Property Law

What is Property:
- A physical object of value
- Held publicly or privately
- A collection of enforceable rights
- A collection of enforceable responsibilities
- Interest-based
  1. Alienable
     a) Can be alienated inter vivos or on death
     b) Except Aboriginal land
        (1) Only alienable to the Crown
  2. Registrable
  3. Indefeasible
  4. Possessory

Torrens System:
- A registration system with two functions:
  1. Recording the written document
  2. Gives legal effect to registration
     a) Given by relevant information related to title
     b) Creates indefeasible title (Land Title Act s.23)
- Legal interest is good against the world
  1. Except as against the person making it
- Equitable interest is formed by making a binding contract
- Has three underlying principles:
  1. Mirror Principle
     a) Title is a complete reflection of all interests
     b) Except s.23 enumerated exceptions
     c) Unregistered documents may have an effect (Land Title Act s.20)
  2. Curtain Principle
     a) Immediate indefeasibility of title
        (1) Conclusive in law and equity (Creelman v. Hudson’s Bay)
     b) There is no indefeasibility of charges
  3. Assurance Principle
     a) There is compensation available if a mistake occurs
     b) Must show loss occasioned by LTA statute/Registrar (McCaig v. Reys)
     c) Must show you were deprived of an interest in land (McCaig v. Reys)
     d) Does not apply to unregistrable interests (Royal Bank v. AGBC)
     e) An action cannot be brought to correct the register (McCaig v. Reys)
     f) Certain conditions apply:
        (1) The AG must be a listed party in any action against the AF (Land Title Act s.296(3))
        (2) There is a six-year limitation period (Land Title Act s.296(8))
        (3) The following people cannot claim against the fund: (Land Title Act s.303)
Role of Registration:
- Registration is required in order to transfer legal interest (Land Title Act s.20)
- Registration is not mandatory, but you may lose out on benefits and certainty
- Registrar has discretionary power to cancel or correct mistakes (Heller v. The Registrar)
  - Registrar has the ability to reject applications that have mistakes (Land Title Act s.168)
- Delays caused by the LTO will not affect a purchaser’s right to title (Rudland)
- Priority of registered charges is determined by time and date on title (Land Title Act s.28)
- No registration means no transfer of legal interest
  1. Also no protection under the Assurance Fund
- If you don’t register, someone can register it and beat you to it (Stonehouse v. AGBC)
  1. Unless you leave an unregistered Form A with a lawyer (Feinstein)
- The following categories of things can be registered:
  1. Fee simples:
    a) The actual owner of the land with indefeasible title
  2. Charges:
    a) Covenants (Land Title Act s.219)
    b) Mineral Rights
    c) Life estates
    d) Mortgages (Registered on Form B)
    e) Caveats (Land Title Act s.282-294)
    f) CPLs (Land Title Act s.215-217)
    g) Judgements (Land Title Act s.210-214)
    h) Statutory Easements (Land Title Act s.218)
    i) Co-habitation agreements/marriages (Family Relations Act s.17)
    j) ALR Parcels (Agricultural Land Commission Act)
    k) Statutory building schemes (Land Title Act s.220)
- The following things cannot be registered:
  1. Licenses
  2. Zoning bylaws (Kessler)
  3. Equitable mortgages (Land Title Act s.33)
  4. Trusts (Land Title Act s.180)
  5. Aboriginal title (Skeetchestn)
  6. Sub-right to purchase (Land Title Act s.200)

Form A
- Must be filed with Registrar
- Must not have any spelling mistakes
- Boundaries must be sufficiently described
  1. But lawyers are not required to verify they are correct
  2. This is established by land surveys
- There must be marketable title in fee simple
- Transferee must legally hold title
- Transferee must pay all property taxes before registration
- The transferor does not need to be alive, as long as the Form A is signed
  1. If the transferor is dead the executor must obtain a Grant of Letters Probate
  2. Then the executor can use Form A to dispose of land

Sources of Property Law:
- Aboriginal people occupied the land until 1700s
- Reception of English Law in BC occurred in 1858 (Law and Equity Act s.2)
  1. All existing British statutes and case law became codified
- 1870 passed the Land Registry Ordinance which introduced the Torrens System
- 1871 BC joined Confederation
- Property rights are of provincial jurisdiction

Feudal Concept of Land Ownership:
1. The Crown owns all the land, with the exception of two remaining concepts
2. Tenure
   a) Only has two remaining concepts: forfeiture (treason) and escheat (no heirs)
   b) Conditions under which land is held
3. Estate
   a) How long can an interest in land be held?
   b) Corporeal interests
      (1) Right to use
      (2) Right to possession

Fee tails
1. Required heirs to be direct descendants of owner
2. Abolished by (Property Law Act s.10)

The Provincial Crown owns all the land except:
1. Federal Crown Lands
   a) Public Harbours, natural defence, Indian Reserves, railways
2. Privately Owned Land
   a) But Crown still has right to take land back
3. Aboriginal Title Lands
   a) Granted by treaty or rights contingent on settlements

Future Interests
1. When an estate is promised to the holder in the future
2. Not like in Back to the Future

Provincial Jurisdiction of Property Rights:
- Control is exercised in the common law, equity, and statute
- What statutes govern BC? What do they govern?
  1. Land Act
a) Crown Land
b) Crown Grants *(Land Act s.50)*
   (1) Normally given for leases, rights of way, and licenses of occupation
c) 7 land districts
   (1) Four offices
d) Surveying of Land
2. Land Title Act
   a) BC Torrens Land Registration System
   b) Requires Transfers on Form A and a single page *(Land Title Act s.185)*
      (1) Unless another statute allows a different form
      (2) Unless the registrar accepts a different form
3. Property Law Act
   a) Everything else
   b) Statutory provisions with land issues
4. Land Transfer Form Act
   a) The meaning to be given words in the prescribed forms *(Land Transfer Form Act cc.4-12)*

**The Relationship Between Property Types:**
- Property is divided into two categories:
  1. Real Property
     a) Corporeal-tangible
        (1) Right to possession
     b) Incorporeal-intangible
        (1) Right to use
  2. Personal Property
     a) A holder of a life estate in personal property must preserve it for the ultimate recipient *(Re Fraser)*
        (1) Free to alienate upon death or inter vivos
        (2) Need not register gifts of personal property
        (3) Absolute/allodial ownership
           (a) The courts can create an equitable interest in property
           (b) This can result in the creation of a personal property estate
           (c) This would happen in the case of car leases, for example
     b) Choses in possession-tangible
        (1) Chattel
     c) Choses in action-intangible
        (1) Intellectual property
        (2) Money
        (3) Stocks
        (4) Etc.
- There used to be different actions related to forms of property, but not anymore
- There is no distinction between real and personal property where wills are concerned

**Legal vs. Equitable Interests:**
- What is the difference between a legal interest and an equitable interest?
1. Legal Interests
   a) Arise through common law
   b) Good against the world
   c) Delivered upon registration in BC
2. Equitable Interests
   a) Governed by the court of equity
   b) Not as secure as legal interests
   c) Governed by contracts
   d) Held for the benefit of a 3rd party

Freehold or Leasehold?

<table>
<thead>
<tr>
<th>Freehold estates</th>
<th>Leasehold estates</th>
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</thead>
<tbody>
<tr>
<td>Indefinite, uncertain (almost forever) time period</td>
<td>Certain, ascertainable, limited time period</td>
</tr>
<tr>
<td>Exclusive possession</td>
<td>In possession of the land [landlord retains some residual possessory rights]</td>
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<tr>
<td>Ex: Fee simples, Life estates</td>
<td>Ex: Leases</td>
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</tbody>
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Possession of Property:

- Right of Possession
  1. Intention to possess
  2. Ability to exclude others
- All corporeal interests have a right of possession
- Depends on the nature of the land
- Exclusivity is not required
  1. Shared title can be recognized
  2. Intermittent possession is adequate for title
     a) ie: summer cabin
- Law of finding
  1. Finders keepers losers weepers
  2. Finder of chattel acquires title good against entire world
     a) Except true owner
     b) Reasonable search must be made for true owner
     c) No presumption of indefeasibility because there is a true owner
- Adverse possession
  1. Squatters rights
  2. Does not exist in BC (Land Title Act s.23(3))
     a) Except where indefeasible title has not been posed before (CPR 2002) (Land Title Act s.23(4))
  3. Adjudicated by the court (Land Title Inquiry Act s.171)
  4. Arises through mutual mistake or knowing trespass
  5. Must meet the following criteria to be valid:
     a) Open and notorious
     b) Without permission
     c) Exclusive
d) Peaceful  
e) Active  
f) Continuous

**Aboriginal Title:**  
- Sui generis  
  1. Common law and Aboriginal perspectives must be considered *(Delgamuukw)*  
- Extinguished by the Royal Proclamation of 1763  
  1. Overturned by *(Calder)*  
  2. Now Royal Proclamation does not apply to Aboriginal title *(Calder)*  
- Aboriginal people only have a personal and usufructory right to land *(St. Catherines)*  
  1. Personal: right or interest less than an estate in fee simple  
  2. Usufructory: right of enjoyment of land owned by another  
- Do not have a legal or equitable interest in land *(St. Catherines)*  
- Aboriginal rights and title have always existed at common law *(Calder)*  
- Aboriginal title is protected under s.35 of Constitution Act 1867 *(Van der Peet)*  
- Aboriginal title is not prescriptive  
  1. It has roots in original occupation of land *(Calder)*  
- The Crown has a fiduciary duty to Aboriginal people *(Guerin)*  
- Aboriginal rights:  
  1. Elements of practice, custom or traditional *(Van der Peet)*  
  2. Transferred faithfully and objectively into modern rights  
  3. Only those indicating possession will be transferred into title *(Marshall / Bernard)*  
  4. Used to be integral, but that was overturned by *(Delgamuukw)*  
    a) Use of land under title does not have to be integral to the group  
    b) Can use land under title for any purpose whatsoever  
  5. Determining integral, look at:  
    a) Perspective of people  
    b) Precise nature of claim  
    c) Central significance to society  
    d) Continuity of tradition  
    e) Oral histories about tradition *(Delgamuukw)*  
    f) Specific nature of tradition  
    g) Must be distinctive, but not necessarily distinct  
- Aboriginal title cannot be transferred to anyone but the Crown *(Delgamuukw) (Skeetchestn)*  
- Aboriginal title is held by the band for the use of the band *(Delgamuukw)*  
- The only Aboriginal land that can be registered is Nisga’a  
- There is an inherent limit on land use based on band’s attachment to land *(Delgamuukw)*  
- To establish Aboriginal Title:  
  1. Show physical occupation pre-sovereignty  
  2. Show exclusive possession  
    a) Nomadic people can establish exclusivity by showing patterns of use  
  3. Show intention and capacity to control land
4. Show connection to land is of central significance to distinct culture
5. Show continuity of practice
   a) This is not affected by colonial separation

Charges:
- An interest or estate in land less than fee simple
- Charges are registered with specific forms
  1. Judgements are registered on Form 17
  2. Mortgages are registered on Form B
- The Registrar can refuse to register a charge if: *(Land Title Act s.197)*
  1. He believes there is no good safeholding and marketable title
  2. The charge is not a registerable interest under the Land Title Act
- Trustee’s name will appear on title, but the details of the trust can not be registered *(Land Title Act s.180)*
- Easements may be registered as a trust if they are done so in accordance with the Land Title Act *(Dukart v. Surrey)*
- Charges can be rebutted by verifying the state of accounts *(Credit Foncier) (Land Title Act s.27)*
- Charges are not subject to immediate indefeasibility
  1. Registering a charge serves as giving notice, but does not validate its claim

Caveats:
- An instrument registered by a person who cannot register
  1. Either by lack of Form A or by operation of law
- Prevent further dealing in the land
- Expire after 2 months
  1. Unless Registrar files it himself, which has no expiry date

Certificates of Pending Litigation:
- Freezes disputed title and gives notice to potential buyers
- Registration does not have to be merit-based, just based on a claim *(Peck)*
- Priority based- title that is acquired prior to registration is good *(Peck) (Rudland)*
- A bona fide purchaser for value can claim the right to registration if:
  1. There has been no fraud
  2. Application for registration was done before CPL was filed
- A bona fide purchaser for value is not a party to litigation involved in a CPL *(Canada Permanent Mortgage)*
- Unregistered CPLs have no effect *(First Citizens)*

Judgements:
- Enforced by the Court Order Enforcement Act
- Non-Monetary judgements alter title to the land
- Expire after two years, but can be re-registered
- Registered against the equitable interest

Physical Dimensions of Land:
- Land is measured both horizontally and vertically
- Dimensions of land change through accretion and erosion
  1. Applies equally to riparian owners, leaseholders, and inland lakes (Southern Centre of Theosophy v. South Australia)
  2. Must be gradual and imperceptible
  3. Must be naturally occurring
  4. A change in boundaries must be registered (Land Title Act s.94-96)
- Surveying of land is required in BC (Land Title Act s.58)
  1. Gives certainty of ownership
  2. Land is divided into a lot, block, district lot, section, township, meridian
  3. Registrar may accept a metes and bounds description (Land Title Act s.99)
  4. Onus is on owner of indefeasible title to prove land is wrongly described (Land Title Act s.23(2)(h))
  5. Lawyers do not have an obligation to investigate the description of land (Winrob v. Street)

Airspace Rights:
- Airspace is considered part of the land
- Right to enjoyment
- Right to exclude
- Possessory interest in airspace (Kelsen)
- Extend only to ordinary use and enjoyment (Bernstein v. Skyviews)
- Owner has no property right or legislative jurisdiction (Manitoba v. Air Canada)
- Overhanging branches from neighbouring properties can be cut down
- Intrusion by a land-based object is trespass (Didow v. Alberta Power)
- Governed by following statutes:
  1. Civil Aviation Statutes
     a) Parties other than the owner have airspace rights
  2. Land Title Act
     a) Air space parcels and plans (s. 138)
     b) Title to airspace is recognized (s.139)
     c) Granting of an interest is for that parcel only (s.140)
     d) Highway airspace can be granted by Minister of Transportation (s.142)
     e) Fee simple owner of airspace receives a separate title
  3. Strata Property Act
     a) Divides airspace in building strata plan
     b) Strata owner has interest in both condo and common area

Underground Rights:
- Everything of value belongs to the Crown
- Free miners can come onto public and private land (Mineral Tenures Act)
  1. Must obtain a license, but do not need permission from landowner
- Fee simple owner of mineral rights appears as a charge on title of land

Riparian Rights:
- Governed by following:
1. Common Law/Water Protection Act
   a) Percolating groundwater
   b) Water which has never been licensed
   c) Not based on rights by use
   d) Ownership rights extend to midpoint of river for non-navigable water
      (1) Water that is navigable has no right to water bed
   e) Flow, quantity, and quality in natural state
   f) Use for domestic purposes on own property
   g) Obligation not to cause injury to other riparian owners
      (1) Can’t diminish flow, quantity, or quality
   h) Use must be connected to property on which water rests
   i) Irrigation purposes are limited
   j) Must own surface land that water is under or flows through (Steadman)
   k) Ownership of clean flowing water until license removes rights (Johnson v. Anderson) (Steadman)
   l) No right to ownership of foreshore after high water mark
      (1) Crown owns foreshore in 6 harbours

2. Water Act
   a) Original right to flowing water is vested in Crown
   b) Percolating water is governed at common law (s.3)
   c) Use of flowing water
      (1) Must be licensed (s.5)
         (a) Unused licenses can be cancelled
         (b) First come, first served
         (c) Allows for diversion of water
         (d) Not required for firefighting, domestic purposes or prospecting (s. 42)
         (e) There is no remedy for water ruined in contravention of a license (Schillinger)
      (2) Cannot be acquired by use (s.2)
      (3) Unless under exception in (s.42)
      (4) You can’t own a riverbed, sorry.

3. Land Act
   a) Water bed rights
   b) No rights to navigable river bed of shore (s.55(1))
      (1) Unless specifically granted (s.56) (R. v. Nickel)
      (2) Unless never taken away (s.56) (R. v. Nickel)

4. Land Title Act
   a) Rights upon accretion or erosion
      - Riparian owners have a right to moor vessels on the shore
      - Cannot interfere with public navigation
      - Cannot impede access to foreshore (Murray v. North Saanich)

Fixtures or Chattel?
- Must be connected to the land to be a fixture
- Transferring an interest in land transfers fixtures
To determine fixture or chattel:
1. Look at degree of annexation (Stack v. Eaton)
   a) Resting on its own weight is chattel (Stack v. Eaton)
   b) Unattached and removed without damage is chattel (Royal Bank of Canada)
   c) Plugged-in is chattel (Royal Bank of Canada)
   d) Attached is fixture, even slightly (Stack v. Eaton) (Royal Bank of Canada) (LaSalle)
2. Look at purpose of annexation (Stack v. Eaton)
   a) What would a reasonable person conclude about the purpose (Stack v. Eaton) (Royal Bank of Canada)
   b) Is it permanent or temporary (Elitestone)
   c) Intention is only relevant if it can be presumed from degree and object (Stack v. Eaton)

Tenants fixtures are only fixtures unless the tenant wants them back (Royal Bank of Canada)
1. Premises must be restored if this happens
2. Must be removed during the lease and is subject to the lease

Look at purpose to determine if it was the improve the land itself (Haggert v. Brampton Town) (Re Davis)
- Large equipment is likely chattel (Pioneer Envelopes)
- Contracts for chattel are not binding on future purchases of land (Diamond Neon)
- Mobile Homes:
   1. Resting on rocks or concrete blocks is chattel (Bing v. Kee) (Burlington)
   2. Supporting blocks and piers is chattel (Litchy)
   3. Attached to a basement foundation is fixture (Plaza Equities)

Support:
- An owner is entitled to have his land in its natural state and condition
- A neighbour cannot interfere by direct or indirect action in this (Cleland)
  1. Properties do not need to be adjacent to owe support
- This is an absolute right that exists independent of a claim in negligence (Rytter v. Schmitz)
- It is best to obtain an easement to ensure support for land not in its natural state
  1. If it can be shown that the problem would have happened without interference, that will suffice (Gilles v. Bortoluzzi) (Capilano Bungalow)
- Lateral Support
  1. No one can interfere with the land in removing lateral support (Trinidad Asphalt Co.) (Rytter v. Schmitz)
  2. Does not extend to actual title in dirt (Bremner v. Bleakley)
- Vertical Support
  1. Limited to land in natural state unless applying rules of trespass (Gilles v. Bortoluzzi) (Ritter v. Schmitz)

Incorporeal Interests:
- Proprietary rights run with the land, while personal rights are subject to privity
- Do not give rights to possession
- Divided into two categories:
  1. Easements
     a) Attaches to and runs with the land
     b) Registered as a charge under torrens
     (1) But registration is not evidence of enforceability (Land Title Act s.26)
  2. Covenants
     a) A third party controls use of the land but does not involve physical access to the land

Licenses:
- Allow a person to use another’s land in a specific manner for a specific service
- Are not an interest in land
- Do not run with the land
- There are four categories of license:
  1. Bare License
     a) Little or no consideration
     b) Not much more than a defence to trespass
     c) Revocable by death or at any time
     d) Granted by fee simple, life estate, or lease holders
  2. License coupled with an interest in land/chattels in land
     a) Allows you to remove something from land
     b) Passes along with specific interest in land
  3. Contractual license (Davidson v. Toronto Blue Jays)
     a) Granted for valuable consideration
     b) Rights are determined by terms of contract
  4. License by estoppel
     a) Licensor is estopped from revoking license by encouraging conduct
     b) Similar to proprietary estoppel

Easements:
- There must be a dominant and servient tenement (Ellenborough Park)
  a) These and the easement area must be properly described
- Must be reasonably necessary for the better enjoyment of the dominant tenement
- Dominant and servient owners must be different properties
  a) But you can grant yourself an easement if you own adjacent properties (Property Law Act s.18)
- Must be capable of forming the subject-matter of a grant
  - Right must be well-defined and commonly understood
    1. An easement can benefit more than the dominant tenement (Dukart v. Surrey)
    2. Must be distinct from the right to enjoy land for recreation
    3. Some degree of impairment on the servient tenement is okay (Shelf Holdings v. Husky)
    4. The test is whether the right substantially detracts from the servient tenement’s right to exclude?
       a) Exclusivity is determined by size and purpose (Grant v. MacDonald)
5. Must be useful and beneficial, not merely for recreation
- Easements cannot include right to take from the land
- An easement cannot place a positive obligation on the servient tenement
  1. But it can prevent the servient tenement from entering the area (Nordin)
- Easements are created in three different ways:
  1. Express Grant
     a) Contractual agreement that is registered and binding
     b) Includes statutory rights of way (Land Title Act s.218)
  2. Grant to Self
  3. Statute
     a) Land Act allows Minister to grant right-of-way over Crown land
     b) Minister of highways may enter land for various purposes (Highway Act)
     c) Easements may be cancelled by the courts (Property Law Act s.35)
- Easements appear as a charge on servient tenement (Land Title Act s.181)
- Easements appear as an endorsement on the dominant tenement (Land Title Act s.182)
- Easements continue and are recreated upon subdivision (Land Title Act s.223)

Covenants:
- Registered as a charge on the servient tenement (Land Title Act s.181)
- Registered as an endorsement on the dominant tenement (Land Title Act s.182)
- Contract that creates a proprietary interest and runs with the land
- Requires both a dominant and a servient tenement
- Can be used for a number of purposes: (Land Title Act s.219)
  1. Control the use
  2. Restrict building
  3. Restrict subdivision
  4. Restrict purchasers
  5. Protect environmentally sensitive land
- There are a number of different covenants:
  1. Positive Covenants
     a) Servient owner must do something
  2. Negative Covenants
     a) Servient owner must refrain from something
  3. Benefits
     a) Must touch and concern land
     b) Must relate to the mode of occupation
     c) Must directly affect the value of the land
  4. Burdens
     a) Cannot be assigned to a subsequent party except under equity (Tulk v. Moxley)
- Restrictive covenants have certain requirements (Canada Safeway)
  1. Must be a negative covenant
  2. Must affect the land by controlling its use
  3. It must concern two plots of land
4. if these requirements are not met, the covenant is still valid but does not follow the land
5. Benefited and burdened land must be described precisely
6. Conveyance should state covenant is imposed
7. Must be registered
8. Clear language is required to show intention of parties \textbf{(Nylar)}
   - Registration of a covenant is not proof of enforceability \textbf{(Land Title Act s.221)}

\textbf{Claims Against Land:}
- Claims can be in personam:
  1. Against an individual person
  2. Mortgages are both in personam and in rem \textbf{(Pacific Savings)}
  3. Trusts are in personam claims \textbf{(McRae)}
  4. Not defeated by registration \textbf{(Pacific Savings)}
- Claims can be in rem
  1. Against the land itself
  2. Defeated by registration \textbf{(Frazer v. Walker)}

\textbf{Inter Vivos Sale:}
- Sale of land exists in two stages:
  1. Executory Stage
    a) Vendor retains legal interest until registration
    b) Vendor retains right to possession until money is paid
       (1) If not paid, vendor can impose lien
    c) Vendor bears risk of loss until registration
    d) Vendor must provide Form A
    e) Purchaser needs to ensure that insurance begins upon registration
  2. Executed Stage
    a) Registration of Form A
    b) Possession does not have to take place at the same time as registration
    c) Possession is not equivalent to ownership
- Charges can be listed when not every interest is transferred
- Leases over 3 years must be registered
- Transfers must be witnessed, in writing, on Form A, and single page \textbf{(Land Title Act s. 185)}
  - Registrar has right to accept other forms at his discretion
  - Even if you don’t have express words of transfer, it is transferred anyway \textbf{(Land Title Act s.186(4))}
  - No seal is required, the form is considered sealed upon signing

\textbf{Gifts:}
- A voluntary and intentional transfer of property without consideration
- You must be alive to receive a gift
  1. If not, it goes into residue, then intestate
- Can be transferred inter vivos, on death, or in contemplation of death
  1. Testamentary gifts are revocable until death or completion
2. Donatio Mortis Causa cannot be revoked
   a) Must have some form of delivery, thought not as strict as inter vivos
   b) Must show that gift was meant to be absolute upon death
- There are four steps required for gifts:
  1. Intention
     a) Must have mental capacity
     b) Words must be unambiguous
     c) Disputes on these matters are settled in evidence
  2. Acceptance
     a) Anything less than outright refusal constitutes acceptance
     b) Typically it is assumed that gift is accepted
     c) Decision of donee must be made within reasonable time
  3. Delivery
  4. Registration
     a) Donor must do everything that needs to be done so a transfer can take place (MacLeod)
     b) Must deliver deed and register title
     c) Written Form A is required to transfer interest in land
     d) Unregistered gifts are valid between original parties, but not against BFP
- Gifts under seal are enforceable even without consideration (Romaine)
- Intention of delivery can suffice, if intention is clear (Ross) (Zwicker)
  1. If there is no clear intention, there must be something to represent delivery (McNeil Estate)
- Gift is enforceable even if no deed is registered (Xenos v. Wickham)
  1. Court focuses on Form A to determine transferor’s intention (Shamas)
- In the absence of a completed gift, it cannot be enforced by the donee (Re Waite)

Presumption of Resulting Trust/Advancement:
- A gift transfers only the legal interest
- Donee holds gift in trust for donor and the trust results back to the donor
- Can be rebutted by a sealed gift document (Romaine)
- A gift to family members is presumed to transfer both the legal and equitable interests
- Trusts can be created by implication or expressly
- Does not apply to independent adult children (Pekor)

Testamentary Gifts:
- Court focuses on all the words used in the will and all relevant circumstances in deciding intention of testator (Cielein) (Re Shamas)
  1. Armchair rule: What were the facts known at the time the will was made?
- Death triggers the transfer of property laid out in will
- Revocable until death
- Subject to debts against the estate
  1. Except insurance, RRSP, and joint tenancies
- Governed by the Estate Administration Act and the Wills Act
- Wills Variation Act can allow courts to vary the will if spouse or children are not adequately provided for
- Assets are transferred to the executor in legal interest, and then distributed according to the will.
- Wills must be in writing, name executor, funeral arrangements, custody of children, disposal of assets.
- Intention must be clear.
- Must be signed by testator and witnessed twice.
- Inconsistent or contradictory clauses will be interpreted by the courts to fulfill the dominant intention (Cielein) (Re Walker)

**Proprietary Estoppel:**
- If a defendant is trying to assert rights, a plaintiff can use proprietary estoppel as a cause of action (Zelmer)
- There is a six-step test:
  1. Plaintiff must have made mistake as to his legal right
  2. P must have expended money on faith of this belief
  3. D must know of legal right and be aware of inconsistency with P’s belief
  4. D must be aware of P’s mistaken belief
  5. D must have encouraged P in expending money implicitly or explicitly
  6. D’s actions must be unconscionable

**Unjust Enrichment:**
- Remedied by monetary compensation or real property (Crick) (Murdoch v. Murdoch was against this but Serokan reversed this) (Daigleman v. Guaranty Trust)
- There is a test for unjust enrichment:
  1. D must have received an enrichment from P
  2. P must have suffered a detriment as a result
  3. There must be absence of a juristic reason (ie: contract) for this to have taken place

**Life Estate:**
- Differs from fee simple because it is uninheritable unless expressly granted
- Duration of tenure is limited to life of holder or another listed person
- There are two parties to a life estate:
  1. Registered owner
  2. Life tenant
  3. When life tenant dies, registered owner resumes control of the estate
- Created by:
  1. Form A with express words of creation (Property Law Act s.19)
  2. Wills, with express words of creation
  3. Statute
    a) Spouses are granted life estates when their spouse dies intestate (Estate Administration Act s.96)
- Rights of a life tenant:
  1. Occupation, use, profit
  2. Use or removal of fixtures
  3. Sell their interest
4. Transfer an interest on death, if tenure is limited to the life of another person

- Obligations of a life tenant:
  1. Maintain property in substantially same condition as when it was transferred
     a) Improvements may be made to the property
     b) Damage to property through neglect or omission is not responsibility of life tenant
  2. Pay taxes *(Mayo v. Leitowski)*
  3. Pay interest on mortgage
     a) If life tenant pays principal of mortgage, they may try to claim against registered owner for repayment

- Life tenants are not obligated to:
  1. Provide property insurance
  2. Repair damage to the estate for which they are not responsible

Co-Ownership of Land:
- Must be reflected on the title *(Land Title Act s.173)*
- Divided into two categories:
  1. Joint Tenancy
     a) Subject to the right of survivorship
        1) Remaining tenants inherit interest on death
        2) When it is terminated by court order, the court may make allowances for equity between parties *(Mastron)*
     b) Common law favors and presumes a joint tenancy over a tenancy in common *(Re Bancroft) (Robb)*
     c) Intention alone is insufficient to create a joint tenancy if one of the four unities is not present
     e) Four unities are present:
        1) Time, title, possession, and interest
        2) Can work with personal property as well as land
  2. Tenancy in Common
     a) Unity of interest is not required
     b) There is no right of survivorship
     c) There is no requirement for consent from co-owners to dispose of interest in land
     d) Created upon registration of two or more owners on same title
        1) Default position unless the instrument explicitly creates a joint tenancy
     e) Presumed by courts to have arisen in three occasions *(Robb)*
        1) Purchase money is contributed in unequal shares
        2) Where the property was a mortgage and the co-owners were mortgagees
        3) When parties were business partners

- Unity of possession
- There is no requirements to report or share profits made off land *(Spelman)*
- There is no requirement to contribute to expenses *(Spelman)*
- Absent co-owners cannot claim rent from occupying owner unless: *(Bernard)*
  1. They were ousted *(Mastron)*
2. One co-owner is acting as a bailiff
3. If occupying owner claims expenses in a partition action (Bernard)

Terminating Co-Ownership:
- There are three main ways to sever a joint tenancy (Williams v. Hensman)
  1. Common intention of both parties
  2. Destruction of one of the unities
     a) Usually by alienation of land from one party
     b) Can be done with or without consent
     c) Can be done by bankruptcy
     d) Can be done through order of partition and sale
     e) Granting a mortgage will sever the joint tenancy (Land Title Act s.231)
        (North Vancouver v. Carlisle)
        (1) Unless both tenants receive the same mortgage
     f) Transfer to yourself will sever the joint tenancy (Property Law Act s.18)
     g) Trust deeds will sever a joint tenancy (Sorenson)
  3. Course of dealings that prevent a party from asserting there was no agreement to sever
     a) If people behave as though they are in a tenancy in common, it will sever the joint tenancy and create a tenancy in common (Flannigan v. Wotherspoon)
     b) Estoppel can sever a joint tenancy if facts can be shown that preclude the parties from asserting there was no agreement (Kish v. Tompkins Estate)
- A joint tenancy is not severed by:
  1. A settlement agreement that provides a lease and division of title (Sorenson)
  2. An incomplete commencement for partition of land (Sorenson)
  3. The execution of a will (Sorenson)
- Intention alone is insufficient to sever
  1. There must be an overt act to show severance
  2. Onus to show severance is on those who contend severance (Sorenson)
  3. Silence can constitute severance in light of circumstances (Flannigan v. Wotherspoon)

Partition and Sale:
- Co-owners can apply for a court order which will either divide the proceeds or the land
- They can do this for two reasons:
  1. No consent
  2. Wanting exclusive possession
- Only those with an interest in the land may use the Partition of Property Act to force a sale
- If the majority of co-owners want a sale, the court is bound by their wishes
  1. Otherwise court has discretion
  2. Court has discretion in dividing proceeds of sale, based on surrounding circumstances
  3. It is not guaranteed that the court will divide proceeds according to shares in title (Aleksich)
- The court will compel such an action unless there is a justiciable reason not to (Harmeling)

**Future Interests:**
- Right to possession is postponed until future
- Will or may be obtained in the future
  1. May interests are contingent
- Reversion or remainder interests
  1. Reversion interests revert back to original owner
  2. Remainder interests transfer to a third party
- Vested interests
  1. Vested in possession
     a) Grant an immediate entitlement to possession
  2. Vested in interest
     a) An unqualified interest to take possession as soon as the preceding estate becomes vacant
     b) Unqualified and immediate
- Determinable Fee
  1. Contains words of limitation based on an event
  2. The event determines the duration of the estate
  3. There is certainty as to the event and the vested interest
- Conditional Fee
  1. Granted to the transferee but made defeasible
  2. Will end if a certain event occurs
  3. Contingent future interest, so there is no vesting in a remainder