever apply to a lease?

Answer: Potentially, though the threshold is high and the circumstances must make the lease obligations radically different from what was undertaken.

Question 16. What is the Shevill/Tabali distinction?

Answer: Future loss-of-bargain damages depend on repudiatory or sufficiently serious breach, not merely on a clause allowing termination for any breach.

Question 17. Why should termination and damages be analysed separately?

Answer: A lessor may validly terminate under a contractual mechanism without automatically obtaining damages for the entire remaining term.

Question 18. What exam fact suggests defective forfeiture?

Answer: A very short notice, vague breach description, premature re-entry or conduct indicating waiver.

Question 19. What immediate remedy may a tenant seek after wrongful or premature re-entry?

Answer: Relief against forfeiture, injunction, declaration and damages where available.

Question 20. What should a Lease Part 3 conclusion state?

Answer: Whether the lease ended validly, whether forfeiture procedure was satisfied, whether waiver or relief applies, and what damages are available.

MASTERY QUIZ - RETAIL SHOP LEASES - 20 QUESTIONS AND ANSWERS

These questions are deliberately mixed between recall, distinction, issue spotting, application and remedies. They are additional to the shorter chapter quiz and are designed for repeated revision.

Question 1. What is the first task before applying the Retail Shop Leases Act 1994 (Qld)?

Answer: Establish that the premises and transaction fall within the Act's threshold definitions and are not excluded.

Question 2. Why is RSLA s 16 important?

Answer: It prevents parties from contracting out of the Act's mandatory protections.

Question 3. Why is lessor disclosure important?

Answer: The Act requires specified information to be given before or around entry into the retail shop lease so the prospective tenant can assess the transaction.

Question 4. Which provision is central to the lessor disclosure statement in the course?

Answer: RSLA s 21B, together with the approved Form 7.

Question 5. What is Form 7?

Answer: The approved lessor disclosure statement used to provide prescribed information about a retail shop lease.

Question 6. Why should disclosure timing be checked precisely?

Answer: Failure to give the required disclosure at the required time may trigger statutory rights or consequences.

Question 7. What may s 21F provide in broad terms?

Answer: A statutory response to specified failures in lessor disclosure, including a potentially time-limited termination route subject to the section's conditions and defences.

Question 8. What is a ratchet clause?

Answer: A rent-review mechanism that prevents rent from decreasing even where the contractual review formula would otherwise produce a lower rent.

Question 9. Which RSLA provision is associated with the prohibition on ratchet clauses?

Answer: RSLA s 36A.

Question 10. Why are outgoings regulated?

Answer: The Act limits and structures what retail tenants can be required to pay and how those amounts are disclosed, apportioned and accounted for.

Question 11. Why should a student check whether GST is included or added?

Answer: The Act and lease terms regulate payment obligations, and misunderstanding the stated rent can distort the entire commercial analysis.

Question 12. What is key money?

Answer: A prohibited or regulated payment demanded for granting, renewing or assigning a retail shop lease beyond legitimate rent, security or statutory amounts.

Question 13. Why are relocation and demolition clauses regulated?

Answer: They can severely affect the tenant's business, so the Act imposes minimum standards and compensation or procedural protections.

Question 14. Why is compensation a separate issue from termination?

Answer: A tenant may have a statutory compensation claim even where the lease continues, and termination rights have distinct statutory requirements.

Question 15. Why must assignment be checked under both the lease and the RSLA?

Answer: The Act may impose disclosure, release or procedural requirements beyond the general lease law.

Question 16. What is the role of the Queensland Small Business Commissioner in retail lease disputes?

Answer: It provides a statutory dispute-resolution pathway, including mediation processes, before or alongside tribunal proceedings as applicable.

Question 17. What forum may ultimately determine many retail lease disputes?

Answer: QCAT, subject to the statutory scheme and jurisdictional requirements.

Question 18. What exam fact suggests a disclosure issue?

Answer: The tenant received the Form 7 late, incomplete, or containing information inconsistent with later representations or charges.

Question 19. What exam fact suggests a ratchet issue?

Answer: The lease says rent can rise on review but can never fall.

Question 20. What should a retail lease conclusion state?

Answer: Whether the Act applies, which mandatory standard or disclosure obligation was breached, and the tenant's termination, compensation or dispute-resolution options.

HIGH DISTINCTION MODEL PROBLEM 2 AND MODEL ANSWER - Forfeiture and retail disclosure

Question — A retail tenant is two months behind in rent. The landlord serves a Notice to Remedy Breach requiring full payment within 48 hours and, after the tenant pays half, re-enters on day three. The landlord had also failed to give the required lessor disclosure statement before the lease. Advise the tenant.

I — ISSUE

The issues are validity of the forfeiture notice, whether 48 hours was a reasonable cure period, whether the landlord waived or prematurely exercised forfeiture, availability of relief against forfeiture, and separate RSLA disclosure remedies.

II — RULE / LAW

Apply PLA Sch 1 cl 11, s 153 and the reasonable-time cases Suga, McKay and BBF Toowoomba. Relief against forfeiture is preserved by PLA ss 160-162 and Shiloh Spinners. Separately apply RSLA s 21B and s 21F if the Act applies, together with ss 12, 16 and 17.

III — APPLICATION

Although rent arrears can enliven forfeiture machinery, a 48-hour demand for a substantial two-month arrears sum may be unreasonable depending on circumstances, making the notice vulnerable. The tenant's partial payment also shows active cure. Re-entry on day three magnifies the procedural concern. Independent of forfeiture, failure to provide statutory disclosure may create a time-limited termination remedy, subject to the landlord's statutory defence.

IV — CONCLUSION

The tenant has a strong basis to challenge the forfeiture and seek equitable/statutory relief; the disclosure failure must be analysed separately rather than treated as the same issue.

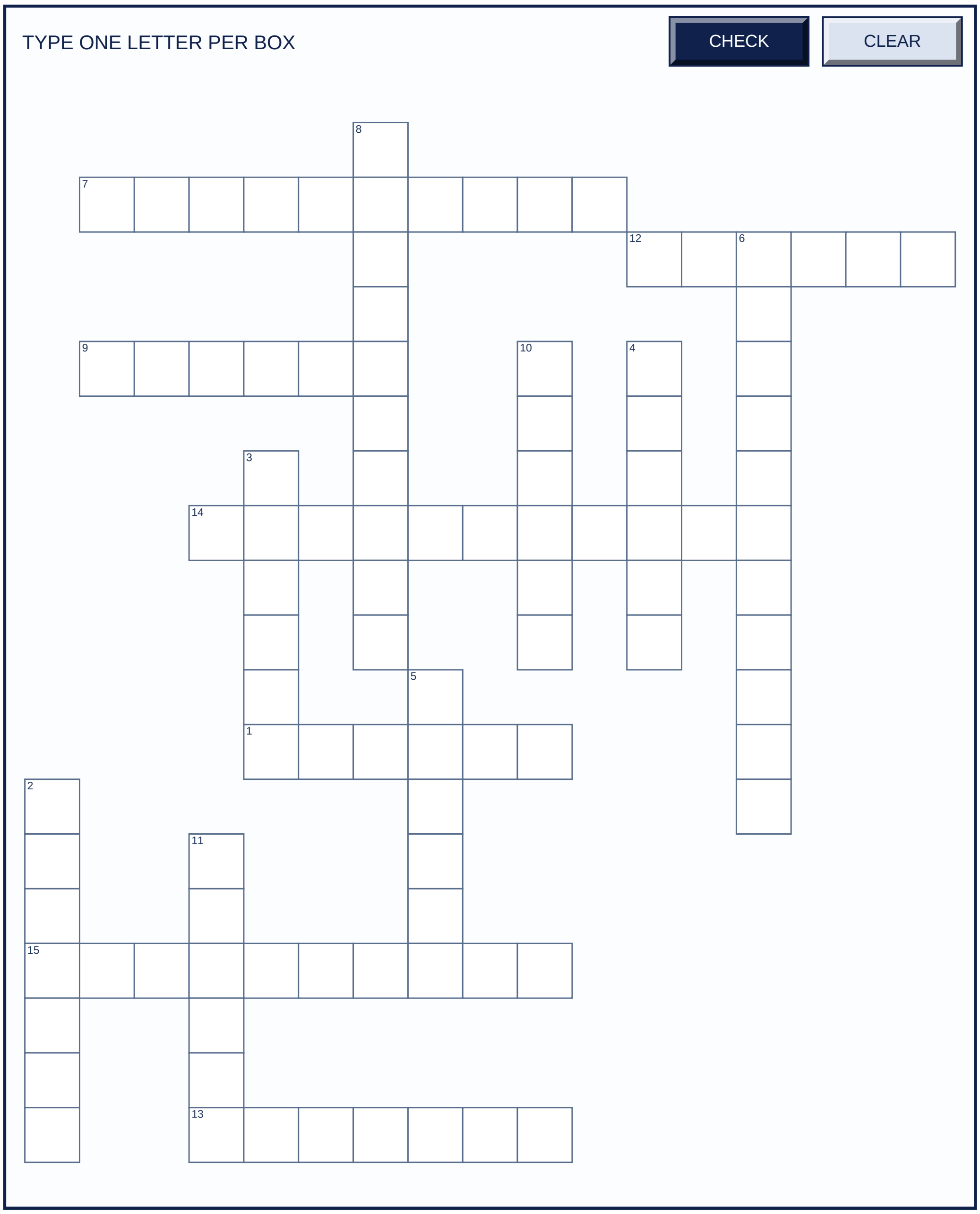
V — REMEDIES / ORDERS

Seek urgent relief restoring possession, relief against forfeiture, and damages for wrongful re-entry if established. Consider RSLA termination or compensation rights arising from disclosure failure and use the statutory retail dispute-resolution process.

CROSSWORD - CHAPTER 9: LEASES - PART 3 AND RETAIL SHOP LEASES

INTERACTIVE CROSSWORD: *Open the active version to type directly into the grid, check each answer, and receive immediate green/red feedback.* [***Launch Chapter 9 Active Crossword***]

Instructions: Complete the crossword using the chapter material, glossary, cases and authorities. Spaces, hyphens and punctuation are omitted from entries.



Across

1. What a breach analysis should identify after liability.
7. A central pre-entry requirement under the retail shop lease regime.
9. Formal document commonly required before forfeiture for certain breaches.
12. The type of shop lease governed by the Retail Shop Leases Act 1994 (Qld).
13. The lessor's right to take possession after breach where the law permits.
14. Conduct showing unwillingness or inability to perform contractual obligations.
15. Transfer of the tenant's leasehold interest to another person.

Down

2. Monetary compensation for loss caused by breach.
3. The landlord under a lease.
4. Equitable/statutory protection a tenant may seek against forfeiture.
5. The tenant under a lease.
6. The legal ending of the lease relationship.
8. Termination remedy by which a lessor ends the lease for qualifying breach.
10. Failure to comply with a lease obligation.
11. Conduct by which a known right to forfeit may be given up.

Use the chapter text to check each answer before moving to the next topic.

CROSSWORD ANSWERS - CHAPTER 9: LEASES: PART 3 AND RETAIL SHOP LEASES

Separate answer page - use this only after attempting the crossword.

1 Across - REMEDY	3 Down - LESSOR
7 Across - DISCLOSURE	4 Down - RELIEF
9 Across - NOTICE	5 Down - LESSEE
12 Across - RETAIL	6 Down - TERMINATION
13 Across - REENTRY	8 Down - FORFEITURE
14 Across - REPUDIATION	10 Down - BREACH
15 Across - ASSIGNMENT	11 Down - WAIVER
2 Down - DAMAGES	

CHAPTER 10. COVENANTS AND BOUNDARIES

Nature • benefit and burden • common law and equity • schemes of development • sustainable housing

LEARNING OUTCOMES

By the end of this chapter, you should be able to analyse benefit and burden of freehold covenants; apply Tulk v Moxhay and scheme-of-development doctrine; identify boundary and encroachment rules; and select equitable and statutory remedies.

How to use this chapter

Read the explanation first. Then connect each rule to the exact statutory provision and authority. The Tutorial Masterclass shows how the lecture and forum material becomes legal analysis: facts are converted into issues, issues into rules, and rules into a reasoned application, conclusion and remedy.

10.1 What is a freehold covenant?

A freehold covenant is a promise by a covenantor to a covenantee to do or not do a specified act, usually affecting use of land and often preserving the amenity of a development. The “benefit” is the right to enforce; the “burden” is the obligation to perform/refrain. In the common development pattern, retained land is the dominant/benefited land and sold land is the servient/burdened land. At common law privity of contract is the starting point, but PLA s 68 allows a third party to enforce a contract made for the third party’s benefit once the statutory conditions are met; the course also notes the accepting beneficiary is bound by associated obligations.

10.2 Types

Type	Meaning	Running with land
Positive	Requires covenantor to do something, e.g. build/maintain fence.	Burden does not ordinarily run at common law; equity’s Tulk doctrine is for

Type	Meaning	Running with land
		restrictive/negative obligations, not positive expenditure obligations.
Negative	Restrains conduct, e.g. do not build above one storey.	May satisfy restrictive-covenant doctrine if land-related.
Restrictive	Negative covenant whose benefit/burden can run in equity when requirements satisfied.	Enforceable against successor with relevant notice/equitable conditions; normally not simply registered as an ordinary Torrens interest unless statutory category applies.

10.3 Passing the benefit at common law

Covenant must “touch and concern” the benefited land: it must affect mode of occupation, value, nature or use of the land rather than merely benefit the covenantee personally. Rogers v Hosegood supplies the classic formulation.

Benefit must be intended to run with the land. PLA s 64 operates as a word-saving/statutory intention provision subject to contrary intention.

Successor seeking to enforce at common law must hold the legal estate in the benefited land, not merely an equitable interest.

Authority	Course proposition
Rogers v Hosegood	Touch and concern: affect land as to occupation or value, not merely owner personally.
Bellevue Station Pty Ltd v Consolidated Pastoral Company Pty Ltd	Look to land-related amenity/value; a merely personal benefit does not touch/concern.

Authority	Course proposition
Smith and Snipes Hall Farm Ltd v River Douglas Catchment Board	Benefit of land-related covenant can pass; also course easement authority.
Clem Smith Nominees Pty Ltd v Farrelly	Touch-and-concern/amenity authority.
Re Ballard’s Conveyance	Restriction benefiting too broad an area or unrelated land may fail sufficient land nexus.
Rhone v Stephens	Positive burden does not run merely because benefit wording runs; cannot use s 64 to impose positive covenant on successor.

10.4 Passing the benefit in equity

Equity recognises three main routes: annexation, express assignment, and a scheme of development. Annexation requires the covenant to benefit/touch land, intention that benefit run, a sufficient legal estate, and sufficient identification of benefited land. The course distinguishes pre-1 December 1975 covenants, where intention had to be expressed, from later arrangements where PLA s 64 supplies presumed intention subject to contrary wording.

Assignment treats the benefit as a chose in action and requires a written assignment in the land transaction: PLA s 8 is flagged by the course. The benefit must have been intended to benefit land, not the original covenantee personally, and must be assigned with the land. Chambers v Randall and Re Union of London and Smiths Bank Ltd’s Conveyance are the course authorities; the slides also direct attention to PLA ss 190 or 192 in the assignment context.

10.5 Scheme of development

A building/development scheme allows purchasers within a defined common scheme to enforce similar restrictive covenants inter se even without direct contracts. Elliston v Reacher supplies four course requirements: common seller, planned scheme of development, same/similar covenants across lots, and purchase on the understanding that restrictions are for mutual benefit of scheme lots. Norton v Kilduff and Ryan v Brain are the course authorities to test whether the scheme is sufficiently coherent and reciprocal.

10.6 Passing the burden

At common law, the burden of a freehold covenant does not generally run with land. It binds the original covenantor under privity, and a later owner is bound only if there is a fresh/chain covenant or a specific statutory exception. Forestview Nominees Pty Ltd v Perpetual Trustees WA Ltd is the course authority for the chain-of-covenants problem.

Statutory exception	Course example
LTA s 97A — tying covenant	State/local-government covenant preventing transfer without specified other land.
LTA s 97A — conservation covenant	Obligations preserving animals, plants or natural physical features.
LTA s 54A + BCCMA	Use covenants/building management/body corporate by-law mechanisms can bind under statutory scheme.

10.7 Equity: Tulk v Moxhay

Equity can enforce the burden of a restrictive covenant against a successor where the Tulk v Moxhay requirements are met. In course terms: the covenant is negative/restrictive in substance; it protects/touches and concerns land retained/benefited by the covenantee; the burden was intended to run; and the successor is affected by the covenant under equitable notice/priorities principles. The remedy is equitable, typically injunction rather than damages alone. The doctrine does not convert a positive covenant to spend money into a running equitable burden.

10.8 Sustainable housing limit

Chapter 8A of the Building Act 1975 (Qld), identified by the course as provisions supporting sustainable housing, invalidates/enfeebles certain private covenants that interfere with protected sustainable building practices—for example restrictions prohibiting solar hot-water or solar panels. In a covenant problem, check whether the restriction is otherwise valid and then whether specific sustainability legislation makes it unenforceable.

10.9 Plain-English covenant attack plan

COVENANTS — WHAT PROMISE? POSITIVE OR RESTRICTIVE? → WHO WANTS TO ENFORCE? → DID BENEFIT PASS? → DID BURDEN PASS? → COMMON LAW OR EQUITY? → STATUTORY EXCEPTION? → INJUNCTION / DAMAGES.

HIGH DISTINCTION MODEL PROBLEM 1 AND MODEL ANSWER

Problem — Damon subdivides land into Apple Cottage and Blueberry Villa. The written sale agreement with original buyer Niles says: only single-storey dwellings; no animal larger than a 15kg dog; and each owner must plant roses along the road boundary. Niles sells to Greg, shows Greg the agreement, but the final sale contract omits it. Greg plans a second storey, keeps a horse, and refuses to plant roses. Damon retains Apple Cottage. Advise Damon.

I — ISSUE

Whether each covenant is positive/restrictive; whether benefit attaches to Damon's retained land; whether burden binds Greg at common law/equity; effect of Greg's actual knowledge; remedies.

II — RULE / LAW

Common-law benefit: touch/concern, intention (PLA s 64), legal estate. Common-law burden generally does not run; Forestview/chain covenant. Equity: Tulk v Moxhay for restrictive negative covenant; sufficient benefited land, intention and notice/equitable priority. Positive rose covenant cannot ordinarily run in equity merely because Greg knew.

III — APPLICATION

Single-storey restriction and animal-size restriction are negative in form and plausibly protect residential amenity of Damon's retained adjoining land, so they strongly touch/concern. Greg saw the agreement before purchase, which strengthens notice for equity, though Torrens/statutory priority still must be considered. The rose obligation is positive because it requires expenditure/action; Tulk does not make its burden run. Damon may enforce it against Niles contractually but not automatically against Greg.

IV — REMEDIES / DAMAGES

For valid restrictive covenants: injunction restraining second storey/horse use is primary equitable relief; damages/equitable damages may be alternatives. Positive rose promise: contractual claim against original covenantor if breached and loss established, or a fresh covenant if Greg agreed separately.

V — CONCLUSION

Damon has materially stronger claims on the single-storey and animal restrictions than on the positive rose obligation. A high-mark answer separates benefit from burden and tests each covenant independently rather than treating the agreement as one indivisible promise.

FROM THE LIVE LECTURE / FORUM SOURCE

The live covenant recap explains freehold covenants as private controls on land use that may preserve amenity and value. The lecturer connected “touches and concerns” to the mode of occupation and value of land, used development examples such as external-colour and height restrictions, and then moved from passing the benefit to the equitable burden under Tulk v Moxhay.

Live speech-to-text can garble names. Where the transcript itself flags an uncertain case name, this book verifies the proposition against the slides or other supplied authority material and does not reproduce an uncertain name as if it were authoritative.

Tutorial Masterclass - Sophia and the Gold Coast development covenants

Tutorial problem - adapted from the supplied course problem. All original purchasers in a coastal development were required to keep dwellings to two storeys and follow a light Queensland aesthetic. MAS bought directly from the developer and complied. Sophia later bought from an intermediate owner. She was shown the restrictions and verbally accepted them, but they were not included in her contract. She then built a dark modern house and rooftop greenhouse that slightly exceeded the two-storey limit.[22]

WHAT THE TUTORIAL IS TEACHING

Analyse whether MAS has the benefit, whether the burden can bind Sophia, whether notice is enough, whether there is annexation/assignment or a scheme of development, whether each covenant is negative or positive in substance, and what equitable remedy is appropriate.

Rule / Law

The common-law and equitable benefit/burden rules must be kept separate. Rogers v Hosegood assists the touch-and-concern analysis. Tulk v Moxhay supplies the classic equitable route for restrictive burdens, subject to the requirement that the covenant be negative in substance and protect benefited land. Elliston v Reacher supplies the scheme-of-development framework. The Property Law Act 2023 (Qld)

[22] *Rogers v Hosegood* [1900] 2 Ch 388; *Tulk v Moxhay* (1848) 2 Ph 774; 41 ER 1143.

provisions identified in the course assist intention/third-party questions, but they do not erase the need to prove the relevant common-law or equitable elements.[23]

Application - how a High Distinction answer reasons

Sophia's actual knowledge is important but it is not a complete answer. MAS must identify a legal route by which the benefit reaches Lot 16 and the burden reaches Lot 15. The height restriction is strongly negative in substance because it restrains building beyond a limit. The design covenant requires closer analysis because some aesthetic wording may amount to a positive obligation to build or alter, which equity traditionally treats differently. The fact that the same restrictions were imposed across the original development supports the scheme argument, but each Elliston element still has to be proved. If MAS itself is in breach, equitable clean-hands considerations can also matter.

Conclusion and remedies

MAS has a stronger argument concerning the restrictive height obligation than a broad demand to reconstruct Sophia's exterior. Injunctive or declaratory relief depends on proving the benefit/burden route, and the court's equitable discretion must be addressed rather than assumed.

EXAM TRANSFER

When the names and facts change, keep the method: identify the legal relationship first, break the problem into sub-issues, state the exact provision and authority, apply each element to a fact, address the strongest counterargument, and only then state the remedy.

PART B - BOUNDARIES AND ENCROACHMENT

Physical extent of ownership • erosion/accretion • roads/water • riparian rights • statutory encroachment remedies

10.10 Physical limits of land ownership

Ownership is not literally "to the heavens and centre of the earth". A landowner owns the surface and such airspace above and subsoil below as the law protects for ordinary use/enjoyment, subject to Crown mineral and statutory regimes.

[23] *Elliston v Reacher* [1908] 2 Ch 374.

Bernstein v Skyviews & General Ltd is the course airspace authority: intrusion far above the height needed for ordinary use does not automatically constitute trespass. Wade v New South Wales Rutile Mining Co Pty Ltd supports the subsoil principle subject to Crown-owned minerals. Di Napoli v New Beach Apartments Pty Ltd treats rock anchors inserted below adjoining land as trespass. PLA s 179 protects rights of support, while Mineral Resources Act 1989 (Qld) s 8 is identified for Crown ownership of gold/minerals generally.

10.11 Natural and artificial boundaries

Boundary	Rule
Natural	Fixed by feature of natural landscape; may shift if doctrine of gradual erosion/accretion applies.
Artificial	Fixed by survey pegs/artificial markers/title description.
Tidal	Course uses mean high-water mark concepts; statutory definition in Survey and Mapping Infrastructure Act 2003 s 70; Land Act 1994 s 9 places below relevant tidal boundary in State.
Road/non-tidal water	Historic medium filum presumption displaced/regulated by statute: roads vest in State under Land Act s 95; non-tidal river/lake beds/banks under Land Act s 13A.

10.12 Erosion and accretion

Gradual natural erosion can reduce, and gradual natural accretion can increase, land where title boundary is defined by a moving natural feature. Sudden avulsion/flood does not ordinarily shift the boundary. Hazlett v Presnell is the course authority. Artificial filling does not create accretion merely because owner deliberately adds land, but protective works against erosion can coexist with later genuinely natural gradual accretion. Southern Centre of Theosophy Inc v South

Australia is the course authority; the common-law position is recognised in Survey and Mapping Infrastructure Act 2003 ss 70 and 99.

10.13 Misdescription and indefeasibility

A registered title can contain a boundary misdescription. The course flags LTA s 185(1)(g) as an indefeasibility exception for land wrongly included in a title. Extrinsic evidence can establish the true boundary. The lecturer also flags LTA ss 189(f),(g) as excluding compensation in the specified boundary circumstances. Do not assume registration cures a mistaken physical extent.

10.14 Total destruction and frustration

Land rarely disappears entirely. National Carriers Ltd v Panalpina (Northern) Ltd is used by the course in the context of physical destruction/frustration and leases. Gradual disappearance may be treated as erosion; sudden total loss requires attention to the specific estate/contractual consequences rather than mechanically applying accretion doctrine.

10.15 Water boundaries and riparian rights

At common law a riparian owner abutting a river/natural watercourse had limited rights to use flowing water but did not own the water itself: Environment Protection Authority v Rashleigh. Queensland's Water Act 2000 substantially regulates the field.

Water Act provision	Course point
s 26	State owns rights to use, flow and control of all water.
s 93	Specified taking for public purpose, firefighting, camping or watering travelling stock.
s 96	Riparian use for stock/domestic purposes without water licence in stated circumstances.
s 107	Water licence needed to take water outside exemptions/regime.

Water Act provision	Course point
s 106(2)	Some water allocations/rights can attach to land and pass to successors.
s 173	Water allocation register rights are not indefeasible in the Torrens sense.

10.16 Encroachment

At strict common law, a structure built partly over the boundary may become part of the land onto which it is affixed and also constitute continuing trespass/nuisance. Traditional remedies include mandatory injunction for removal, damages and carefully limited self-help. Queensland's PLA ss 183-188 provides a statutory adjustment regime designed to avoid disproportionate demolition where justice favours compensation or a property adjustment.

Authority / provision	Rule / relevance
PLA ss 183-188	Court may deal with qualifying encroachment by compensation, conveyance/transfer, lease/grant of lesser right, or removal as appropriate.
Ex parte Van Achterberg	Course directs attention to definition/nature of "encroachment" and whether the structure is of a kind suited to statutory relief.
Gesmundo v Anastasiou	Statutory encroachment relief/compensation authority.
Kostis v Devitt	Course authority on balancing encroachment remedies.
Steer v Hemmings	Course authority on removal versus adjustment/compensation.

10.17 Boundary exam checklist

Identify title/legal boundary: natural or artificial?

If natural changed, gradual natural erosion/accretion or sudden avulsion?

If road/water, apply Land Act/Survey Act/Water Act rather than old medium-filum rule.

If vertical intrusion, classify airspace/subsoil trespass and Crown mineral exception.

If building crosses line, prove encroachment and apply PLA ss 183-188 remedies.

Consider LTA s 185(1)(g) if registered title wrongly includes land.

HIGH DISTINCTION MODEL PROBLEM 1 AND MODEL ANSWER

Problem — Greg builds a timber-and-tin stable with concrete footings. A survey later shows one-third of the stable sits on Damon’s adjoining lot. Greg says the builder chose the location and demolition would be expensive. Damon demands complete removal. Advise.

I — ISSUE

Trespass/encroachment; whether structure falls within PLA regime; court discretion between removal, compensation and property adjustment; relevance of fault/hardship.

II — RULE / LAW

At common law physical structure across boundary is trespass/encroachment and mandatory injunction may be available. Apply PLA ss 183-188 and Ex parte Van Achterberg; statutory remedies include compensation, transfer/conveyance/lease/lesser right or removal. Gesmundo, Kostis and Steer guide exercise of discretion.

III — APPLICATION

Concrete footings/timber stable are sufficiently permanent to be a strong encroachment candidate. Greg’s delegation to contractor does not erase infringement, but intention/negligence, relative hardship, value of affected strip, effect on Damon and feasibility of removal can influence statutory remedy. Damon is not automatically entitled to demolition simply because title line was crossed.

IV — REMEDIES / DAMAGES

Damon can seek injunction/removal and statutory compensation. Greg may apply for an adjustment/transfer/lease of encroached strip if statutory factors favour it, usually on compensation and costs terms.

V — CONCLUSION

Liability for encroachment is strong; remedy is discretionary. A high-distinction answer separates the existence of trespass from the court's power to choose a proportionate statutory remedy.

Tutorial Masterclass - Lucas's 25 centimetre encroachment

Tutorial problem - adapted from the supplied course problem. Lucas constructs a permanent alfresco roof beside MAS's Brisbane property. Council-approved plans show the structure within his boundary, but a later survey finds the concrete footings and roof extend 25 centimetres into MAS's land for six metres. MAS also observes cracking near the boundary and demands immediate removal.[24]

WHAT THE TUTORIAL IS TEACHING

Establish the true boundary and encroachment first. Then identify whether the statutory encroachment regime applies, the factors affecting relief, possible compensation or transfer/easement orders, the significance of good faith and council approval, and any separate claim for physical damage or support.

Rule / Law

Property Law Act 2023 (Qld) ss 183-188 provide the course's statutory encroachment framework. The statute gives the court remedial flexibility rather than making demolition automatic. The extent of intrusion, conduct, hardship, value, good faith and appropriate compensation are relevant to the practical outcome. Council approval does not determine private title boundaries.[25]

Application - how a High Distinction answer reasons

The survey evidence is central because planning approval cannot authorise occupation of a neighbour's land. Lucas's apparent reliance on approved plans may support good faith, but good faith does not erase MAS's proprietary rights. The permanent roof and deep footings make the encroachment substantial in character even though the horizontal distance is only 25 centimetres. The court must compare the burden of removal with the prejudice to MAS and any effect on future use or value. Cracking should be analysed separately on causation and evidence rather than assumed to result from the encroachment.

[24] *Property Law Act 2023* (Qld) ss 183-188.
[25] Council or planning approval does not, without more, confer proprietary title to adjoining land.

Conclusion and remedies

MAS is entitled to seek statutory relief, but should not assume that removal is inevitable. The possible orders include removal, compensation and property/easement-style adjustments depending on the statutory criteria. A strong answer states the remedy only after applying those factors.

EXAM TRANSFER

When the names and facts change, keep the method: identify the legal relationship first, break the problem into sub-issues, state the exact provision and authority, apply each element to a fact, address the strongest counterargument, and only then state the remedy.

Chapter 10 Knowledge Checks and Practice Problems

FREQUENTLY ASKED QUESTIONS

Covenants

What is a freehold covenant?

A freehold covenant is a **promise relating to land** that creates an obligation affecting how the land is used.

It is commonly used by developers to maintain standards and protect property values within a development.

Why are covenants important in Queensland?

In Queensland, covenants are **not registered on title** and operate primarily through contract.

This makes enforcement against future owners more complex compared to registered interests.

What types of covenants do developers commonly use?

- Minimum building size requirements
- Restrictions on materials or design
- Rules preserving aesthetic uniformity

However, covenants restricting sustainable building practices may be unenforceable under the Building Act.

Who are the parties to a covenant?

- **Covenantor:** The party burdened by the obligation
- **Covenantee:** The party benefiting from the covenant

The land benefited is called the **dominant tenement**, and the burdened land is the **servient tenement**.

Can the benefit of a covenant pass to future owners?

Yes, if certain conditions are met:

- The covenant must benefit the land
- It must be intended to run with the land
- The new owner must hold a legal interest

In equity, benefit may also pass through:

- Annexation
- Assignment
- Scheme of development

Can the burden of a covenant bind future owners?

At common law, the burden generally does **not** run with the land.

In equity, it may bind successors under the rule in *Tulk v Moxhay* if:

- The covenant benefits land
- It 'touches and concerns' the land
- It was intended to run
- It is **negative in nature**

Positive covenants are rarely enforceable against successors.

What is a scheme of development?

A scheme of development is a planned subdivision where all lots are subject to similar covenants.

This can allow enforcement between neighbouring owners even without direct contractual relationships.

What is the difference between positive and negative covenants?

- **Positive covenants:** Require action (e.g. build something)
- **Negative covenants:** Restrict actions (e.g. do not build above height)

Only negative covenants are generally enforceable in equity against future owners.

Boundaries

What happens when a building encroaches on neighbouring land?

Encroachment occurs when structures extend beyond a property boundary.

Possible remedies include:

- Compensation
- Transfer or lease of land
- Creation of an easement
- Removal of the encroachment

What counts as a ‘building’ for encroachment purposes?

A structure must generally be:

- Substantial
- Relatively permanent
- Constructed using building materials

Some fences may qualify depending on their nature.

What are riparian rights?

Riparian rights traditionally allowed landowners to use adjacent water.

In Queensland, the **Water Act** vests water ownership in the State.

Limited uses are still permitted, such as:

- Firefighting
- Camping
- Watering livestock

How are property boundaries determined?

- Natural features (e.g. rivers)
- Survey markers
- Road references
- Tidal boundaries

Ownership generally extends above and below the land, subject to legal limits.

Can boundaries change over time?

Yes, due to natural processes:

- **Accretion:** Gradual increase in land
- **Erosion:** Gradual loss of land

Sudden changes generally **do not** alter boundaries.

Do human actions affect boundaries?

Artificial changes (e.g. adding soil) usually do **not** alter legal boundaries.

However, works that prevent erosion may indirectly lead to recognised natural accretion.

What happens if land is lost entirely?

If land disappears completely (e.g. into the sea), the estate in the land may cease to exist.

Chapter Quiz

1. What is the difference between positive and restrictive covenants?

Answer: Positive covenants require action/expenditure; restrictive covenants restrain conduct.

2. Does the burden of a positive freehold covenant ordinarily run at common law?

Answer: No.

3. What doctrine allows a restrictive burden to run in equity?

Answer: Tulk v Moxhay.

4. What does “touch and concern” mean?

Answer: The covenant must affect the use, occupation, nature or value of the benefited land rather than merely benefit a person.

5. What are the main routes by which benefit may pass in equity?

Answer: Annexation, express assignment and scheme of development.

6. What case supplies the classic building-scheme requirements?

Answer: Elliston v Reacher.

MASTERY QUIZ - COVENANTS - 20 QUESTIONS AND ANSWERS

These questions are deliberately mixed between recall, distinction, issue spotting, application and remedies. They are additional to the shorter chapter quiz and are designed for repeated revision.

Question 1. What is a freehold covenant?

Answer: A promise concerning the use or enjoyment of freehold land that may be enforceable between original parties and, in certain circumstances, successors.

Question 2. What is a restrictive covenant?

Answer: A negative promise limiting how burdened land may be used, such as a building-height or use restriction.

Question 3. What is a positive covenant?

Answer: A promise requiring expenditure or positive action, such as maintaining a fence or paying money.

Question 4. Why is the positive/negative distinction important?

Answer: The burden of a positive covenant does not ordinarily run with freehold land in the same way as a restrictive covenant may run in equity.

Question 5. Which case supplies the classic touch-and-concern analysis for covenant benefit?

Answer: Rogers v Hosegood [1900] 2 Ch 388.

Question 6. What does it mean for a covenant to touch and concern land?

Answer: The covenant must affect the nature, quality, mode of use or value of the land as land rather than provide merely personal benefit.

Question 7. What is annexation?

Answer: Attachment of the benefit of a covenant to identified land so that successors to that land may enforce it.

Question 8. What is assignment of the benefit?

Answer: Transfer of the benefit of a covenant to a successor where legal requirements for assignment are satisfied.

Question 9. What is a scheme of development?

Answer: A common building or development scheme under which reciprocal restrictive covenants are intended to bind and benefit defined lots.

Question 10. Which case is the classic authority for a scheme of development?

Answer: Elliston v Reacher [1908] 2 Ch 374.

Question 11. Which case is the classic equitable authority for enforcing a restrictive covenant against a successor?

Answer: Tulk v Moxhay (1848) 2 Ph 774; 41 ER 1143.

Question 12. What are the central Tulk v Moxhay ideas?

Answer: A negative covenant, benefiting identifiable land, intended to bind successors, with the later owner bound in equity subject to the relevant notice/registration and equitable requirements.

Question 13. Why is Rhone v Stephens important?

Answer: It reaffirms the general rule that the burden of a positive freehold covenant does not run merely because the land is transferred.

Question 14. Does actual knowledge of a covenant automatically make every successor bound?

Answer: No. Knowledge alone cannot replace the legal and equitable requirements for the benefit and burden to run.

Question 15. Why must common-law benefit and equitable burden be analysed separately?

Answer: Different legal tests govern whether a successor can enforce a covenant and whether a successor is bound by it.

Question 16. What remedy is especially important for threatened breach of a restrictive covenant?

Answer: An injunction.

Question 17. Can damages be relevant to covenant breach?

Answer: Yes, depending on the cause of action, loss and availability of equitable or statutory relief.

Question 18. What exam fact suggests a scheme-of-development issue?

Answer: A developer sold many lots under substantially identical restrictions intended to preserve a common estate character.

Question 19. What exam fact suggests a positive-covenant problem?

Answer: A successor is asked to pay annual maintenance money or perform construction because a predecessor promised to do so.

Question 20. What should a covenant conclusion state?

Answer: Who has the benefit, who bears the burden, whether the covenant is enforceable at law or in equity, and the appropriate remedy.

HIGH DISTINCTION MODEL PROBLEM 2 AND MODEL ANSWER - Building scheme and positive covenant

Question — A developer sells ten lots under substantially identical deeds containing two promises: no building above two storeys, and each owner must contribute $2,000 annually to maintain a private landscaped entrance. A later purchaser had notice of the deeds but did not sign a fresh covenant. Other owners seek to enforce both promises.

I — ISSUE

The issues are whether a scheme of development exists, whether the restrictive covenant burden runs in equity, whether the positive payment covenant can bind the later purchaser, and what remedies are available.

II — RULE / LAW

Apply Elliston v Reacher and related scheme authorities to establish common seller, defined scheme, common covenants and reciprocal intention. Apply Tulk v Moxhay to the negative two-storey restriction. The positive annual payment obligation does not ordinarily run in equity merely because of notice; positive burden requires a distinct contractual or statutory basis.

III — APPLICATION

Uniform deeds across ten lots and a common landscaped entrance strongly support reciprocal scheme intention if the land and affected lots are sufficiently identified. The two-storey restriction is negative and land-related, making equitable enforcement plausible. The annual payment obligation requires expenditure and is positive, so notice alone cannot convert it into a running burden under Tulk.

IV — CONCLUSION

The later purchaser is much more likely to be bound by the two-storey restriction than by the annual payment covenant.

V — REMEDIES / ORDERS

An injunction is the primary remedy to restrain construction contrary to a binding restrictive covenant. The positive contribution may require enforcement against the original covenantor or through a separate statutory/contractual mechanism; damages depend on the enforceable obligation.

Chapter Quiz

1. Does ownership extend infinitely upward and downward?

Answer: No. Airspace/subsoil rights are limited to what is necessary for ordinary use and are subject to statutory/Crown regimes.

2. What case is the leading course authority on airspace?

Answer: Bernstein v Skyviews & General Ltd.

3. What is accretion?

Answer: Gradual natural addition to land by movement of a natural boundary.

4. What is avulsion?

Answer: Sudden change to a boundary, which ordinarily does not shift title in the same way as gradual accretion/erosion.

5. Which PLA provisions govern encroachment relief?

Answer: PLA ss 183-188.

6. What remedies can a court order for encroachment?

Answer: Removal, compensation, transfer/conveyance, lease or lesser rights as the statute permits.

MASTERY QUIZ - BOUNDARIES AND ENCROACHMENT - 20 QUESTIONS AND ANSWERS

These questions are deliberately mixed between recall, distinction, issue spotting, application and remedies. They are additional to the shorter chapter quiz and are designed for repeated revision.

Question 1. Does a landowner own the airspace infinitely upward?

Answer: No. Rights to airspace are limited to the height necessary for ordinary use and enjoyment, subject to statute.

Question 2. Which case is a leading authority on airspace limits?

Answer: Bernstein v Skyviews & General Ltd.

Question 3. Does ownership extend infinitely downward?

Answer: No. Subsoil ownership is subject to statutory reservations, mineral regimes and practical limits.

Question 4. Why must mineral rights be checked separately?

Answer: The Crown or another person may hold statutory rights to minerals even where the surface land is privately owned.

Question 5. What is lateral support?

Answer: The right of land in its natural state to receive necessary support from adjoining land, supplemented in Queensland by PLA s 179.

Question 6. What does PLA s 179 broadly impose?

Answer: A duty of care in relation to support for land.

Question 7. What is accretion?

Answer: Gradual and imperceptible natural addition to land caused by movement of a water boundary.

Question 8. What is erosion in boundary law?

Answer: Gradual natural loss of land through movement of a water boundary.

Question 9. What is avulsion?

Answer: A sudden and perceptible change to a watercourse or boundary, generally treated differently from gradual accretion or erosion.

Question 10. Why does a cadastral survey matter?

Answer: It provides evidence of the legally recognised boundary and can reveal encroachment not apparent from occupation on the ground.

Question 11. What is an encroachment?

Answer: A building or structure extending across the legal boundary onto adjoining land.

Question 12. Which PLA provisions govern encroachment relief?

Answer: PLA ss 183-188.

Question 13. Is demolition automatic when an encroachment is proved?

Answer: No. The statutory regime gives the court a range of remedial options and requires consideration of relevant circumstances.

Question 14. What remedies may be ordered for an encroachment?

Answer: Removal, compensation, transfer or conveyance of the affected land, lease or other statutory adjustment as available.

Question 15. Does council approval give a builder title to a neighbour's land?

Answer: No. Planning or building approval does not itself alter private proprietary boundaries.

Question 16. Why is good faith relevant in some encroachment cases?

Answer: The court may consider the circumstances in which the encroachment occurred when selecting a just remedy.

Question 17. What exam fact suggests support liability?

Answer: Excavation, footings or retaining works cause cracking, subsidence or movement on adjoining land.

Question 18. What exam fact suggests an encroachment remedy rather than ordinary trespass alone?

Answer: A permanent roof, footing, wall or building structure physically crosses the surveyed boundary.

Question 19. Why should natural-boundary change be separated from artificial reclamation?

Answer: The law of accretion and erosion generally concerns gradual natural processes; deliberate works may not move title in the same way.

Question 20. What should a boundary conclusion state?

Answer: Where the legal boundary lies, whether natural change or encroachment occurred, any support obligation, and the most appropriate proprietary or compensatory remedy.

HIGH DISTINCTION MODEL PROBLEM 2 AND MODEL ANSWER - Accretion and encroachment

Question — A riverside owner notices that over fifteen years the river has gradually shifted, adding a strip of land to the property. The owner builds a retaining wall and deck based on the new bank. A survey shows the deck also projects 40 centimetres into the neighbour's title. Advise both owners.

I — ISSUE

The issues are whether gradual natural accretion altered the river boundary, whether the retaining works affect that conclusion, whether the deck is an encroachment, and which remedies are proportionate.

II — RULE / LAW

Apply the common-law and statutory recognition of gradual natural accretion/erosion, including Hazlett and Southern Centre of Theosophy and Survey and Mapping Infrastructure Act provisions identified by the course. Sudden avulsion is treated differently. For the deck, apply PLA ss 183-188 and the encroachment authorities.

III — APPLICATION

A fifteen-year gradual natural change is consistent with accretion if the addition resulted from natural river movement rather than deliberate reclamation. The retaining wall does not necessarily defeat previously accrued natural boundary change, but evidence of artificial filling would. The 40-centimetre deck projection is a separate encroachment even if the river boundary moved. Its modest scale and demolition cost are relevant to remedy, not liability.

IV — CONCLUSION

The riverside owner may have gained land through genuine natural accretion but still faces a separate encroachment claim concerning the deck.

V — REMEDIES / ORDERS

The neighbour may seek removal or injunction, while the encroacher may seek statutory compensation or an adjustment/transfer/lease of the affected strip under PLA ss 183-188. Boundary declaratory relief may also be required.

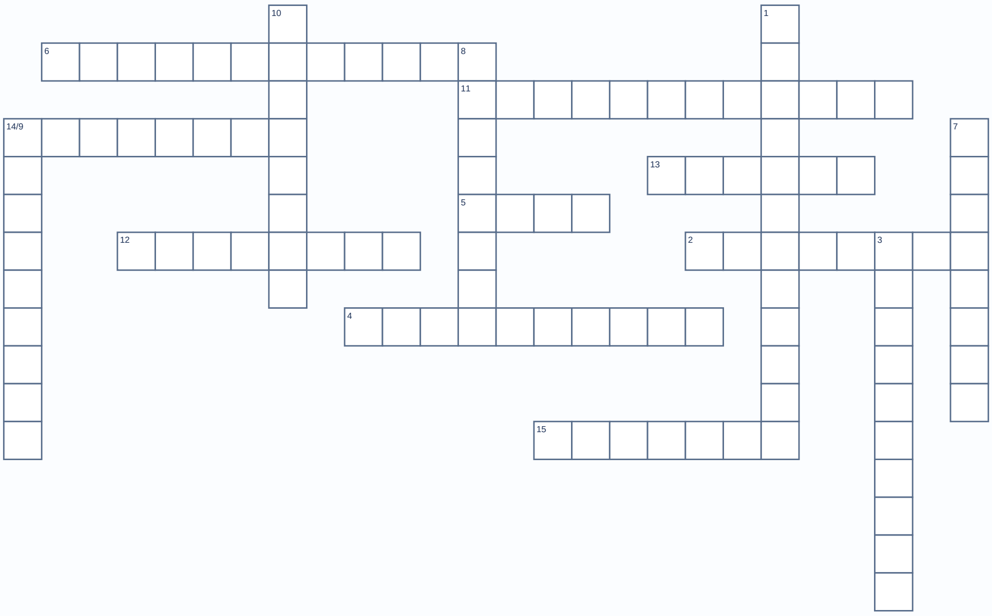
CROSSWORD - CHAPTER 10: COVENANTS AND BOUNDARIES

INTERACTIVE CROSSWORD: *Open the active version to type directly into the grid, check each answer, and receive immediate green/red feedback.* [***Launch Chapter 10 Active Crossword***]

Instructions: Complete the crossword using the chapter material, glossary, cases and authorities. Spaces, hyphens and punctuation are omitted from entries.

TYPE ONE LETTER PER BOX

CHECK CLEAR



Across

2. A ______ covenant requires a person to do something.

4. Process attaching the benefit of a covenant to land so it can pass to successors.

5. Leading equitable restrictive-covenant authority: ______ v Moxhay.

6. Traditional requirement that a covenant must ______ and ______ the land.

11. A building or structure extending onto neighbouring land.

12. An owner whose land borders a river or natural watercourse.

13. A building ______ may support mutual enforcement of restrictions across a development.

14. Sudden perceptible change that generally does not move the legal boundary.

15. Gradual loss of land through natural forces.

Down

1. Money that may be ordered where an encroachment or other land interference causes loss.

3. Equitable order restraining continuing interference.

7. A promise concerning land contained in a legal instrument.

8. A ______ covenant limits the use of land.

9. Gradual addition of land through natural deposition.

10. The legal line separating adjoining parcels.

Use the chapter text to check each answer before moving to the next topic.

CROSSWORD ANSWERS - CHAPTER 10: COVENANTS AND BOUNDARIES

Separate answer page - use this only after attempting the crossword.

2 Across - POSITIVE	15 Across - EROSION
4 Across - ANNEXATION	1 Down - COMPENSATION
5 Across - TULK	3 Down - INJUNCTION
6 Across - TOUCHCONCERN	7 Down - COVENANT
11 Across - ENCROACHMENT	8 Down - NEGATIVE
12 Across - RIPARIAN	9 Down - ACCRETION
13 Across - SCHEME	10 Down - BOUNDARY
14 Across - AVULSION	

CHAPTER 11. STRATA TITLE, BODY CORPORATE AND COMMUNITY MANAGEMENT

BCCMA • CMS • common property • by-laws • lot entitlements • body corporate • meetings • disputes

LEARNING OUTCOMES

By the end of this chapter, you should be able to identify the BCCMA/module/CMS framework; test validity and enforcement of by-laws; analyse common property, exclusive use and lot entitlements; and follow the statutory dispute-resolution pathway.

How to use this chapter

Read the explanation first. Then connect each rule to the exact statutory provision and authority. The Tutorial Masterclass shows how the lecture and forum material becomes legal analysis: facts are converted into issues, issues into rules, and rules into a reasoned application, conclusion and remedy.

11.1 Statutory framework and scheme creation

Queensland strata/community living in this course is governed by the Body Corporate and Community Management Act 1997 (Qld) (BCCMA). It allows subdivision of land and airspace into separate indefeasible titles while creating a statutory governance system for common property and relations between owners/occupiers. Under BCCMA s 21, regulation modules include Standard, Accommodation, Commercial, Small Schemes and Specified Two-lot Schemes; always identify the applicable module before applying meeting/management detail.

Provision	Rule
BCCMA s 24	Community titles scheme (CTS) established when plan of subdivision is registered and first CMS is recorded.
s 30	Body corporate is created when CTS

Provision	Rule
	established.
s 12	Defines Community Management Statement (CMS).
s 31	Body corporate membership consists of owners of all lots.
s 33	Body corporate name; may sue/be sued in corporate name.
s 66	CMS content requirements.
s 52	CMS has no effect unless recorded.
s 54	A CMS is replaced by lodging a subsequent CMS rather than informally “amending” recorded instrument.
s 59	CMS operates as mutual covenant binding body corporate, members, registered proprietors and occupiers of lots/common property.
s 60	Local authority endorsement where planning matters relevant, subject to exceptions including s 60(6).
s 62	Body corporate consent to new CMS; s 62(2) usually resolution without dissent for relevant replacement/exclusive-use changes.
s 65	New CMS lodged within 3 months after consent endorsement as course states.

11.2 Common property

Common property is scheme land not included in a lot—examples in the lecture are pools, BBQ/tennis/gym areas, driveways, visitor parking, lobbies and lifts. Under s 35(1), it is owned jointly by lot owners as tenants in common in proportions tied to interest schedule lot entitlements. The common-property share cannot be separated from the lot.

11.3 By-laws: scope and limits

Provision	Rule / exam trigger
s 168	Body corporate may use tailored by-laws or default Schedule 4 by-laws as permitted.
s 169	By-laws may regulate administration/management/control of common property/assets, use/enjoyment of lots/common property/services and other permitted matters.
s 169A	By-laws may restrict/prohibit smoking/vaping on common property or outdoor lot areas as permitted.
s 169B	By-laws cannot simply prohibit animals on lots; can require written approval, and refusal only in limited statutory circumstances (see s 169B(6)).
s 180(4)	By-law cannot restrict/prevent dealing with a legal interest in a lot.
s 180(5)	Cannot discriminate between different types of occupiers.
s 180(7)	Cannot be oppressive or unreasonable.
s 180(8)	Cannot contradict sustainable housing provisions in Building Act ch 8A pt 2.

Provision	Rule / exam trigger
Mineralogy Pty Ltd v Body Corporate for the Lakes Coolum	Course authority on validity/reasonableness and statutory limits on by-laws; use when a by-law exceeds governance power or substantially interferes with lot rights.

11.4 Exclusive-use by-laws

Exclusive use over common property is not something the committee chair can simply announce. Section 170(1) describes a by-law attaching to a lot and giving its occupier exclusive use/right and enjoyment of identified common property/body corporate asset. Section 171 requires identification/allocation, and the course identifies s 62(2) as requiring a resolution without dissent by the whole body corporate for relevant CMS change. Section 94(1) makes the body corporate responsible for enforcing the CMS/by-laws.

Exam trap — Committee decision-making power is not the same as power to create an exclusive-use property right. Check CMS/by-law process and resolution threshold.

11.5 Lot entitlements

The CMS contains two distinct schedules. Contribution schedule lot entitlement affects recurrent financial/voting burdens; interest schedule lot entitlement affects proprietary share in common property and termination/assets (and specified insurance/rating consequences). The two numbers answer different questions and must be tested against different statutory principles.

Provision	Contribution / interest rule
ss 46-51C	Original owner sets initial entitlements in first CMS subject to statutory principles.
s 46(7)	Contribution schedule must follow equality principle or relativity principle.

Provision	Contribution / interest rule
s 46A	Defines principles for deciding contribution schedule entitlement.
s 46(8)	Interest schedule must follow market value principle.
s 46B	Market-value principle for interest schedule.
s 47(2)	Contribution entitlement determines levies and value of vote on ordinary resolution poll.
s 47(3)	Interest entitlement determines share of common property, termination assets/liabilities and other listed consequences.
s 47A(1)	Contribution schedule change by resolution without dissent in specified process.
s 47AA	Dispute about s 47A resolutions.
s 47B	Adjustment by specialist adjudicator/QCAT.
s 48	Lot owner may seek adjustment of interest entitlement by specialist adjudicator/QCAT.
s 49	Criteria for deciding just and equitable circumstances.
s 50	Limited agreed adjustment between owners of 2+ lots without changing total, with mortgagee/lessee consent and CMS process.

11.6 Body corporate functions and powers

Provision	Rule
s 94(1)	General functions: administer common property/assets, enforce CMS/by-laws, perform statutory/CMS functions.
ss 95-96	General powers necessary to act: contract, acquire/dispose/deal with property, employ staff, necessary business activities, invest funds; body corporate must not carry on business as an end in itself.
ss 98-101B, 111A	Committee/collective decision and protection framework.
s 14	Body corporate manager definition/framework flagged by course.
s 99	Committee composition governed by applicable regulation module.
s 100	Committee decision-making subject to restricted issues.
s 101A	Civil-liability protection for committee members in statutory conditions.
s 101B + Sch 1A	Committee Code of Conduct.
s 111A	Protection concerning publication of defamatory material within statutory scope.

11.7 Meetings

Source	Rule
BCCMA s 104 → Standard Module ch 4	Meeting machinery sourced through applicable module.
Standard Module s 94(2)	First AGM.
Standard Module s 83	Subsequent AGM.
Standard Module s 84	Requested EGM: notice signed by at least 25% owners; call within 14 days and hold within 6 weeks; can occur before first AGM.
Standard Module s 85	If requested EGM not called within 14 days, eligible owners may request another committee member to call it.

11.8 By-law enforcement before formal dispute

Provision	Step
s 182(2)	Continuing contravention notice — prescribed Form 10.
s 183(3)	Likely future contravention notice — prescribed Form 11.
s 185(2)(a)	Owner/occupier may notify body corporate of contravention — Form 1.
s 183A	If notice given to occupier, copy to owner as soon as practicable.
ss 182(3), 183	After owner/occupier notice under s 185(2), body corporate has 14 days to issue appropriate continuing notice and advise

Provision	Step
	complainant.
ss 182(5), 183(6)	Failure to comply with contravention notice: course notes 20 penalty units.
s 184	Normally contravention notice before dispute-resolution application.
s 186 + s 186(4)	Urgent interim exception where special circumstances: likely injury, serious property damage, health/safety risk, serious nuisance or emergency.

11.9 Chapter 6 dispute resolution

Provision	Function
s 227	Definition of “dispute”.
s 228	Purpose of Chapter 6.
s 230	Structure/Commissioner/dispute resolution arrangements.
s 238	Who may apply: party/body corporate after reasonable internal attempts.
s 239	Application: approved form, Commissioner, fee.
s 243	Commissioner notice to affected parties.
s 248	Commissioner recommendations before referral in appropriate case.
s 289	Appeal from adjudicator on question of law.

11.10 Termination of a CTS

Under s 78, a CTS may be terminated by resolution without dissent or District Court order. Under s 81, termination dissolves body corporate and distributes body corporate assets / debts among owners by interest schedule lot entitlements. This is why interest entitlement is proprietary rather than merely a levy number.

11.11 Plain-English strata formula

STRATA — WHAT MODULE? → WHAT DOES CMS SAY? → IS BY-LAW WITHIN ss 168-180? → EXCLUSIVE USE NEEDS PROPER CMS/RESOLUTION → WHICH LOT ENTITLEMENT? → WHO HAD POWER TO DECIDE? → NOTICE/INTERNAL PROCESS → COMMISSIONER/ADJUDICATION/QCAT.

HIGH DISTINCTION MODEL PROBLEM 1 AND MODEL ANSWER

Problem — A six-lot commercial scheme uses the Standard Module. The committee chair obtains a committee resolution granting the chair's Lot 5 exclusive use of 16 m² common property beside Lot 6 for restaurant seating. No new CMS is registered and owners never vote. Lot 6 owner Kelly also discovers her contribution entitlement is 7 and interest entitlement 1, while the chair's are 1 and 7, despite comparable lots; the developer was the chair's friend. Advise Kelly.

I — ISSUE

Validity of exclusive use; committee authority; required by-law/CMS resolution; validity/adjustment of contribution and interest schedules; dispute route.

II — RULE / LAW

Exclusive use: BCCMA ss 170(1),171 and s 62(2); committee general powers do not replace resolution without dissent/CMS recording. Lot entitlements: ss 46-51C; contribution equality/relativity s 46(7),46A; interest market value s 46(8),46B; adjustment ss 47B,48,49. Dispute: internal attempts then ss 238-239 process, specialist adjudicator/QCAT where statute provides.

III — APPLICATION

A committee resolution alone is inadequate to create the statutory exclusive-use by-law/CMS right. Kelly therefore has a strong invalidity/enforcement argument. The extreme inverse entitlements and alleged favouritism raise strong non-compliance concerns because contribution and interest use different objective principles; equal lot size/use does not automatically prove equality, but arbitrary friendship is not a statutory principle.

IV — REMEDIES / DAMAGES

Seek body corporate reversal/CMS correction, adjudication/QCAT adjustment of entitlements where statutory pathway applies, orders enforcing valid CMS/by-laws, and interim relief if access/serious nuisance warrants. Financial adjustments may follow revised entitlements as statute permits.

V — CONCLUSION

Kelly has strong grounds to challenge the exclusive-use arrangement and substantial grounds to seek formal review/adjustment of both schedules. A high-mark answer treats contribution and interest entitlements separately.

Tutorial Masterclass - Sea Breeze Community Titles Scheme

Tutorial problem - adapted from the supplied course problem. The strata tutorial presents five incidents: late-night balcony parties and drifting smoke; a tenant’s large barking dog without body corporate consent; bright-yellow exterior repainting and new fencing without approval; an owner repeatedly using visitor parking; and large pot plants blocking a hallway emergency exit.[26]

WHAT THE TUTORIAL IS TEACHING

Treat each incident separately. Identify the source of the body corporate’s power, the applicable by-law or statutory duty, whether the rule itself is valid and reasonable, who is responsible for compliance, and the enforcement path if informal requests fail.

Rule / Law

The Body Corporate and Community Management Act 1997 (Qld), the applicable regulation module, the community management statement and Schedule 4 by-laws operate together. The body corporate must administer common property and enforce valid by-laws, but by-laws cannot be oppressive or unreasonable. The enforcement pathway ordinarily moves from identifying the contravention to an appropriate notice and then statutory dispute resolution if the conduct continues.

Application - how a High Distinction answer reasons

Noise and smoke require attention to nuisance/interference provisions and the repeated warnings matter to enforcement. The dog issue should not be reduced to “no consent = automatically remove the animal”: the validity and reasonableness of the animal by-law must be assessed. Exterior repainting/fencing may affect common property or appearance controls depending on the scheme documents. Visitor parking is a use-of-common-property issue. Blocking an emergency exit is especially serious because the physical obstruction creates an immediate safety and access problem. The body corporate should use the correct notice for the kind of contravention rather than sending a generic demand.

---

[26] *Body Corporate and Community Management Act 1997* (Qld), including ss 94, 168-171, 180 and dispute-resolution provisions; *Body Corporate and Community Management (Standard Module) Regulation 2020* (Qld).

Conclusion and remedies

The incidents demonstrate why strata answers are procedural as well as substantive. Identify the rule, test validity, identify the contravener, choose the correct enforcement notice, allow the statutory process to operate and then escalate to Commissioner/adjudication or other available relief if necessary.

EXAM TRANSFER

When the names and facts change, keep the method: identify the legal relationship first, break the problem into sub-issues, state the exact provision and authority, apply each element to a fact, address the strongest counterargument, and only then state the remedy.

FREQUENTLY ASKED QUESTIONS

Strata Title, Body Corporate and Community Management

What is strata title?

Strata title is a form of property ownership designed for **shared or community living**.

It allows individuals to own separate lots (such as apartments) within a larger development, while sharing common areas.

It is regulated by the **Body Corporate and Community Management Act**.

What is a Community Titles Scheme (CTS)?

A CTS is the legal structure that governs a strata development.

It includes:

- A **Community Management Statement (CMS)**
- The **scheme land**, including all lots and common property

What is common property?

Common property includes shared areas such as:

- Gardens
- Driveways
- Pools
- Lifts and hallways

It is owned jointly by all lot owners as tenants in common, in proportion to their lot entitlements.

What are by-laws?

By-laws are rules that regulate behaviour within the scheme.

They may cover:

- Use of common property
- Noise and pets
- Renovations and alterations

They aim to ensure harmonious shared living.

What are lot entitlements?

Lot entitlements determine each owner's share in the scheme.

- **Contribution entitlement:** Share of expenses (e.g. levies)
- **Interest entitlement:** Share in ownership of common property and proceeds on termination

What is a body corporate?

A body corporate is the legal entity formed when a scheme is created.

Its functions include:

- Managing and maintaining common property
- Enforcing by-laws
- Managing finances and levies

How are decisions made in a body corporate?

- **General meetings:** Voting by all lot owners
- **Committee:** Handles day-to-day decisions
- **Delegation:** Some functions may be managed by a body corporate manager

How are disputes resolved in a strata scheme?

The **Body Corporate and Community Management Act** provides a structured dispute resolution process.

This generally involves:

- Internal resolution processes
- Mediation or conciliation
- Adjudication if required

Disputes may arise between lot owners, the body corporate, or contractors.

Chapter Quiz

1. What instrument governs a community titles scheme internally?

Answer: The Community Management Statement (CMS).

2. When is the body corporate created?

Answer: When the community titles scheme is established; BCCMA s 30.

3. Who are body corporate members?

Answer: Owners of all lots: BCCMA s 31.

4. Can a committee alone create an exclusive-use by-law?

Answer: No; exclusive-use rights require the statutory CMS/by-law process and relevant resolution threshold.

5. What do contribution schedule entitlements affect?

Answer: Levies and certain voting consequences.

6. What do interest schedule entitlements affect?

Answer: Proprietary share in common property and termination/assets consequences, among other matters.

MASTERY QUIZ - STRATA TITLE AND BODY CORPORATE - 20 QUESTIONS AND ANSWERS

These questions are deliberately mixed between recall, distinction, issue spotting, application and remedies. They are additional to the shorter chapter quiz and are designed for repeated revision.

Question 1. What is a community titles scheme?

Answer: A statutory scheme dividing land into privately owned lots and common property governed collectively under the BCCMA.

Question 2. When is the body corporate created?

Answer: When the community titles scheme is established; BCCMA s 30.

Question 3. Who are the members of the body corporate?

Answer: The owners of all lots in the scheme; BCCMA s 31.

Question 4. What is the Community Management Statement?

Answer: The registered instrument containing core scheme information, including by-laws and schedule information.

Question 5. What is common property?

Answer: Scheme land not included in a lot and held/administered for the owners through the body corporate structure.

Question 6. What does BCCMA s 94 broadly require?

Answer: The body corporate must administer common property and body corporate assets for the benefit of owners and occupiers and act reasonably in carrying out its functions.

Question 7. What is a by-law?

Answer: A scheme rule regulating specified aspects of lots, common property and conduct within the statutory limits.

Question 8. Can a by-law be oppressive or unreasonable?

Answer: No. BCCMA s 180 restricts by-laws that are oppressive or unreasonable.

Question 9. What is the significance of BCCMA s 169B for animals?

Answer: It regulates animal by-laws and limits the grounds on which approval may be refused.

Question 10. Can a blanket “no animals ever” rule automatically be enforced?

Answer: Not if it conflicts with the statutory animal-by-law regime or is otherwise invalid or unreasonable.

Question 11. What is an exclusive-use by-law?

Answer: A by-law giving specified owners or occupiers exclusive use or special rights over identified common property.

Question 12. Can the committee alone create every exclusive-use right?

Answer: No. Exclusive-use arrangements require the statutory by-law/CMS process and the correct resolution threshold.

Question 13. What do contribution schedule lot entitlements broadly affect?

Answer: The allocation of many body corporate expenses and certain voting consequences.

Question 14. What do interest schedule lot entitlements broadly affect?

Answer: Proprietary interests in common property and certain distribution or termination consequences.

Question 15. Why can visitor parking create a by-law issue?

Answer: Visitor spaces are common property intended for visitors and regular resident use may breach a valid parking by-law.

Question 16. Why can smoke drift and late-night parties engage the BCCMA?

Answer: They may breach nuisance/interference provisions or valid scheme by-laws regulating use and conduct.

Question 17. Why is blocking an emergency exit serious?

Answer: It may breach by-laws, safety obligations and the body corporate's duties concerning common property.

Question 18. What is usually the first practical step in a by-law dispute?

Answer: Identify the valid by-law and statutory breach, give the appropriate contravention notice where required, and attempt internal resolution.

Question 19. What happens if internal steps fail?

Answer: The dispute may proceed through the Commissioner's dispute-resolution processes and adjudication/QCAT routes as provided by the Act.

Question 20. What should a strata conclusion state?

Answer: The relevant statutory or by-law breach, validity of the by-law, required enforcement process and the order or dispute-resolution pathway available.

HIGH DISTINCTION MODEL PROBLEM 2 AND MODEL ANSWER - Pet by-law and enforcement

Question — A body corporate adopts a by-law stating ‘No animals of any kind may be kept on any lot or common property’. An owner with a small assistance animal is issued a continuing contravention notice. The committee refuses to consider any application for approval. Advise the owner.

I — ISSUE

The issues are validity of the blanket animal prohibition, whether the body corporate has exercised its by-law power consistently with the BCCMA, and the correct internal and statutory dispute path.

II — RULE / LAW

Apply BCCMA ss 168-180, particularly s 169B governing animal by-laws and s 180(7) prohibiting oppressive or unreasonable by-laws. The body corporate must enforce valid by-laws under s 94 but cannot enforce an invalid rule. Contravention notices and Chapter 6 dispute-resolution procedures must also be followed.

III — APPLICATION

A blanket prohibition is directly inconsistent with the statutory animal regime where the Act permits approval-based regulation and limits refusal. The committee’s refusal even to consider approval reinforces unreasonableness and statutory non-compliance. A contravention notice cannot make an invalid by-law valid.

IV — CONCLUSION

The owner has a strong basis to challenge both the blanket by-law and the enforcement action.

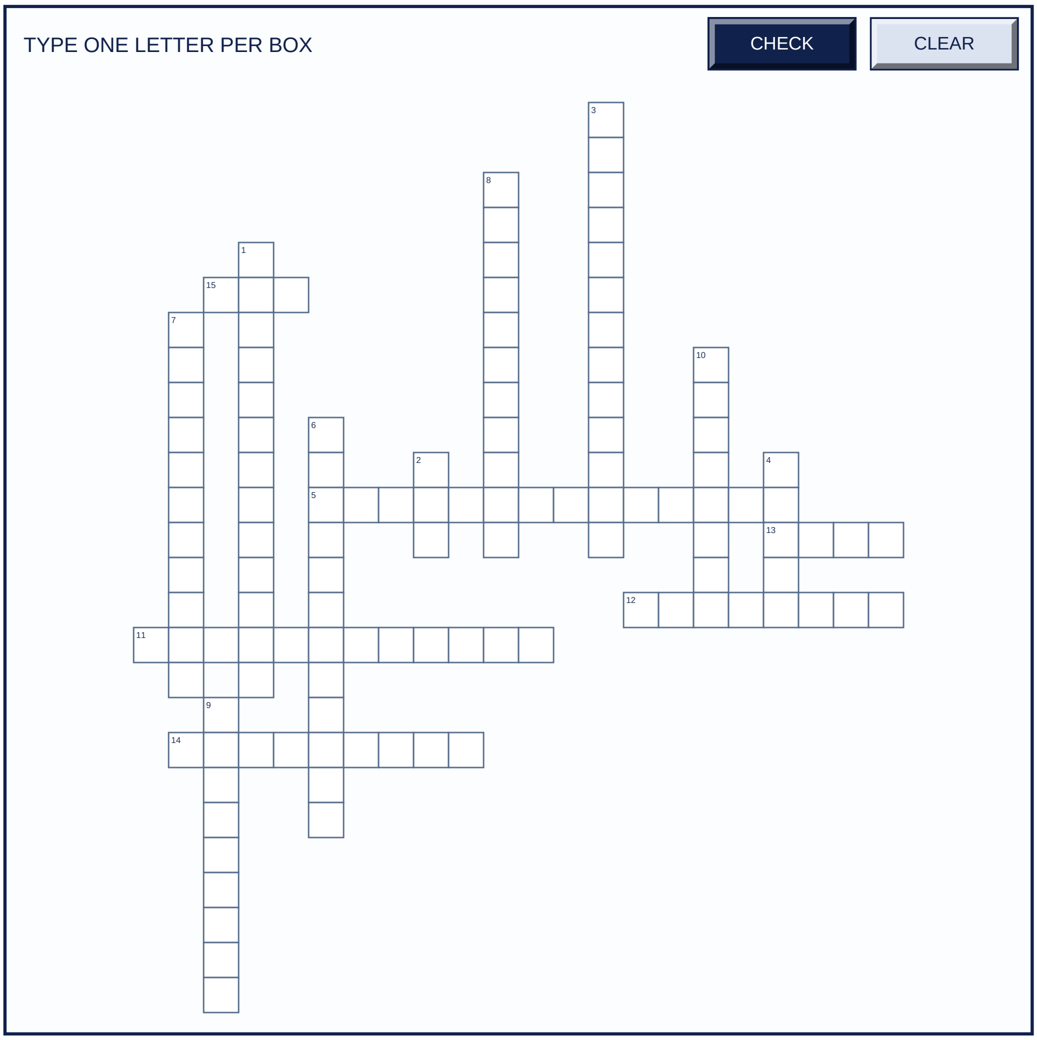
V — REMEDIES / ORDERS

Seek internal reversal, then Commissioner/adjudication orders declaring the by-law invalid or restraining enforcement. Urgent interim relief may be available in qualifying circumstances. Any discrimination or disability-specific rights would require separate statutory analysis beyond the property-law issue.

CROSSWORD - CHAPTER 11: STRATA TITLE, BODY CORPORATE AND COMMUNITY MANAGEMENT

INTERACTIVE CROSSWORD: ***Open the active version to type directly into the grid, check each answer, and receive immediate green/red feedback. [Launch Chapter 11 Active Crossword]***

Instructions: Complete the crossword using the chapter material, glossary, cases and authorities. Spaces, hyphens and punctuation are omitted from entries.



Across

5. Areas of the scheme not contained within an individual lot and managed collectively.

11. The ______ schedule lot entitlement is used in allocating many levy liabilities.

12. Person holding title to an individual lot.

13. Amount raised from owners to fund body corporate expenses.

14. A ______ titles scheme contains individually owned lots and common property.

15. The individually owned parcel within a community titles scheme.

Down

1. The entity comprising lot owners that manages the community titles scheme.

2. Abbreviation for the Community Management Statement.

3. A breach of a by-law may lead to a ______ notice or enforcement process.

4. A rule regulating management, use or enjoyment within a scheme.

6. A by-law may grant a particular owner ______ ______ of part of common property.

7. Decision-maker who may determine a body corporate dispute through the statutory process.

8. A lot ______ records a numerical share used for statutory scheme purposes.

9. Smaller body elected to make many day-to-day body corporate decisions.

10. The ______ schedule lot entitlement relates to proportional interests in scheme land/assets.

Use the chapter text to check each answer before moving to the next topic.

CROSSWORD ANSWERS - CHAPTER 11: STRATA TITLE, BODY CORPORATE AND COMMUNITY MANAGEMENT

Separate answer page - use this only after attempting the crossword.

5 Across - COMMONPROPERTY	3 Down - CONTRAVENTION
11 Across - CONTRIBUTION	4 Down - BYLAW
12 Across - LOTOWNER	6 Down - EXCLUSIVEUSE
13 Across - LEVY	7 Down - ADJUDICATOR
14 Across - COMMUNITY	8 Down - ENTITLEMENT
15 Across - LOT	9 Down - COMMITTEE
1 Down - BODYCORPORATE	10 Down - INTEREST
2 Down - CMS	

CHAPTER 12. NATIVE TITLE AND INDIGENOUS LAND INTERESTS

Common-law recognition • Native Title Act 1993 (Cth) • extinguishment • acts • claims • ILUAs

LEARNING OUTCOMES

By the end of this chapter, you should be able to explain common-law recognition of native title; apply NTA s 223 element by element; analyse extinguishment and coexistence; and identify claims, future-act and agreement pathways.

How to use this chapter

Read the explanation first. Then connect each rule to the exact statutory provision and authority. The Tutorial Masterclass shows how the lecture and forum material becomes legal analysis: facts are converted into issues, issues into rules, and rules into a reasoned application, conclusion and remedy.

12.1 Native title and doctrine of tenure

Native title is sui generis: common law recognises rights and interests whose content comes from traditional Indigenous laws and customs rather than from English property categories. The doctrine of tenure was received into Australian law, but Mabo v Queensland (No 2) rejected terra nullius and held that Crown sovereignty/radical title did not automatically erase pre-existing Indigenous rights. Where native title exists, Crown radical title can coexist with it; where it has been validly extinguished, it cannot simply revive.

12.2 Historical authorities

Case	Outcome / why it matters
Milirrpum v Nabalco Pty Ltd (Gove Land Rights Case) (1971)	Blackburn J found a recognisable Indigenous system of law but concluded it did not produce proprietary interests cognisable under then common-law doctrine. Historically important

Case	Outcome / why it matters
	pre-Mabo refusal.
Coe v Commonwealth (1979)	High Court showed willingness to consider recognition questions, helping set doctrinal path to Mabo.
Mabo v Queensland (No 2)	High Court rejected terra nullius; recognised native title rights derived from traditional law/custom; Crown acquired radical title where native title survived; inconsistent valid Crown acts can extinguish.
Yanner v Eaton	Native title can include specific traditional rights to hunt/take fauna; statutory regulation does not automatically equal extinguishment.
Fejo v Northern Territory (1998) 195 CLR 96	Fee simple grant is wholly inconsistent with native title; extinguishment is permanent and native title does not revive when freehold later returns to Crown.
Western Australia v Ward	“Bundle of rights” analysis; extinguishment can be partial right-by-right where inconsistent statutory interests exist; exclusive possession not presumed.
Wilson v Anderson	Course authority on Western Lands leases and extinguishment/leasehold character.
Wik Peoples v Queensland	Pastoral leases did not necessarily confer exclusive possession; native title can coexist to extent not inconsistent. Decision drove 1998 NTA amendments and intermediate-period validation regime.
De Rose v South Australia (No 2)	Non-exclusive pastoral lease/improvements can

Case	Outcome / why it matters
	partially extinguish native title on improvement areas such as house, shed, airstrip, dams/constructed stock-water points.

12.3 Mabo in exam form

Terra nullius was false as a basis for denying pre-existing property rights.

Australian common law can recognise rights possessed under traditional laws and customs of Aboriginal peoples/Torres Strait Islanders.

The Crown’s radical title is compatible with surviving native title; it is not necessarily beneficial ownership of every parcel from sovereignty.

Native title is vulnerable to valid government acts whose rights are inconsistent with continued exercise of native-title rights.

Content may be communal, group or individual and ranges from use rights to possession, depending on traditional law/custom and statutory/common-law recognition.

12.4 Native Title Act 1993 (Cth) core provisions

Provision	Rule / exam use
s 3	Objects include recognition/protection and statutory framework.
s 10	Native title recognised/protected in accordance with Act.
s 11	Native title not extinguished contrary to Act.
s 223(1)(a)	Rights/interests must be possessed under traditional laws acknowledged and traditional customs observed.

Provision	Rule / exam use
s 223(1)(b)	By those laws/customs, peoples must have connection with land/waters.
s 223(1)(c)	Rights/interests must be recognised by common law of Australia.
s 223(2)	Includes hunting, gathering, fishing and other activities within statutory definition where requirements met.
s 237A	Meaning of extinguish.
s 238	Non-extinguishment principle: native title may be suspended/inoperative to extent of inconsistency and can revive in effect when inconsistent act ends, rather than being permanently extinguished where principle applies.

12.5 Proving s 223(1)

The course breaks the statutory proof into four clusters: traditional laws/customs (their source and continuity); effect of modification/adaptation; connection with land/waters by those laws/customs; and common-law recognition. Archaeological evidence may corroborate occupation but does not itself prove continuing acknowledgement/observance. Conversely, modern adaptation does not automatically destroy “traditional” character; the legal inquiry is continuity of normative society/laws/customs and connection, applied under the case law.

12.6 Extinguishment

Extinguishment can occur through an inconsistent Crown grant, legislation intending/extending inconsistent rights, surrender to Crown, or loss of necessary connection/continuity. Fee simple is the clearest inconsistent grant (Fejo). Some exclusive-possession leases extinguish, while pastoral/mining/licence interests require analysis of actual rights and inconsistency; Wik and Ward prohibit crude "lease equals total extinguishment" reasoning. De Rose shows partial extinguishment over improvement footprints under pastoral arrangements.

12.7 Past, intermediate and future acts

Category	Statutory map / effect
Past acts	Course: 1975–1994 grants. NTA s 229 category A (freehold/Crown leasehold specified); s 230 category B other Crown leases excluding mining; s 231 category C mining leases; s 232 category D other dealings/expired grants. Validation/extinguishment/non-extinguishment and compensation depend on category.
Intermediate period acts	s 232A dealings between 1 Jan 1994 and 23 Dec 1996 inclusive that otherwise risk invalidity; ss 232B-E mirror A-D categories; compensation may be available. Regime responds to Wik.
Future acts	s 233: legislative/other act on or after 1 Jan 1994 affecting native title, including creation/variation/extension/renewal/extinguishment of rights. Validity may depend on future-act procedures, right to negotiate and/or Indigenous Land Use Agreement; compensation may be available.

12.8 Claim administration

Application/compensation claim filed in Federal Court.

Claim referred to National Native Title Tribunal for registration test.

Public, interested parties and governments notified and may become respondents.

If agreement is achieved, consent determination can be made; otherwise court hears and determines.

National Native Title Register records approved determinations; Register of Native Title Claims records applications passing registration test; Register of ILUAs records agreements.

12.9 Indigenous Land Use Agreements (ILUAs)

Type	When used
Area agreement	No registered native title body corporate (RNTBC) for entire agreement area.
Body corporate agreement	One or more RNTBCs for entire relevant area other than parts where native title determined absent.
Alternative procedure agreement	Representative body/RNTBC participation in circumstances not meeting full body-corporate agreement pattern.

ILUAs can address virtually any native-title matter agreed by parties: exercise/surrender of rights, future development/mining, cultural heritage, coexistence, access, land management, compensation, validation of future acts, changes to intermediate-act effects and settlement of claims. In commercial property analysis, an ILUA is a structured statutory method for consent/coexistence—not evidence that native title is absent.

12.10 Current context: Yindjibarndi / Fortescue

The user-provided 2026 Yindjibarndi/Fortescue material concerns Western Australia, not Queensland property law authority. It is nevertheless a useful contemporary illustration of compensation exposure where mining activity affects determined native title. Treat it as policy/current-context material, not as a substitute for Queensland statutory analysis or binding course doctrine. Likewise, the Juukan Gorge inquiry material is Western Australian cultural-heritage context; it should not be cited as Queensland native-title law.

12.11 Plain-English native title formula

NATIVE TITLE — s 223: TRADITIONAL LAW/CUSTOM → CONNECTION → COMMON-LAW RECOGNITION → IDENTIFY RIGHTS → HAS AN ACT AFFECTED THEM? → PAST/INTERMEDIATE/FUTURE ACT → EXTINGUISHMENT OR NON-EXTINGUISHMENT → VALIDITY/PROCEDURE → COMPENSATION.

HIGH DISTINCTION MODEL PROBLEM 1 AND MODEL ANSWER

Problem — The Freshwater People claim rights over Merino Station in northern Queensland to fish in a river and hunt a native animal for an annual ceremony on a culturally significant riverbank. Archaeology shows pre-settlement occupation; evidence shows the ceremony, hunting and fishing traditions have continued and access has remained possible. Merino Station is subject to a pastoral-style land interest and later resource dealings. Advise the registered landholder on native-title issues.

I — ISSUE

Whether claimed rights satisfy NTA s 223; nature of hunting/fishing/ceremonial rights; whether existing land grants/resources extinguish wholly/partly; category/timing of government acts; future-act procedure/compensation.

II — RULE / LAW

Mabo No 2 + NTA ss 10,11,223. Yanner for hunting/use rights; Fejo for fee simple total extinguishment/non-revival; Wik/Ward for coexistence/partial inconsistency; De Rose for improvement-area partial extinguishment. Classify acts under ss 229-233 and apply s 238 where non-extinguishment principle operates.

III — APPLICATION

The continuity evidence is stronger than archaeology alone because it links present practice to asserted traditional law/custom and place. Fishing/hunting/ceremonial access are capable of native-title content. The registered owner must identify the precise Crown grant: if fee simple, Fejo is decisive against surviving native title over that parcel; if non-exclusive pastoral rights, Wik/Ward require right-by-right inconsistency rather than blanket extinguishment, with improvements potentially extinguishing locally under De Rose. Later mining/resource dealings must be dated and classified as past/intermediate/future acts, with validity/procedure and compensation considered.

IV — REMEDIES / DAMAGES

Possible declaratory/determination orders in Federal Court, negotiation/ILUA for future acts, right-to-negotiate procedures where applicable, and compensation for validated/affecting acts. Landholder should not obstruct claimed rights merely on assumption that registered pastoral/resource interests automatically erase all native title.

V — CONCLUSION

The claim is legally plausible on the facts, but outcome depends on proof under s 223 and exact Crown/resource instruments. The HD answer distinguishes existence/content from extinguishment and then separately classifies each governmental act by date.

Tutorial Masterclass - Banksia people and the 1976 pastoral lease

Tutorial problem - adapted from the supplied course problem. The Banksia people maintain a continuing connection to Richmond Creek and Bunya Pools through harvesting, fishing, ceremonies and orally transmitted laws. In 1976 Queensland granted a 99-year pastoral lease requiring fencing, an airstrip, dams, a house and seeding of 40 hectares. Large areas, including Bunya Pools, were left unfenced and continued to be used by Banksia people. Evidence includes archaeology, early settler journals and elder testimony; younger members use modern tools but retain traditional protocols.[27]

WHAT THE TUTORIAL IS TEACHING

First prove whether native title exists under s 223 of the Native Title Act 1993 (Cth). Then identify the exact Crown grant and ask whether particular native-title rights are inconsistent with rights conferred by the pastoral lease. Distinguish total from partial extinguishment and analyse evidence of continuity rather than demanding unchanged practices.

Rule / Law

Mabo v Queensland (No 2) recognises native title at common law and rejects terra nullius. Native Title Act 1993 (Cth) s 223 directs attention to rights and interests possessed under traditional laws and customs, connection with land or waters, and recognition by common law. Wik and later authorities require inconsistency to be analysed right by right rather than assuming that every pastoral lease creates exclusive possession. Western Australia v Ward reinforces the need to identify the particular native-title right and the inconsistent statutory or granted right.[28]

Application - how a High Distinction answer reasons

The evidence of ceremonies, fishing, harvesting, oral law, archaeology and historical records supports continuity and connection. The use of modern fishing gear does not itself destroy tradition if the normative basis remains traditional. The pastoral lease must be read precisely: houses, dams, seeded areas, fencing and other improvements may create localised inconsistency with particular native-title

[27] *Mabo v Queensland (No 2)* (1992) 175 CLR 1; *Native Title Act 1993* (Cth) s 223.
[28] *Wik Peoples v Queensland* (1996) 187 CLR 1; *Western Australia v Ward* (2002) 213 CLR 1.

rights, while undeveloped Bunya Pools and surrounding areas may allow coexistence. The absence of an express extinguishing statement is relevant but not decisive because extinguishment can arise from inconsistency of rights.

Conclusion and remedies

The Banksia people have a substantial basis for a claim, but the content and survival of rights must be determined area by area and right by right. The best exam answer resists both extremes: neither "pastoral lease automatically extinguishes everything" nor "no express extinguishment means all native title survives".

EXAM TRANSFER

When the names and facts change, keep the method: identify the legal relationship first, break the problem into sub-issues, state the exact provision and authority, apply each element to a fact, address the strongest counterargument, and only then state the remedy.

FREQUENTLY ASKED QUESTIONS

Native Title

What is native title?

Native title refers to the **rights and interests of Aboriginal and Torres Strait Islander peoples** in land or waters.

These rights arise from **traditional laws and customs** and are recognised by Australian law.

They differ from standard property rights and cannot be freely sold or transferred.

How is native title recognised in Australian law?

- **Common law:** Recognised following the *Mabo* decision, which rejected terra nullius
- **Statute:** Governed by the **Native Title Act**, which provides the framework for recognition and protection

What rights can native title include?

- Rights to access and use land
- Hunting and fishing rights
- Conducting cultural or ceremonial activities
- In some cases, rights of possession

The content of rights depends on the relevant traditional laws and customs.

How can native title be extinguished?

- Grant of inconsistent interests (e.g. freehold or exclusive possession leases)
- Legislation (subject to broader legal requirements)
- Surrender to the Crown
- Loss of connection to land under traditional laws and customs

Extinguishment occurs where rights are inconsistent with continued native title.

What are past acts and intermediate acts?

- **Past acts:** Earlier government actions validated under the Native Title Act, often with compensation
- **Intermediate acts:** Actions taken during a period of legal uncertainty before key clarification by the courts

The legislation provides mechanisms to validate these actions and manage their consequences.

What was the significance of the Wik case?

The *Wik* decision confirmed that **pastoral leases do not automatically extinguish native title**.

This means native title and other interests can **co-exist**, although inconsistent rights will prevail.

What are Indigenous Land Use Agreements (ILUAs)?

ILUAs are agreements between native title groups and others (such as governments or developers).

They deal with:

- Land use and development
- Mining and infrastructure projects
- Compensation and benefits
- Cultural heritage protection

They provide a flexible way to resolve potential disputes.

How is native title determined?

- A claim is filed in the Federal Court
- The claim is assessed and registered
- Interested parties are notified
- Mediation may occur
- The Court makes a determination if necessary

The process is structured under the Native Title Act.

Where can information about native title claims be found?

- National Native Title Register
- Register of Native Title Claims
- Register of Indigenous Land Use Agreements

These registers provide publicly accessible information about claims and determinations.

Chapter Quiz

1. What did Mabo (No 2) reject?

Answer: Terra nullius as a basis for denying pre-existing Indigenous property rights.

2. What are the three limbs of NTA s 223(1)?

Answer: Traditional laws/customs; connection by those laws/customs; and recognition by the common law of Australia.

3. What does Fejo establish?

Answer: A fee simple grant is wholly inconsistent with native title and extinguishment is permanent.

4. What does Wik establish?

Answer: Pastoral leases do not necessarily confer exclusive possession and native title may coexist to the extent of consistency.

5. What does the non-extinguishment principle do?

Answer: It can suspend native title to the extent of inconsistency rather than permanently extinguish it where the statutory principle applies.

6. What is an ILUA?

Answer: An Indigenous Land Use Agreement under the NTA dealing with native title, future acts, access, development, compensation or coexistence.

MASTERY QUIZ - NATIVE TITLE - 20 QUESTIONS AND ANSWERS

These questions are deliberately mixed between recall, distinction, issue spotting, application and remedies. They are additional to the shorter chapter quiz and are designed for repeated revision.

Question 1. What did Mabo v Queensland (No 2) reject?

Answer: The doctrine of terra nullius as a basis for denying pre-existing Indigenous rights and interests in land.

Question 2. What is radical title?

Answer: The Crown's underlying title acquired on sovereignty, which can coexist with native title until native title is validly extinguished.

Question 3. What are the three central limbs of NTA s 223(1)?

Answer: Rights and interests possessed under traditional laws and customs; connection with land or waters by those laws and customs; and recognition of those rights and interests by the common law of Australia.

Question 4. Does use of modern technology necessarily break traditional connection?

Answer: No. Practices may adapt while remaining rooted in traditional laws and customs; the question is continuity of the normative system and connection.

Question 5. Why is evidence from elders important?

Answer: It can establish the content, transmission and continuity of traditional laws and customs and the community's connection to country.

Question 6. Why can historical records and archaeology matter?

Answer: They may corroborate continuity and the historical exercise of traditional practices, though they do not replace proof of the current normative connection.

Question 7. What does Fejo v Northern Territory establish?

Answer: A valid fee simple grant is wholly inconsistent with native title; extinguishment is permanent and native title does not revive when the fee simple later returns to the Crown.

Question 8. What does Wik Peoples v Queensland establish?

Answer: A pastoral lease does not necessarily confer exclusive possession; native title may coexist to the extent that the rights are not inconsistent.

Question 9. What does Western Australia v Ward emphasise?

Answer: Extinguishment is analysed by comparing the legal rights created by the Crown grant with the asserted native title rights, often right by right.

Question 10. Why is Yanner v Eaton important?

Answer: It illustrates the character of native title hunting rights and the effect of regulation rather than assuming statutory control automatically extinguishes the underlying native title right.

Question 11. What does De Rose illustrate?

Answer: Pastoral improvements and grants may cause partial extinguishment in particular areas without necessarily extinguishing every native title right over the entire lease.

Question 12. What do NTA ss 10 and 11 broadly do?

Answer: They recognise and protect native title and restrict extinguishment contrary to the Act.

Question 13. Why must the date of a government act be identified?

Answer: The NTA treats past, intermediate-period and future acts differently and the applicable validation or procedural regime depends on classification.

Question 14. What is the non-extinguishment principle?

Answer: Where the Act applies it can suspend the exercise of native title to the extent of inconsistency rather than permanently extinguish it, with the native title capable of full effect again if the inconsistent act ceases.

Question 15. What is an ILUA?

Answer: An Indigenous Land Use Agreement that can regulate future acts, access, coexistence, development and compensation between native title parties and others.

Question 16. Does absence of an express extinguishment clause prove native title survives?

Answer: No. Extinguishment can result from legal inconsistency between granted rights and native title even without express words.

Question 17. What exam fact suggests partial rather than total extinguishment?

Answer: A non-exclusive pastoral grant or specific improvement footprint that conflicts with some native title rights but leaves other areas and rights capable of coexistence.

Question 18. What exam fact suggests a strong continuity argument?

Answer: Elders continue ceremonies and teaching, younger people return to country, practices have adapted but remain governed by traditional laws and customs, and historical evidence supports continuity.

Question 19. What remedy or process may arise for future development affecting native title?

Answer: Notification, negotiation, right-to-negotiate or other future-act procedures, ILUA negotiation and compensation depending on the act.

Question 20. What should a native title conclusion state?

Answer: Whether s 223 is likely satisfied, what earlier acts have done to the claimed rights, what future-act process applies, and whether compensation or agreement should be pursued.

HIGH DISTINCTION MODEL PROBLEM 2 AND MODEL ANSWER - Native title and mining proposal

Question — A Queensland company proposes a new mining project on land subject to a non-exclusive pastoral interest. A registered native title claim asserts ceremonial access, hunting and gathering rights. The company says the pastoral lease automatically extinguished everything and plans to proceed without negotiation. Advise the company.

I — ISSUE

The issues are whether the claimed rights satisfy NTA s 223, whether the pastoral interest extinguished them wholly or only to the extent of inconsistency, and whether the proposed mining is a future act requiring statutory procedures.

II — RULE / LAW

Apply Mabo, Wik, Ward, Yanner and De Rose with NTA ss 10, 11 and 223. Non-exclusive pastoral interests do not automatically extinguish all native title; examine actual rights and inconsistency. A new mining grant or authorisation may be a future act under s 233 and can require future-act procedures, right to negotiate or an ILUA, with compensation consequences.

III — APPLICATION

The company's blanket extinguishment assumption is legally unsafe. Ceremonial access, hunting and gathering are capable of recognised native-title content if continuity and connection are proved. The pastoral interest must be analysed right by right. The new mining proposal is a separate governmental act whose validity may depend on compliance with the NTA future-act regime.

IV — CONCLUSION

The company should assume neither absence nor total extinguishment and must identify the determination/claim status, pastoral rights and exact mining approvals before proceeding.

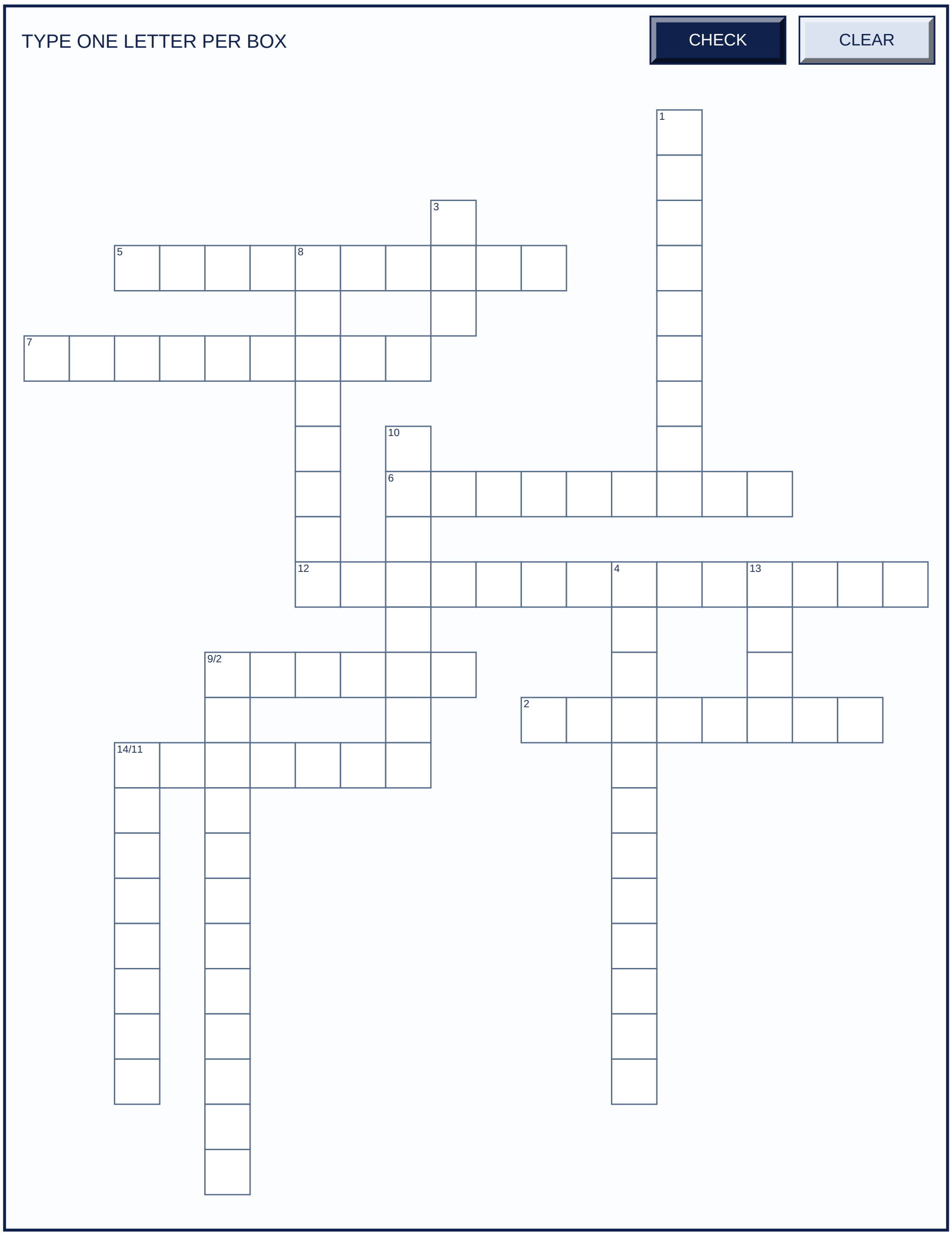
V — REMEDIES / ORDERS

Engage the statutory notification/negotiation process, consider an ILUA, and plan for compensation exposure where the NTA provides. Court/NNTT determinations may be required for disputed rights.

CROSSWORD - CHAPTER 12: NATIVE TITLE AND INDIGENOUS LAND INTERESTS

INTERACTIVE CROSSWORD: *Open the active version to type directly into the grid, check each answer, and receive immediate green/red feedback.* ***Launch Chapter 12 Active Crossword***

Instructions: Complete the crossword using the chapter material, glossary, cases and authorities. Spaces, hyphens and punctuation are omitted from entries.



Across

2. One of the strongest Crown-granted interests in land, ordinarily inconsistent with native title.

5. A claimant group must establish continuing ______ with land or waters under traditional laws and customs.

6. The final word in ILUA: Indigenous Land Use ______.

7. Pastoral leases were once assumed to confer ______ possession, a proposition rejected as a universal rule.

9. Acts occurring after the relevant 1996 dividing point are generally described as ______ acts.

12. Permanent loss of native title rights because of legally inconsistent grants or legislation.

14. The Crown's underlying title following sovereignty is called ______ title.

Down

1. The animal at the centre of Yanner v Eaton, raising questions about Indigenous hunting rights.

2. The court with jurisdiction to determine native title claims.

3. The 1996 High Court decision that led to significant amendments to the Native Title Act.

4. The description given to acts in the 1994-1996 validation period: ______ acts.

8. Unlike a court, the Tribunal is not bound by ordinary rules of ______.

10. A ______ lease is a Crown lease commonly covering large rural areas.

11. Approved native title determinations are recorded on a public ______.

13. It all began with the claim made in this landmark case.

Use the chapter text to check each answer before moving to the next topic.

CROSSWORD ANSWERS - CHAPTER 12: NATIVE TITLE AND INDIGENOUS LAND INTERESTS

Separate answer page - use this only after attempting the crossword.

2 Across - FREEHOLD	2 Down - FEDERALCOURT
5 Across - CONNECTION	3 Down - WIK
6 Across - AGREEMENT	4 Down - INTERMEDIATE
7 Across - EXCLUSIVE	8 Down - EVIDENCE
9 Across - FUTURE	10 Down - PASTORAL
12 Across - EXTINGUISHMENT	11 Down - REGISTER
14 Across - RADICAL	13 Down - MABO
1 Down - CROCODILE	

CHAPTER 13. FINAL EXAMINATION REVISION

This chapter is designed for a 2.5-hour problem-based Property Law examination. It deliberately mixes topics, statutory sources, common law, equity, Torrens principles and remedies. Train yourself to identify the strongest issues first, allocate time proportionately and write in a disciplined IRAC structure.

LEARNING OUTCOMES

By the end of this chapter, you should be able to spot mixed-topic issues under time pressure; state exact provisions and authority propositions; make Application the largest part of IRAC; and identify remedies and give firm qualified conclusions.

How to use this chapter

Read the explanation first. Then connect each rule to the exact statutory provision and authority. The Tutorial Masterclass shows how the lecture and forum material becomes legal analysis: facts are converted into issues, issues into rules, and rules into a reasoned application, conclusion and remedy.

FREQUENTLY ASKED QUESTIONS

Final Examination Revision

What should I identify first in a Property Law problem?

Identify the **property interest or relationship** being asserted and the parties affected by it.

Then classify the issue: co-ownership, mortgage, easement, profit, licence, lease, covenant, boundary, body corporate/community title, native title, or a combination of these.

How should legislation be used in an exam answer?

State the **exact provision, subsection or paragraph** that controls the issue, explain the legal test in plain language, and then apply each element to the facts.

Do not cite a section without explaining why the factual trigger makes it relevant.

How should cases and authorities be used?

Use a case for the **legal proposition it actually supports** and connect that proposition to the facts in the problem.

Avoid name-dropping authorities without explaining the rule or reasoning for which they are relevant.

What if the facts support more than one possible legal classification?

Analyse the alternatives in order of strength.

For example, explain why facts may point first to a proprietary interest, then identify the contractual or equitable fallback if that classification fails.

What is the best structure for a problem answer?

Use the book’s core method:

- **Issue:** Identify the main issue and sub-issues
- **Rule/Law:** Set out the relevant statute, common law, equity and cases
- **Application:** Apply each legal element to the material facts
- **Remedies:** Explain what orders, damages or protective steps may follow
- **Conclusion:** Give a reasoned likely outcome

How should I deal with the Property Law Act 2023 (Qld) and older authorities?

Use the **Property Law Act 2023 (Qld)** as the current statutory framework for the course.

Where an older case or course source refers to the repealed 1974 Act, explain the modern provision and use the historical reference only where it assists understanding.

Why should remedies be discussed in every problem?

A legal conclusion is incomplete if it does not explain what the successful party can actually seek.

Tie the remedy to the issue: for example damages, injunction, declaration, sale/division, account, relief against forfeiture, power-of-sale consequences, or another chapter-specific order.

What is a common exam mistake with threshold tests?

Students sometimes jump straight to a remedy without first proving that the governing regime applies.

Always complete threshold questions first - for example whether the NCC applies, whether a right is a lease or licence, or whether an easement satisfies the proprietary requirements.

How should I manage time in a long problem question?

Issue-spot first, allocate time according to the marks and complexity, and use clear headings so each issue is visibly answered.

Reserve enough time to complete the application, remedies and conclusion rather than spending all available time reciting law.

How should I use the quizzes, crosswords and attack sheet for final revision?

Use the **quizzes** for rapid recall, the **crosswords** for terminology and authority recognition, and the **attack sheet** for issue sequencing under exam pressure.

Then practise full IRAC answers so recall is converted into legal application.

Part A — 100 Quiz Questions and Answers

Question 1. Which feature most clearly distinguishes a joint tenancy from a tenancy in common?

A. Unequal shares

B. Right of survivorship

C. Ability to sell land

D. Registration only

E. Need for a mortgage

Answer: B. Why: Survivorship is the hallmark of joint tenancy.

Question 2. Which is NOT one of the four unities?

A. Possession

B. Interest

C. Title

D. Time

E. Registration

Answer: E. Why: The four unities are possession, interest, title and time.

Question 3. A, B and C hold shares of 1/2, 1/4 and 1/4. What is the likely co-ownership?

A. Joint tenancy

B. Tenancy in common

C. Lease

D. Easement

E. Profit

Answer: B. Why: Unequal shares defeat unity of interest; TIC allows unequal shares.

Question 4. Unity of possession means:

A. Each co-owner has a physically separate part

B. Each has equal right to possess the whole

C. Only one may occupy

D. Only legal owner may possess

E. Possession depends on contribution

Answer: B. Why: Each co-owner has equal possessory rights to the whole.

Question 5. A joint tenant attempts to leave their share by will without severance. What happens?

A. Will controls

B. Executor owns share

C. Survivorship prevails

D. Mortgagee owns share

E. State owns share

Answer: C. Why: JT has no severable share on death unless severed before death.

Question 6. If joint tenants die together and order of death is uncertain, which Queensland provision is relevant?

A. PLA s 8

B. Succession Act s 65

C. LTA s 74

D. NCC s 5

E. PLA s 116

Answer: B. Why: Succession Act s 65 deems death in order of seniority.

Question 7. Which case is the classic authority for severance methods?

A. Williams v Hensman

B. Re Ellenborough Park

C. Spencer v Commonwealth

D. Wanner v Caruana

E. Westfield

Answer: A. Why: Williams v Hensman sets out severance categories.

Question 8. Which is a Williams v Hensman severance category?

A. Foreclosure

B. Act operating on own share

C. Prescription

D. Adverse possession only

E. Registration of easement

Answer: B. Why: Act operating on own share is a recognised severance method.

Question 9. At law in Queensland, unilateral alienation of a joint tenant's interest generally requires:

A. Oral notice

B. Title transfer registration

C. A will

D. Death certificate

E. Mortgage consent only

Answer: B. Why: LTA s 59 / registration is required for legal effectiveness.

Question 10. Corin v Patton is mainly about:

A. Power of sale

B. Incomplete gift/equitable severance

C. Profits a prendre

D. Default notice

E. Protected plants

Answer: B. Why: It asks whether donor did everything necessary to complete transfer/gift.

Question 11. If co-owners contribute unequally to purchase price, equity tends to presume:

A. Joint tenancy

B. Tenancy in common

C. Mortgage

D. Lease

E. Profit

Answer: B. Why: Equity looks to contributions and often presumes TIC.

Question 12. PLA s 28 is important because it:

A. Defines mortgage

B. Presumes TIC in relevant dispositions

C. Creates power of sale

D. Extinguishes easements

E. Defines credit

Answer: B. Why: It shifts presumption towards TIC unless contrary intention.

Question 13. Which provision allows companies to be joint tenants in Queensland?

A. PLA s 26

B. LTA s 86

C. NCC s 5

D. PLA s 116

E. LTA s 90

Answer: A. Why: PLA s 26 modifies common law company issue.

Question 14. Tenants in common differ from joint tenants because TICs:

A. Must have equal shares

B. Have survivorship

C. Hold separate proportionate shares

D. Cannot sell shares

E. Cannot mortgage

Answer: C. Why: TICs have distinct shares.

Question 15. On death of a tenant in common, the share generally:

A. Automatically passes to other co-owner

B. Vests in estate

C. Disappears

D. Becomes easement

E. Becomes mortgage

Answer: B. Why: TIC share passes under will/intestacy.

Question 16. Which case concerns occupation rent/exclusion between co-owners?

A. Dennis v McDonald

B. Spencer

C. Phipps

D. Noakes

E. Westfield

Answer: A. Why: Dennis v McDonald is a co-owner occupation rent case.

Question 17. A co-owner cannot usually eject another co-owner because of:

A. Unity of possession

B. Unity of title only

C. NCC s 5

D. Power of sale

E. Profit in severalty

Answer: A. Why: Each has equal right to possess whole.

Question 18. PLA ss 33-40 deal mainly with:

A. Default interest

B. Sale/division of co-owned property

C. Profit expiry

D. Smoke alarms

E. Mortgage registration

Answer: B. Why: They provide court sale/division remedies.

Question 19. Under PLA s 35, the court generally prefers:

A. Physical division

B. Sale and division of proceeds

C. Foreclosure

D. Easement creation

E. No remedy

Answer: B. Why: Slides state sale and division of proceeds is preferred.

Question 20. Which case pair relates to homicide and survivorship?

A. Neubacher v Good [2003] NSWSC 379/Re Stone [1989] 1 Qd R 351

B. Westfield/Hoy

C. Spencer/Pendlebury

D. Cuckmere/Kennedy

E. Phipps/Riley

Answer: A. Why: Public policy prevents killer benefiting by survivorship.

Question 21. A course of dealing treating interests as separate is relevant to:

A. Severance

B. NCC application

C. Market value

D. Profit expiry

E. Easement registration

Answer: A. Why: Williams v Hensman includes course of dealing.

Question 22. Mutual agreement severance requires:

A. All JTs agree clearly

B. Mortgagee sale

C. Only one JT orally objects

D. A profit

E. A caveat only

Answer: A. Why: All JTs must show clear voluntary intention.

Question 23. Sprott v Harper is relevant to:

A. Evidence of severance intention

B. Mortgagee sale duty

C. Easement necessity

D. Profit water rights

E. NCC default

Answer: A. Why: It concerns intention/evidence for severance.

Question 24. Saleeba v Wilkie is used where:

A. No sufficient evidence of severance

B. Power of sale valid

C. Profit valid

D. NCC not applied

E. Easement abandoned

Answer: A. Why: It is a no-severance/evidence case.

Question 25. Public Trustee v Grivas [1974] 2 NSWLR 316, Berdal v Burns [1990] WAR 140 and Penny Nominees concern:

A. Court order severance

B. Default interest

C. Easement elements

D. Profits

E. Indefeasible mortgage sale

Answer: A. Why: Court orders may sever depending terms/timing.

Question 26. Max 1/2, Alex 1/4, Sam 1/4 are registered as:

A. Joint tenants

B. Tenants in common

C. Mortgagees

D. Lessee and lessor

E. Public utility easement holders

Answer: B. Why: The shares are separate and unequal.

Question 27. In the negotiation facts, total Max expenditure is:

A. $50,000

B. $52,500

C. $90,000

D. $140,000

E. $740,000

Answer: D. Why: Works 50k + mortgage/rates/insurance 90k = 140k.

Question 28. In the negotiation facts, total rent received is:

A. $13,125

B. $20,000

C. $35,000

D. $52,500

E. $90,000

Answer: D. Why: The facts state total rent August 2024-May 2026 was 52,500.

Question 29. Alex's notional 1/4 share of $140,000 expenditure is:

A. $13,125

B. $20,000

C. $35,000

D. $45,000

E. $70,000

Answer: C. Why: One quarter of 140,000 is 35,000.

Question 30. Alex's notional 1/4 rent credit from $52,500 is:

A. $10,625

B. $13,125

C. $20,000

D. $26,250

E. $35,000

Answer: B. Why: One quarter of 52,500 is 13,125.

Question 31. Which expenditure is strongest for contribution?

A. Luxury upgrade

B. Necessary termite structural repair

C. Decorative fountain

D. New cinema room

E. Non-urgent gold taps

Answer: B. Why: Necessary safety/preservation works are strongest.

Question 32. Which expenditure is weakest for full reimbursement?

A. Insurance

B. Mortgage repayment

C. Rates

D. Smoke alarms

E. Roof upgrade with higher-quality materials

Answer: E. Why: Upgrade beyond necessary repair is contestable.

Question 33. A deed of settlement should normally include:

A. Only jokes

B. Payment, release and timing

C. No parties

D. No dates

E. No future conduct

Answer: B. Why: Settlement deed needs enforceable payment/release/timing clauses.

Question 34. The negotiation exercise is:

A. Transactional negotiation

B. Dispute resolution negotiation

C. Criminal plea

D. Family mediation

E. Conveyance settlement only

Answer: B. Why: The notes say it is dispute resolution negotiation.

Question 35. The negotiation scope excludes:

A. Financial accounting

B. Rent credits

C. Costs

D. Whether property ultimately sold/transferred

E. Future expenses

Answer: D. Why: Sale/transfer is addressed separately.

Question 36. Joint and several mortgage liability means:

A. Each only liable for own share to bank

B. Each may be liable for whole debt to lender

C. No one liable

D. Only Max liable

E. Only tenants in common liable

Answer: B. Why: Lender can pursue each borrower for entire debt subject to contribution rights.

Question 37. Co-owner accounting often asks:

A. Who received rent and who paid expenses

B. Who is tallest

C. Who drafted will

D. Which bank logo

E. Which suburb is nicer

Answer: A. Why: Accounting balances income received and expenses paid.

Question 38. If one co-owner excludes another, possible remedy includes:

A. Occupation rent/accounting

B. Profit a prendre

C. Foreclosure only

D. NCC hardship only

E. Extinguishment of easement

Answer: A. Why: Occupation rent can account for exclusive occupation.

Question 39. Unity of title requires:

A. Same instrument/act creates interests

B. Same age

C. Same bank

D. Same lawyer

E. Same furniture

Answer: A. Why: Interests must derive from same title/instrument/act.

Question 40. Unity of time requires:

A. Same time/event of vesting

B. Same postcode

C. Same mortgage interest rate

D. Same death date

E. Same lease term only

Answer: A. Why: Interests vest at same time.

Question 41. Unity of interest requires:

A. Identical interests

B. Same solicitor

C. Same bank

D. One person controls all

E. No title

Answer: A. Why: Nature, extent and duration must be identical.

Question 42. Unity of possession means co-owners:

A. Have separate fenced shares

B. Have equal right to possess the whole

C. Must live there together

D. Cannot ever rent property

E. Need mortgagee approval

Answer: B. Why: It is the equal right to possess all land.

Question 43. Which answer best describes “seised of the whole”?

A. Each JT owns separate room

B. Each JT owns the whole with others

C. Each TIC owns whole

D. Mortgagee owns title

E. No one owns land

Answer: B. Why: Joint tenants own the whole together.

Question 44. Which is true of TIC shares?

A. Must be equal

B. Can be unequal

C. Always pass by survivorship

D. Cannot be sold

E. Cannot be inherited

Answer: B. Why: TIC shares can be unequal and pass by estate.

Question 45. Which provisions specifically allow a co-owner to make a standalone court application for accounting of amounts received and empower the court to make a just and fair accounting order?

A. PLA ss 41-42

B. LTA s 74

C. NCC s 30

D. LTA s 90

E. PLA s 179

Answer: A. Why: PLA ss 41-42 create the standalone accounting procedure. Section 27 states the underlying liability to account, while s 40 permits compensation and accounting orders within a sale or division proceeding.

Question 46. A clear bank account record in co-ownership dispute is useful because:

A. It proves accounting figures

B. It creates easement

C. It ends mortgage

D. It prevents registration

E. It creates survivorship

Answer: A. Why: Accounting requires proof of receipts/payments.

Question 47. If a company joint tenant is deregistered, the survivorship problem is resolved by:

A. PLA s 26

B. NCC s 88

C. LTA s 90

D. PLA s 116

E. Succession s 65

Answer: A. Why: PLA s 26 allows companies to be JTs.

Question 48. Which case says unilateral declaration alone is not enough to sever?

A. Corin v Patton

B. Spencer

C. Westfield

D. Cuckmere

E. Phipps

Answer: A. Why: Corin requires more than unilateral declaration.

Question 49. Which is the best MCQ answer if unequal contributions but title says JT?

A. Equity may presume TIC unless contrary intention

B. Always JT forever

C. Always void

D. Mortgagee owns it

E. Easement arises

Answer: A. Why: Equity may look behind legal title to contributions.

Question 50. Main exam shortcut for co-ownership:

A. JT = survivorship; TIC = shares

B. JT = mortgage; TIC = easement

C. JT = debt; TIC = lender

D. JT = water; TIC = crops

E. JT = default notice

Answer: A. Why: This is the core distinction.

Question 51. A mortgage in Queensland is best described as:

A. Transfer of title to bank

B. Charge over land securing payment

C. Lease

D. Profit

E. Caveat only

Answer: B. Why: LTA s 74: mortgage is a charge, not title transfer.

Question 52. Who is the mortgagor?

A. Borrower/land owner

B. Lender

C. Tenant

D. Registrar

E. Receiver

Answer: A. Why: Mortgagor gives mortgage security.

Question 53. Who is the mortgagee?

A. Borrower

B. Lender/security holder

C. Neighbour

D. Dominant owner

E. Trustee only

Answer: B. Why: Mortgagee lends money and holds security.

Question 54. PLA s 8 requires:

A. Writing and signature for legal/equitable interests

B. 30-day notice

C. Market value sale

D. Profit expiry

E. Survivorship

Answer: A. Why: Creation of land interests must be written and signed.

Question 55. LTA s 74 states a mortgage:

A. Transfers title

B. Constitutes a charge

C. Creates tenancy in common

D. Creates easement

E. Is always void

Answer: B. Why: Queensland Torrens mortgage is a charge.

Question 56. Registration of mortgage creates legal interest under:

A. LTA ss 181-182

B. NCC s 5

C. PLA s 35

D. Succession s 65

E. LTA s 90

Answer: A. Why: Registration creates/vests legal interest.

Question 57. An unregistered mortgage may be:

A. No effect ever

B. Equitable mortgage

C. Profit

D. Joint tenancy

E. Foreclosure

Answer: B. Why: Equity may recognise intention to create security.

Question 58. Swiss Bank v Lloyds Bank is authority for:

A. Equitable mortgage intention

B. Easement elements

C. Market value

D. Severance

E. Protected plants

Answer: A. Why: Defective legal security can be equitable if intention clear.

Question 59. NCC is Schedule 1 to:

A. National Consumer Credit Protection Act 2009 (Cth)

B. PLA

C. LTA

D. Succession Act

E. Acts Interpretation Act

Answer: A. Why: NCC is Sch 1 NCCPA.

Question 60. NCC s 5 debtor must be:

A. Natural person or strata corporation

B. Only company

C. Only bank

D. Only trustee company

E. Only State

Answer: A. Why: s 5 application test begins with debtor status.

Question 61. NCC s 5 credit purpose includes:

A. Residential investment property

B. Only mining

C. Only commercial farms

D. Only easements

E. Only wills

Answer: A. Why: It includes buying/renovating/improving residential investment property.

Question 62. NCC s 5(4) predominant purpose means:

A. More than half

B. Exactly 100%

C. Less than 10%

D. No purpose

E. Bank purpose only

Answer: A. Why: Predominant = more than half intended use.

Question 63. NCC s 7 applies to mortgage if:

A. Secures credit contract/guarantee and mortgagor natural person

B. It is a profit

C. It is unregistered easement

D. It has no debt

E. It is commercial-only company borrower

Answer: A. Why: s 7 connects mortgage to NCC credit obligations.

Question 64. NCC s 14 deals with:

A. Credit contract writing

B. Easement surrender

C. Market value

D. TIC presumption

E. Receiver agency

Answer: A. Why: Credit contract writing/signing/offer acceptance.

Question 65. NCC s 30 deals with:

A. Default interest

B. Co-owner sale

C. Easement support

D. Profit expiry

E. Caveats

Answer: A. Why: Default interest drafting trap.

Question 66. A default interest clause increasing rate forever after default is likely:

A. Penalty/unenforceable

B. Always valid

C. An easement

D. A TIC

E. A profit

Answer: A. Why: Wanner v Caruana; penalty issue.

Question 67. A higher interest rate only during default is more likely:

A. Enforceable

B. Always void

C. Severance

D. Foreclosure

E. Abandonment

Answer: A. Why: Can reflect damages for default period.

Question 68. Mortgagor obligations under PLA s 128 include:

A. Pay principal/interest and keep buildings in repair

B. Sell neighbour land

C. Take timber

D. Register easement

E. Buy insurance for bank only

Answer: A. Why: s 128 implied obligations.

Question 69. Mortgagor right to inspect documents is:

A. PLA s 129

B. NCC s 5

C. LTA s 90

D. PLA s 181

E. LTA s 86

Answer: A. Why: s 129 inspection right.

Question 70. Mortgagor right to require transfer of mortgage to third party is:

A. PLA s 132

B. PLA s 116

C. LTA s 79

D. NCC s 30

E. PLA s 180

Answer: A. Why: s 132 transfer in lieu of discharge.

Question 71. No common law right to early repayment before date is from:

A. Hyde Management

B. Re Ellenborough

C. Westfield

D. Phipps

E. Williams

Answer: A. Why: Hyde Management Services v FAI.

Question 72. Right of redemption means:

A. Right to get property free from mortgage after payment

B. Right to lake access

C. Right to take gravel

D. Right to survivorship

E. Right to sell co-owner share only

Answer: A. Why: Redemption is core mortgagor equity.

Question 73. A clog on redemption is:

A. Term making mortgage irredeemable or unfairly fettering redemption

B. A tree root

C. A potted plant

D. A public utility easement

E. A caveat form

Answer: A. Why: Equity prevents clogs.

Question 74. Kreglinger is about:

A. Collateral advantages and redemption

B. Easement elements

C. JT homicide

D. Torrens fraud

E. Accounting rent

Answer: A. Why: Collateral advantage can be valid if not oppressive.

Question 75. Acceleration means:

A. Default makes whole debt due

B. Mortgagee takes timber

C. Easement ends

D. TIC becomes JT

E. Registrar creates title

Answer: A. Why: Acceleration clause accelerates debt.

Question 76. PLA s 130(2)-(3) gives:

A. Relief against accelerated sum

B. Market value duty

C. Profit extinguishment

D. TIC presumption

E. Easement modification

Answer: A. Why: Mortgagor can seek relief if default remedied.

Question 77. NCC s 88 requires generally:

A. 30-day default notice

B. Immediate foreclosure without notice

C. Sale by auction only

D. TIC presumption

E. Writing easement

Answer: A. Why: NCC default enforcement notice.

Question 78. NCC s 88(3) concerns:

A. Contents of default notice

B. Definition of easement

C. Order of sale proceeds

D. Profit expiry

E. Company JT

Answer: A. Why: s 88(3) notice contents.

Question 79. NCC ss 94-96 concern:

A. Postponement/hardship enforcement proceedings

B. Easement support

C. Market valuation

D. Co-owner sale

E. Caveat removal only

Answer: A. Why: They provide hardship/postponement path.

Question 80. Mortgagee possession power appears in:

A. LTA s 78(2)(b)

B. PLA s 28

C. NCC s 14

D. LTA s 90

E. PLA s 181

Answer: A. Why: Mortgagee may take possession/receive rents.

Question 81. Mortgagee in possession must account for:

A. Rents/profits actually received and those lost by wilful default

B. Only own profit

C. Nothing

D. Only GST

E. Only neighbour rent

Answer: A. Why: Mortgagee must account and avoid culpable negligence.

Question 82. PLA s 113(1)(a) gives mortgagee implied power to:

A. Sell

B. Create JT

C. Create will

D. Extinguish easement

E. Take water

Answer: A. Why: Implied power of sale.

Question 83. PLA s 113(1)(c) gives implied power to:

A. Appoint receiver

B. Create tenancy in common

C. Register profit

D. Ignore default

E. Alter will

Answer: A. Why: Receiver appointment.

Question 84. Before power of sale, PLA s 114 requires:

A. Default notice and 30 days continuing default

B. Only oral demand

C. No notice

D. Death certificate

E. A profit release

Answer: A. Why: Statutory notice condition.

Question 85. Time calculation for 30 days should consider:

A. Acts Interpretation Act ss 38-39

B. NCC s 3 only

C. Succession s 65

D. LTA s 86

E. PLA s 26

Answer: A. Why: Slides flag ss 38-39 for counting days.

Question 86. PLA s 116(2) requires mortgagee to:

A. Take reasonable care to ensure market value

B. Get best possible price ever

C. Sell to itself

D. Foreclose first

E. Ignore valuation

Answer: A. Why: Reasonable care to ensure market value.

Question 87. Spencer v Commonwealth test involves:

A. Willing but not anxious buyer and seller

B. Fastest sale

C. Lowest price

D. Forced sale only

E. Highest sentimental value

Answer: A. Why: Classic market value formula.

Question 88. Cuckmere Brick is authority for:

A. Reasonable care in mortgagee sale

B. JT survivorship

C. Profit water

D. s 86 same owner

E. NCC predominant purpose

Answer: A. Why: Mortgagee must advertise/consider value factors properly.

Question 89. Commercial and General Acceptance v Nixon says mortgagee:

A. Cannot avoid duty by delegating to agent

B. Always immune

C. Can sell for any price

D. Must foreclose first

E. Must create easement

Answer: A. Why: Delegation does not avoid duty.

Question 90. A prescribed mortgage under PLA s 116(3) is:

A. Mortgage over mortgagor's home

B. Any company charge

C. Any easement

D. Profit in common

E. TIC share only

Answer: A. Why: Reg 11 applies to prescribed mortgage over home.

Question 91. Reg 11 Property Law Regulation 2024 requires generally:

A. Advertise, valuation evidence, maintain/repair, auction unless another method appropriate

B. No advertising

C. Only private sale to bank

D. No valuation

E. No repairs

Answer: A. Why: Additional duties for prescribed mortgage.

Question 92. LTA s 79 effect after mortgagee sale registration:

A. Buyer gets mortgagor interest free from mortgage and later mortgages

B. Sale void always

C. Mortgagor keeps title

D. Easement created

E. Profit expires

Answer: A. Why: Registration vests interest free from relevant mortgages.

Question 93. PLA s 118(2) first applies proceeds to:

A. Reasonable costs of sale

B. Owner balance

C. Subsequent mortgages

D. Gifts

E. Neighbour compensation

Answer: A. Why: Costs of sale first.

Question 94. Under PLA s 118(2), balance after mortgages goes to:

A. Owner/mortgagor

B. Mortgagee keeps all

C. Agent

D. Registrar

E. State always

Answer: A. Why: Surplus goes to owner.

Question 95. PLA s 116(4) requires notice to mortgagor within:

A. 28 days after completion

B. 7 years

C. 1 day before settlement

D. Never

E. 6 months

Answer: A. Why: Notice after completion within 28 days.

Question 96. Receiver is deemed agent of mortgagor under:

A. PLA s 123(4)

B. PLA s 28

C. LTA s 90

D. NCC s 30

E. PLA s 181

Answer: A. Why: Receiver avoids mortgagee possession liabilities partly.

Question 97. Foreclosure does what?

A. Removes mortgagor right of redemption

B. Creates rent credit

C. Creates easement

D. Severs JT only

E. Discharges all debts automatically

Answer: A. Why: Foreclosure extinguishes redemption.

Question 98. Mortgagee usually prefers sale to foreclosure because foreclosure is:

A. Expensive/time-consuming/uncertain

B. Always cheaper

C. Mandatory

D. Automatic

E. No court involved

Answer: A. Why: Slides say mortgagees prefer sale.

Question 99. After improper mortgagee sale and registration, mortgagor's likely remedy is:

A. Damages under PLA s 117(3)

B. Automatic title recovery always

C. Profit

D. JT severance

E. No remedy ever

Answer: A. Why: LTA indefeasibility makes damages key.

Question 100. Which is a pre-sale mortgagor remedy?

A. Injunction

B. Profit release

C. Joint tenancy

D. Public utility easement

E. Possessory title

Answer: A. Why: Injunction can stop invalid/improper sale.

Part B — 50 Short Questions and Model Answers

1. Define joint tenancy.

Model answer: A form of co-ownership in which each joint tenant is seised of the whole subject to the equal rights of the others, with the right of survivorship.

2. Define tenancy in common.

Model answer: Co-ownership in which each owner holds a distinct undivided proportionate share that can pass under a will or intestacy.

3. What is survivorship?

Model answer: On the death of a joint tenant, the deceased's interest is absorbed by the surviving joint tenant or tenants rather than passing through the estate.

4. What is severance?

Model answer: The destruction of the joint tenancy as to a share so that the relevant owners thereafter hold as tenants in common.

5. What is an equitable mortgage?

Model answer: A security over land recognised in equity where the parties intended to create a mortgage but legal registration or formalities are incomplete.

6. What is the equity of redemption?

Model answer: The mortgagor's residual proprietary interest and equitable right to recover the property free of the mortgage after satisfying the secured obligation.

7. What is a clog on redemption?

Model answer: A mortgage term or collateral advantage that impermissibly makes redemption illusory, excessively postponed or burdened beyond repayment.

8. What is acceleration?

Model answer: A contractual consequence making the entire outstanding debt immediately payable following specified default.

9. What is a mortgagee's power of sale?

Model answer: The power to sell mortgaged property after default and satisfaction of statutory/contractual preconditions in order to recover the secured debt.

10. What is market value in mortgagee sale analysis?

Model answer: The value produced by a hypothetical transaction between a willing but not anxious vendor and purchaser after proper market exposure and ordinary business consideration.

11. What is an easement?

Model answer: A non-possessory proprietary right attached to land allowing defined use of another parcel or, for recognised negative easements, restraint of specified use.

12. What is the dominant tenement?

Model answer: The land benefited by an easement.

13. What is the servient tenement?

Model answer: The land burdened by an easement.

14. What is an easement in gross?

Model answer: An easement not attached to a dominant tenement; generally not recognised at common law but available in specified statutory public-utility contexts.

15. What is abandonment of an easement?

Model answer: A fixed intention never again to assert or transmit the easement; mere long non-use is ordinarily insufficient.

16. Define profit à prendre.

Model answer: A proprietary right to enter another's land and take naturally occurring products or substances from it.

17. What is a profit in severalty?

Model answer: An exclusive profit exercisable by the holder rather than in common with the landowner or others.

18. Define bare licence.

Model answer: A gratuitous personal permission to enter or remain on land, ordinarily revocable and non-proprietary.

19. Define contractual licence.

Model answer: A personal permission to use or enter land created by contract and enforceable according to contractual rights.

20. What is a licence coupled with an interest?

Model answer: A licence ancillary to a proprietary interest, such as the right to enter land to exercise a profit à prendre.

21. Define lease.

Model answer: A grant of exclusive possession of land for a certain or ascertainable term shorter than the grantor’s own interest, creating both contractual and proprietary rights.

22. What is exclusive possession?

Model answer: The legal right to exclude the world, potentially including the landlord subject to reserved rights of entry.

23. What is a periodic tenancy?

Model answer: A tenancy that continues from period to period until terminated by proper notice.

24. What is tenancy at will?

Model answer: Occupation with consent that is terminable by either party, subject in Queensland to applicable reasonable-notice rules.

25. What is quiet enjoyment?

Model answer: The tenant’s right not to have possession and enjoyment substantially interfered with by the landlord or persons claiming through the landlord.

26. What is non-derogation from grant?

Model answer: The principle that a grantor must not substantially take away or frustrate the benefit of what was granted.

27. What is assignment of a lease?

Model answer: Transfer by a tenant of the whole residue of the leasehold interest to another person.

28. What is sublease?

Model answer: A grant by the tenant of a lesser term, leaving a reversion in the original tenant.

29. What is forfeiture?

Model answer: Termination of a lease by the landlord for qualifying breach under the lease and applicable law.

30. What is relief against forfeiture?

Model answer: Equitable or statutory relief restoring or protecting the lease where justice requires, often after cure or compensation of the breach.

31. What is a retail shop lease?

Model answer: A lease falling within the Retail Shop Leases Act 1994 (Qld) definitions and therefore subject to mandatory statutory protections.

32. What is a ratchet clause?

Model answer: A rent-review term preventing rent from decreasing even if the prescribed review method would produce a lower rent.

33. What is key money?

Model answer: A prohibited premium or payment demanded for the grant, renewal or assignment of a retail shop lease outside legitimate statutory categories.

34. What is a freehold covenant?

Model answer: A promise concerning use or conduct in relation to freehold land, potentially benefiting and burdening successors subject to common law, equity and statute.

35. What does "touch and concern" mean?

Model answer: The covenant must affect the land's use, occupation, nature or value rather than confer merely personal benefit.

36. What is annexation of covenant benefit?

Model answer: Attachment of the covenant's benefit to identified land so it passes with that land to successors.

37. What is a scheme of development?

Model answer: An equitable arrangement under which owners of lots in a defined development may mutually enforce common restrictive covenants.

38. State the rule in Tulk v Moxhay.

Model answer: Equity may enforce the burden of a restrictive covenant against a successor where the covenant benefits identifiable land, was intended to run and the successor is affected by the relevant equitable notice/priority rules.

39. What is accretion?

Model answer: Gradual natural addition of land caused by movement of a natural boundary.

40. What is erosion?

Model answer: Gradual natural loss of land caused by movement of a natural boundary.

41. What is avulsion?

Model answer: A sudden change in a natural boundary that ordinarily does not alter title in the same way as gradual erosion or accretion.

42. What is encroachment?

Model answer: A building or structure extending across the legal boundary onto neighbouring land.

43. What is a Community Management Statement?

Model answer: The recorded instrument governing a Queensland community titles scheme, including by-laws and lot entitlement schedules.

44. What is common property?

Model answer: Scheme land not included in an individual lot, owned jointly by lot owners in statutory proportions.

45. What is an exclusive-use by-law?

Model answer: A by-law attaching to a lot that grants its occupier exclusive use or enjoyment of specified common property or a body corporate asset.

46. What is native title?

Model answer: Rights and interests in land or waters possessed under traditional laws and customs and recognised by Australian common law under the Native Title Act framework.

47. What does NTA s 223 require?

Model answer: Traditional laws/customs, connection with land or waters by those laws/customs, and rights/interests recognised by the common law.

48. What is extinguishment of native title?

Model answer: Permanent removal of native title rights to the extent valid governmental rights or acts are inconsistent with their continued existence, subject to the NTA framework.

49. What is an ILUA?

Model answer: A registered Indigenous Land Use Agreement dealing with native title rights, future acts, access, development, compensation or coexistence.

50. What is BATNA?

Model answer: The best alternative available if negotiation does not produce an agreement.

Part C — 12 Integrated IRAC Problems with High Distinction Answers

The first seven integrated problems below are drawn from the existing master revision material. Five further mixed-topic problems are added so that this section contains twelve complete examination problems.

13.1 Supplied Revision Question 1 — Robina joint tenants + mortgagee sale

Question — Peter, Paul and Mary are registered joint tenants of Robina land. Bank holds registered mortgage. After months of default it sends a power-of-sale notice demanding full loan within 30 days. Peter dies in early June. Paul later executes and registers a self-severance in mid-July. Bank's agents hold a poorly advertised auction two days before a major week-long holiday, relying on a six-month-old valuation; sale is $250,000 below market to an unrelated genuine buyer. Contract signed; completion/registration still weeks away. Advise Paul, Mary and Peter's executor.

I — ISSUES

Effect of Peter's death on JT before Paul's later severance.

Whether Paul's later self-severance changes the surviving co-ownership shares.

Validity and timing of bank power of sale/default notice.

Breach of PLA s 116 market-value/reasonable-care duty and common-law good faith.

Mortgagor/co-owner remedies before purchaser registration and damages after registration.

II — RULE / LAW

JT survivorship: deceased interest passes automatically to surviving JTs unless severed before death. A will/executor receives no unsevered JT share.

Severance: Williams v Hensman; effective registered transfer/dealing can sever. After Peter's death only Paul and Mary remain. If Paul validly transfers his interest to himself as TIC through required procedures/registration, the JT between Paul and Mary is severed and each holds an undivided half as TIC.

Mortgage survives death/severance because registered mortgage burdens land; co-owner changes do not destroy lender security.

Power: mortgage/PLA s 113, LTA s 78; PLA s 114 notice + continuation of default for 30 days; NCC notice only if s 5/s 7 consumer threshold proven.

Sale duty: PLA s 116(2) reasonable care to ensure market value; Emerson/Spencer/Cameron/Pendlebury. Good faith Kennedy; Cuckmere; Nixon says bank cannot escape duty by delegating to reputable agents.

Remedies: urgent caveat/injunction where sustainable before completion/registration; possible set-aside depending improper exercise and purchaser equities; PLA s 117 damages. After registration, Torrens indefeasibility substantially protects innocent buyer absent exception.

III — APPLICATION

Peter died before Paul's July severance. On the facts there was no earlier Peter severance. Peter's interest therefore disappeared through survivorship and enlarged Paul and Mary's interests. Peter's executor does not receive one-third of the land; the estate may retain personal claims unrelated to ownership but no JT share. Paul's later dealing cannot retroactively restore Peter's estate. If Paul completed the statutory self-severance and it was registered mid-July as the problem states, Paul and Mary thereafter hold their post-survivorship interests as tenants in common, most naturally one-half each.

The bank's security remains over the whole land despite death and severance. The notice appears aimed at acceleration and sale; exact statutory validity depends on service wording/timing and whether the NCC applies. The major facts strongly point to a defective sale process: major-holiday timing, almost no advance campaign, only one week online exposure, stale six-month valuation and a $250,000 shortfall. These matters combine rather than operate in isolation. Under Nixon, "we left it to reputable agents" is not a defence to the mortgagee's statutory duty. The low price alone does not prove breach, but it corroborates the deficient marketing/valuation process.

IV — REMEDIES / DAMAGES

Because the transfer has not yet registered, Paul and Mary should urgently consider injunctive relief and any caveat/proceeding necessary to preserve the challenge. Setting aside a sale to an unrelated innocent purchaser is more difficult than restraining completion before registration; after registration, indefeasibility makes recovery of land materially harder. PLA s 117 damages against the bank should be pleaded for the loss caused by failure to take reasonable care—potentially the difference between the price achieved and what a compliant market-value sale would probably have achieved, subject to causation/evidence. Peter's executor normally has no proprietary sale proceeds entitlement because survivorship occurred before sale; Paul/Mary own the equity subject to mortgage at relevant time.

V — CONCLUSION

Peter's estate likely has no share in the Robina land. Paul and Mary survived as JTs on Peter's death, then Paul's valid registered self-severance converted their relationship to TIC in equal post-survivorship shares. The bank had a security interest but appears exposed to a strong s 116(2) sale-duty challenge. The practical priority is immediate pre-registration relief plus a preserved s 117 damages claim.

13.2 Supplied Revision Question 2 — Blueberry Villa covenants + stable encroachment

Question — Damon retained Apple Cottage after subdivision and sold Blueberry Villa to Niles under written promises: only single-level dwellings; no animal over a 15kg dog; plant roses along road boundary. Niles sells to Greg after showing him agreement, but clauses omitted from sale contract. Greg plans upper storey, horse, desert garden and builds stable partly on Damon's land. Advise Damon.

I — ISSUES

Benefit/burden of three covenants against Greg.

Positive versus restrictive classification.

Actual knowledge and equity/Torrens effect.

Encroachment/trespass and PLA ss 183-188 remedies.

II — RULE / LAW

Apply Ch 10: Rogers/Tulk, PLA s 64, common-law burden rule/Forestview, scheme principles if facts support. The first two are negative restrictions; roses is positive. Apply Ch 11 encroachment regime and Ex parte Van Achterberg/Gesmundo/Kostis/Steer.

III — APPLICATION

Single-storey and animal restrictions plausibly preserve adjoining residential amenity and can touch/concern Apple Cottage. Greg's pre-purchase knowledge assists equitable enforcement, though a full Torrens priority analysis remains necessary. The rose promise requires positive action/expenditure and does not run in equity under Tulk merely because of notice. Stable physically occupies Damon's title and is a strong encroachment/trespass.

IV — REMEDIES / DAMAGES

Injunction restraining upper storey/horse if restrictive covenants bind; damages/equitable damages if appropriate. For roses, direct enforcement against Greg is weaker absent fresh covenant/statutory route; contractual remedies remain against Niles as original covenantor if loss/obligation persists. For stable, Damon may seek removal/mandatory injunction, compensation or statutory property adjustment under PLA ss 183-188.

V — CONCLUSION

Damon's strongest covenant claims are the two negative amenity restrictions. The rose obligation is materially weaker against Greg. The stable gives Damon a separate strong encroachment claim, but the final remedy is discretionary rather than automatically demolition.

13.3 Supplied Revision Question 3 — Elaine's Burleigh Heads lease

Question — James and Elaine sign a notebook page on 30 June for a five-year ground-floor florist/café lease beginning 1 July, $2,000 + GST monthly, 75% outgoings, default clause for arrears + lost future rent, and annual rent review that can never decrease. James gives keys immediately; formal lease signed a week later. Elaine discovers little pedestrian/vehicle traffic and worries about profitability. Advise.

I — ISSUES

Binding agreement/lease and certainty; writing/registration/equity.

Whether retail shop lease legislation applies.

Outgoings validity/apportionment.

Ratchet rent clause.

Future-rent default damages.

Any traffic-flow representation/disclosure claim.

II — RULE / LAW

Apply PLA ss 7-10 and LTA long-lease registration; Walsh v Lonsdale/part performance as necessary. If RSLA threshold met, apply ss 5A-5D, 12,16,17; s 21B/Form 7; s 24 payment limits; ss 37-38 outgoings; s 27 and s 36A rent review/ratchet; s 43AA false/misleading statements; Shevill/Tabali for future-rent damages.

III — APPLICATION

The signed notebook identifies parties, premises, rent, use, start and five-year duration, so it is unusually complete and strongly supports a binding written agreement, with possession from 1 July. Five years requires registration for legal lease, but contract/equity may bind between parties. The 75% outgoings clause cannot simply override RSLA apportionment if the Act applies; actual area/benefit formula must comply. The no-decrease review is a ratchet and void to statutory extent. The default clause cannot itself convert every default into repudiation; Shevill/Tabali require classification. On traffic, the given facts do not state James made a traffic representation. Mere disappointment in passing trade is not a cause of action; check Form 7, item 25 traffic data and item 28 other representations.

IV — REMEDIES / DAMAGES

Elaine can seek statutory correction/declaration on rent/outgoings, compensation if a false/misleading representation is proven, and use retail dispute resolution. Termination cannot be assumed merely because business is unprofitable. If disclosure was materially defective, s 21F may create a time-limited termination route subject to defence. Future-rent damages against Elaine depend on repudiatory breach, not mere clause wording.

V — CONCLUSION

The core lease bargain is likely enforceable between James and Elaine. Elaine's strongest legal protection is the mandatory RSLA control of ratchet/outgoings/disclosure if the premises are a retail shop lease; low traffic alone is not enough without a representation or disclosure breach.

13.4 Supplied Revision Question 4 — The Keys CTS + easement

Question — Six-lot Standard Module CTS. Committee grants chair Michael/Lot 5 exclusive use of 16m² common property beside Lot 6 for restaurant seating, making delivery access difficult. Kelly/Lot 6 has contribution 7, interest 1 while Michael has contribution 1, interest 7. Access to scheme is by 1970 easement over Christian's land for "all reasonable access purposes"; it lay little-used for decades and now trucks use it, sometimes stopping partly on easement. Advise Michael, Kelly and Christian.

I — ISSUES

Exclusive-use validity and committee authority.

Lot entitlement validity/adjustment.

Easement scope—vehicles/trucks; effect of historic purpose/subjective statement; abandonment by non-use; loading beyond passage.

II — RULE / LAW

Exclusive use: BCCMA ss 170,171,62(2), CMS recording. Entitlements: ss 46-50 and equality/relativity/market-value principles. Easement: Westfield objective registered construction; broad "all reasonable access purposes"; Treweeke non-use/abandonment; PLA s 181 modification; nuisance remedies for excessive/interfering use.

III — APPLICATION

Michael's committee resolution is insufficient for exclusive-use by-law/CMS right requiring whole-body corporate process/resolution without dissent. Kelly's inverse numbers and friendship evidence strongly justify statutory adjustment inquiry though comparable size alone is not decisive. Christian's private recollection that prior owner said "pedestrian only" is weak against broad registered wording and bitumen road character. Long non-use does not prove fixed intention to abandon. Vehicle/truck passage likely fits reasonable access; stopping/loading is more vulnerable if it converts a right of passage into occupation or materially increases burden.

IV — REMEDIES / DAMAGES

Kelly: invalidate exclusive use, seek CMS/body corporate orders and lot entitlement adjustment through specialist adjudicator/QCAT route. Christian: injunction/damages for use exceeding easement or seek PLA s 181 modification if criteria met, but cannot obstruct lawful access. Michael should cease relying on committee chair status as source of exclusive-use power and regularise or remove arrangement.

V — CONCLUSION

Michael's exclusive-use arrangement is highly vulnerable. Kelly has substantial entitlement-adjustment grounds. The access easement likely survives and permits modern vehicles within reasonable access, but loading/standing must remain within the registered right and not substantially interfere with Christian's servient land.

13.5 Supplied Revision Question 5 — Merino Station profit + water + native title

Question — Wally owns Merino Station. Nigel informally may remove up to 50 tonnes of rock/month for 3 years at $1,000/tonne, with exclusivity. Barcoo River runs through station. Freshwater People threaten native-title claim for fishing, hunting endangered "Western Walking Wombat" at annual ceremony and ceremonial use, supported by archaeology and continuing practices. Advise Wally.

I — ISSUES

Nigel's right: profit à prendre or licence/contract; formalities, registration and exclusivity.

Ownership/use of river water and fishing/resource regulation.

Native-title existence under NTA s 223, content, effect of Wally's title and later acts, future dealings/compensation.

Wildlife/endangered-species statutory overlay: native-title recognition does not automatically disapply conservation laws.

II — RULE / LAW

Profit: natural rock is apt subject; PLA s 8; LTA ss 97E-97M; equitable/caveat issues. Water: Water Act s 26 State control, s 96 domestic/stock, s 107 licence etc; riparian owner does not own flowing water. Native title: Mabo, Yanner, Fejo, Wik, Ward, De Rose; NTA ss 10,11,223,229-233,238. Any wildlife legislation is a separate regulatory layer and must be checked on actual species/permits; do not infer a traditional right equals unrestricted permission to take protected fauna.

III — APPLICATION

Nigel's substance is a profit because he enters to take naturally occurring rock, and exclusivity suggests profit in severalty. Informality weakens legal status; registration should be pursued. Wally cannot treat the river water as his private chattel. The Freshwater evidence is capable of satisfying s 223 if continuing traditional laws/customs and connection are proved; hunting/fishing/ceremonial rights are legally recognisable types under Yanner and s 223(2). But exact Wally title matters: a fee simple grant may have extinguished prior native title under Fejo; a non-exclusive pastoral interest would require Wik/Ward inconsistency analysis. The fictional endangered wombat introduces conservation regulation; a native-title right can coexist with regulation, but legality of taking the animal depends on the actual statutory regime.

IV — REMEDIES / DAMAGES

Formalise/register Nigel's profit and consider caveat until registered. For native title, Wally should participate in Federal Court/NNTT process, preserve evidence and consider ILUA for coexistence/future acts. Compensation exposure attaches to government/act framework rather than automatically making private landholder personally liable for every claimed loss. Seek specialist advice on wildlife/water licences before restricting or permitting activities.

V — CONCLUSION

Nigel likely has the substance of a profit but needs formal proprietary protection. Wally has no general ownership of flowing water. The native-title claim is factually plausible but cannot be resolved without exact Crown-title history; existence, extinguishment and regulation must be analysed separately.

13.6 Additional Integrated Exam Question 1 — retail lease + mortgage + assignment

HIGH DISTINCTION MODEL PROBLEM 1 AND MODEL ANSWER

Problem — Lessor owns a Gold Coast retail centre subject to a registered bank mortgage. Lessor grants Mia a seven-year registered retail shop lease after obtaining bank consent. Three years later Mia wants to assign to a well-capitalised restaurant group. Lessor refuses unless Mia pays $60,000 “consent premium”, pays all of lessor’s solicitor costs, and accepts a new clause that rent can never decrease. Meanwhile the bank begins mortgagee-sale enforcement against the centre. Advise Mia.

I — ISSUE

Assignment consent; prohibited/key-money style payment; lease legal costs; ratchet term; effect of bank mortgagee sale on bank-consented registered lease; remedies.

II — RULE / LAW

PLA s 142 unreasonable withholding/conditions; RSLA s 16-17 mandatory operation; s 39 key money/goodwill prohibition; s 48 costs; s 36A ratchet; s 50 assignment dispute; LTA s 66 and mortgagee consent; registered lease/Torrens effect.

III — APPLICATION

The proposed assignee appears commercially strong, so demanding a $60,000 premium unrelated to legitimate consent costs is vulnerable both as unreasonable consent leverage and prohibited payment/key money. Requiring all lessor legal costs conflicts with s 48 except permitted categories. A no-decrease rent term is a ratchet. Because bank consented before lease registration, s 66 supports lease validity against mortgagee, so sale should occur subject to Mia’s registered lease rather than erasing it merely because mortgage predates lease.

IV — REMEDIES / DAMAGES

Court order under PLA s 142; RSLA dispute/QCAT orders; repayment/compensation where statute allows; injunction to protect registered lease against improper interference; damages for breach/compensable loss.

V — CONCLUSION

Mia has strong statutory protection against the demanded conditions and strong priority protection because the registered mortgagee consented to the registered lease.

13.7 Additional Integrated Exam Question 2 — co-ownership + easement + encroachment

HIGH DISTINCTION MODEL PROBLEM 1 AND MODEL ANSWER

Problem — Sisters Ava and Bea own a rural Queensland property as tenants in common 70/30. Bea lives there alone and excludes Ava after an argument. Bea pays all mortgage/rates for two years and builds a $180,000 shed without Ava's consent. The shed accidentally extends 1.5 metres onto neighbour Noah's land. The property is landlocked except for a registered easement over Noah's land "for vehicular access". Bea has begun parking delivery trucks on the easement for an hour at a time. Ava seeks sale; Noah seeks to stop all easement use and demolish the shed. Advise all parties.

I — ISSUE

Co-owner sale/accounting/occupation rent; reimbursement for mortgage/rates/improvements; easement scope versus parking; encroachment remedy.

II — RULE / LAW

PLA ss 33-40, especially s 40(2)-(3): mortgage/rates, improvements, exclusion/occupation rent. Easement construction Westfield and interference remedies; right of access does not necessarily include prolonged parking. Encroachment PLA ss 183-188 and course cases.

III — APPLICATION

Ava can seek sale/division; 70/30 TIC means no survivorship. Bea's mortgage/rates payments are expressly relevant to reimbursement under s 40(2)(d); shed improvement may support adjustment if reasonably spent/beneficial but lack of consent and location problem affect equity. Bea's exclusion of Ava directly engages s 40(3)(b), supporting occupation-rent accounting. Noah cannot extinguish a registered vehicular easement merely because he dislikes use; vehicle passage is within wording, but hour-long truck parking is likely use beyond “access” and can be restrained. Shed encroachment is separate: Noah has strong trespass rights, but court may choose compensation/transfer/lease/removal under PLA ss 183-188.

IV — REMEDIES / DAMAGES

Sale order and s 40 accounting between sisters; injunction restraining parking beyond easement; damages for excess use; statutory encroachment order balancing removal against compensation/property adjustment.

V — CONCLUSION

Ava likely obtains sale/accounting. Bea receives credit for appropriate outgoings but may owe occupation rent and cannot assume full credit for unilateral shed cost. Noah must tolerate lawful vehicular passage but can restrain parking and seek proportionate statutory relief for the shed encroachment.

Integrated Problem 8 — Co-ownership, mortgage and retail lease

Question — Ava and Leo own a shopping strip as tenants in common 60/40. Ava alone grants a seven-year retail lease of one shop without Leo’s written agreement. The land is already subject to a registered bank mortgage and the bank does not consent. The tenant spends $300,000 on fitout after receiving an incomplete disclosure statement. The bank later exercises power of sale. Advise Ava, Leo, the tenant and bank.

I — ISSUE

The issues combine co-owner authority, status of the lease, prior registered mortgage, retail disclosure, bank sale and remedies.

II — RULE / LAW

Analyse the 60/40 tenancy in common and whether Ava could bind Leo’s share. Apply PLA ss 7-10 and LTA lease-registration provisions, LTA s 66 on post-mortgage leases and bank consent, and the Retail Shop Leases Act threshold/disclosure provisions including ss 21B and 21F. For the mortgagee sale apply PLA ss 113-118 and LTA s 79.

III — APPLICATION

Ava may contract in relation to her own interest but cannot simply confer exclusive possession binding Leo's separate proprietary share without authority. Even if the lease is effective between Ava and tenant in some form, the absence of bank consent is a serious priority problem under LTA s 66 because the mortgage predates the lease. The tenant's substantial fitout increases practical loss but does not by itself overcome Torrens priority. The incomplete disclosure statement must be separately assessed for RSLA termination/compensation consequences. If the bank validly sells, the tenant's survival depends on the lease's status and mortgagee consent rather than mere occupation.

IV — CONCLUSION

The tenant has potentially strong personal/statutory claims against Ava but materially weaker proprietary protection against the bank if the lease was not binding on the mortgagee. Leo is unlikely to be bound merely by Ava's unilateral grant.

V — REMEDIES / ORDERS

Potential relief includes declaration as to lease scope, damages against Ava, RSLA termination/compensation, urgent injunction if the bank sale process itself is defective, and any sale-duty damages under PLA s 117. The bank should verify the lease and possession but can rely on its registered priority subject to statutory exceptions.

Integrated Problem 9 — Easement, body corporate and covenant

Question — A community titles scheme has a registered access easement over neighbouring land. The CMS also contains a restrictive covenant that each ground-floor lot must remain residential. The body corporate adopts a by-law authorising Lot 1 to operate a busy café and places outdoor tables within the easement corridor on common property. The neighbour complains that deliveries block the access easement and another owner seeks to enforce the residential restriction.

I — ISSUE

The problem raises easement scope/interference, body corporate by-law power, common-property use, and enforceability of a restrictive covenant.

II — RULE / LAW

Apply the registered easement instrument and Westfield construction principles; substantial interference can attract injunction/damages. Under BCCMA ss 168-180, a by-law cannot exceed statutory power or be oppressive/unreasonable and exclusive/common-property use must comply with CMS procedures. For the residential covenant, apply the freehold covenant framework including benefit/burden and Tulk v Moxhay where appropriate.

III — APPLICATION

Café deliveries and tables do not automatically breach the easement, but physical obstruction of the corridor can substantially interfere with the neighbour's registered right. The body corporate cannot use an ordinary by-law to override another registered proprietary interest or an enforceable restrictive covenant. If the residential restriction benefits identifiable land and its burden runs in equity/statute, the café authorisation does not extinguish it. The body corporate must also identify whether any exclusive-use allocation was properly adopted through the CMS process.

IV — CONCLUSION

The neighbour and affected owner each have substantial claims on different legal foundations. The access dispute is an easement issue; the café-use dispute is a covenant/body-corporate issue.

V — REMEDIES / ORDERS

Likely remedies include injunction restraining obstruction and prohibited café use, damages for easement interference, body corporate adjudication orders, and CMS/by-law correction where statutory procedures were not followed.

Integrated Problem 10 — Boundary, profit and mortgagee sale

Question — A rural owner grants an unregistered written profit allowing a quarry operator to remove gravel for ten years. The operator excavates close to a surveyed boundary and accidentally removes material from the neighbour's land. The rural owner later mortgages the property and defaults. The mortgagee plans to sell to a purchaser who knows the operator is on site but has not seen the profit document.

I — ISSUE

The issues are validity and priority of the equitable profit, trespass/boundary liability for excavation beyond title, and the effect of a later mortgagee sale on the operator's rights.

II — RULE / LAW

Apply PLA s 8 and LTA ss 97E-97M to the profit; lack of registration leaves the operator with an equitable interest only. Apply boundary/trespass principles to excavation beyond the survey line and relevant encroachment rules only if a qualifying structure exists. For the mortgagee sale, determine mortgage priority, statutory sale duties and Torrens effect under LTA s 79, remembering that purchaser knowledge alone does not necessarily defeat registration.

III — APPLICATION

The operator has a strong equitable profit against the grantor because the written grant concerns naturally occurring gravel, but failure to register creates priority risk. Excavation over the boundary is separate and constitutes trespass regardless of the profit because the grantor cannot authorise extraction from the neighbour's title. If the mortgage was registered after the equitable profit, priority must be analysed under Torrens/equitable principles and any caveat conduct. A later registered purchaser through mortgagee sale may take free of interests according to the statutory scheme unless an exception preserves them.

IV — CONCLUSION

The operator's best substantive right is against the grantor, but its third-party protection depends on priority and registration. The neighbour has a direct trespass claim for over-extraction.

V — REMEDIES / ORDERS

The operator should consider caveat/registration and injunction before sale. The neighbour may seek damages, injunction and restoration-related relief. Claims against the mortgagee depend on breach of sale duties or recognition of the operator's prior interest.

Integrated Problem 11 — Native title, easement and water

Question — A proposed eco-resort in northern Queensland requires a new access road across Crown land, a water extraction licence and an easement over neighbouring pastoral land. A registered native title claim asserts ceremonial and fishing rights along the river corridor. The developer assumes the easement and water licence will override any native title concerns.

I — ISSUE

The issues are creation of the access easement, statutory water rights, native-title existence and future-act consequences of governmental approvals.

II — RULE / LAW

The easement must satisfy ordinary proprietary requirements and be created/registered under the LTA. Water is controlled by the Water Act 2000 (Qld), not privately owned merely because land adjoins the river. Native title is governed by Mabo and NTA ss 10, 11, 223 and the future-act regime in s 233 and related provisions. Government grants such as licences/easements may affect native title and may require procedural compliance, negotiation or an ILUA.

III — APPLICATION

The developer is wrong to treat the proposed easement and water licence as private arrangements that automatically displace native title. Ceremonial and fishing rights are capable of native-title content if s 223 is satisfied. Each proposed governmental act must be assessed for inconsistency and future-act validity. The water licence may regulate extraction but does not resolve native-title access or cultural rights. The easement must also be validly created against the pastoral land and its scope precisely defined.

IV — CONCLUSION

The project may proceed only after the property, water and native-title regimes are each satisfied; none substitutes for the others.

V — REMEDIES / ORDERS

The developer should pursue proper easement documentation, water licensing, NTA notification/negotiation and an ILUA where appropriate. Injunction, determination and compensation risks should be incorporated into project planning.

Integrated Problem 12 — Lease forfeiture, covenant, encroachment and settlement

Question — A commercial tenant operates under a registered lease requiring the premises to be used only as professional offices. The tenant converts part to a gym, installs heavy equipment that damages the floor, and constructs an external stair that extends 60 centimetres onto neighbouring land. The landlord serves a remedy notice giving five days to cease the gym and repair all damage, then threatens forfeiture. The parties begin settlement talks and propose a deed allowing the gym to continue for increased rent while the neighbour demands removal of the stair.

I — ISSUE

The problem combines lease covenant breach, forfeiture procedure and relief, boundary encroachment, and settlement drafting.

II — RULE / LAW

Apply the lease use/repair covenants and PLA s 153 reasonable-time notice machinery, together with forfeiture and relief provisions in ss 160-162 and relevant cases. The external stair creates a distinct encroachment governed by PLA ss 183-188. Settlement can be documented by deed, but the landlord cannot settle away the neighbour’s independent proprietary rights. Any variation allowing gym use should also consider registration/mortgagee consent where required.

III — APPLICATION

The tenant likely breached both use and repair obligations. Five days may be reasonable to stop gym use but may be inadequate to complete substantial structural repairs; the notice must be tested against each required cure. Even a valid forfeiture power remains subject to relief. The stair is a separate trespass/encroachment against the neighbour, so a landlord-tenant deed cannot validate it without the neighbour’s participation. A settlement permitting the gym should specify rent, works, approvals, releases, default and any formal lease variation.

IV — CONCLUSION

The parties can settle the landlord-tenant dispute, but the deed must not pretend to resolve the neighbour’s encroachment rights. Forfeiture validity depends on the notice and breach classification.

V — REMEDIES / ORDERS

Tenant may seek relief against forfeiture; landlord may recover repair costs/damages and enforce lawful use terms. The neighbour may seek removal, compensation or statutory adjustment under ss 183-188. Any settlement deed should be conditional on necessary approvals and separately address the neighbour if a property adjustment is proposed.

Final Examination Method

For every problem, begin with the main proprietary relationship and work outward. Identify the parties and interests, then the governing statutory regime, then common-law or equitable doctrines, then priority/registration where relevant, then remedies. Use section numbers precisely. Apply each element to the facts and cite authorities for propositions rather than as decoration. Your conclusion should answer the legal question and state the practical order or remedy that should follow.

2.5-HOUR EXAM METHOD

Use the first minutes to map parties, land, registered interests, contractual rights, equitable rights and remedies. Write the main issue and sub-issues before drafting.

For every proposition: exact statutory provision first where legislation controls, then the case/authority proposition, then application. Application should be the largest part of every answer.

Finish each issue with the immediate practical remedy or protective step - for example injunction, caveat, sale/division, possession, compensation, accounting, relief against forfeiture, QCAT/body-corporate process or native-title relief - and explain why it is available.

PART D - SIX MIXED-TOPIC CAPSTONE PROBLEMS WITH HIGH DISTINCTION MODEL ANSWERS

These six capstones deliberately combine the subject areas rather than presenting one isolated doctrine at a time. Across the six problems they revisit every major chapter: co-ownership, mortgages, easements, profits, licences, negotiation and deeds, leases, retail shop leases, covenants, boundaries, strata and native title.

13.13 CAPSTONE 1 - Co-ownership, severance, mortgage default and negotiated settlement

Question

Ava, Ben and Chloe are registered joint tenants of a Toowoomba investment property. Ava contributed 50% of the deposit, while Ben and Chloe each contributed 25%, and the parties agreed by email that expenses and eventual sale proceeds would reflect those proportions. The property is subject to a registered first mortgage to Horizon Bank. After Ben and Chloe stop contributing, Ava pays the mortgage and rates alone. Ben later signs and lodges a transfer of his interest to himself as tenant in common but dies before the Titles Registry records the dealing. Horizon then serves a power-of-sale notice and, despite an earlier written bank concession giving the owners another two months to cure the arrears, arranges a poorly advertised auction using a two-year-old valuation. Before the auction, the surviving owners and the bank begin settlement negotiations. Advise the parties and identify what a settlement deed should address.

HIGH DISTINCTION MODEL ANSWER

I - ISSUES

The problem requires separate analysis of the registered joint tenancy, beneficial ownership, possible severance before Ben's death, survivorship, contribution and accounting, the bank's contractual concession, the statutory power-of-sale preconditions and sale duties, and the content and authority needed for a negotiated deed of settlement.

II - RULE / LAW

Start with the co-ownership framework. A registered joint tenancy carries survivorship unless severed before death. Williams v Hensman organises severance into unilateral dealing, mutual agreement and course of dealing. Corin v Patton is important where a transferor dies before registration because equity asks whether the transferor did everything necessary within his or her power to complete the transfer. The financial relationship must then be kept separate from title: PLA ss 27 and 33-40 support accounting, sale/division and adjustment between co-owners.

For the mortgage, distinguish the existence of the registered charge from enforcement. Apply PLA ss 113-118, especially the notice requirements in s 114 and the market-value duty in s 116(2). Cuckmere Brick and the course mortgage authorities require genuine care in the sale process. A prior written concession by the bank may also affect whether the bank is contractually or equitably entitled to act when it does. If sale has not completed or registered, urgent proprietary relief may still matter; after an innocent purchaser becomes registered, damages may become the principal remedy.

Negotiation must remain client-directed. The parties should identify BATNA/WATNA, valuation evidence, refinancing capacity, arrears, contribution claims and timing. Any deed should accurately implement the authorised outcome and deal with payment, mortgage standstill or discharge, sale/refinance steps, releases, accounting between co-owners, costs, cooperation, default and execution.

III - APPLICATION

Co-ownership and severance. The registered starting point is joint tenancy, but the email about proportions is relevant to beneficial ownership and financial adjustment. Ava should not assume the 50/25/25 agreement automatically changed the registered estate. Ben's lodged self-transfer is much more significant to severance. If the dealing was registered before death, legal severance is straightforward. Because he died first, the critical equitable question is whether he had completed every act required of him so that registration was merely an administrative step. If he had not, survivorship may operate in favour of Ava and Chloe. If equity treated the transfer as complete, Ben's severed share can pass to his estate.

Accounting. Ava has a strong claim to have the post-default mortgage payments, rates and other proper outgoings brought into account. The agreed 50/25/25 allocation is relevant evidence of the intended economic arrangement. Rental income, if any, must also be credited rather than allowing Ava to claim expenditure without recognising receipts. The court's adjustment powers should be analysed independently of the survivorship question.

Mortgage enforcement. Horizon cannot treat default as ending the analysis. The written concession is factually important because it may mean the asserted default was not yet enforceable in the manner assumed. Even if the statutory power was ultimately enlivened, a two-year-old valuation and poor advertising materially weaken the bank's ability to show reasonable care to obtain market value. The safer answer is that the validity of the power and the manner of sale are two distinct issues, and both need to be resolved before auction.

Negotiated solution. The strongest commercial settlement may be a short standstill coupled with a defined refinance or private-sale process using independent valuation and marketing. Ava's contribution claim can be recorded separately from the bank debt. The deed should avoid purporting to decide Ben's estate interest unless the relevant personal representative is a party and the ownership issue is capable of being settled. It should state who signs transfer or mortgage-discharge documents, dates for payment, consequences if refinancing fails, and the scope of releases.

IV - REMEDIES / PROTECTIVE STEPS

Before a challenged sale, Ava and Chloe should consider urgent injunction proceedings and any properly founded caveat or other protective step, while also seeking declarations about Ben's interest and co-owner accounting. If a sale proceeds in breach of the mortgagee's duty, damages under the statutory and general principles may follow. A consensual deed can reduce litigation risk, but it must be executed by all parties whose rights it purports to settle and must not substitute for required Torrens registration instruments.

V - CONCLUSION

The best answer separates title, equity, accounting and mortgage enforcement. Ben's estate succeeds only if severance was legally or equitably effective before death. Ava has a substantial accounting claim regardless. Horizon faces real enforcement risk if it disregards its written concession or sells through an obviously deficient process. The commercially strongest outcome is a tightly drafted, authorised standstill/refinance or sale deed supported by current valuation evidence and precise registration obligations.

13.14 CAPSTONE 2 - Easement access, profit à prendre, licence, and boundary encroachment

Question

Riverstone Farm benefits from a registered 3-metre right of way across neighbouring Hill Farm “for all reasonable vehicular and pedestrian access”. Riverstone also grants ChefCo, by signed but unregistered agreement, the exclusive right for four years to enter a bush paddock and collect naturally occurring truffles. Separately, Riverstone tells a local tour operator it may use a lookout area every weekend for a fee, but the operator has no right to exclude Riverstone and takes nothing from the land. Hill Farm installs a locked gate and concrete planter boxes that narrow the right of way. ChefCo discovers that Riverstone has contracted to sell to a purchaser who says the truffle agreement is only a licence. A survey then reveals that Riverstone's recently built shed roof and footings extend 30 centimetres into Hill Farm. Advise all parties.

HIGH DISTINCTION MODEL ANSWER

I - ISSUES

The issues are the scope and interference with the registered easement; characterisation and protection of ChefCo's extraction right; characterisation and revocability of the tour operator's right; the effect of the proposed sale on unregistered proprietary rights; and the statutory response to the shed encroachment.

II - RULE / LAW

The easement must be construed objectively from its registered terms under Westfield Management. A servient owner may make reasonable use of its land but cannot substantially interfere with the granted access. Injunction and damages are available for actionable interference. PLA s 181 and LTA amendment/release provisions are relevant if the parties seek formal modification rather than enforcement.

A profit à prendre is a proprietary right to enter land and take naturally occurring produce or substances. LTA ss 97E-97M provide the Queensland Torrens framework. Clos Farming helps distinguish a true profit from a broader farming or personal arrangement. A signed but unregistered grant may be equitable and potentially caveatable, but registration is the safest protection against a later purchaser.

A licence is ordinarily personal permission. The tour operator's weekend use, without exclusive possession and without taking natural produce, strongly resembles a contractual licence rather than a lease, easement or profit. Wrongful revocation may produce contractual or equitable remedies but does not automatically create a registrable proprietary right.

PLA ss 183-188 govern encroachments. Council or building approval does not alter the legal boundary. The court has remedial flexibility including removal, compensation and property-adjustment orders depending on the statutory factors.

III - APPLICATION

Easement. The words “all reasonable vehicular and pedestrian access” are broad. A gate is not automatically unlawful, but a locked gate combined with planter boxes that reduce the width may materially impede the expressly granted vehicular right. Hill Farm should provide practical access and avoid arbitrary restrictions. Riverstone has a strong argument for an injunction requiring the obstruction regime to be altered.

Profit. ChefCo enters to remove naturally occurring truffles, the core feature of a profit à prendre. The fixed term and exclusivity are consistent with a profit in severalty. The fact the document is unregistered means ChefCo should not rely on the purchaser's knowledge alone. It should urgently assess a caveat and seek execution and registration of the appropriate instrument before completion.

Licence. The tour operator does not have possession of the lookout and removes nothing from the land. The weekend permission for a fee is therefore most naturally contractual permission. If Riverstone revokes contrary to the agreed term, the operator's strongest remedies are contractual, with estoppel considered only if substantial reliance makes strict revocation unconscionable.

Boundary. The 30-centimetre roof and footing intrusion is a true structural encroachment. Riverstone cannot answer the proprietary complaint merely by pointing to building approval. The court would consider the circumstances, the degree of fault, hardship, value of the strip and feasibility of removal before selecting a remedy.

IV - REMEDIES / PROTECTIVE STEPS

Riverstone may seek an injunction against easement obstruction; ChefCo should seek registration and consider a caveat and injunction; the tour operator may pursue contract damages or suitable equitable relief; and Hill Farm may seek encroachment orders under PLA ss 183-188, including removal or compensation. The parties may also negotiate an easement amendment or boundary adjustment, but it must be properly documented and registered.

V - CONCLUSION

The legal classifications drive the result: the access right is a registered easement, the truffle right is strongly capable of being a profit, the lookout arrangement is a contractual licence, and the shed is an encroachment. Each right therefore has a different priority and remedy regime.

13.15 CAPSTONE 3 - Commercial lease, quiet enjoyment, assignment, forfeiture, retail disclosure and covenants

Question

Metro Properties leases a ground-floor shop in a Brisbane lifestyle centre to Bloom & Co for five years. The premises are used as a florist and café and the lease is registered. Before signing, Metro provides a late and incomplete lessor disclosure statement. The lease states that rent may increase on annual review but can never decrease. Two months after opening, Metro begins major demolition works directly above the shop, causing severe vibration, dust and repeated closure of the café. Bloom asks to assign the lease to a financially strong national operator. Metro agrees only if rent rises by 5% and the existing three-month security is doubled. Bloom then falls behind in rent. Metro serves a Notice to Remedy Breach giving 48 hours to pay all arrears and re-enters on the third day. The centre is also subject to a registered covenant restricting external signage to specified colours, and the proposed assignee wants bright black signage. Advise Bloom, Metro and the assignee.

HIGH DISTINCTION MODEL ANSWER

I - ISSUES

The problem raises lease validity and registration, quiet enjoyment and non-derogation, assignment consent, statutory retail-shop protections, ratchet rent review, disclosure, forfeiture procedure and relief, future damages, and enforcement of a restrictive covenant against the proposed assignee.

II - RULE / LAW

Radaich v Smith confirms that a lease is characterised by substance and exclusive possession. The registered five-year lease is a proprietary estate. Lease obligations include quiet enjoyment and non-derogation, subject to the express wording of the lease. PLA s 142 regulates consent to assignment in the circumstances addressed by the provision and makes unreasonable conditions vulnerable.

For forfeiture, apply PLA s 153 and the course authorities on adequate notice and reasonable time, together with ss 160-162 on relief against forfeiture. Shevill and Progressive Mailing House v Tabali distinguish termination from a right to recover future loss-of-bargain damages.

If the premises are a retail shop lease, the RSLA threshold, anti-contracting-out rule, lessor disclosure regime, ratchet prohibition, outgoings/compensation standards and dispute-resolution provisions apply. The late or incomplete Form 7 and no-decrease rent clause must be examined under the statutory provisions rather than ordinary freedom of contract.

The external-signage restriction is a separate freehold covenant question. If the benefit and burden run and the covenant is properly registered or otherwise enforceable, the assignee takes the lease subject to the land-use restriction independently of the landlord-tenant dispute.

III - APPLICATION

Interference. Major demolition above a florist/café causing dust, vibration and closure is capable of substantial interference. An express right for the landlord to carry out works, if any, would not necessarily authorise unreasonable conduct. Bloom has a strong quiet-enjoyment/non-derogation argument if Metro could have staged or controlled the works more reasonably.

Assignment. A national assignee with strong finances weakens any claim that extra security or higher rent is needed to protect Metro against performance risk. The 5% rent increase looks particularly like an attempt to renegotiate the bargain as the price of consent. The doubled security also requires justification. Bloom therefore has a substantial argument that the conditions are unreasonable where PLA s 142 applies.

Retail protections. The late and incomplete disclosure creates a distinct statutory issue and may support statutory termination or compensation depending on timing, materiality and the precise provision. The no-decrease rent-review term is a ratchet and is vulnerable under s 36A. Bloom should calculate any outgoings and other charges separately rather than treating the written lease as conclusive.

Forfeiture. A 48-hour cure period for two months of arrears is vulnerable if it does not provide the reasonable opportunity required in the circumstances. Re-entry on day three magnifies that risk. Even if rent default gave Metro a contractual right to forfeit, Bloom can seek relief against forfeiture and should offer to cure arrears and costs if commercially viable.

Covenant. The assignee's preferred black signage must be tested against the registered restrictive covenant. The landlord cannot promise away a covenant enforceable by other benefited landowners. Consent to assignment and permission for signage are therefore separate questions.

IV - REMEDIES / PROTECTIVE STEPS

Bloom may seek damages and/or injunction for lease interference, orders concerning assignment consent, RSLA compensation or other statutory relief, mediation/QCAT pathways, and urgent relief against forfeiture. Metro may recover genuine arrears and enforce valid covenants but must use lawful forfeiture procedure. The assignee should obtain written consent and check the registered covenant before committing to signage or fit-out.

V - CONCLUSION

Bloom has substantial rights on several independent legal bases. The strongest answer does not collapse them into “breach of lease”: quiet enjoyment, assignment, retail disclosure, ratchet rent, forfeiture and the freehold signage covenant each have their own test and remedy.

13.16 CAPSTONE 4 - Community titles scheme, easement, exclusive use, by-laws and leasehold occupation

Question

Ocean Vista CTS contains twelve apartments and two ground-floor restaurants. The body corporate committee purports to grant the chairperson's restaurant exclusive use of a 20-square-metre section of common property for tables. That area partially blocks the loading route used by another restaurant tenant under a registered easement benefiting its lot. The committee also enforces a by-law stating “no animals of any kind” against an owner seeking approval for a small assistance animal, while ignoring repeated smoke and late-night noise complaints against the chairperson's restaurant. The affected restaurant tenant threatens to withhold rent from its landlord because deliveries are disrupted. Advise the body corporate, the affected owner, the restaurant tenant and the landlord.

HIGH DISTINCTION MODEL ANSWER

I - ISSUES

The issues are validity of the exclusive-use arrangement, scope of committee authority, validity and reasonableness of the animal by-law, body corporate enforcement duties, interaction between common-property decisions and a registered easement, and the tenant's separate lease rights against its landlord.

II - RULE / LAW

The BCCMA governs the creation and administration of the body corporate, common property, by-laws, exclusive use and dispute resolution. BCCMA s 94 requires reasonable administration. Exclusive-use rights require the proper statutory by-law/CMS process rather than a committee simply allocating valuable common property informally. BCCMA ss 168-171 and s 180 regulate by-laws, and s 169B is central to animal by-laws.

The registered easement must be construed objectively under Westfield Management. Body corporate management of common property cannot simply extinguish or materially obstruct a registered proprietary access right. If the easement benefits the lot, the tenant's practical use may also depend on the lease and the lot owner's rights.

The tenant's rent obligation and lease remedies are separate. Serious access interference may engage quiet enjoyment or non-derogation depending on the landlord's responsibility and control, but a tenant should not assume it may withhold rent unilaterally without legal basis.

III - APPLICATION

Exclusive use. A committee-only grant of exclusive restaurant seating is unlikely to be enough if the BCCMA requires an exclusive-use by-law and CMS process with the specified resolution. The fact that the chairperson benefits also raises governance and reasonableness concerns. The arrangement should be treated as legally vulnerable until the correct process is demonstrated.

Easement. If the loading route lies within a registered easement, tables that materially impede deliveries may constitute substantial interference. The body corporate cannot rely on an internal resolution to defeat a registered land interest. The lot owner should enforce the easement and may seek an injunction requiring the common property to be kept sufficiently clear.

Animal by-law. A blanket prohibition on all animals is inconsistent with the statutory animal regime where approval must be assessed under s 169B and refusal is confined by the Act. The owner has a strong case to challenge the by-law or its application, particularly for an assistance animal.

Selective enforcement. Ignoring persistent smoke and noise while enforcing a questionable animal ban against another owner is relevant to whether the body corporate is acting reasonably and consistently. The correct contravention and dispute-resolution process should be used rather than ad hoc committee preference.

Lease. The restaurant tenant should notify the landlord formally of the access interference and seek enforcement of the lot's easement. If the landlord or body corporate conduct substantially impairs the tenancy, damages or injunction may be available, but withholding rent without a contractual or statutory basis could place the tenant in breach.

IV - REMEDIES / PROTECTIVE STEPS

The owner may pursue body corporate internal review and Commissioner/adjudication relief on the animal by-law. The benefited lot owner may seek injunction/declaration for the easement. The affected tenant should use its lease remedies and may coordinate with the landlord rather than unilaterally stop rent. The body corporate should suspend reliance on the defective exclusive-use arrangement and regularise any proposed right through the proper statutory process.

V - CONCLUSION

The body corporate's internal powers are not unlimited. Registered easements, statutory by-law constraints and the requirement of reasonable administration all limit what the committee can do. The tenant's lease rights then operate on a separate contractual/proprietary layer.

13.17 CAPSTONE 5 - Native title, pastoral lease, profit à prendre, water and proposed development

Question

Red Gum Station in western Queensland is subject to a long-standing non-exclusive pastoral lease. The Marloo people claim native title rights to conduct ceremonies, hunt, fish and gather bush foods across undeveloped parts of the station. Elders continue the ceremonies and younger members return seasonally, although modern vehicles, fishing equipment and phones are now used. The pastoral lessee has granted StoneCo a signed five-year right to enter a rocky paddock and remove naturally occurring stone, but the grant is not registered. A developer proposes a tourism complex beside a permanent waterhole and assumes that the pastoral lease extinguished all native title and that ownership of the station gives it ownership of all water. Advise the Marloo people, the lessee, StoneCo and the developer.

HIGH DISTINCTION MODEL ANSWER

I - ISSUES

The issues are proof of native title under NTA s 223, the effect of a non-exclusive pastoral lease and any improvements, future-act procedure for the tourism proposal, characterisation and priority of StoneCo's stone-extraction right, and statutory control of water.

II - RULE / LAW

Mabo recognises native title and radical title; NTA s 223 requires traditional laws and customs, connection and common-law recognition. Wik rejects the assumption that every pastoral lease confers exclusive possession. Ward requires rights-by-rights inconsistency analysis, while De Rose illustrates partial extinguishment associated with particular pastoral rights and improvements. Fejo is reserved for a genuinely inconsistent fee simple grant.

The tourism proposal must be classified under the NTA future-act regime. Depending on the act, notice, negotiation, agreement or other statutory procedures may apply, and compensation can arise. An ILUA may provide a practical framework for access, development, protection of sites and compensation.

StoneCo's right to enter and remove naturally occurring stone is classic profit à prendre subject matter. LTA ss 97E-97M govern legal creation and registration; a signed but unregistered right may be equitable and potentially caveatable. Flowing or natural water is not simply the pastoral lessee's privately owned chattel; Water Act 2000 (Qld) controls rights to take and use water.

III - APPLICATION

Native title. The Marloo evidence is capable of satisfying s 223. Continued ceremonies, seasonal return, oral teaching and consistent connection to country are legally significant. Use of modern equipment does not itself break continuity if the practices remain rooted in the traditional normative system. The pastoral lease therefore cannot be treated as automatic total extinguishment.

Pastoral inconsistency. The exact terms of the lease and the location of improvements must be compared with each claimed right. Exclusive use of a house, yards or constructed facilities may be inconsistent with some native title rights in those footprints, while ceremonial access, hunting or gathering may remain capable of coexistence elsewhere. The result is likely to be partial and spatially specific rather than all-or-nothing.

Future act. The developer cannot proceed on the assumption that the claim is irrelevant. It must identify claim/determination status, the nature of the governmental approvals or grants required and the applicable NTA process. Early negotiation of an ILUA may reduce legal and project risk.

Profit and water. StoneCo has a strong substantive profit because stone is naturally occurring material removed from the land. However, failure to register creates priority risk against later registered dealings, so StoneCo should consider a caveat and registration. The developer's assumption about water is also wrong: statutory water entitlements must be obtained or confirmed rather than inferred from land occupation.

IV - REMEDIES / PROTECTIVE STEPS

The Marloo people may pursue determination, future-act rights, negotiation and compensation. StoneCo should protect and register its profit. The pastoral lessee should disclose the native title and profit issues in any development transaction.

The developer should obtain native-title and water approvals before committing capital and should negotiate rather than rely on assumed extinguishment.

V - CONCLUSION

The problem turns on classification. A non-exclusive pastoral lease does not automatically extinguish all native title; StoneCo's extraction right is likely a profit rather than a mere licence; and water use is statutory. The developer must address each legal layer before the project can safely proceed.

13.18 CAPSTONE 6 - Full-spectrum Property Law B examination problem

Question

Mia and Noah buy a mixed-use property at the Gold Coast as tenants in common in equal shares, funded by a registered bank mortgage. The title benefits from a registered rear-lane easement and is burdened by an estate covenant limiting buildings to two storeys. The ground floor is leased to a retail tenant for six years; the landlord gave the tenant an incomplete disclosure statement and the lease contains a no-decrease rent review. Mia separately grants a chef a signed but unregistered three-year right to collect naturally occurring native herbs from the rear garden. Noah later grants a personal trainer weekend permission to use the courtyard for classes. A survey shows the neighbouring awning encroaches 20 centimetres onto Mia and Noah's land. The bank serves a default notice after repayments fall behind, while the body corporate for an adjoining access parcel begins placing bollards across part of the easement. Mia and Noah want to negotiate a global resolution, refinance and sell. Advise them on the issue-spotting sequence and the major rights and remedies.

HIGH DISTINCTION MODEL ANSWER

I - ISSUES

This final capstone requires the student to identify and order nearly every major Property Law B relationship: co-ownership, mortgage security and enforcement, easement, restrictive covenant, lease and retail statute, profit à prendre, licence, encroachment, body corporate interference and negotiation/settlement documentation.

II - RULE / LAW

Begin with the proprietary map. Mia and Noah are tenants in common, so each holds a distinct undivided share and survivorship does not apply. Their registered mortgage is a charge over the land. Any sale or refinance must account for the mortgage and both owners' authority.

The rear-lane easement is construed under Westfield and protected against substantial interference. The two-storey covenant must be analysed through the benefit/burden rules, including Tulk v Moxhay and any scheme-of-development principles. The neighbour's awning engages PLA ss 183-188 rather than being dismissed as a minor planning issue.

The retail tenant has leasehold rights and, if the RSLA threshold is met, mandatory statutory protections concerning disclosure and ratchet rent review. The chef's right to take naturally occurring herbs is capable of being a profit à prendre; the trainer's permission, without possession or extraction rights, is more naturally a contractual licence. The body corporate cannot use internal management powers to defeat a registered easement.

If the bank's power of sale is invoked, apply PLA ss 113-118 separately to notice and sale conduct. Negotiation then requires client authority, valuation evidence, BATNA/WATNA and a deed that coordinates refinance, discharge, sale, releases, easement access and any settlement of boundary or tenant issues.

III - APPLICATION

Ownership and mortgage. Because Mia and Noah are tenants in common, neither can unilaterally convey the entire fee simple. They should agree on sale instructions and how net proceeds will be distributed after mortgage discharge and any co-owner adjustments. If default continues, they must verify the validity and expiry of the bank's notice before assuming the bank can sell.

Easement and body corporate. Bollards that materially narrow a registered rear-lane easement may be substantial interference. The fact that the obstruction is installed by a body corporate does not change the proprietary character of the right. Mia and Noah should demand practical access and consider injunctive relief if negotiation fails.

Covenant and encroachment. The two-storey covenant matters to future development and sale disclosure. Its enforceability depends on the benefit and burden rules and the registered/development scheme context. The 20-centimetre awning intrusion is a distinct encroachment; a negotiated boundary licence is not necessarily enough if a permanent property solution is required, so statutory transfer, easement or removal options should be considered.

Retail lease. The six-year tenant cannot be treated as an obstacle that disappears on sale. Its registered lease and statutory retail rights travel with the property. The incomplete disclosure and no-decrease rent review should be corrected or priced into any settlement because the tenant may hold statutory remedies.

Profit and licence. The chef's right has the substance of a profit because the herbs are naturally occurring and are removed from the land. The absence of registration creates a priority problem before a sale, so the interest should be formally resolved or protected. The trainer has only permission to use the courtyard for classes and takes no produce; that arrangement is far more likely a contractual licence. Any sale contract should deal expressly with whether the licence is terminated or assumed.

Negotiation and transaction design. A global resolution should not merge all issues into one vague compromise. The owners need current valuation, bank payout figures, tenant disclosure status, easement access terms, the chef's proprietary claim and the encroachment survey. A deed can settle inter-party liabilities, but mortgage discharge, transfers, easement variations or other Torrens changes require the appropriate registrable instruments.

IV - REMEDIES / PROTECTIVE STEPS

Potential remedies include injunction for easement interference, statutory encroachment orders, retail-lease compensation or other RSLA relief, registration/caveat protection for the chef, contractual remedies for the trainer, mortgagee-sale damages if the bank breaches its duties, co-owner accounting, and court sale/division if Mia and Noah cannot cooperate. A global deed should coordinate rather than replace these proprietary mechanisms.

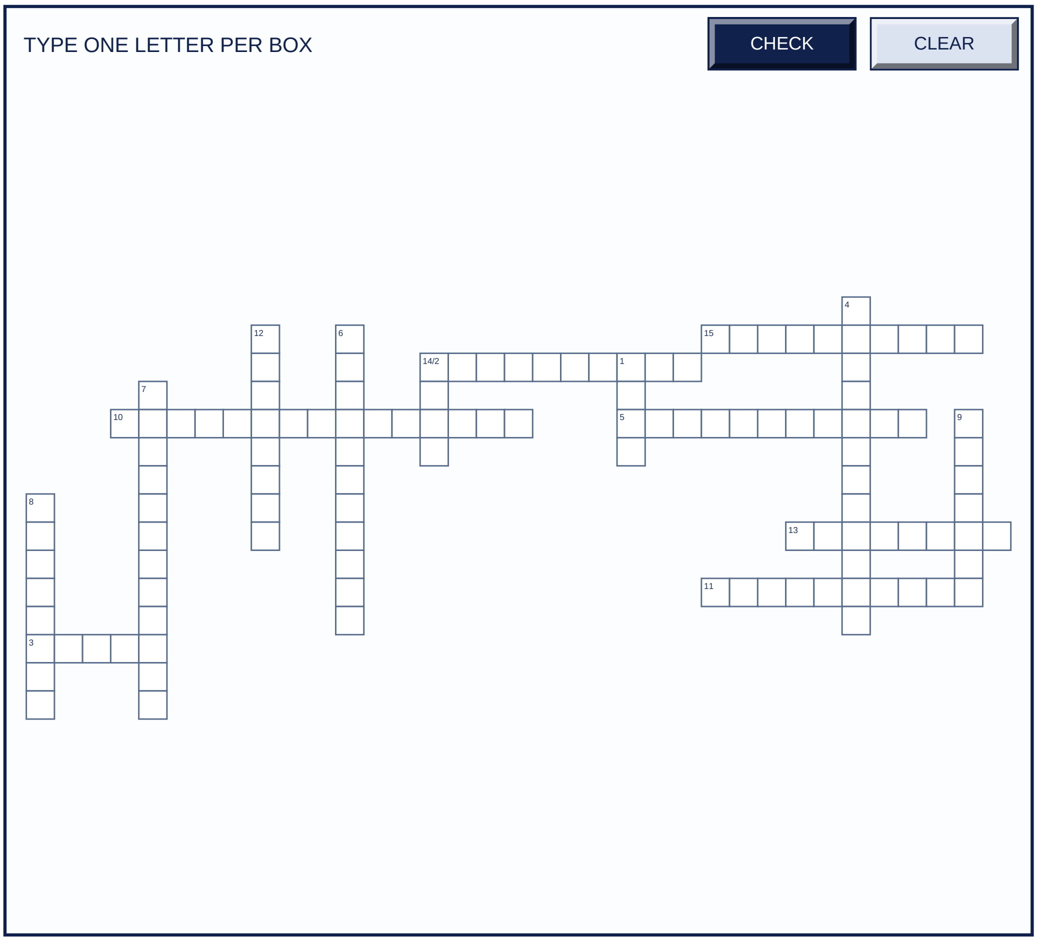
V - CONCLUSION

The correct exam method is to map the interests first and then work outward. Co-ownership and mortgage sit at the title level; easement and covenant qualify the land; the lease, profit and licence create different occupier/user rights; encroachment and body corporate action create separate disputes; and negotiation is the implementation tool. A high-distinction answer keeps those layers separate, applies the exact law to each, and finishes with practical remedies and registration steps.

CROSSWORD - CHAPTER 13: FINAL EXAMINATION REVISION - MIXED TOPICS

INTERACTIVE CROSSWORD: ***Open the active version to type directly into the grid, check each answer, and receive immediate green/red feedback. [Launch Chapter 13 Active Crossword]***

Instructions: Complete the crossword using the chapter material, glossary, cases and authorities. Spaces, hyphens and punctuation are omitted from entries.



Across

3. The first step: identify the legal ______.

5. The reasoning stage connecting facts to the legal rules.

10. Torrens principle protecting registered title, subject to exceptions.

11. Lease remedy involving termination for qualifying breach.

13. A proprietary right over another's land without possession.

14. The mortgagor's right to clear the mortgage by satisfying the secured obligation.

15. The stage giving the likely outcome after analysis.

Down

1. Four-letter problem-solving structure used throughout the book.

2. The part of an exam answer stating the governing law and authorities.

4. Defining incident of a joint tenancy on death.

6. Rights and interests arising from traditional laws and customs recognised by Australian law.

7. A structure extending across a legal boundary onto neighbouring land.

8. The practical orders or relief a successful party may seek.

9. Permission to enter land that ordinarily does not itself confer a proprietary estate.

12. A promise concerning land that may raise benefit-and-burden questions.

Use the chapter text to check each answer before moving to the next topic.

CROSSWORD ANSWERS - CHAPTER 13: FINAL EXAMINATION REVISION

Separate answer page - use this only after attempting the crossword.

3 Across - ISSUE	2 Down - RULE
5 Across - APPLICATION	4 Down - SURVIVORSHIP
10 Across - INDEFEASIBILITY	6 Down - NATIVETITLE
11 Across - FORFEITURE	7 Down - ENCROACHMENT
13 Across - EASEMENT	8 Down - REMEDIES
14 Across - REDEMPTION	9 Down - LICENCE
15 Across - CONCLUSION	12 Down - COVENANT
1 Down - IRAC	

APPENDIX A. STATUTE GUIDE

This guide converts the course statute checklist into an easy-reading single-column reference. Each entry tells you what the provision is for and the factual trigger that should make you think of it. Where a course shorthand such as "PLA" or "LTA" is used, read it with the legislation list in the bibliography.

Co-ownership

Succession Act 1981 (Qld) s 65 - Order-of-death presumption where co-deaths uncertain; apply before JT survivorship.

PLA 2023 s 26 - Course authority permitting corporation/company as joint tenant.

PLA ss 28-29 - Statutory tenancy-in-common presumption/framework for multiple grantees/equitable interests.

LTA 1994 s 56(2) - TIC status when equitable co-owners become entitled to legal interest, subject to contrary agreement.

LTA s 59 - Registration of transfer; critical to legal severance under Torrens.

PLA s 192 - Course directs attention to equitable effect/assignment in incomplete dealing context.

PLA ss 33-40 - Court sale/division and associated co-owner relief.

PLA s 35 - Sale/division remedy highlighted by lecture.

PLA s 40(1)(a)-(c) - Current-law verification: compensation/reimbursement; account under s 27; adjust co-owner interests.

PLA s 40(2)(a)-(f) - Current-law verification: improvements; maintenance/insurance; damage from unreasonable use; disproportionate rates/mortgage/purchase/outgoings; occupation/use rent considerations.

PLA s 40(3)(a)-(c) - Current-law verification: occupation rent for land only where occupier seeks expenditure account, excluded non-occupier, or non-occupier suffers detriment because joint occupation impracticable.

Mortgages Part 1

PLA s 8 - Writing/signature for creation of legal/equitable interest in land.

LTA s 181 - Registration creates legal interest.

LTA s 182 - Registered interest vested in registered person.

LTA Sch 2 - Definitions including registered owner/proprietor.

LTA s 37 - Creation of indefeasible title when the particulars of the lot are recorded in the freehold land register.

LTA ss 184-187 - Indefeasibility and exceptions.

LTA s 74 - Registered mortgage is a charge, not transfer of title.

LTA ss 72-73 - Mortgage by registration and instrument requirements.

NCC Sch 1 to NCCP Act 2009 (Cth) - National Credit Code source.

NCC s 3 - Credit definition.

NCC s 204 - Principal definitions.

NCC Part 2 - Credit contracts.

NCC s 5 - Application test.

NCC s 5(4) - Predominant purpose: > half / most-use test.

NCC s 6 - Exceptions/exclusions.

NCC s 7 - Application to mortgages.

NCC s 14 - Credit-contract form/signing.

NCC ss 16-17 - Pre-contract disclosure and required contract content.

NCC ss 20, 43 - Copies/documents to debtor.

NCC s 30 - Default interest restrictions.

LTA s 78 - Mortgagee statutory powers on default.

PLA s 128 - Implied mortgagor obligations.

NCC s 26 - Course right concerning early repayment.

PLA s 132 - Transfer of mortgage to third person in lieu of discharge.

NCC s 82 - Repayment/discharge within Code.

PLA s 129 - Inspection of documents.

PLA s 125 - Subsequent mortgage does not affect first mortgage; a mortgagor may grant a second or subsequent mortgage.

PLA s 130 - Relief from acceleration/default; expanded in Part 2.

Mortgages Part 2

PLA s 130(2) - Relief from accelerated sum by curing default plus reasonable expenses/performance.

PLA s 130(3) - Application/defence and timing before sale/enforcement; discretion.

NCC s 88 - 30-day default notice.

NCC s 88(3) - Default notice contents.

NCC s 88(5) - Exception to ordinary notice requirement.

NCC ss 94-96 - Postponement of enforcement.

NCC s 89 - Code relief where outstanding obligation satisfied.

NCC Reg 86 + Sch 1 Form 12 - Postponement process/form identified in lecture.

LTA s 78(2)(b) - Possession/accounting powers/duties.

PLA s 113 - Implied mortgagee powers.

PLA s 113(1)(a) - Implied power of sale.

PLA s 113(1)(c) - Appointment of receiver.

LTA s 78(2)(c)(iii) - Court/sale enforcement power identified by lecture.

PLA s 134 - Court jurisdiction/order in mortgage enforcement/foreclosure context.

PLA s 114 - Notice before exercise of power of sale; default continues 30 days after service.

Acts Interpretation Act 1954 (Qld) ss 38-39 - Calculation of statutory time.

PLA s 116(2) - Reasonable care to ensure market value.

PLA s 116(3) - Additional prescribed-home mortgage sale duties.

Property Law Regulation 2024 reg 11 - Prescribed home-mortgage sale safeguards.

PLA s 116(4) - Post-completion notification to mortgagor within 28 days as course notes.

LTA s 79 - Effect of registered transfer after mortgagee sale.

PLA s 118(2) - Application/distribution of sale proceeds.

PLA s 123(4) - Receiver deemed mortgagor's agent.

PLA s 117 / s 117(3) - Purchaser protection and mortgagor/person damages remedy for improper exercise.

LTA s 122(1)(c) - Caveat basis/provision flagged in lecture.

LTA s 126(1A)(b)(ii) - Caveat lapse/removal mechanism flagged in lecture.

Easements

PLA s 8 - Writing/signature.

LTA s 82(1) - Creation by registration.

LTA s 82(2) - Benefited/burdened land requirements identified in lecture.

LTA s 181 - Registration creates legal interest.

LTA s 81A - Definitions for easement division.

LTA ss 86-88 - Same registered owner / benefit-burden interaction.

LTA s 89 - Public utility provider easements; in-gross statutory exception.

PLA s 179 - Statutory right of support.

PLA s 180 - Statutory rights of user.

PLA s 181 - Court modification/extinguishment of easements/restrictive interests within statutory criteria.

LTA s 90 - Surrender/release.

LTA s 91 - Amendment.

LTA s 87 - Merger/same-owner statutory consequences.

Profits à prendre

PLA s 8 - Writing/signature.

LTA ss 97E-97M - Profits à prendre statutory registration framework.

LTA s 97L - Release/expiry/exhaustion provisions highlighted by course.

LTA s 97L(3)(a) - Expiry.

LTA s 97L(3)(b) - Exhaustion of subject matter.

LTA s 97I - Merger/same-owner consequence.

Leases Parts 1-2

PLA ss 175-176 - Periodic tenancy / tenancy-at-will notice.

PLA s 172 - Common-law yearly tenancy categories converted to lease terminable at will.

PLA s 173 - Termination notice content.

PLA s 174 - 20 business days notice.

PLA s 176(3) - Reasonableness of tenancy-at-will notice assessed in circumstances.

PLA s 7 - Disposition in writing/signed.

PLA s 8 - Creation of land interest in writing/signed.

PLA s 10(1)(a) - Short lease exception up to 3 years with immediate possession.

LTA ss 64-65 - Long lease registration/instrument.

LTA ss 181-182 - Legal interest on registration.

LTA s 71 - Unregistered lease not invalid merely for lack of registration.

LTA s 66 - Mortgagee consent to later lease/amendment.

PLA Sch 1 cl 8(1) - Quiet enjoyment.

PLA Sch 1 cl 9(2) - No derogation from grant.

PLA s 139 + Sch 1 cl 1 - Implied rent covenant.

Sch 1 cl 4 - Rent abatement in specified destruction/damage circumstances.

Sch 1 cls 3,7 - Repair/yield-up obligations.

Sch 1 cl 10(1)(a) - Inspection/repair entry.

Sch 1 cl 3(1)(b) - Yield up.

Sch 1 cl 12 - Tenant fixtures.

PLA s 142(1)-(9) - Consent to assignment: proposal, information, decision, reasons/conditions, court application and orders.

PLA s 140 - Benefit/burden of lease terms on assignment of reversion.

LTA ss 60-62 - Transfer/assignment of registered lease.

Leases Part 3

PLA ss 172-176 - Termination notice framework.

PLA Sch 1 cl 11(1) - Forfeiture power: rent arrears 1 month or continuing breach 2 months; liabilities preserved.

PLA s 153 - Notice to Remedy Breach.

PLA s 153(2) - Reasonable time in all circumstances.

PLA s 155 - Acceptance of rent after notice not automatic waiver.

PLA s 156 - Notice exception where lessor reasonably believes possession given up.

PLA s 157 - Peaceable re-entry / written demand.

PLA s 158 - Court possession/forfeiture/money/compensation orders.

LTA s 68 - Remove forfeited registered lease from title.

PLA s 160 - Equitable jurisdiction for relief against forfeiture.

PLA s 161 - Factors/timing for relief.

PLA s 162 - Court orders on relief.

PLA s 177 - Waiver limited to particular breach.

Retail Shop Leases

RSLA ss 5A-5D - Retail shop lease/shop/business/centre definitions.

RSLA s 12 - Application.

s 16 - No contracting out.

s 17 - Act prevails over inconsistent lease.

s 21B - Lessor disclosure before lease.

s 21E - Disclosure on renewal.

s 21F - Effect of failure to disclose.

s 22A - Lessee disclosure to lessor.

s 22B(1)-(2) - Assignor/assignee reciprocal disclosure.

s 22C(1),(3) - Lessor/assignee reciprocal disclosure.

ss 22D(1)-(2) - Financial/legal advice statements.

ss 24-50B - Minimum lease standards - expanded fully in Chapter 9.

s 46 - Renewal/option notice.

s 50A - Release of assignor in qualifying assignment.

ss 55-83 - Retail tenancy dispute-resolution framework: mediation/QCAT.

Covenants

PLA s 68 - Third-party beneficiary enforcement identified by lecture.

PLA s 64 - Benefit/intention to run; statutory word-saving presumption subject to contrary intention.

PLA s 8 - Writing for assignment/land interest.

PLA ss 190,192 - Course assignment/chose-in-action/equity references.

LTA s 97A - Tying/conservation covenants statutory exceptions.

LTA s 54A + BCCMA - Building-management/use covenant mechanisms.

Building Act 1975 (Qld) ch 8A - Sustainable housing provisions can invalidate restrictive private covenants.

Boundaries

PLA s 179 - Right of support.

Mineral Resources Act 1989 (Qld) s 8 - Crown ownership of gold/minerals generally.

Survey and Mapping Infrastructure Act 2003 (Qld) ss 70,99 - Water boundary definitions/common-law accretion recognition.

LTA s 185(1)(g) - Indefeasibility exception for land wrongly included in title.

LTA ss 189(f),(g) - Course says no compensation for specified boundary/misdescription cases.

Land Act 1994 (Qld) s 95 - Roads vest in State.

Land Act s 13A - Non-tidal river/lake beds and banks vest in State.

Land Act s 9 - Tidal boundary / State land below boundary.

Water Act 2000 (Qld) s 26 - State rights to use/flow/control water.

Water Act s 93 - Specified public/fire/camping/travelling stock taking.

Water Act s 96 - Stock/domestic riparian taking without licence in specified circumstances.

Water Act s 107 - Water licence requirement.

Water Act s 106(2) - Some rights attach/pass with land.

Water Act s 173 - No Torrens-style indefeasibility for water allocation.

PLA ss 183-188 - Boundary encroachment definition/remedies.

Strata / BCCMA

BCCMA s 21 - Regulation modules.

s 24 - CTS establishment.

s 30 - Body corporate creation.

s 12 - CMS definition.

s 31 - Members.

s 33 - Body corporate name/legal capacity.

s 66 - CMS requirements.

s 52 - CMS ineffective unless recorded.

s 54 - Subsequent CMS.

s 59 - CMS mutual covenant/binding persons.

s 60; s 60(6) - Local authority endorsement / exceptions.

s 62; s 62(2) - Consent/new CMS; resolution without dissent in relevant cases.

s 65 - Lodgement within 3 months.

s 35(1) - Common property owned by lot owners as TIC by interest entitlement.

s 168 - By-laws/default by-laws.

s 169 - Permitted by-law subject matter.

s 169A - Smoking/vaping.

s 169B; s 169B(6) - Animals and limited refusal grounds.

s 180(4) - No restriction on dealing with legal interest.

s 180(5) - No discrimination by occupier type.

s 180(7) - No oppressive/unreasonable by-law.

s 180(8) - Sustainable housing consistency.

s 170(1) - Exclusive-use by-law.

s 171 - Identification/allocation of exclusive use.

s 94(1) - Body corporate functions/enforcement.

ss 46-51C - Lot-entitlement framework.

s 46(7); s 46A - Contribution equality/relativity principles.

s 46(8); s 46B - Interest market-value principle.

s 47(2) - Contribution entitlement effects.

s 47(3) - Interest entitlement effects.

s 47A(1); s 47AA; s 47B - Contribution adjustment resolutions/disputes/orders.

s 48 - Interest entitlement adjustment.

s 49 - Just and equitable criteria.

s 50 - Limited agreed adjustment.

ss 95-96 - Body corporate powers.

ss 98-101B,111A - Committee/decision/protection framework.

s 14 - Body corporate manager.

s 99 - Committee composition via module.

s 100 - Decision-making.

s 101A - Civil-liability protection.

s 101B + Sch 1A - Code of conduct.

s 111A - Defamation-publication protection.

s 104 - Meeting framework -> regulation module.

Standard Module s 94(2) - First AGM.

Standard Module s 83 - Subsequent AGM.

Standard Module ss 84-85 - Requested EGM procedure.

BCCMA s 182(2) - Continuing contravention; Form 10.

s 183(3) - Likely future contravention; Form 11.

s 185(2)(a) - Notify body corporate; Form 1.

s 183A - Copy notice to owner when occupier notified.

ss 182(3),183 - 14-day body corporate response after owner/occupier notice.

ss 182(5),183(6) - Non-compliance penalty noted in course.

s 184 - Notice before dispute resolution.

s 186; s 186(4) - Urgent special-circumstances interim exception.

s 227 - Dispute definition.

s 228 - Chapter 6 purpose.

s 230 - Dispute structure.

s 238 - Who may apply/internal resolution attempts.

s 239 - How to apply.

s 243 - Notice to affected parties.

s 248 - Commissioner recommendation.

s 289 - Appeal on question of law.

s 78 - Termination of CTS.

s 81 - Consequences of termination.

Native Title

Native Title Act 1993 (Cth) s 3 - Objects.

s 10 - Recognition/protection.

s 11 - Extinguishment protection.

s 223(1)(a) - Traditional laws/customs.

s 223(1)(b) - Connection by those laws/customs.

s 223(1)(c) - Common-law recognition.

s 223(2) - Activities such as hunting/fishing within rights/interests.

s 237A - Extinguish definition.

s 229 - Category A past acts.

s 230 - Category B past acts.

s 231 - Category C past acts.

s 232 - Category D past acts.

s 232A - Intermediate period act definition.

ss 232B-E - Intermediate categories A-D.

s 233 - Future act.

s 238 - Non-extinguishment principle.

APPENDIX B. CASE AND AUTHORITY GUIDE

This authority guide preserves the propositions supplied in the course materials and master revision sources. It is designed to answer four questions: what issue did the authority concern; what proposition does it support; when should it be cited; and how does it help the application? Where the supplied material does not give a complete report citation, this guide retains the case name rather than inventing a citation.

Co-ownership

CASE / AUTHORITY - Chieco v Evans

Facts / issue: Co-owner possession dispute; lecture groups with unity of possession.

Outcome / proposition: Supports analysis of equal possessory rights and inter-co-owner liability/accounting.

When to use: Exclusion, trespass, occupation rent.

CASE / AUTHORITY - Dennis v McDonald

Facts / issue: Co-owners did not jointly occupy; authority commonly associated with occupation rent.

Outcome / proposition: Occupation rent/account may be ordered in exclusion/separation circumstances.

When to use: One co-owner lives in property alone.

CASE / AUTHORITY - Biviano v Natoli

Facts / issue: Lecture authority under unity of possession.

Outcome / proposition: Used for accounting/occupation consequences between co-owners.

When to use: Sole occupation and financial adjustment.

CASE / AUTHORITY - Williams v Hensman

Facts / issue: Multiple joint-tenancy interests; question how JT can be severed.

Outcome / proposition: Classic three routes: unilateral dealing with own share; mutual agreement; course of dealing.

When to use: Organise any severance answer.

CASE / AUTHORITY - Sprott v Harper

Facts / issue: Course mutual-agreement severance authority.

Outcome / proposition: Evidence may establish clear agreement/intention to hold separately.

When to use: Consensual severance.

CASE / AUTHORITY - Saleeba v Wilkie

Facts / issue: Course contrast to Sprott.

Outcome / proposition: Ambiguous conduct/evidence insufficient to establish severance.

When to use: Weak evidence of mutual severance.

CASE / AUTHORITY - Wright v Gibbons

Facts / issue: Joint tenant dealt with share to alter co-ownership.

Outcome / proposition: Alienation destroys relevant unities and severs.

When to use: Transfer to third party / dealing with share.

CASE / AUTHORITY - Corin v Patton

Facts / issue: Donor attempted transfer of JT interest but legal completion was incomplete before death.

Outcome / proposition: Equity requires donor to have done everything necessary within their power; intention alone insufficient.

When to use: Death before registration/incomplete gift.

CASE / AUTHORITY - Neubacher v Good [2003] NSWSC 379

Facts / issue: Homicide between joint tenants.

Outcome / proposition: Equity/public policy prevents killer taking beneficial advantage of survivorship in ordinary way.

When to use: One JT kills another.

CASE / AUTHORITY - Re Stone [1989] 1 Qd R 351

Facts / issue: Lecture homicide/severance authority.

Outcome / proposition: Supports public-policy/equitable response to unlawful killing.

When to use: Homicide and survivorship.

CASE / AUTHORITY - Public Trustee v Grivas [1974] 2 NSWLR 316

Facts / issue: Court order affected co-owned property.

Outcome / proposition: Construction/timing of court order can sever JT before death.

When to use: Orders for sale/property adjustment.

CASE / AUTHORITY - Berdal v Burns [1990] WAR 140

Facts / issue: Lecture court-order severance authority.

Outcome / proposition: Order inconsistent with continued JT can sever depending on terms/effect.

When to use: Court orders before death.

CASE / AUTHORITY - Penny Nominees Pty Ltd v Fountain (No 3) (1990) 5 BPR 11,284

Facts / issue: Lecture court-order/severance authority.

Outcome / proposition: Used to determine whether judicial orders have destroyed survivorship.

When to use: Sale/division order timing.

Mortgages

CASE / AUTHORITY - English, Scottish and Australian Bank Ltd v Phillips (1937) 57 CLR 302

Facts / issue: High Court considered nature of mortgage security.

Outcome / proposition: Mortgage is contractual charge securing payment, extinguished on performance and enforceable on default.

When to use: Define mortgage.

CASE / AUTHORITY - Swiss Bank Corporation v Lloyds Bank Ltd

Facts / issue: Instrument/act insufficient for legal mortgage but showed binding intention to create security.

Outcome / proposition: Supports equitable mortgage where legal title/formality incomplete but security intention binding.

When to use: Unregistered/defective mortgage.

CASE / AUTHORITY - MAG Financial and Investment Ventures Pty Ltd v El-Saafin

Facts / issue: Credit purpose/application dispute.

Outcome / proposition: Course authority for identifying purpose/predominant purpose under NCC threshold.

When to use: Mixed personal/business/investment loan.

CASE / AUTHORITY - Wanner v Caruana

Facts / issue: Default clause increased financial burden after breach.

Outcome / proposition: Penalty analysis: acceleration/default interest may be unenforceable if punitive rather than compensatory.

When to use: Default interest/acceleration.

CASE / AUTHORITY - Hyde Management Services Pty Ltd v FAI Insurances Ltd

Facts / issue: Borrower sought early repayment at common law.

Outcome / proposition: No general common-law right to prepay before contractual date absent term/statute.

When to use: Early repayment.

CASE / AUTHORITY - Sun North Investments Pty Ltd as trustee v Dale

Facts / issue: Mortgage collateral option/purchase arrangement.

Outcome / proposition: Course uses as clog-on-redemption authority.

When to use: Mortgagee option to buy.

CASE / AUTHORITY - Samuel v Jarrah Timber & Wood Paving Corp Ltd

Facts / issue: Mortgagee held option to purchase mortgaged property.

Outcome / proposition: Option inconsistent with redemption held invalid clog.

When to use: Lender purchase option.

CASE / AUTHORITY - Fairclough v Swan Brewery Co Ltd

Facts / issue: Mortgage postponed redemption for very long period.

Outcome / proposition: Unduly postponed redemption invalid.

When to use: Very long redemption postponement.

CASE / AUTHORITY - Knightsbridge Estates Trust Ltd v Byrne

Facts / issue: Commercial mortgage with lengthy redemption postponement.

Outcome / proposition: Long term can be upheld where commercial bargain leaves genuine redemption and is not oppressive.

When to use: Contrast Fairclough.

CASE / AUTHORITY - Noakes & Co Ltd v Rice

Facts / issue: Mortgage tied hotel to purchasing beer from lender even after redemption.

Outcome / proposition: Collateral tie surviving redemption invalid.

When to use: Post-redemption collateral advantage.

CASE / AUTHORITY - Biggs v Hoddinott

Facts / issue: Trade tie connected with mortgage term.

Outcome / proposition: Collateral advantage limited to mortgage period may be valid.

When to use: Contrast Noakes.

CASE / AUTHORITY - Kreglinger v New Patagonia Meat & Cold Storage Co Ltd

Facts / issue: Lender obtained collateral commercial advantage.

Outcome / proposition: Collateral benefit not automatically a clog; invalidity depends on oppression/penalty/inconsistency with redemption.

When to use: Framework for collateral advantage.

Mortgage sale

CASE / AUTHORITY - Emerson v Custom Credit Corp Ltd

Facts / issue: Mortgagee-sale valuation issue.

Outcome / proposition: Course links duty to market value and Spencer concept.

When to use: PLA s 116 market value.

CASE / AUTHORITY - Spencer v Commonwealth

Facts / issue: Valuation of land.

Outcome / proposition: Willing-but-not-anxious buyer and seller hypothetical under ordinary market conditions.

When to use: Define market value.

CASE / AUTHORITY - Cameron v Brisbane Fleet Sales

Facts / issue: Queensland valuation/market transaction authority.

Outcome / proposition: Course uses for market-value sale standard.

When to use: Price/valuation evidence.

CASE / AUTHORITY - Pendlebury v Colonial Mutual Life Assurance Society Ltd

Facts / issue: Sale/valuation context.

Outcome / proposition: Market price reflects voluntary bargaining by parties observing ordinary business considerations.

When to use: Market value.

CASE / AUTHORITY - Kennedy v De Trafford

Facts / issue: Mortgagee exercise of sale.

Outcome / proposition: Common-law obligation of good faith.

When to use: Bad faith/improper purpose.

CASE / AUTHORITY - Cuckmere Brick Co Ltd v Mutual Finance Ltd

Facts / issue: Mortgagee failed to advertise valuable planning/development potential.

Outcome / proposition: Mortgagee can be liable for careless sale process; course uses alongside statutory reasonable-care duty.

When to use: Inadequate advertising/value information.

CASE / AUTHORITY - Commercial and General Acceptance Ltd v Nixon

Facts / issue: Mortgagee delegated sale conduct to agent.

Outcome / proposition: No fraud/wilful or reckless sacrifice; delegation to competent agent does not absolve mortgagee duty.

When to use: Bank says agent was responsible.

CASE / AUTHORITY - Farrar v Farrar

Facts / issue: Mortgagee/self-related sale.

Outcome / proposition: Equity scrutinises self-dealing; mortgagee cannot simply sell to itself without genuine independent transaction.

When to use: Mortgagee/associate buyer.

CASE / AUTHORITY - ANZ Banking Group Ltd v Bangadilly Pastoral Co Pty Ltd

Facts / issue: Sale involved associated/non-arm's-length circumstances.

Outcome / proposition: Improper associated-party sale vulnerable; genuine independent bargain required.

When to use: Related buyer.

CASE / AUTHORITY - Latec Investments Ltd v Hotel Terrigal Pty Ltd

Facts / issue: Improper mortgagee sale produced later equitable priority issues.

Outcome / proposition: Shows consequences of bad-faith sale and interaction of equitable interests.

When to use: Set-aside/priority after improper sale.

CASE / AUTHORITY - Reynolds v Aluma-Lite Products Pty Ltd

Facts / issue: Lecture associated/genuine-sale authority.

Outcome / proposition: Use to test whether transaction was genuine arm's-length exercise of sale power.

When to use: Mortgagee-affiliate transaction.

Mortgage remedies

CASE / AUTHORITY - Re McKean's Caveat

Facts / issue: Mortgagor sought caveat after mortgagee sale contract.

Outcome / proposition: Course authority on whether mortgagor retains caveatable equity before registration.

When to use: Urgent pre-registration challenge.

CASE / AUTHORITY - Swanston Mortgage Pty Ltd v Trepan Investments Pty Ltd

Facts / issue: Course contrast on caveat following mortgagee sale.

Outcome / proposition: Use with Re McKean to analyse proprietary basis/timing of caveat.

When to use: Post-contract, pre-registration.

CASE / AUTHORITY - Breskvar v Wall

Facts / issue: Fraudulent dealing under Torrens title.

Outcome / proposition: High Court: Torrens is title by registration, not registration of title; indefeasibility central.

When to use: Any registered-buyer priority question.

CASE / AUTHORITY - McKean v Maloney

Facts / issue: Lecture caveat/removal authority.

Outcome / proposition: Use for procedural/proprietary caveat analysis in sale challenge.

When to use: Caveat after mortgagee contract.

Easements

CASE / AUTHORITY - Re Ellenborough Park

Facts / issue: Residents claimed right to use communal garden.

Outcome / proposition: Established four classic easement requirements: DT/ST, accommodation, different owners, capable subject matter.

When to use: Every easement validity problem.

CASE / AUTHORITY - Smith & Snipes Hall Farm Ltd v River Douglas Catchment Board

Facts / issue: Land-related drainage/covenant/easement benefit issue.

Outcome / proposition: Supports passing/enforcement of land-benefiting equitable rights; used in two course topics.

When to use: Equitable easement/covenant benefit.

CASE / AUTHORITY - Rixon v Horseshoe Pastoral Co Pty Ltd

Facts / issue: Reliance/representation concerning land use/access.

Outcome / proposition: Course authority for easement rights arising by estoppel.

When to use: Promised access relied upon.

CASE / AUTHORITY - Pryce v McGuinness [1966] Qd R 591

Facts / issue: Landlocked Torrens parcel claimed necessity access.

Outcome / proposition: Old Queensland authority supports easement of necessity despite non-registration; lecturer flags tension with modern indefeasibility.

When to use: Landlocked land/no registered easement.

CASE / AUTHORITY - Gallagher v Rainbow

Facts / issue: Lecture authority for easement requirements/in-gross issue.

Outcome / proposition: Use where claimed easement benefits person rather than land.

When to use: No identifiable DT.

Easements/Profits

CASE / AUTHORITY - Clos Farming Estates v Easton

Facts / issue: Rights associated with agricultural land/use.

Outcome / proposition: Course uses for accommodation/nexus and distinction between proprietary profit/licence/agricultural venture.

When to use: Benefit-to-land or profit subject matter.

Easements

CASE / AUTHORITY - Phipps v Pears

Facts / issue: Claim to protection from weather through neighbour's building.

Outcome / proposition: Courts resist creating novel negative easements outside recognised categories; capable-subject-matter limit.

When to use: Novel negative easement.

CASE / AUTHORITY - Riley v Penttila

Facts / issue: Lecture capable-subject-matter authority.

Outcome / proposition: Right must be sufficiently defined/proprietary and not vague.

When to use: Uncertain easement.

CASE / AUTHORITY - Tujilo v Watts

Facts / issue: Lecture authority on scope/capable grant.

Outcome / proposition: Right cannot be so extensive it effectively gives exclusive possession of ST.

When to use: Exclusive-use-like easement.

CASE / AUTHORITY - Westfield Management Ltd v Perpetual Trustee Co Ltd

Facts / issue: High Court construed registered easement in Torrens title.

Outcome / proposition: Focus on registered instrument/objective context; do not undermine register with private subjective intention.

When to use: Meaning/scope of registered easement.

CASE / AUTHORITY - Hare v Van Brugge

Facts / issue: Lecture authority on support/scope.

Outcome / proposition: Use for support/easement construction as lecturer directs.

When to use: Support/scope.

CASE / AUTHORITY - St Edmundsbury and Ipswich Diocesan Board of Finance v Clark (No 2)

Facts / issue: Lecture easement-construction authority.

Outcome / proposition: Use on extent/intensification of permitted use.

When to use: Scope.

CASE / AUTHORITY - Elliott v Renner

Facts / issue: Lecture scope/interference authority.

Outcome / proposition: Use where manner/intensity of easement use changed.

When to use: Intensified use.

CASE / AUTHORITY - SS & M Ceramics Pty Ltd v Kin

Facts / issue: Lecture construction authority.

Outcome / proposition: Use for limits of rights over servient land.

When to use: Scope/interference.

CASE / AUTHORITY - Hoy v Allerton

Facts / issue: Lecture statutory user/easement authority.

Outcome / proposition: Use with PLA s 180 and interference/scope.

When to use: Statutory access/user right.

CASE / AUTHORITY - In the matter of an application by Rollwell Australia Pty Ltd

Facts / issue: Application to modify/extinguish easement.

Outcome / proposition: Course authority on PLA modification criteria.

When to use: Servient owner seeks discharge/variation.

CASE / AUTHORITY - Eucalypt Group Pty Ltd v Robin

Facts / issue: Modification/extinguishment dispute.

Outcome / proposition: Use for obsolete/burdensome easement statutory discretion.

When to use: PLA s 181.

CASE / AUTHORITY - Treweeke v 36 Oosley Road Pty Ltd

Facts / issue: Easement unused for long period.

Outcome / proposition: Mere non-use insufficient; abandonment requires fixed intention never to assert/transmit right.

When to use: Long dormancy.

Licences

CASE / AUTHORITY - Halliday v Nevill

Facts / issue: Police approached dwelling by ordinary route.

Outcome / proposition: Implied licence to approach private dwelling for lawful communication unless excluded.

When to use: Driveway/path entry.

CASE / AUTHORITY - Lincoln Hunt Australia Ltd v Willesee

Facts / issue: Licence revoked while licensee/property remained on land.

Outcome / proposition: Reasonable time allowed to depart/remove property after revocation.

When to use: Immediate revocation/ejection.

CASE / AUTHORITY - Barker v The Queen

Facts / issue: Entry where circumstances/signage excluded ordinary permission.

Outcome / proposition: Clear "keep out" conditions negate implied licence.

When to use: Signs/gates/exclusion.

CASE / AUTHORITY - Ashburn Anstalt v Arnold

Facts / issue: Contractual right to occupy and successor-in-title dispute.

Outcome / proposition: Contractual licence does not become proprietary merely because it concerns land.

When to use: Third-party binding claim.

CASE / AUTHORITY - Errington v Errington and Woods

Facts / issue: Family occupiers performed conditions under unilateral promise.

Outcome / proposition: Equity protected occupation while conditions performed; used to contrast ordinary licence revocation.

When to use: Reliance/performance.

CASE / AUTHORITY - Cowell v Rosehill Racecourse Co Ltd

Facts / issue: Paying racecourse patron ejected.

Outcome / proposition: Majority: contractual licence revocable; remedy in contract. Evatt J dissent favoured stronger protection.

When to use: Ticket/payment + ejection.

CASE / AUTHORITY - Smith v Tamworth City Council

Facts / issue: Burial/grave occupation right.

Outcome / proposition: Course authority for unusual proprietary right not neatly fitting conventional categories.

When to use: Grave/burial right.

CASE / AUTHORITY - Beard v Baulkham Hills Shire Council

Facts / issue: Burial/grave rights.

Outcome / proposition: Course proprietary-characterisation authority.

When to use: Grave right.

CASE / AUTHORITY - Reid v Moreland Timber Company

Facts / issue: Entry right associated with another interest.

Outcome / proposition: Course authority on licence coupled with interest.

When to use: Ancillary right of entry.

Leases

CASE / AUTHORITY - Radaich v Smith

Facts / issue: A deed described the occupier of shop premises as a licensee, but the occupier had the right to exclusive possession. The issue was whether the substance of the arrangement created a lease despite the label used.

Outcome / proposition: Exclusive possession; substance not label.

When to use: Lease-versus-licence problems where the document's label conflicts with the practical legal rights, especially exclusive possession.

CASE / AUTHORITY - Lewis v Bell

Facts / issue: The court construed an occupation agreement to determine whether the grantee had a legal right to exclusive possession or merely a limited right to use the premises. The issue was lease or licence characterisation.

Outcome / proposition: Exclusive possession course authority.

When to use: Where control, access rights and the terms of the grant make exclusive possession uncertain.

CASE / AUTHORITY - KJRR v Commissioner of State Revenue

Facts / issue: A commercial franchise/licence arrangement expressly denied exclusive occupation, raising whether the instrument was nevertheless a lease for stamp-duty purposes. The court focused on the legal rights actually granted.

Outcome / proposition: Lease/licence characterisation.

When to use: Commercial documents labelled licences where exclusive-possession language and the practical rights must be analysed.

CASE / AUTHORITY - Hamilton Island Enterprises Ltd v Croycom Pty Ltd

Facts / issue: A commercial concession for a general store included rights of occupation and a power in the grantor to require relocation. The issue was whether the arrangement created a lease or licence.

Outcome / proposition: Objective rights determine character.

When to use: Commercial occupation arrangements where relocation, access or control clauses complicate the exclusive-possession analysis.

CASE / AUTHORITY - Swan v Uecker

Facts / issue: Tenants used Airbnb to give short-stay guests occupation of residential premises. The issue was whether the guest arrangements conferred exclusive possession and therefore amounted to subleases rather than licences.

Outcome / proposition: Short-stay exclusive occupation can be lease.

When to use: Short-stay, Airbnb or temporary occupation problems where the legal right to exclusive possession is disputed.

CASE / AUTHORITY - South Coast Oils (Qld & NSW) Pty Ltd v Look Enterprises Pty Ltd

Facts / issue: The dispute concerned whether a purported lease had a sufficiently certain commencement date. The court considered whether the start of the term was fixed or objectively capable of being ascertained.

Outcome / proposition: Commencement must be certain/capable of being certain.

When to use: Lease-formation questions involving commencement dates tied to an event, condition or uncertain future occurrence.

CASE / AUTHORITY - Lace v Chantler

Facts / issue: A tenancy was expressed to continue for the duration of the war. Because the maximum duration could not be ascertained at the outset, the purported fixed term failed for uncertainty.

Outcome / proposition: Uncertain maximum duration invalid fixed term.

When to use: Any lease problem where the end date or maximum duration depends on an uncertain event.

CASE / AUTHORITY - Bishop v Taylor

Facts / issue: The case is used in the course on certainty of duration, considering whether the term of an occupation arrangement was sufficiently certain to constitute a lease.

Outcome / proposition: Course certainty-of-duration authority.

When to use: Where a purported fixed term has an unclear duration and the student must test certainty of term.

CASE / AUTHORITY - Prudential Assurance Co Ltd v London Residuary Body

Facts / issue: Occupation continued under an arrangement expressed to last until redevelopment was required. The House of Lords reaffirmed that a lease must have a term whose maximum duration is ascertainable when created.

Outcome / proposition: Certainty of term reaffirmed.

When to use: Modern certainty-of-term problems and as the leading contrast to arrangements with indefinite or event-based duration.

CASE / AUTHORITY - Smallwood v Sheppards

Facts / issue: The case is used in the course for leases granted to commence in the future or in non-continuous periods, raising whether the term and commencement satisfy lease requirements.

Outcome / proposition: Course future/non-continuous fixed-term lease authority.

When to use: Future leases, non-continuous terms and questions about whether commencement and duration are sufficiently certain.

CASE / AUTHORITY - Brisbane City Council v The Council Club

Facts / issue: An occupier remained in possession after the original arrangement and continued paying rent. The issue concerned the tenancy consequences of holding over and the terms on which occupation continued.

Outcome / proposition: Holding over + rent may imply tenancy/continuation terms.

When to use: Holding-over problems where possession continues after expiry and rent is accepted.

CASE / AUTHORITY - Moore v Dimond

Facts / issue: An informal occupation arrangement was followed by possession and payment of rent. The issue was what tenancy, if any, arose despite deficiencies in the original agreement.

Outcome / proposition: Informal agreement + possession/rent may create implied tenancy.

When to use: Informal or defective lease arrangements where possession and rent may generate a periodic or other tenancy.

CASE / AUTHORITY - Palmdale Insurance Ltd v Spenger

Facts / issue: The court considered the legal consequences of occupation under a defective or informal lease arrangement after possession had been taken. The case is used to identify the tenancy that can arise notwithstanding failed formalities.

Outcome / proposition: Defective/informal lease + possession can produce tenancy consequences.

When to use: Where a lease is not validly created in the intended form but possession and rent require classification of the resulting tenancy.

CASE / AUTHORITY - Bond University Ltd v Limgold Pty Ltd

Facts / issue: The dispute concerned occupation terminable at will and the amount of notice required to bring that occupation to an end. The case is used as a Queensland authority on reasonable notice.

Outcome / proposition: Reasonable notice for tenancy at will.

When to use: Tenancy-at-will problems and determining what constitutes reasonable notice in the circumstances.

CASE / AUTHORITY - Crago v Julian

Facts / issue: The case concerned the operation of the short-lease exception to formal land-disposition requirements and whether the occupation satisfied the conditions for a legal short lease.

Outcome / proposition: Short-lease exception/formality authority.

When to use: Short oral lease problems where immediate possession, duration and statutory formality exceptions must be tested.

CASE / AUTHORITY - Ashton v Hunt

Facts / issue: An unregistered longer-term lease raised whether the arrangement could still be recognised and enforced in equity between the parties. The case applies the equitable-lease approach notwithstanding lack of registration.

Outcome / proposition: Unregistered long lease can be equitable between parties; follows Chan.

When to use: Unregistered long leases where contractual or equitable enforceability must be separated from legal registration.

CASE / AUTHORITY - Chan v Cresdon Pty Ltd

Facts / issue: The High Court distinguished the legal estate created by registration from rights arising under an unregistered agreement for lease. The issue was the effect of non-registration on the lease and related obligations.

Outcome / proposition: High Court distinction between registered legal lease and equitable contractual lease.

When to use: Torrens lease problems requiring a distinction between registered legal leases and contractual or equitable lease rights.

CASE / AUTHORITY - Laurinda Pty Ltd v Capalaba Park Shopping Centre Pty Ltd

Facts / issue: A commercial lessor delayed providing a registrable lease after the tenant had entered possession. The High Court considered breach, repudiation and damages arising from the failure to complete the promised lease documentation.

Outcome / proposition: Obligation/damages concerning failure/delay to provide registrable lease.

When to use: Where a landlord delays or fails to provide a registrable lease and the tenant seeks contractual remedies.

CASE / AUTHORITY - Leitz Leeholme Stud Pty Ltd v Robinson

Facts / issue: A land-occupation agreement failed to create the intended legal lease but remained capable of contractual enforcement. The issue was the remedies available despite defective legal formalities.

Outcome / proposition: Contract may remain enforceable with damages even if legal lease formalities fail.

When to use: Where legal lease formalities fail but a binding contract may still support damages or other contractual relief.

CASE / AUTHORITY - Walsh v Lonsdale

Facts / issue: The parties had a specifically enforceable agreement for a lease but no completed legal lease. Equity treated the parties as if the promised lease had been granted.

Outcome / proposition: Equity treats specifically enforceable agreement for lease as done; equitable lease.

When to use: Equitable-lease problems where a signed agreement for lease is specifically enforceable but legal formalities or registration are incomplete.

CASE / AUTHORITY - Aussie Traveller Pty Ltd v Marklea Pty Ltd

Facts / issue: The landlord's conduct substantially interfered with the tenant's ability to use the leased premises for the contemplated business purpose. The issue was breach of the covenant for quiet enjoyment.

Outcome / proposition: Quiet enjoyment protects substantial interference with use for leased purpose.

When to use: Quiet-enjoyment problems involving substantial landlord interference with access, use or the commercial benefit of the premises.

CASE / AUTHORITY - Lavender v Betts

Facts / issue: A landlord removed windows and doors in an attempt to force the tenant to leave. The conduct substantially interfered with occupation and breached quiet enjoyment.

Outcome / proposition: Removing windows/forcing tenant out breaches quiet enjoyment.

When to use: Clear physical interference or self-help eviction by a landlord.

CASE / AUTHORITY - Kohua Pty Ltd v Tai Ping Trading Pty Ltd

Facts / issue: The landlord interfered with essential services to the leased premises. The issue was whether cutting or disrupting services amounted to a substantial interference with the tenant's occupation.

Outcome / proposition: Cutting services can breach quiet enjoyment.

When to use: Quiet-enjoyment problems involving electricity, water, air-conditioning or other central services controlled by the landlord.

CASE / AUTHORITY - Perera v Vandiyar

Facts / issue: The case is used in the course as an authority on landlord interference with a tenant's use and enjoyment of leased premises.

Outcome / proposition: Course quiet-enjoyment/interference authority.

When to use: Where landlord conduct or service interference is alleged to breach quiet enjoyment.

CASE / AUTHORITY - Kenny v Preen

Facts / issue: A landlord repeatedly threatened and harassed the tenant in an effort to obtain possession. The Court of Appeal held that serious intimidation could breach the covenant for quiet enjoyment.

Outcome / proposition: Threatening landlord harassment breaches quiet enjoyment.

When to use: Harassment, threats or intimidation by a landlord that substantially interfere with peaceful occupation.

CASE / AUTHORITY - Musumeci v Winadell Pty Ltd

Facts / issue: The tenant was wrongfully excluded and property was removed from the premises. The dispute concerned unlawful interference with possession and the remedies flowing from wrongful eviction.

Outcome / proposition: Wrongful eviction/removal of property.

When to use: Wrongful eviction, lockout or removal of a tenant's goods.

CASE / AUTHORITY - J C Berndt Pty Ltd v Walsh

Facts / issue: Alterations undertaken by the landlord on adjoining or common property affected customer access and the tenant's use of the leased premises. The issue was substantial interference with the tenancy.

Outcome / proposition: Landlord alteration impairing customer access/use.

When to use: Commercial leases where landlord works impede customer access, visibility or normal business use.

CASE / AUTHORITY - Martins Camera Corner Pty Ltd v Hotel Mayfair Ltd

Facts / issue: Drainage or maintenance failures affecting premises occupied by the tenant caused damage and interference. The issue was whether the landlord's control and obligations gave rise to liability.

Outcome / proposition: Drain/maintenance interference course authority.

When to use: Quiet-enjoyment or maintenance problems involving common services, drains or building systems under the landlord's control.

CASE / AUTHORITY - Aldin v Latimer Clark, Muirhead & Co

Facts / issue: The landlord's use of retained land interfered with ventilation necessary for the tenant's timber business. The court held that a grantor must not substantially deprive the tenant of the benefit of the grant.

Outcome / proposition: No derogation: landlord impaired ventilation essential to business.

When to use: Non-derogation from grant where the landlord's later use of adjoining or retained land undermines the purpose of the lease.

CASE / AUTHORITY - Harmer v Jumbil (Nigeria) Tin Areas Ltd

Facts / issue: The case is used in the course to illustrate the principle that a grantor must not act inconsistently with the rights or commercial purpose granted to the tenant.

Outcome / proposition: Course derogation authority.

When to use: Non-derogation problems where landlord conduct makes the granted use materially less effective.

CASE / AUTHORITY - Lend Lease Development Pty Ltd v Zemlicka

Facts / issue: Major demolition or redevelopment works around the leased premises affected security and practical use of the tenancy. The issue was whether the landlord's works unlawfully interfered with the grant.

Outcome / proposition: Demolition/security interference.

When to use: Redevelopment or demolition works that compromise access, security or ordinary use of leased premises.

CASE / AUTHORITY - Karaggianis v Malltown Pty Ltd

Facts / issue: The landlord interfered with lift or escalator access to upper-level premises, materially affecting access and use. The dispute concerned interference inconsistent with the lease.

Outcome / proposition: Lift/escalator interruption impaired access.

When to use: Shopping-centre or multi-level premises where lifts, escalators or access routes controlled by the landlord are disrupted.

CASE / AUTHORITY - Ell v Cisera

Facts / issue: The tenant argued that rent had not been collected or demanded. The case confirms that, absent contrary arrangements, a tenant must seek out the landlord and pay rent when due.

Outcome / proposition: Tenant must seek out landlord/payment duty; non-collection no defence.

When to use: Rent-arrears problems where the tenant relies on the landlord's failure to demand or collect rent.

CASE / AUTHORITY - Proudfoot v Hart

Facts / issue: A repairing covenant required assessment of the condition in which the premises had to be kept. The court explained that the repair standard depends on the age, character and locality of the premises and what a reasonably minded tenant would do.

Outcome / proposition: Repair standard depends on age/character/locality and reasonably minded tenant.

When to use: Determining the content and standard of a tenant's covenant to repair.

CASE / AUTHORITY - Lurcott v Wakeley & Wheeler

Facts / issue: Structural deterioration required replacement of parts of a building. The court distinguished repair, which may involve renewal of subsidiary parts, from reconstruction of substantially the whole.

Outcome / proposition: Repair can include replacement of subsidiary parts but not reconstruction of whole.

When to use: Repair-versus-renewal questions where substantial components need replacement.

CASE / AUTHORITY - Graham v Markets Hotel Pty Ltd

Facts / issue: The case is used in the course to distinguish works properly characterised as repair from renewal or reconstruction of the premises.

Outcome / proposition: Course repair versus renewal authority.

When to use: Where the scope of a repairing covenant is disputed because the proposed work is extensive.

CASE / AUTHORITY - Warren v Keen

Facts / issue: The landlord complained about the tenant's treatment of residential premises. The court described the ordinary tenant-like obligation to take proper care but not to make good deterioration caused by fair wear and tear.

Outcome / proposition: Tenant-like use: ordinary maintenance/care.

When to use: Implied tenant obligations concerning ordinary care, minor maintenance and fair wear and tear.

CASE / AUTHORITY - Kirby v Caruso

Facts / issue: The case concerns the doctrine of emblements and the circumstances in which an agricultural tenant may retain rights to crops after the tenancy ends.

Outcome / proposition: Emblements/agricultural tenant crop rights.

When to use: Agricultural tenancies and questions about a tenant's right to harvest crops after termination.

CASE / AUTHORITY - BP Refinery (Westernport) Pty Ltd v Shire of Hastings

Facts / issue: The dispute concerned whether an unstated contractual term should be implied to make the agreement work. The Privy Council stated the well-known five conditions for implication of a term in fact.

Outcome / proposition: Five conditions for implication in fact.

When to use: Lease or contract problems where a party argues that an unexpressed term should be implied from the particular agreement.

CASE / AUTHORITY - Codelfa Construction Pty Ltd v State Rail Authority of NSW

Facts / issue: The High Court considered interpretation, surrounding circumstances and implication of contractual terms after unexpected restrictions affected performance. It endorsed the disciplined approach to implication in fact.

Outcome / proposition: High Court acceptance/application of implication principles; construction/context.

When to use: When implying a term into a lease or related contract, and when distinguishing implication from interpretation or frustration.

CASE / AUTHORITY - Liverpool City Council v Irwin

Facts / issue: Tenants in a multi-storey building suffered serious problems with common areas and facilities. The House of Lords implied a landlord obligation as a legal incident of the tenancy to take reasonable care of common parts.

Outcome / proposition: Terms implied by law into class of tenancy, including common parts.

When to use: Terms implied by law into a class of lease, particularly landlord obligations concerning common areas and essential facilities.

CASE / AUTHORITY - Pimms Ltd v Tallow Chandlers Co

Facts / issue: A landlord withheld consent to an assignment, raising whether the refusal was reasonable in light of the proposed assignee and the landlord's legitimate interests.

Outcome / proposition: Reasonableness of withholding assignment consent.

When to use: Assignment-consent disputes where the reasonableness of refusal or conditions must be assessed.

CASE / AUTHORITY - J A McBeath Nominees Pty Ltd v Jenkins Development Corp Pty Ltd

Facts / issue: The dispute concerned landlord consent to assignment and whether the landlord's reasons or conditions were objectively reasonable.

Outcome / proposition: Course assignment-consent reasonableness authority.

When to use: Commercial assignment problems where a landlord relies on solvency, tenant mix, use, security or other stated reasons for withholding consent.

CASE / AUTHORITY - Tamsco Ltd v Franklins Ltd

Facts / issue: The case is used in the course on the limits of a landlord's power to withhold or condition consent to assignment.

Outcome / proposition: Course assignment-consent authority.

When to use: Where consent to assignment is refused or made subject to conditions and the student must test whether those reasons are legitimate and reasonable.

CASE / AUTHORITY - English, Scottish and Australian Bank Ltd v City National Bank

Facts / issue: A lease was granted over land already subject to a mortgage, raising priority and enforceability between the mortgagee and tenant. The case illustrates the effect of an earlier mortgage on a later lease.

Outcome / proposition: Priority/effect of lease where land subject to mortgage.

When to use: Priority problems involving a lease granted after a mortgage, especially where mortgagee consent is absent.

CASE / AUTHORITY - Minister of State for the Army v Dalziel

Facts / issue: The Commonwealth took exclusive possession of land during wartime. The High Court considered the proprietary nature and value of exclusive occupation, providing an important historical reference point for leasehold interests.

Outcome / proposition: Lease/proprietary occupation and historical frustration context.

When to use: Historical discussion of the proprietary character of exclusive possession and the background to lease/frustration analysis.

CASE / AUTHORITY - Shevill v Builders Licensing Board

Facts / issue: A landlord terminated a lease under a re-entry clause after rent default. The High Court held that exercising the clause for a non-repudiatory breach did not itself entitle the landlord to future loss-of-bargain damages.

Outcome / proposition: Forfeiture for non-repudiatory breach does not automatically yield future loss-of-bargain damages.

When to use: Lease termination and damages where the landlord relies on a forfeiture clause rather than acceptance of repudiation.

CASE / AUTHORITY - Cao v ISPT Pty Ltd

Facts / issue: The case is used in the course as a modern authority concerning whether supervening events can frustrate a lease and discharge future obligations.

Outcome / proposition: Course modern lease-frustration authority.

When to use: Frustration arguments in leases where an external event allegedly makes continued performance radically different.

CASE / AUTHORITY - Matthews v Smallwood

Facts / issue: A landlord knew of a breach capable of forfeiture but then acted in a way recognising that the lease continued. The case states the classic requirements for waiver of forfeiture.

Outcome / proposition: Waiver: actual knowledge + unequivocal act recognising lease continues.

When to use: Waiver problems where the landlord accepts rent or otherwise affirms the lease after learning of a breach.

CASE / AUTHORITY - Suga Pty Ltd v Trust Co of Australia Ltd

Facts / issue: A notice to remedy breach required the tenant to cure default within a stated period. The issue was whether the time allowed was objectively reasonable in light of what had to be done.

Outcome / proposition: Reasonable time in breach-remedy notice.

When to use: Testing whether a Notice to Remedy Breach gives the tenant a reasonable time to comply.

CASE / AUTHORITY - McKay v Blumson

Facts / issue: The court considered the time reasonably required to cure a lease breach, having regard to the nature of the default and the steps needed for compliance.

Outcome / proposition: Reasonable cure-time authority.

When to use: Notice-to-remedy problems where the adequacy of the cure period is disputed.

CASE / AUTHORITY - BBF Toowoomba Pty Ltd v Nebrean Pty Ltd

Facts / issue: A Queensland lease dispute raised whether the period allowed to remedy the identified breach was reasonable in the circumstances.

Outcome / proposition: Queensland course reasonable-time authority.

When to use: Queensland notice and forfeiture problems requiring assessment of a reasonable cure period.

CASE / AUTHORITY - Shiloh Spinners Ltd v Harding

Facts / issue: A proprietary interest was liable to forfeiture for breach of obligation. The House of Lords explained equity's jurisdiction to relieve against forfeiture where the forfeiture operates as security and justice can be done by performance or compensation.

Outcome / proposition: Equitable relief against forfeiture.

When to use: Applications for relief against forfeiture after breach, especially where the default can be cured and the landlord can be compensated.

CASE / AUTHORITY - Progressive Mailing House Pty Ltd v Tabali Pty Ltd

Facts / issue: A tenant's serious and continuing breaches amounted to repudiation of the lease. The High Court held that ordinary contractual termination principles can apply to leases and may support loss-of-bargain damages.

Outcome / proposition: Repudiatory breach supports termination and loss-of-bargain damages; contrast Shevill.

When to use: Serious or repeated tenant breach where the landlord seeks termination for repudiation and future loss-of-bargain damages; contrast Shevill.

Covenants

CASE / AUTHORITY - Rogers v Hosegood

Facts / issue: Land covenant dispute.

Outcome / proposition: Touch and concern land: mode of occupation/value.

When to use: Benefit/burden analysis.

CASE / AUTHORITY - Bellevue Station Pty Ltd v Consolidated Pastoral Company Pty Ltd

Facts / issue: Land covenant dispute.

Outcome / proposition: Amenity/land benefit versus personal covenant.

When to use: Benefit/burden analysis.

CASE / AUTHORITY - Clem Smith Nominees Pty Ltd v Farrelly

Facts / issue: Land covenant dispute.

Outcome / proposition: Touch-and-concern/amenity.

When to use: Benefit/burden analysis.

CASE / AUTHORITY - Re Ballard's Conveyance

Facts / issue: Land covenant dispute.

Outcome / proposition: Insufficient identification/nexus of benefited land.

When to use: Benefit/burden analysis.

CASE / AUTHORITY - Rhone v Stephens

Facts / issue: Land covenant dispute.

Outcome / proposition: Positive covenant burden does not run in equity merely with benefit.

When to use: Benefit/burden analysis.

CASE / AUTHORITY - Chambers v Randall

Facts / issue: Land covenant dispute.

Outcome / proposition: Express assignment of covenant benefit in equity.

When to use: Benefit/burden analysis.

CASE / AUTHORITY - Re Union of London and Smiths Bank Ltd's Conveyance

Facts / issue: Land covenant dispute.

Outcome / proposition: Assignment of covenant benefit.

When to use: Benefit/burden analysis.

CASE / AUTHORITY - Elliston v Reacher

Facts / issue: Land covenant dispute.

Outcome / proposition: Four requirements for scheme of development.

When to use: Benefit/burden analysis.

CASE / AUTHORITY - Norton v Kilduff

Facts / issue: Land covenant dispute.

Outcome / proposition: Scheme-of-development course authority.

When to use: Benefit/burden analysis.

CASE / AUTHORITY - Ryan v Brain

Facts / issue: Land covenant dispute.

Outcome / proposition: Scheme-of-development course authority.

When to use: Benefit/burden analysis.

CASE / AUTHORITY - Forestview Nominees Pty Ltd v Perpetual Trustees WA Ltd

Facts / issue: Land covenant dispute.

Outcome / proposition: Common-law burden does not run without chain/new covenant.

When to use: Benefit/burden analysis.

CASE / AUTHORITY - Tulk v Moxhay

Facts / issue: Land covenant dispute.

Outcome / proposition: Restrictive covenant burden can run in equity against successor under doctrine requirements.

When to use: Benefit/burden analysis.

Boundaries

CASE / AUTHORITY - Bernstein v Skyviews & General Ltd

Facts / issue: Boundary/property-use dispute.

Outcome / proposition: Landowner airspace rights limited to height necessary for ordinary use/enjoyment.

When to use: Boundary/encroachment issue.

CASE / AUTHORITY - Wade v New South Wales Rutile Mining Co Pty Ltd

Facts / issue: Boundary/property-use dispute.

Outcome / proposition: Owner has subsoil/natural contents subject to Crown minerals.

When to use: Boundary/encroachment issue.

CASE / AUTHORITY - Di Napoli v New Beach Apartments Pty Ltd

Facts / issue: Boundary/property-use dispute.

Outcome / proposition: Rock anchors below neighbour land constituted trespass.

When to use: Boundary/encroachment issue.

CASE / AUTHORITY - Hazlett v Presnell

Facts / issue: Boundary/property-use dispute.

Outcome / proposition: Gradual natural change can move water boundary; sudden avulsion does not.

When to use: Boundary/encroachment issue.

CASE / AUTHORITY - Southern Centre of Theosophy Inc v South Australia

Facts / issue: Boundary/property-use dispute.

Outcome / proposition: Natural gradual accretion can alter shoreline boundary even where protective works influenced conditions.

When to use: Boundary/encroachment issue.

CASE / AUTHORITY - National Carriers Ltd v Panalpina (Northern) Ltd

Facts / issue: Boundary/property-use dispute.

Outcome / proposition: Lease/frustration/property destruction context.

When to use: Boundary/encroachment issue.

CASE / AUTHORITY - Environment Protection Authority v Rashleigh

Facts / issue: Boundary/property-use dispute.

Outcome / proposition: Riparian owner has use rights but no property in flowing water.

When to use: Boundary/encroachment issue.

CASE / AUTHORITY - Ex parte Van Achterberg

Facts / issue: Boundary/property-use dispute.

Outcome / proposition: Definition/nature of statutory encroachment and appropriate relief.

When to use: Boundary/encroachment issue.

CASE / AUTHORITY - Gesmundo v Anastasiou

Facts / issue: Boundary/property-use dispute.

Outcome / proposition: Encroachment statutory compensation/property adjustment.

When to use: Boundary/encroachment issue.

CASE / AUTHORITY - Kostis v Devitt

Facts / issue: Boundary/property-use dispute.

Outcome / proposition: Balancing removal/compensation in encroachment.

When to use: Boundary/encroachment issue.

CASE / AUTHORITY - Steer v Hemmings

Facts / issue: Boundary/property-use dispute.

Outcome / proposition: Encroachment remedy authority.

When to use: Boundary/encroachment issue.

Strata

CASE / AUTHORITY - Mineralogy Pty Ltd v Body Corporate for the Lakes Coolum

Facts / issue: Body corporate/by-law validity dispute.

Outcome / proposition: Course authority for statutory limits, reasonableness/oppressiveness of by-laws.

When to use: Challenge by-law beyond BCCMA power.

Native title

CASE / AUTHORITY - Milirrpum v Nabalco Pty Ltd (Gove Land Rights Case)

Facts / issue: Native-title claim/land grant context.

Outcome / proposition: Pre-Mabo refusal to recognise claimed proprietary rights despite recognisable Indigenous law.

When to use: NTA s 223 or extinguishment/acts analysis.

CASE / AUTHORITY - Coe v Commonwealth

Facts / issue: Native-title claim/land grant context.

Outcome / proposition: High Court willingness to engage recognition issue pre-Mabo.

When to use: NTA s 223 or extinguishment/acts analysis.

CASE / AUTHORITY - Mabo v Queensland (No 2)

Facts / issue: Native-title claim/land grant context.

Outcome / proposition: Terra nullius rejected; native title recognised; radical title/coexistence/extinguishment framework.

When to use: NTA s 223 or extinguishment/acts analysis.

CASE / AUTHORITY - Yanner v Eaton

Facts / issue: Native-title claim/land grant context.

Outcome / proposition: Native title can include traditional hunting/taking fauna; regulation not automatically extinguishment.

When to use: NTA s 223 or extinguishment/acts analysis.

CASE / AUTHORITY - Fejo v Northern Territory (1998) 195 CLR 96

Facts / issue: Native-title claim/land grant context.

Outcome / proposition: Fee simple wholly extinguishes native title and extinguishment is permanent.

When to use: NTA s 223 or extinguishment/acts analysis.

CASE / AUTHORITY - Western Australia v Ward

Facts / issue: Native-title claim/land grant context.

Outcome / proposition: Right-by-right partial extinguishment and non-exclusive content.

When to use: NTA s 223 or extinguishment/acts analysis.

CASE / AUTHORITY - Wilson v Anderson

Facts / issue: Native-title claim/land grant context.

Outcome / proposition: Western Lands lease/extinguishment course authority.

When to use: NTA s 223 or extinguishment/acts analysis.

CASE / AUTHORITY - Wik Peoples v Queensland

Facts / issue: Native-title claim/land grant context.

Outcome / proposition: Pastoral lease not necessarily exclusive; coexistence subject to inconsistency; led to intermediate-period reforms.

When to use: NTA s 223 or extinguishment/acts analysis.

CASE / AUTHORITY - De Rose v South Australia (No 2)

Facts / issue: Native-title claim/land grant context.

Outcome / proposition: Partial extinguishment over pastoral improvement footprints.

When to use: NTA s 223 or extinguishment/acts analysis.

APPENDIX C. FINAL EXAM ATTACK SHEET

This is the fast issue-spotting sequence to use before writing. It does not replace the full law in the chapters; it tells you what to ask first.

CO-OWNERSHIP JT or TIC? Four unities? Death/survivorship? Severance before death? Sale/division? PLA s 40 accounts/occupation rent.
MORTGAGE Legal/equitable? NCC threshold? Default notice? Power? 30 days? s 116 market value/good faith? Buyer registered? Injunction/caveat now; s 117 damages.
EASEMENT Four Re Ellenborough Park elements -> creation/registration -> construction -> excess/interference -> injunction/damages -> PLA s 181 / LTA release.
PROFIT Is holder taking natural produce? Writing/registration? Equitable caveat? Interference? Expiry/exhaustion/merger.
LICENCE Permission only? Bare/contractual/coupled interest? Exclusive possession? Revocation + reasonable time? Contract damages.
LEASE Exclusive possession + certainty -> legal/equitable form -> tenancy type -> covenants -> assignment/successor -> ending/notice/forfeiture/relief -> damages basis.
RETAIL LEASE Prove RSLA threshold -> disclosure -> ss 24-50B minimum standard -> compensation -> mediation/QCAT.
COVENANT Promise positive or restrictive? Benefit passed? Burden passed? CL or equity? Tulk? Scheme? Injunction.
BOUNDARY Where is boundary? Natural change? State road/water? Vertical trespass?

Encroachment? PLA ss 183-188.
STRATA Module + CMS -> by-law power/limits -> exclusive use -> lot entitlement principle -> decision maker/meeting -> notices -> Commissioner/adjudicator/QCAT.
NATIVE TITLE s 223 existence/content -> exact Crown grant -> inconsistency/extinguishment -> date/classify act -> future-act process/ILUA -> compensation.
EVERY CONCLUSION State who owns what / who can enforce what / immediate practical step / remedy / damages or compensation and why.

High Distinction drafting checklist

Write the main issue, then visible sub-issues. Do not hide the structure inside a long narrative.

State the exact statutory provision and subsection before relying on the case proposition where legislation controls.

State each limb or element and apply each limb to a fact.

Use cases as analogies and contrasts. Explain why the facts trigger the authority.

Deal with registration and indefeasibility separately from underlying contractual or equitable validity.

Distinguish liability from remedy. Identify causation, measure and mitigation for damages or compensation, and consider proprietary relief first where appropriate.

End with a firm but legally qualified conclusion and the immediate practical step.

APPENDIX D. AGLC4 QUICK REFERENCE FOR PROPERTY LAW STUDENTS

AGLC4 provides the citation conventions used throughout this book. The examples below show the citation structures students should learn to recognise and reproduce. Always follow any specific assessment or workplace instructions where a law school, court or firm requires a variation.

Cases

FIRST CITATION - REPORTED CASE

Case name in italics + year/volume/report/first page + pinpoint where needed.

Example: Williams v Hensman (1861) 1 J & H 546; 70 ER 862.

Use a pinpoint paragraph or page when relying on a specific proposition. The case name belongs in italics; the citation itself is not italicised.

Legislation

QUEENSLAND ACT

Property Law Act 2023 (Qld) s 116(2).

Land Title Act 1994 (Qld) ss 184-187.

The Act name and year are italicised. The jurisdiction appears in parentheses. Use s for one section and ss for multiple sections; retain the exact subsection and paragraph where the proposition depends on it.

Books

BOOK

Author, Title (Publisher, edition, year) pinpoint. Use the exact bibliographic details supplied by the source.

Journal articles

JOURNAL ARTICLE

Author, ‘Article Title’ (Year) Volume Journal First Page, Pinpoint.

Government forms, webpages and news material

Cite the responsible institution or author, the title of the form/page/article, the publication date where supplied and the online source in the form required by AGLC4. Contemporary news examples in this book are contextual illustrations, not substitutes for Queensland authority.

Subsequent references

After the first full citation, use the shortened form permitted by AGLC4, and use Ibid only where the immediately preceding footnote supports that form. Do not use a shortened reference that makes it difficult to identify the original authority.

Bibliographies

In a bibliography, organise material by category. The first author’s surname is placed first for author-based sources. Cases and legislation are separated from books/articles. AGLC4 permits categories to be adapted where the source mix requires it.

APPENDIX E. LECTURE-TUTORIAL ALIGNMENT AND SOURCE GUIDE

The book treats all supplied materials as sources while distinguishing their legal status. Legislation is statutory law; reported decisions are judicial authority; lecture and tutorial materials are teaching sources; textbooks and journal articles are secondary sources; forms and government guidance are practice sources; and contemporary articles are contextual illustrations.

Chapter 1 - Co-Ownership Co-ownership forum/lecture Co-ownership tutorial: Max, Alex and Sam
Chapter 2 - Mortgages Part 1 Mortgages Part 1 forum/lecture Tutorial bridge using Toowoomba mortgage facts
Chapter 3 - Mortgages Part 2 Mortgages Part 2 forum/lecture Mortgages tutorial: Resi power of sale
Chapter 4 - Easements and Profits à Prendre Easements and Profits forum/lecture Easements tutorial + Profits and Licences tutorial
Chapter 5 - Licences Licences forum/lecture Profits and Licences tutorial, licence lens
Chapter 6 - Negotiation and Settlement Deeds Negotiation lecture + assessment task Co-ownership/Resi dispute negotiation and deed
Chapter 7 - Leases Part 1 Leases Part 1 forum/lecture Leases Parts 1 & 2 tutorial, formation/classification lens
Chapter 8 - Leases Part 2 Leases Part 2 forum/lecture Leases Parts 1 & 2 tutorial, covenants/assignment lens
Chapter 9 - Leases Part 3 and Retail

Leases Part 3 forum/lecture Supplied revision problem: Elaine’s Burleigh Heads retail lease
Chapter 10 - Covenants and Boundaries Covenants and Boundaries forum/lecture + live recap Covenants and Boundaries tutorial: Sophia + Lucas
Chapter 11 - Strata / BCCM Strata Title forum/lecture Sea Breeze CTS tutorial
Chapter 12 - Native Title Native Title forum/lecture Banksia people tutorial
Chapter 13 - Final Examination Revision Course-wide revision resources 5 supplied revision problems + additional integrated problems

BIBLIOGRAPHY

This bibliography is organised in an AGLC4-style source structure. It includes the principal sources relied upon in preparing the study guide. Where the supplied course resource identifies an authority by name but does not provide a complete report citation, the name is retained rather than supplemented by an invented citation.

A Articles, Books and Reports

Adams, George W, Mediating Justice: Legal Dispute Negotiations (2nd ed, 2011) ch 2

Boulle, Laurence and Nadja Alexander, Mediation: Skills and Techniques (3rd ed, 2019) ch 6

Brown and Marriott, ADR Principles and Practice (4th ed, 2019) negotiation chapter

Edgeworth, Brendan, Butt's Land Law (7th ed, 2017)

Edgeworth, Brendan, Clyde Croft, Chris Rossiter and Pamela O'Connor, Sackville & Neave Australian Property Law (11th ed, 2021)

Field, Rachael, Australian Dispute Resolution (2022) ch 7

Fowler, Michael Ross, Mastering Negotiation (2017)

Inns of Court School of Law, Negotiation (2006/2007)

Johnson, Tammy and Gregory Dale, Real Property Law in Queensland (6th ed, 2026)

Sourdin, Tania and Lola Akin Ojelabi, Alternative Dispute Resolution (7th ed, 2026) chs 2, 7

Wolski, Bobette, negotiation chapter in Skills, Ethics and Values for Legal Practice (2nd ed, 2009) 483-580

Wolski, Bobette, "The 'New' Limitations of Fisher and Ury's Model of Interest-Based Negotiation: Not Necessarily the Ethical Alternative" (2012) 19 James Cook University Law Review 127

B Cases

Aldin v Latimer Clark, Muirhead & Co

ANZ Banking Group Ltd v Bangadilly Pastoral Co Pty Ltd

Ashburn Anstalt v Arnold

Ashton v Hunt

Aussie Traveller Pty Ltd v Marklea Pty Ltd

Barker v The Queen

BBF Toowoomba Pty Ltd v Nebrean Pty Ltd

Beard v Baulkham Hills Shire Council

Bellevue Station Pty Ltd v Consolidated Pastoral Company Pty Ltd

Berdal v Burns [1990] WAR 140

Bernstein v Skyviews & General Ltd

Biggs v Hoddinott

Bishop v Taylor

Biviano v Natoli

Bond University Ltd v Limgold Pty Ltd

BP Refinery (Westernport) Pty Ltd v Shire of Hastings

Breskvar v Wall

Brisbane City Council v The Council Club

Cameron v Brisbane Fleet Sales

Cao v ISPT Pty Ltd

Chambers v Randall

Chan v Cresdon Pty Ltd

Chieco v Evans

Clem Smith Nominees Pty Ltd v Farrelly

Clos Farming Estates v Easton

Codelfa Construction Pty Ltd v State Rail Authority of NSW

Coe v Commonwealth

Commercial and General Acceptance Ltd v Nixon

Corin v Patton

Cowell v Rosehill Racecourse Co Ltd (1937) 56 CLR 605

Crago v Julian

Cuckmere Brick Co Ltd v Mutual Finance Ltd

Dennis v McDonald

De Rose v South Australia (No 2)

Di Napoli v New Beach Apartments Pty Ltd

Elliott v Renner

Elliston v Reacher [1908] 2 Ch 374

Ell v Cisera

Emerson v Custom Credit Corp Ltd

English, Scottish and Australian Bank Ltd v City National Bank

English, Scottish and Australian Bank Ltd v Phillips (1937) 57 CLR 302

Environment Protection Authority v Rashleigh

Errington v Errington and Woods

Eucalypt Group Pty Ltd v Robin

Ex parte Van Achterberg

Fairclough v Swan Brewery Co Ltd

Farrar v Farrar

Fejo v Northern Territory (1998) 195 CLR 96

Forestview Nominees Pty Ltd v Perpetual Trustees WA Ltd

Gallagher v Rainbow

Gesmundo v Anastasiou

Graham v Markets Hotel Pty Ltd

Halliday v Nevill

Hamilton Island Enterprises Ltd v Croycom Pty Ltd

Hare v Van Brugge

Harmer v Jumbil (Nigeria) Tin Areas Ltd

Hazlett v Presnell

Hoy v Allerton

Hyde Management Services Pty Ltd v FAI Insurances Ltd

In the matter of an application by Rollwell Australia Pty Ltd

J A McBeath Nominees Pty Ltd v Jenkins Development Corp Pty Ltd

J C Berndt Pty Ltd v Walsh

Karaggianis v Malltown Pty Ltd

Kennedy v De Trafford

Kenny v Preen

Kirby v Caruso

KJRR v Commissioner of State Revenue

Knightsbridge Estates Trust Ltd v Byrne

Kohua Pty Ltd v Tai Ping Trading Pty Ltd

Kostis v Devitt

Kreglinger v New Patagonia Meat & Cold Storage Co Ltd

Lace v Chantler

Latec Investments Ltd v Hotel Terrigal Pty Ltd

Laurinda Pty Ltd v Capalaba Park Shopping Centre Pty Ltd

Lavender v Betts

Leitz Leeholme Stud Pty Ltd v Robinson

Lend Lease Development Pty Ltd v Zemlicka

Lewis v Bell

Lincoln Hunt Australia Ltd v Willesee

Liverpool City Council v Irwin

Lurcott v Wakeley & Wheeler

Mabo v Queensland (No 2) (1992) 175 CLR 1

MAG Financial and Investment Ventures Pty Ltd v El-Saafin

Martins Camera Corner Pty Ltd v Hotel Mayfair Ltd

Matthews v Smallwood

McKay v Blumson

McKean v Maloney

Milirrpum v Nabalco Pty Ltd (Gove Land Rights Case)

Mineralogy Pty Ltd v Body Corporate for the Lakes Coolum

Minister of State for the Army v Dalziel

Moore v Dimond

Musumeci v Winadell Pty Ltd

National Carriers Ltd v Panalpina (Northern) Ltd

Neubacher v Good [2003] NSWSC 379

Noakes & Co Ltd v Rice

Norton v Kilduff

Palmdale Insurance Ltd v Spenger

Pendlebury v Colonial Mutual Life Assurance Society Ltd

Penny Nominees Pty Ltd v Fountain (No 3) (1990) 5 BPR 11,284

Perera v Vandiyar

Phipps v Pears

Pimms Ltd v Tallow Chandlers Co

Progressive Mailing House Pty Ltd v Tabali Pty Ltd (1985) 157 CLR 17

Proudfoot v Hart

Prudential Assurance Co Ltd v London Residuary Body

Pryce v McGuinness [1966] Qd R 591

Public Trustee v Grivas [1974] 2 NSWLR 316

Radaich v Smith (1959) 101 CLR 209

Re Ballard's Conveyance

Re Ellenborough Park [1956] Ch 131

Reid v Moreland Timber Company

Re McKean's Caveat

Re Stone [1989] 1 Qd R 351

Re Union of London and Smiths Bank Ltd's Conveyance

Reynolds v Aluma-Lite Products Pty Ltd

Rhone v Stephens

Riley v Penttila

Rixon v Horseshoe Pastoral Co Pty Ltd

Rogers v Hosegood [1900] 2 Ch 388

Ryan v Brain

Saleeba v Wilkie

Samuel v Jarrah Timber & Wood Paving Corp Ltd

Shevill v Builders Licensing Board (1982) 149 CLR 620

Shiloh Spinners Ltd v Harding

Smallwood v Sheppards

Smith & Snipes Hall Farm Ltd v River Douglas Catchment Board

Smith v Tamworth City Council

South Coast Oils (Qld & NSW) Pty Ltd v Look Enterprises Pty Ltd

Southern Centre of Theosophy Inc v South Australia

Spencer v Commonwealth

Sprott v Harper

SS & M Ceramics Pty Ltd v Kin

St Edmundsbury and Ipswich Diocesan Board of Finance v Clark (No 2)

Steer v Hemmings

Suga Pty Ltd v Trust Co of Australia Ltd

Sun North Investments Pty Ltd as trustee v Dale

Swanston Mortgage Pty Ltd v Trepan Investments Pty Ltd

Swan v Uecker

Swiss Bank Corporation v Lloyds Bank Ltd

Tamsco Ltd v Franklins Ltd

Treweeke v 36 Oosley Road Pty Ltd

Tujilo v Watts

Tulk v Moxhay (1848) 2 Ph 774; 41 ER 1143

Wade v New South Wales Rutile Mining Co Pty Ltd

Walsh v Lonsdale

Wanner v Caruana

Warren v Keen

Western Australia v Ward (2002) 213 CLR 1

Westfield Management Ltd v Perpetual Trustee Co Ltd (2007) 233 CLR 528

Wik Peoples v Queensland (1996) 187 CLR 1

Williams v Hensman (1861) 1 J & H 546; 70 ER 862

Wilson v Anderson

Wright v Gibbons

Yanner v Eaton

C Legislation

Acts Interpretation Act 1954 (Qld)

Body Corporate and Community Management (Standard Module) Regulation 2020 (Qld)

Body Corporate and Community Management Act 1997 (Qld)

Building Act 1975 (Qld)

Land Act 1994 (Qld)

Land Title Act 1994 (Qld)

Mineral Resources Act 1989 (Qld)

National Consumer Credit Protection Act 2009 (Cth) sch 1 (National Credit Code)

Native Title Act 1993 (Cth)

Property Law Act 2023 (Qld)

Property Law Regulation 2024 (Qld)

Retail Shop Leases Act 1994 (Qld)

Retail Shop Leases Regulation 2016 (Qld)

Succession Act 1981 (Qld)

Survey and Mapping Infrastructure Act 2003 (Qld)

Water Act 2000 (Qld)

D Government and Practice Materials

Queensland Government, approved Retail Shop Leases Form 7 - Lessor Disclosure Statement

Queensland Government, Notice to Remedy Breach - lease practice material supplied with the course

Queensland Government, Notice of Exercise of Power of Sale - mortgage practice material supplied with the course

Queensland Body Corporate and Community Management forms and contravention notices supplied with the course, including likely-future and continuing-contravention material

E Other Sources

ABC News, “Unauthorised Frankston seawall work continues on beachfront despite stop-work order” (21 July 2025) - contextual Victorian boundary/coastal example, not Queensland authority

The Age, “Frankston beach hit by more unauthorised works as ‘illegal’ seawall action stalls” - contextual Victorian boundary/coastal example, not Queensland authority

The Conversation, Juukan Gorge / Indigenous heritage destruction material supplied with the course - contextual resource

ABC News, Yindjibarndi / Fortescue compensation and appeal material supplied with the course - contemporary native-title context

Bond University Property Law B forums, lecture slides, tutorials, live transcripts/recaps, assessment facts and revision questions supplied to the author for study purposes

INDEX

Accounting between co-owners - Ch 1; ss 1.1-1.8; Tutorial Masterclass

Assignment of lease - Ch 8; s 8.7; Tutorial Masterclass

BATNA / WATNA - Ch 6; negotiation masterclass

Body corporate - Ch 11; Appendix A

Boundaries - Ch 10 Part B; Appendix A

Caveat - Chs 2-4; Appendix A

Clogs on redemption - Ch 2; s 2.9

Co-ownership - Ch 1; Ch 13 revision problems

Covenants - Ch 10 Part A; Ch 13 revision problem 2

Easements - Ch 4 Part A; Ch 13 revision problems

Encroachment - Ch 10 Part B; Ch 13 revision problem 2

Equity of redemption - Ch 2

Exclusive possession - Ch 7

Forfeiture - Ch 9

Four unities - Ch 1

Indefeasibility - Chs 1-4, 7-8, 10; Appendix A

Injunction - Remedies throughout; especially Chs 3-5, 10

Joint tenancy - Ch 1

Licences - Ch 5

Lot entitlements - Ch 11; Ch 13 revision problem 4

Market value - mortgagee sale - Ch 3

Mortgages - Chs 2-3; Ch 13 revision problems 1, 8, 10

National Credit Code - Ch 2; Appendix A

Native title - Ch 12; Ch 13 revision problems 5, 11

Negotiation - Ch 6

Non-derogation from grant - Ch 8

Occupation rent - Ch 1

Pastoral lease - Ch 12

Power of sale - Ch 3

Profits à prendre - Ch 4 Part B

Quiet enjoyment - Ch 8

Registration - Throughout; especially Chs 1-4, 7-8

Relief against forfeiture - Ch 9

Retail Shop Leases - Ch 9

Settlement deed - Ch 6

Severance - Ch 1; Ch 13 revision problem 1

Specific performance - Remedies where equitable proprietary/contractual relief is appropriate

Strata / community titles - Ch 11

Tenancy at will - Ch 7

Tenancy in common - Ch 1

Torrens title - Throughout; Appendix A

Tulk v Moxhay - Ch 10

Tutorial method - How to Use This Book; Tutorial Masterclasses in Chs 1-12

Legal research platforms **-** How to Use This Book; Westlaw Australia; Lexis+ / LexisNexis; CCH iKnowConnect; AustLII; Supreme Court Library Queensland; Queensland Legislation

Water boundaries / rights - Ch 10 Part B; Ch 13 revision problem 5

Williams v Hensman - Ch 1; Appendix B

DIGITAL STUDY PACKAGE

This electronic edition is supplied with an interactive crossword companion. Keep the interactive_crosswords folder with this book and use the blue launch links at the end of each chapter, or open START_HERE.html from the complete package. The PDF and Word files remain the primary reading editions; the browser-based crossword pages provide the active typing, answer checking and colour feedback requested for revision practice.

RESOURCES

Course Resources and Online Case Links

This consolidated resource list reproduces the prescribed, recommended, practice, legislation, negotiation, case and supplementary resources supplied for Property Law B. In this electronic edition, case names are linked to public online legal sources. Some course or library resources may require institutional access.

Prescribed Resources

Real property law in Queensland [Book] - Johnson, Tammy, Dale, Gregory, Sixth edition., 2026

Recommended Resources

Sackville & Neave Australian Property Law [Book] - Brendan Edgeworth ; Chris Rossiter ; Pamela O'Connor, 11th edition, 2021

Butt's Land Law [Book] - Brendan Edgeworth, 7th edition, 2017

Queensland Practice Forms

Leases - Notice to Remedy Breach [Document] - 2024, Queensland Government

Mortgages - Notice of Exercise of Power of Sale [Document] - 2024, Queensland Government

BCCMA Form 11 - Likely Future Contravention Notice [Document] - Department of Justice and Attorney-General, 2022, Queensland Government

BCCM Notice to body corporate of a contravention of body corporate by-law [Document] - Department of Justice and Attorney-General, 2021, Queensland Government

BCCM Form Notice of continuing contravention of a body corporate by-law [Document] - Queensland. Department of Justice and Attorney-General, Effective 8 June 2022, Queensland Government

Legislation

Property Law Act 2023 (Qld) [Legislation] - Queensland Legislation, Queensland Government

Property Law Registration 2024 (Qld) [Legislation]

Land Title Act 1994 (Qld) [Legislation] - Queensland Legislation, Queensland Government

Retail Shop Leases Act 1994 (Qld) [Legislation] - Queensland Legislation, Queensland Government

Retail Shop Leases Regulation 2016 (Qld) [Legislation] - Queensland Legislation, Queensland Government

Body Corporate and Community Management Act 1997 (Qld) [Legislation] - Queensland Legislation, Queensland Government

Body Corporate and Community Management (Standard Module) Regulation 2020 (Qld) [Legislation] - Queensland Legislation, Queensland Government

National Credit Code [Legislation] - Australian Government, Federal Register of Legislation

Native Title Act 1993 (Cth) [Legislation] - Australian Government, Federal Register of Legislation

Negotiation Resources

Australian dispute resolution [Book] - Field, Rachael, 2022 Read Chapter 7: Negotiation

Alternative dispute resolution [Book] - Sourdin, Tania, Ojelabi, Lola Akin, Seventh edition., 2026 Read Chapter 2: Negotiation and Chapter 7: Skills

Chapter 6: Assisting the Communication and Culture Dynamics [Book Chapter] - in Mediation: Skills and Techniques, by Laurence Boulle and Nadja Alexander, 3rd edition, 2019, pp. 167-204 Read Chapter 6 pp. 167-204

The 'new' limitations of fisher and Ury's model of interest-based negotiation: Not necessarily the ethical alternative [Article] - Bobette Wolski, 2012, James Cook University Law Review, 19, 127-155

Chapter 2: Negotiation [Book Chapter] - in Mediating Justice: Legal Dispute Negotiations , by George W Adams, 2nd edition, 2011, pp. 27-68

Negotiation [Book Chapter] - in Brown & Marriott's ADR principles and practice, by Shirley Shipman, Ben Waters and William Wood, Henry Brown (consultant editor), 4th edition, 2019, pp. 45-65

Negotiation [Book] - Inns of Court School of Law, 2006/2007 edition, 2006

Mastering negotiation [Book] - Michael Ross Fowler, 2017

Negotiation [Book Chapter] - Wolski, Bobette, in Skills, ethics and values for legal practice , by Wolski, Bobette author, Field, David, 1945-; Bahrij, John., 2nd ed., 2009, pp. 483-580

Cases and Case Resources

Chieco v Evans (1990) 5 BPR 11,297 - 1990, Butterworths Property Reports, 11297-11301 | VIEW ONLINE

Cowell v Rosehill Racecourse (1937) 56 CLR 605 - 1937, Commonwealth Law Reports, 605-656 | VIEW ONLINE

Williams v Hensman (1861) 1 J & H 546; 70 ER 862 - English Reports Full Reprint Vol. 70 - Vice-Chancellors' Courts, 862-868 | VIEW ONLINE

Wardanski v Mawby [2023] QSC 136 - 2023 | VIEW ONLINE

Ratakhin v Tubaro [2023] QCAT 256 - 2023 | VIEW ONLINE

Hare v van Brugge (2013) 84 NSWLR 41 - 2013, New South Wales Law Reports, 41- | VIEW ONLINE

Issa v Owens (No 2) [2023] QSC 96 | VIEW ONLINE

McPaul v Massignani (2023) 14 QR 332 - 2023, Queensland Reports, 332- | VIEW ONLINE

Hyde Management Services v FAI Insurance [1978] QSCFC 53 - 1978 | VIEW ONLINE

Wanner v Caruana [1974] 2 NSWLR 301 - 1974, New South Wales Law Reports, 301- | VIEW ONLINE

Wang v HSBC Bank Australia Ltd [2021] QCA 63 - 2021 | VIEW ONLINE

KJRR v Commissioner of State Revenue [1999] 2 VR 174 - 1999, Victorian Reports, 174- | VIEW ONLINE

Brisbane City Council v Council Club [1995] QCA 163 - 1995 | VIEW ONLINE

Smith v Tamworth City Council (1997) 41 NSWLR 680 - 1997, New South Wales Law Reports, 680- | VIEW ONLINE

Beard v Baulkham Hills Shire Council (1986) 7 NSWLR 273 - 1986, New South Wales Law Reports, 273- | VIEW ONLINE

Forbes v NSW Trotting Club (1979) 143 CLR 242 - 1979, Commonwealth Law Reports, 242- | VIEW ONLINE

Queensland v Congoo Opinions on High - Martin Clark, 13 May 2015, Opinions on High, Melbourne Law School | VIEW ONLINE

Roads and Maritime Services v Devine Marine Group Pty Ltd [2013] NSWSC 1467 - 2013 | VIEW ONLINE

Hamilton Island Enterprises Pty Ltd v Croycom [1998] QSC 71 - 1998 | VIEW ONLINE

Buckley v Timbury No 2 [2013] NSWSC 1389 - 2013 | VIEW ONLINE

Suga v Trust Company [2001] QSC 231 - 2001 | VIEW ONLINE

McKay v Blumson [2000] QSC 65 - 2000 | VIEW ONLINE

Bentley v Chang Holdings [2012] QSC 366 - 2012 | VIEW ONLINE

Castle Constructions Pty Ltd v Sahab Holdings Pty Ltd (2013) 247 CLR 149 - 2013, Commonwealth Law Reports, 149- | VIEW ONLINE

South Coast Oils v Look Enterprises [1988] 1 Qd R 680 - 1988, Queensland Reports, 680- | VIEW ONLINE

Reynolds v Aluma-Lite Products Pty Ltd [2009] QSC 379 | VIEW ONLINE

McKean v Maloney [1988] 1 Qd R 628 - 1988, Queensland Reports, 628- | VIEW ONLINE

Cameron v Brisbane Fleet Sales [2002] 1 Qd R 463 - 2002, Queensland Reports, 463- | VIEW ONLINE

Australia and New Zealand Banking Group Ltd v Bangadilly Pastoral Co Pty Ltd (1978) 139 CLR 195 - 1978, Commonwealth Law Reports, 195- | VIEW ONLINE

Farrar v Farrars Limited (1888) 40 Ch D 395 - 1888, Law Reports, Chancery Division (2nd series), 395- | VIEW ONLINE

ANZ v Alirezai (2004) Q ConvR ¶54-601 - 2004, Queensland Conveyancing Reports | VIEW ONLINE

Latec Investments Ltd v Hotel Terrigal Pty Ltd (1965) 113 CLR 265 - 1965, Commonwealth Law Reports, 265- | VIEW ONLINE

Forsyth v Blundell (1973) 129 CLR 477 - 1973, Commonwealth Law Reports, 477- | VIEW ONLINE

Greene v McInnes [2013] QDC 207 | VIEW ONLINE

Thistle Investment Pty Ltd v MXL Investment Pty Ltd [2024] QSC 247 | VIEW ONLINE

Eucalypt Group Pty Ltd v Robin [2003] QSC 063 - 2003 | VIEW ONLINE

Pirie v Registrar-General (1962) 109 CLR 619 - 1962, Commonwealth Law Reports, 619- | VIEW ONLINE

Phipps v Pears [1964] 2 All ER 35 | VIEW ONLINE

Warren v Nut Farms of Australia Pty Ltd | VIEW ONLINE

Corporate Affairs Commission v ASC Timber Pty Ltd (1989) 18 NSWLR 577 | VIEW ONLINE

Permanent Trustee Australia Ltd v Shand (1992) 27 NSWLR 426 | VIEW ONLINE

Unimin Pty Ltd v Commonwealth (1974) 32 LGRA 342; 2 ACTR 71; 22 FLR 299 | VIEW ONLINE

Ex parte Henry; Re Commissioner of Stamp Duties [1963] NSWR 1079; (1962) 63 SR(NSW) 298; 80 WN(NSW) 435 | VIEW ONLINE

Clos Farming Estates Pty Ltd v Easton | VIEW ONLINE

Additional / Interesting Resources

Bitter ups and downs in neighbourly dispute [Hare v Van Brugge news article] [News Article] - Vanda Carson, 20 April 2013, News.com

Example Building Covenants [Website]

Old Certificate of Title Example [Image]

ABOUT THE AUTHOR

Dr Adrian Adams is an entrepreneur, educator and experienced business leader whose career has spanned healthcare, property, investment and international enterprise.

Over more than two decades, Adrian has built, owned and operated more than 15 clinics internationally across multiple fields of health, helped establish health and supplement businesses, advised boards and directors of international enterprises, and led companies across Queensland, New South Wales and international markets.

His business experience extends deeply into property. Adrian has owned and operated property and development companies in Australia and Asia, real estate agencies and investment corporations, giving him practical exposure to the commercial decisions, negotiations, risks and relationships that sit behind many of the legal principles studied in Property Law.

Now nearing completion of his Juris Doctor at Bond University on the Gold Coast, Queensland, Adrian brings together years of experience as a CEO, director, investor, entrepreneur and student of law. His goal is to make difficult concepts clear, practical and engaging so students can understand the law, prepare for examinations and apply legal reasoning with confidence.

ABOUT THE BOOK

Property Law B in Queensland is designed to make one of the most detailed areas of legal study clearer, more approachable and easier to apply. It brings together Queensland legislation, common law, equity, leading authorities, tutorials, practical examples, exam strategies and High Distinction model answers in a structured and accessible format.

From co-ownership and mortgages to easements, leases, covenants, boundaries, body corporate law and Native Title, each chapter is crafted to build both knowledge and confidence. Extensive quizzes, tutorial masterclasses, problem questions and worked IRAC answers help readers move beyond memorising law and begin thinking with it.

Whether you are studying Law, a Juris Doctor, Business Law or Legal Studies, this book is designed to help you understand the law, apply it with confidence and enjoy learning it.

KEY FEATURES

- Queensland-focused property law coverage
- Exact statutes, cases and practical application
- Tutorial guidance, issue spotting and IRAC method
- Extensive quizzes and High Distinction model answers
- Exam-focused revision and mixed-topic practice

juniq.com.au | hello@juniq.com.au