

Winter | 2010

Private Law: Property

Christopher Scott

Outline for LAW 108B A01, as taught by Professor Deborah Curran

Table of Contents

THE DOCTRINE OF ESTATES (CONTINUED)	1
Fee Simple Estates (Continued)	1
Life Estates	1
Aboriginal Title (Continued)	2
ORIGINS AND NATURE OF EQUITABLE INTERESTS	2
Historical Background – Uses and Trusts	2
Resulting Trusts	2
Constructive Trusts	3
QUALIFIED TRANSFERS AND FUTURE INTERESTS	4
Basic Concepts	4
State Limitations on Private Power (or: How To Void a Condition)	4
The Legal Remainder Rules	5
The Rule Against Perpetuities	6
SHARED OWNERSHIP	6
Joint Tenancy and Tenancy in Common	6
Resolving Concurrent Ownership Disputes	7
Co-Ownership Through Marital Property Law	7
Stratas, Co-Ops, Ecovillages, and Other Shared Ownership Models	8
ACQUIRING AND TRANSFERRING INTERESTS IN LAND	9
Crown Grants	9
<i>Inter Vivos</i> Transfers (Gifts and Contracts)	9
Transfers on Death (Wills and Intestacy)	9
Proprietary Estoppel	9
PRIORITIES IN LAND AND LAND TITLE REGISTRATION	10
Priorities at Common Law and in Equity	10
Title Registration	10
Indefeasibility and its Qualifications	11
LEASES, LICENSES AND BAILMENTS	12
SERVITUDES OVER PROPERTY	13
Easements	13
Covenants	13
INDEX OF CASES	14
APPENDIX I	15

The Doctrine of Estates (Continued)

Fee Simple Estates (Continued)

- Under *Property Law Act* s. 19, the largest interest available (usually a fee simple) is what is transferred, unless a transfer is explicitly of a lesser interest.
- A fee simple estate may be **determinable**, or **on condition**.
 - **Determinable**: Estate lasts until some event occurs (or fails to occur).
 - **On Condition**: Some condition must be met to sustain the estate.

Life Estates

- **Terminology**:
 - *Cestui que vie*: The life by which the life estate is measured.
 - Life estate *pur sa vie*: A life estate where the *cestui que vie* is the life tenant.
 - Life estate *pur autre vie*: A life estate where the *cestui que vie* is not the life tenant.
- If a life tenant sells their *pur sa vie* life estate, they are still the *cestui que vie*; the purchaser now has a *pur autre vie* life estate that terminates on the original owner's death.
- **Income vs. Capital**: The property is often conceptualized as a sum of money (**capital**), which the remainder is to receive. The life tenant receives only the interest (**income**) during their life.
 - Day-to-day maintenance (e.g. cutting the lawn) comes from the income.
 - Repairs and long-term upkeep (e.g. putting in a new porch) come from the capital.
- **Waste**: The life tenant may reduce the value of the remainder's interest only in certain ways:
 - **Ameliorating**: Increases the value of capital. The life tenant is not liable for this kind of waste.
 - This may be detrimental to the remainderperson's interests (e.g. cutting down trees to put in commercial facilities; probably increases value, but a hippie remainderperson won't like it).
 - **Permissive**: Normal wear and tear. The life tenant is generally not responsible for this.
 - **Voluntary**: Non-permissive waste caused by the life tenant.
 - Remedies include an order to stop (or damages).
 - Typically, clearing land is not voluntary waste, at common law.
 - **Equitable**: Exceptional waste (malicious or egregious). This must be specifically excluded in the grant; thus, even if voluntary waste is excluded, equitable waste is not.

Life Estates Arising from Wills:

- General principles of **interpretation of wills**:
 - The overarching goal of the court is to realize the testator's intent. (Taylor)
 - The Court will examine the will and the surrounding circumstances in their entire context in order to determine the testator's intent. (Christensen)
 - "A Court will make every effort to reconcile two apparently **conflicting provisions**" (Christensen)
 - A will drafted by a **layperson** is held to a lower standard of technical correctness. (Christensen)
- **Example grants of property** (all of these leave the remainder to their children):
 - T devises "all my real and personal property" to wife; "should any be left over", it is left to their kids. Court finds that the wife got an absolute gift (no limitation), so no remainder. (Walker)
 - T devises property to wife "to have and use **during her lifetime**"; life estate formed. (Taylor)
 - T devises property to wife "until she no longer needs it"; life estate found. (Christensen)
- A life estate may come with a power to encroach (i.e. reduce the capital). **Examples**:
 - T devises property to wife "to have and **use** during her lifetime"; encroachment found. (Taylor)
 - T devises property to wife; "said property" goes to remainder. No encroachment. (Christensen)
- Adding the power to dispose to a life estate makes it a fee simple (not so for encroachment). (Taylor)

Old, strict case
(T's intent
defeated!)

Newer, lenient
cases (honour
T's intent)

Life Estates Arising by Operation of Law

- Life estates no longer arise by operation of the doctrines of dower, curtesy, or homestead (*EAA* s. 95)
- Under *Estate Administration Act* s. 96, a surviving spouse can gain a life estate in a spousal home that the deceased spouse had title to if he/she dies **intestate**. They may not sell this estate. (*EAA* s. 96)
 - This does not protect the home from creditors.
 - Where the spouse only had a partial interest in the home, the life estate only covers part of the home (e.g. a life estate over ½ of the home, where the spouse had a ½ interest in the home). (*Khan*)
- *Land (Spouse Protection) Act* s. 2 allows a spouse to register a lien on a house that their spouse owns (which prevents them from selling [s. 3] or willing it away [s. 4] without consent). (*LSPA* ss. 2-4)
- **Equity**: The court may also grant a life estate when it serves the purposes of justice.
- **Personalty**: There is **no estate in personalty**. A gift for any amount of time is an absolute gift.
 - **Note**: It might get returned through equity, or via bailment, or being held in trust.

Aboriginal Title (Continued)

- Recall that it is *sui generis*, unalienable (except to the Crown), and communally held. (*Delgamuukw*)
 - It provides a right to exclusive use and occupation, but uses must not be irreconcilable with the traditional attachment to the land. This title can be infringed upon by the Crown. (*Delgamuukw*)
 - **Note**: Aboriginal title is incompatible with the Torrens system of land registration; it is an unregistrable charge that is valid without registration. (*Tsilhqot'in Nation*)

Origins and Nature of Equitable Interests

Historical Background – Uses and Trusts

- **Terminology**:
 - **Settlor**: The transferor of land. [**NB** – For uses, “feeoffor” is used]
 - **Trustee**: The transferee of land. The legal owner. [**NB** – For uses, “feeoffee” is used]
 - **Cestui que trust**: The trustee holds the land for the benefit of this person. The equitable owner.
- The equitable **doctrine of use** is a precursor to trusts; today, “use” and “trust” are synonyms.
 - *Statute of Uses*: Where one person is seized of land for the use/trust of another (incl. corporations), the legal interest also passes to the *cestui que use/trust*.
 - The *Statute of Uses* **does not apply** if the trustee is granted a leasehold, the trustee is a corporation, the trustee is also the beneficial owner, duties are imposed on the trustee, or the trust is composed of personalty.
 - The *Statute of Uses* is **exhausted** if more than one grant is provided; e.g. “from A to B for the use of C for the use of D” is the same as “from A to C for the use of D” (without the *Statute*).

See Ziff 203-204 for examples of valid grants of trusts

Resulting Trusts

- Circumstances in which a resulting trust may be found:
 - The beneficial entitlement has **not** been fully or **properly disposed** of by the settlor.
 - The settlor (A) **gratuitously transfers** property to B (i.e. A retains the beneficial interest). (*Pecore*)
 - There is a **common intention** to form a resulting trust; mostly replaced by constructive trust.
- **Presumption of Resulting Trust**: If a property is not properly disposed of, and the trustee has not given any consideration to the settlor, the trust is presumed to “result” back to the settlor. (*Pecore*)
 - e.g. "From A to B Ltd. in fee simple in trust for C for life" – reverts to A on C's death.
 - To rebut the presumption, it must be shown on the BoP that the **intent of the settlor** was to grant the property to the trustee. If shown, the equitable interest goes to the trustee. (*Pecore*)

- **E.g.** This has been rebutted where an adult daughter had a joint savings account with her father (that she had not paid into); she was close to & financially dependent on him, he said he wanted to take care of her, and his will disposed of everything but that account. (*Pecore*)
- **Presumption of Advancement:** A trust held by a parent for their child is a gift to the child when the parent dies (i.e. it doesn't revert to the parent's estate). Applies to equally to moms/dads. (*Pecore*)
 - Applies only to trusts with minor children (and, sometimes, a dependant spouse) (*Pecore*)

Constructive Trusts

Institutional (or Situational) Trusts

- These trusts arise to remedy wrongful acquisition of property, or to protect relationships of trust and the institutions that rely on them.
- **The Test:** A constructive trust (based on **wrongful conduct**) may be found where: (*Soulos*)
 - There is an **equitable obligation** between the parties relating to the activities giving rise to Δ 's acquisition of the assets in question.
 - **E.g.** A real estate agent's duty of loyalty to his client. (*Soulos*)
 - Those assets were acquired by Δ as a result of an (actual or deemed) **agency** relationship between Δ and π , in breach of Δ 's equitable obligations to π . (i.e. wrongfully acquired)
 - **E.g.** A real estate agent obtaining property that he was pursuing on behalf of his client. (*Soulos*)
 - π must show a **legitimate reason** for seeking a proprietary remedy (rather than damages).
 - This may be a personal reason, or a policy reason to keep people like Δ faithful to duties.
 - **E.g.** Allowing a dishonest real estate agent to keep the property would encourage bad faith among real estate brokers, which is detrimental to the profession as a whole. (*Soulos*)
 - There are **no factors** rendering the imposition of the trust **unjust**.
 - **E.g.** Third parties suffering would be such a reason (no such reason found in *Soulos*) (*Soulos*)

Remedial Trusts

- These trusts arise to remedy **unjust enrichment** (or deprivation), esp. with matrimonial property.
- **The Test:** Unjust enrichment will be remedied in equity where there has been: (*Beblow*)
 - **Enrichment:** Someone benefits financially from another without corresponding compensation.
 - **Deprivation:** The person doing the enriching must have done so to their detriment.
 - **No juristic reason** for enrichment.
 - The "fundamental concern" for whether the services in question are capable of founding an action depends on the "legitimate expectations of the parties"; was the benefit conferred a gift, was π under a legal obligation to provide it, does public policy support the enrichment?
 - **Note:** There is no legal obligation for spouses to provide **domestic services** (but there is a legal obligation to provide for dependent children) (*Beblow*)
- **Equitable remedies** for unjust enrichment include:
 - **Payment for services**, either on the basis of *quantum meruit* or *quantum valebat*. (*Beblow*)
 - *Quantum meruit*: "As much as he deserved", i.e. the appropriate wage for the services.
 - *Quantum valebat*: "As much as it was worth", i.e. the value that Δ was enriched by.
 - **Constructive trust**, where [part of] the legal title is held in trust for π if: (*Beblow*)
 - Monetary compensation is **inadequate** (e.g. unlikely to be paid, or π has a special interest).
 - There is a **link** between the services rendered and the property in dispute.
- **Example:** Wife performs domestic tasks (replaces housekeeper) and raises children, allowing husband to save money, buy more property. Constructive trust found; wife gets the house. (*Beblow*)
- **Note:** Equity prevails over the common law. (*Law and Equity Act* s. 44)
- **Note:** *Murdoch* is the case of the farm wife who got no interest in the ranch (despite working on and financing the ranch) when she divorced her husband. **Mention this** as background. (*Murdoch*)

Qualified Transfers and Future Interests

Basic Concepts

Vested and Contingent Interests

- **Vested interests:** The interest does not depend on any condition or limitation (i.e. it is certain)
 - **Note:** The natural termination of a prior estate is not a condition. (*Stuartburn, Browne*)
 - **e.g.** "To A for life, to B in fee simple" – Both A and B have vested interests
 - A is vested in **possession:** His interest is presently realized (i.e. he currently has possession).
 - B is vested in **interest:** His interest will be realized at a later date (with certainty).
- **Contingent interests:** Vesting is delayed until an uncertain condition is met (**condition precedent**)
 - **e.g.** "To A for life, remainder to B if C occurs"
 - B has a contingent interest, and A has a vested interest. C is a condition precedent.
 - If the **condition precedent is void**, the entire gift fails. (*McKeen*)
- **Presumption for early vesting:** Courts will prefer constructions that grant vested interests. (*McKeen*)
 - Due to this, courts **prefer** to find a condition **subsequent** over a condition precedent. (*HJ Hayes*)

Remainder and Reversion

- **Reversion:** An incomplete gift – only part of the estate is passed. The rest goes back to the testator.
 - **e.g.** "From A to B for life" – A retains his fee simple on reversion, B is vested in possession.
- **Remainder:** The rest of the estate (that hasn't been dealt with) passes on to the next
 - **e.g.** "To A for life, to B in fee simple" – A is vested in possession with a life estate, B is vested in interest with the remainder (the fee simple).

Qualified interests:

- **Defeasible interest:** The opposite of a contingent interest; a grant of an estate that may return to the grantor if an event occurs (**condition subsequent**) (*Caroline*)
 - If the **condition subsequent is met:** The grantor's estate obtains a **right of re-entry**; it may choose to re-enter the property, but does not have to. (*Caroline*)
 - If the **condition subsequent is void**, then the gift is absolute (i.e. grantee keeps it all). (*Caroline*)
 - **e.g.** "To A on the condition that if he does B, my estate may re-enter"
 - B is a condition subsequent. If this occurs, the grantor may re-enter and take A's fee simple.
 - **Magic words** that grant a defeasible interest (i.e. create a condition subsequent) include: "but if", "provided that", "on condition that", and "if it happens that". (*Caroline*)
- **Determinable Interest:** An estate that remains with the grantee until some limitation is breached.
 - If the **limitation is breached**, estate reverts back to grantor automatically ("**right of reverter**")
 - If the **limitation is void**, the grant fails – A gets nothing.
 - **Note:** The court will still review the parties' intentions; if it is evident that the grantor intended to retain some rights, the courts may rectify title and/or create a trust. (*Caroline*)
 - **e.g.** "To A in fee simple so long as he does B" – this is a determinable fee simple.
 - **Magic words:** "while", "during", "so long as", "until" (*Caroline*)

State Limitations on Private Power (or: How To Void a Condition)

- Conditions that **contravene public policy** will not be enforced. (*Leonard*)
 - This will only be invoked in clear cases, where harm to the public is incontestable, or the terms of the trust are so at odds with societal values that they're inimical to the public interest. (*Leonard*)
 - A trust is based on ideas of racism and religious superiority is just such a trust. (*Leonard*)
 - Some discriminatory trusts aren't void, e.g. trusts for children of clergy, or affirmative action trusts. In particular, "**family trusts**" cannot be found void for public policy. (*Leonard*)

Right of re-entry is contingent (Note: Exempted from rule against perpetuities)

Right of reverter is vested (Rule against perpetuities doesn't apply)

- **Cy-près doctrine:** If conditions have changed so that a **charitable trust** may no longer operate, the court may alter its terms to advance the intent of the testator. (Leonard)
 - Becoming void for contemporary public policy may trigger *cy-près*.
 - A charitable trust must satisfy the following criteria: (Leonard)
 - It must have a recognized **charitable purpose** (relief of poverty, advancement of education or religion, or another purpose beneficial to the community as a whole)
 - Its purpose must be wholly and **exclusively charitable**
 - It must promote a **public benefit** (i.e. benefits a “sufficient cross-section” of population)
- **Uncertainty:** A **condition** that could cause a gift to fail must be absolutely clear – the grantee must know what it is they are (or are not) to do. If not, it is void. (*HJ Hayes, aff’g Clavering v. Ellison*)
 - **Note:** Depending on the type of condition, this could result in the gift failing, or being absolute.
- **Restraints on Alienation:** A condition that would take away necessary incidents of fee simple estate (i.e. power to alienate) is void as repugnant to the estate. (Trinity College)
 - An individual can burden himself during life, but not someone else. (Trinity College)
 - A right of first refusal is not, in itself, a restraint on alienation, as the owner may choose when to sell and at what price. An option to purchase at a fixed price, however, is void. (Trinity College)
 - **Note:** There are numerous allowable restraints on alienation for public policy reasons; consider the restrictions on foreign ownership, sacred objects, Aboriginal land, or matrimonial property.

The Legal Remainder Rules

- There are four **rules of legal remainders:**
 1. A remainder after a fee simple is void (NB – *Quia Emptores*)
 2. A remainder is void unless, at its creation, it is supported by a prior (particular) estate of freehold created by the same instrument (the “**springing interests**” rule)
 - **E.g.** “To A and his heirs if A reaches 21” is invalid – there’s a gap prior to A turning 21.
 3. A remainder is void if it is designed to take effect in possession by prematurely defeating the prior estate of freehold (the “**shifting interests**” rule)
 - **E.g.** “To A as long as he does C, and then to B” – the interest “shifts” from C to B.
 - **E.g.** “To A for life or until C occurs, then to B” is valid; A’s interest ends, B gets remainder.
 4. A remainder is void... (Crow)
 - unless it is so limited that it **could** take effect during the continuance of the estate or at the moment of its determination (the “**timely vesting**” rule), and
 - unless it **did**, in fact, take effect during that time (the “**wait and see**” rule).
 - **E.g.** T leaves estate to R & W, remainder to his nieces and nephews. At the time of T’s death, there were no nieces/nephews; at time of R/W’s deaths, there are some. Gift to nieces/nephews fails – didn’t take effect prior to (or at moment of) T’s death. (Crow)
 - **Class Gifts:** If 2 nieces were alive at T’s death, and 3 were alive by R/W’s deaths, only the first 2 nieces would receive the gift; the class is limited by this rule (*Festing v. Allen*)
- **Note:** There is a **chart** detailing the applicability of the remainder rules; see handout.
- **Equitable Interests:** None of the above rules apply to purely equitable interests (i.e. an equitable interest being transferred without the legal title). Equitable interests may spring, shift, *etc.*
- **Legal Executory Interests:** If the *Statute of Uses* shifts legal title over the equitable title-holder, that person has a legal executory interest. Courts often imply these in **testamentary dispositions**.
 - Only rule # 4 applies to such an interest, and **only** if the “**wait and see**” form of rule #4 is capable of applying to it; that is, if the interest *might* vest in that timeframe (i.e. it is not certain to vest, and it is also not certain *not* to vest), then it *must* vest in that timeframe to be valid. (*Purefoy*)
 - **E.g.** “To A for life, then to B if B marries” – Rule #4 applies; B must marry before A dies.
 - **E.g.** “To A for life, remainder one day later to B if B is married” – Rule #4 doesn’t apply, because it is impossible to vest before B dies (i.e. “wait and see” doesn’t apply).

The Rule Against Perpetuities

- **The Rule:** No [contingent] interest is good unless it must vest, if at all, no later than twenty-one years after some life in being at the creation of the interest. (*Scurry-Rainbow*, *Perpetuities Act* s. 6(1))
 - The “must” is literal – at the time of creation (death of testator, or execution of *inter vivos* grant), it **must not be possible** for the interest to vest after the limitation period. (*Scurry-Rainbow*)
 - **Overridden:** Interest is only void if it becomes impossible to vest. (*Perpetuities Act* ss. 8, 9)
 - **Note:** BC statute provides for a fixed 80 year period as an alternative. (*Perpetuities Act* s. 7(1))
 - Vesting may be in interest or possession.
 - The interest is created at the completion of an *inter vivos* transfer or at the death of the testator.
 - **Lives in Being:** Includes the donor, potential recipients, and parties entitled to prior interests.
 - May also include parties with a “sufficient nexus” to the devise; e.g. “to my grandchildren” implies that the donor’s children may be relevant lives in being (since their children benefit)
 - **Class Gifts:** If the class of recipients is indeterminate such that one member might vest outside of the perpetuity period, the entire gift fails (i.e. those who would have vested lose their share)
 - **Rule of Construction:** A class closes as soon as one member is entitled to vest (i.e. if at least one member can vest at the moment of creation, no new members can arise) (*Andrews*)
- “The general purpose of the rule is to prevent the tying up of property to the detriment of society in general”, esp. where that detriment is the fettering of marketability. (*Scurry-Rainbow*)
 - **E.g.** A common lease used in the oil & gas industry that generally promotes commercial development that otherwise offended the rule was valid; the rule is not absolute. (*Scurry-Rainbow*)
- **Note:** The possibility of reverter is a vested interest, and as such cannot offend the Rule. Rights of re-entry, gifts between charities, and options to renew leases are exempt contingent interests. (**Z** 257)
 - **Overridden:** These interests now appear to be subject to the Rule in BC (*Perpetuities Act* s. 23)

Shared Ownership

Joint Tenancy and Tenancy in Common

- **Joint Tenancy:** Historically the default form of shared ownership.
 - **Right of survivorship:** The defining feature of a joint tenancy; When one tenant dies, their interest in the property passes to the other owners.
 - This takes precedence over wills, intestacy, or other mechanisms operating on death.
 - To create a joint tenancy, require the **intention to create** it and the **four unities**: (*McEwan*)
 - **Possession:** The joint tenants must take possession of the same property
 - **Interest:** The joint tenants must have equal shares in the property.
 - **Title:** The joint tenants’ respective interests must arise from the same instrument.
 - **Time:** The interest of the joint tenants must have arisen at the same time.
- **Tenancy in Common:** Has no right of survivorship, and requires only unity of possession.
- Creating concurrent tenancies:
 - There is a **presumption** in favour of **tenancy in common**. (*Property Law Act* s. 11)
 - If the grant states “joint tenancy”, but then includes **words of severance**, a common tenancy is created. Such words include “equally”, “share and share alike”, or “to each”. (*Bancroft*)

Severance of Joint Tenancies

- A joint tenancy can be severed in the following ways: (*Williams v. Hensman*)
 - **Unilateral Acts:** A transfer of title by any one tenant severs the tenancy (since it breaks the unities of time and title)
 - A person may transfer title to himself, thus severing the tenancy. (*Property Law Act* s. 18)
 - An unregistered instrument is only valid against the person making it. (*Land Title Act* s. 20)

- Thus, an executed but unregistered transfer from a tenant to a third party may be enforced against them, so the title is severed at the time of execution. (Stonehouse)
 - See *Sorensen*, below, for a list of unilateral acts that do or don't sever the joint tenancy.
- **Mutual Agreement** (in equity)
- **Other Conduct**: "Any course of dealing sufficient to intimate that the interests of all were mutually treated as constituting a tenancy in common"; i.e. where intention can be inferred.
 - **E.g.** A party dies mid-negotiation, or all parties' wills assume severance.
- **Other**: Bankruptcy of a party, judicial sale, or murder of another tenant can result in severance.
- The **onus** to show severance is on the party asserting it. (Sorensen)
- *Sorensen* is the "encyclopedia case" of **actions that do not result in severance**: (Sorensen)
 - A divorce agreement where a party does not act as if (or believe that) it severed the title
 - Creating a **lease for life** in the property [**NB**: Prof. Curran thinks this ought to sever a unity]
 - Registering a **charge on property** (e.g. mortgage) – doesn't affect right of survivorship.
 - A mortgage is just a charge on property, and doesn't transfer ownership. (*Land Title Act* s. 231)
 - Creating **transfer instruments** without sending to transferee (or his lawyer) – incomplete gift
 - **Donatio mortis causa** (a gift of land cannot be the subject of a D.M.C.)
 - A **unilateral declaration** of intention to sever.
 - Executing a **will** (right of survivorship trumps wills).
 - Commencing an **action for partition** of the land.
- Executing a **trust deed** does sever the tenancy, if it is a valid gift of the beneficial interest. (Sorensen)
 - In *Sorensen*, the presumption of advancement supported validity. Be wary of dissimilar facts!
- **Note**: *Sorensen* focuses on the right of survivorship. **Don't do this**. This treatment has been widely critiqued; we will follow the general approach of determining whether one of the four unities has been severed. However, it is still a good precedent.

Resolving Concurrent Ownership Disputes

- The Supreme Court may order that land held in joint or common tenancy be partitioned and/or sold. This is a **discretionary** power. (*Partition of Property Act* s. 2, *Davis* aff'd *Harmerling*)
 - **Presumption**: Joint tenants have a *prima facie* right to partition/sell, and the court should compel it when requested unless there is a sufficient reason to refuse it. (*Harmerling*)
 - The court will examine the other party's age, health, finances, appropriateness of the property to their interests, and relative contribution to property when assessing such a claim. (*Harmerling*)
 - In *Harmerling*, they examined only the attributes of the resident party (the husband)
- Joint tenants and tenants in common can commence an "action of account" against a tenant for receiving more than is their just share. (*Estate Administration Act* s. 71)
 - Both capital expenses and revenues from land (e.g. minerals) should be split equally between tenants; interest (e.g. revenue from a business on the property) stays with the earner. [*common law*]
 - If one party is called upon to pay a greater share of the expenses, they may claim the excess amounts against the defaulting party (s. 13) or register a lien (s. 14). (*Property Law Act* ss. 13, 14)
- **Personalty**: The same common law principles apply to personalty, but the statutes don't apply.
 - **Note**: This means that joint tenancy is still presumed for personalty, *etc.*

Co-Ownership Through Marital Property Law

- Unless justice requires otherwise [**NB** – this smells like equity], a **matrimonial home** should be sold immediately upon the breakdown of the marriage. (*Harmerling*)
- The *Family Relations Act* ("FRA") Part 5 sets up a "**deferred equal sharing**" system: (FRA ss. 56, 58-61, 65)
 - When a trigger event occurs (see s. 56), all property is deemed family assets owned equally as tenants in common, with business assets mostly excluded (s. 59 – check for exceptions).

- There may be a judicial reapportionment on the basis of unfairness. (*FRA* s. 65)
- The *FRA* prevails over all other acts where there is a conflict. (*FRA* s. 69)
- The *Land (Spouse Protection) Act* allows a **spouse to register a lien** on land (s. 2), and prohibits disposing of the land without consent of both spouses (s. 3). (*Land (Spouse Protection) Act* ss. 2, 3)
- If a will **inadequately supports** T's spouse or children, a court may revise it. (*Wills Variation Act* s. 2)
- **Note:** The *Land (Spouse Protection) Act* and Part V of the *Family Relations Act* (the property division provisions) **do not apply to common-law spouses**. The *WVA* does, though. (cf. *WVA* s. 1)
 - Other parts of the *FRA* (incl. those involving maintenance) does include common-law couples.
- Testators have both moral and legal obligations to provide for spouses and children: (*Tataryn*)
 - **Legal** obligations: Parties must receive at least the portion that they would have been entitled to when the testator was alive (e.g. Spouse would be entitled to ½ in a divorce, so they get ½ now)
 - **Moral** obligations: What would contemporary society expect? There's a strong obligation to give to one's family, if the size of the estate allows and there are no extenuating circumstances.
 - Adult, independent children have limited moral claims (e.g. \$10k each out of \$123k will).
 - Spouses have strong moral claims, esp. if the marriage was a long one and spouse is old.
 - E.g. on top of ½ legal obligation, may also obtain funds for maintenance and old age.
- **Recall:** A surviving spouse can gain a life estate in a spousal home on their spouse's death, if the latter dies intestate. **Query:** Does this inform the legal or moral obligations of the testator? (*EAA* s. 96)
- **Common Law Couples:** Although exclusions of common law couples from insurance schemes was struck down as offending *Charter* s. 15 (*Miron*), matrimonial property-division schemes (e.g. the N.S. *Matrimonial Property Act*) exclude them and have been upheld (*Walsh*), on the basis that common law couples' autonomy is of primary importance; they may opt into *FRA*-like schemes if they wish, but those schemes should not be imposed by the state without the parties' consent.
 - **Criticism:** Property division legislation isn't about consent at the beginning of a relationship, but the situation at the end. This exclusion amounts to exploitation (esp. of women); weaker partners are only entitled to needs-based maintenance, and not the fruits of their labours.

Matrimonial Property on Indian Reserves

Indian Act = "IA"

- The **federal government** has jurisdiction over Indians and Indian land. (*Constitution Act, 1867* s. 94(24))
 - Provincial laws of general application apply to Indians, unless contrary to the *Indian Act* (*IA* s. 88)
 - Whether this applies to laws applying to Indian lands as well is unsettled (*Derrickson*)
 - Federal ministerial approval must be obtained for transfers of Indian land (*IA* ss. 20, 24)
 - Thus, the *IA* provides a code for land division, so judicial reapportionment of land under the *FRA* is contrary to the *IA*. So, even if s. 88 applies to laws regarding Indian land generally, the ***FRA* provisions regarding division of property are of no effect on-reserve**. (*Derrickson*)
 - **Note:** Similarly, the courts can't grant exclusive possession of land on-reserve, since occupation is a component of ownership. (*Paul*)
- **Note:** Division of assets may still be ordered under the *FRA* (specifically, under s. 52(2)(c) – power to make compensation orders to adjust division). Only reserve land is excluded. (*Derrickson*)
- **Note:** The *Family Homes on Reserves and Matrimonial Interests or Rights Act* is currently under review by Parliament to resolve this much-criticized hole in the law.
 - Due to legislative attention, are courts now less likely to change their interpretation (deference)?

Stratas, Co-Ops, Ecovillages, and Other Shared Ownership Models

- These schemes are defined by the statutes, contracts, registered instruments, and corporate bylaws that create them. They're popular for:
 - **Intentional communities** – letting occupants govern the use of land in a particular manner.
 - **Limiting liability** of the tenants (since liability of tenants in common is joint and several).
- Stratas in BC are governed by the *Strata Property Act*, which isn't part of our course materials.

Acquiring and Transferring Interests in Land

Crown Grants

- A variety of interests in land are reserved for the Crown, even if not stated in the Crown grant (e.g. rights to minerals, oil, geothermal energy, *etc.*). This applies retroactively. (*Land Act* s. 50)

Inter Vivos Transfers (Gifts and Contracts)

- A **contract for land** cannot be enforced unless it is in **writing**, unless there has been reliance such that it would be unfair (in equity) not to recognize the transfer. (*Law & Equity Act* s. 59)
- A vendor of land must ensure that their title is good; e.g. land must be adequately described, and the vendor must convey the land to himself to verify good title. (*Property Law Act* ss. 4-7)
- If one is purporting to deal with land in an instrument, one must explicitly state that one is dealing in "**real estate**" (and not merely land). (*Property Law Act* ss. 15, 16)
- An **unregistered instrument** only passes an interest as against the person making it. (*Land Title Act* s. 20)
- Interests are only passed at the **time of registration** of the passing instrument. (*Land Title Act* s. 22)
- **Note:** The usual elements of a contract or gift are also required for validity.

Transfers on Death (Wills and Intestacy)

Estate Administration Act = "EAA"

- Wills must be in writing, signed, and witnessed, unless you're a soldier or mariner. (*Wills Act*, ss. 3-5)
- The representative of the deceased (i.e. the **executor**) may distribute real estate either devised by will or where persons are entitled to it. (*Estate Administration Act* s. 79)
- The rules of **intestacy** are governed by Part 10 of the *Estate Administration Act* (**D** = the deceased):
 - If D had **no children**, the spouse takes the whole estate. (*EAA* s. 83)
 - The estate is divided between issue according to the rule of *per stirpes*; that is, if one beneficiary has died, their share is split between their children equally. (*EAA* s. 84)
 - If D had **children** then the first \$65,000 of the estate goes to the spouse; for the rest: (*EAA* s. 85)
 - If there is **one child**, the spouse and child each get ½.
 - If there are **multiple children**, the spouse gets ⅓, and the kids split the rest evenly.
 - Half-children (s. 90) and *in vitro* children (once born; s. 91) inherit as full children. (*EAA* ss. 90, 91)
 - The surviving spouse must receive a **life interest in the spousal home** (they didn't get title), subject to creditors/foreclosure. New title-holders must hold it in trust for the spouse. (*EAA* s. 96(2))
 - If the **spouses** had been **separated** for a year at death and intended to stay apart, the surviving spouse has no claim on D's estate. (*EAA* s. 98(1))
- **Presumption against intestacy:** If multiple constructions are possible, the court will prefer the one that leaves the least of the estate intestate. (*McKeen*)
- **Note: Equity prevails over the common law**, so be on the lookout for equitable reasons that the court might use to select one outcome despite the legal arguments. (*Law & Equity Act* s. 44)
- **Note:** It is unclear whether the legal remainder rules or the *Statute of Uses* apply to testamentary devises. Some Canadian cases have treated uses in wills as *inter vivos* uses (where the statute applies). Some cases also treat legal interests as legal executory interests (i.e. infer an initial use to the executor before the grant), to avoid the legal remainder rules.

Proprietary Estoppel

- This is a "somewhat obtuse" equitable principle that we covered in Contracts.

Priorities in Land and Land Title Registration

Priorities at Common Law and in Equity Bona Fide Purchaser for Value Without Notice = "BFPVWN"

- *Nemo dat*: One may not convey more than one actually owns. (Chippewas)
 - **E.g.** A life tenant can't convey a fee simple interest.
 - **Note**: This is significant for holders of charges granted on fraudulent title (see below) (Gill)
 - **Exception: Bona fide purchaser for value without notice**: Where the purchaser (Chippewas)
 - Has no **notice** (i.e. hasn't investigated the seller's title),
 - Notice can be actual, constructive (should've known), or imputed (e.g. known by agent)
 - Is *bona fide* (i.e. buys the property with a clear conscience at equity), and
 - **Purchases** [NB – no gifts!] the property at an appropriate (market) **value**.
- **Priorities of Legal and Equitable Interests**: When there is a conflict between...
 - **Two legal interests**: "First in time is first in right" (first registered interest takes priority)
 - **An equitable interest followed by a legal interest**: The legal interest takes precedence, provided that the purchaser is a BFPVWN (which trumps the equitable interest in equity).
 - **A legal interest followed by an equitable interest**: The legal interest takes precedence, unless the legal owner is estopped in equity (e.g. fraud, gross negligence, etc.)
 - **Two equitable interests**: "First in time is first in right", provided that the interests are otherwise equal in equity (**Note**: Equity examines the parties' conduct: BFPVWN, fraud, etc.)
- **Equitable Defences**: Only defend against equitable claims (not legal claims) (Chippewas)
 - **BFPVWN**: An absolute, unqualified, unanswerable defence that protects current owners.
 - **Note**: The court has noted that a rigid application of BFPVWN might deprive Aboriginals of fundamental rights; this is not an issue where there was also acquiescence.
 - **Laches and Acquiescence**: Former titleholders are estopped from claiming an interest in equity where they have acquiesced to the conduct transferring their interest away, and there has been reasonable reliance on that acquiescence (e.g. Aboriginals sue 150 years later)

Title Registration

Land Title Act = "LTA"

- **Overview of Title and Deed Registration Systems**:
 - **Deed System**: A chain of documents reaches back (in theory) to the original owner.
 - **Deed Registration**: All records are stored centrally in a public archive, but are not necessarily correct. This makes it easier to investigate title, but offers no other protections.
 - **Title Registration (Torrens) System**: An exhaustive, definitive, insured title for each property.
 - **Mirror**: The register is valid and exhaustive; it mirrors all rights associated with the land.
 - This is not absolute, due to exceptions for fraud (e.g. LTA ss. 23(2)(i), 29) (Gill)
 - **Curtain**: Past transactions are hidden behind a curtain; title, once conferred, is **indefeasible**.
 - **Net**: The register insures against error (through the assurance fund).
- All Crown grants (post-1968) *must* be registered; previous grants *may* be registered. (Land Act s. 54)
- *Land Title Act*:
 - **Definitions**. In particular, "charge" is any less-than-fee-simple interest, including "encumbrances", which include mortgages, judgments, liens, etc. See also "highway". (LTA s. 1)
 - Unless an interest is registered, it **doesn't pass** (except against the person making it). (LTA s. 20)
 - Indefeasible title is **conclusive evidence** of fee simple title that is good against the whole world, subject to a variety of qualifications. (LTA s. 23(2))
 - **E.g.** Even where a corporation was incapable (under its incorporating documents) of holding title, registered indefeasible title was conclusive evidence of ownership. (Creelman)
 - This protects BFPVWNs, and not registered owners who aren't BFPVWN. (Pacific Savings)
 - The registrar **must register** title where application is made (and conditions are met) (LTA s. 24)

- There is a **rebuttal presumption** that registered **owners of charges** hold a valid interest (i.e. registration is not conclusive evidence of the validity of a charge) (*LTA s. 26, cf. Gill*)
- **Notice** is given by registration. (*LTA s. 27*)
- **Notice is irrelevant** when transferring interests (except where there is fraud) (*LTA s. 29*)
 - There are some **exceptions**, including *lis pendens* and leases of less than three years.
- The land can't be dealt with until all **caveats/etc.** are dealt with. (*LTA s. 169*)
- Title by **adverse possession** has been essentially abolished in BC (limited exception) (*LTA s. 171*)
- The owner of the surface is the owner in fee simple. Owners above or below may only register an estate as a charge. (*LTA s. 179*)
- Deals with registration of charges; the registrar must be satisfied that it's valid. (*LTA s. 197*)

Indefeasibility and its Qualifications

- There are a number of **qualifications to the indefeasibility** of title, notably: (*LTA s. 23(2)*)
 - Conditions contained in the original (or subsequent) grants or conveyances.
 - Unregistered leases of less than 3 years where there is actual occupation.
 - A variety of notations and charges currently on title, **or pending**. (*LTA s. 23(2)(g)*)
 - Charges are not saved by a BFPVWN (i.e. they remain on the title even without notice)
 - "the right of a person deprived of land to show fraud, including forgery, in which the registered owner has participated in any degree" (*LTA s. 23(2)(i)*)
- The *LTA* provides an **exhaustive list of parties able to sue** for recovery of land. (*LTA s. 25*)
- Only a BFPVWN can obtain an interest under a **void instrument**. (*LTA s. 25.1*)
- Notice of unregistered interests doesn't affect title (except for fraud, leases < 3 years, etc.) (*LTA s. 29*)
 - This has been circumvented somewhat; see below. (*Woodwest*)
- **Lesser Interests:** *LTA s. 23(2)* only validates fee simple interests, and does not protect BFPVWNs of lesser, registered interests (e.g. charges). *Nemo dat* still applies to those BFPVWNs. (*Gill*)
 - E.g. A holder of fraudulent title cannot give a mortgage (because they hold no interest – *nemo dat*). Thus, registered owners of charges on title lose their interest if the title is fraudulent. (*Gill*)
- The indefeasibility of title doesn't let the registered owner hide behind it where there are other equitable or legal interests; the *LTA* **protects BFPVWNs, not registered owners**. (*Pacific Savings*)
- Unregistered Aboriginal title (where there are no treaties) may also burden the title (*Tsilhqot'in Nation*)
 - Aboriginal title cannot be registered as a charge under the (BC) Torrens system. Aboriginal title burdens Crown title without registration. (*Tsilhqot'in Nation*)

Various Conceptions of Fraud

- Fraud will be found on the part of the purchaser where: (*Woodwest (BCSC 1982)*)
 - There was **actual notice** of the unregistered interest **prior to completion** of the contract.
 - Notice of occupation isn't notice of an interest – seeing someone on the land isn't enough.
 - E.g. Seeing the lease document provides actual notice – there is “no doubt” of its existence.
 - The purchaser sought to defeat that interest by invoking the *LTA* (especially s. 29)
- Fraud will be found on the part of the purchaser where there was: (*Holt Renfrew (ACA 1982)*)
 - Knowledge of the **existence** of an unregistered interest.
 - Knowledge that the **unregistered interest will be defeated** by concluding the transaction.
 - An "**additional element**" (e.g. If the doctrine of **fraudulent misrepresentation** is satisfied)
- Fraud will be found on the part of the purchaser where: (*McCulloch (AQB 1991)*)
 - There was knowledge of the **existence** of an unregistered interest.
 - That knowledge was used for an "**unjust or inequitable purpose**".
 - E.g. Transferring the title for the (principle) purpose of thwarting that interest is inequitable.
- **Note:** Those who have been defrauded may sue the fraudster. (*LTA s. 294.2(1)*)

That doctrine is satisfied where there was a fraudulent misrepresentation that the other party was misled by and relied upon (*Holt Renfrew*)

Completion of contract = Signature

Other Features of Registration

- **Note: Personalty** uses a similar system for charges under the *Personal Property Security Act*.
- **Mortgages:** Permitted under *LTA* s. 23(2)(g). A mortgage is just a charge on title (*LTA* s. 231). A mortgage is security for a debt, and doesn't deal with title (*LTA* s. 27), and as such the land can't be disposed of until the mortgage has been dealt with. The usual priority of charges applies (*LTA* s. 28)
 - A mortgagor in default has a continuing equitable interest in the land even after title is transferred to the mortgagee; if they give notice of an intention to redeem (even after the redemption period – e.g. by registering a *lis pendens*), the court may reopen title. (*Pacific Savings*)
- **Caveats, Certificates of Pending Litigation, and Judgments:** These all provide notice of possible adverse claims and prevent dealing with land. Established by *LTA* s. 23(2)(g)

Leases, Licenses and Bailments

- **Lease:** A contract that grants a right of **exclusive occupation** and an interest in land. (*Fatac*)
 - **Note:** If for less than 3 years, a lease needn't be registered. (*LTA* s. 29)
 - Types of leases:
 - **Fixed term:** Defined ending date (though may have a premature termination clause)
 - **Periodic tenancy:** Recurring (e.g. monthly) that continues until terminated.
 - Notice required is equal to period of recurrence [**NB** – only 6 months notice for annual]
 - **Tenancy at will:** No period of recurrence; continues under parties agree to terminate.
 - **Tenancy at sufferance:** Staying non-consensually after a lease has terminated.
 - **Perpetual lease** (not really a lease): No fixed term, no ability to terminate.
 - The Crown does this; courts treat it as a yearly periodic lease or as a sale + rentcharge.
 - **The test** for finding a lease: (*Fatac*)
 - Did the parties intend for the occupier to have **exclusive possession**?
 - *De facto* possession is an “important guide” in assessing this.
 - Exclusive possession ≠ unlimited use; rights over the land may be limited in a lease.
 - Was there a defined **term** (fixed or periodic)?
 - Was there an **intention** to be legally bound?
 - Rent is relevant, but not necessary, consideration.
 - The wording of the grant is not decisive; it is only relevant insofar as it indicates intent.
 - There is **no lease** (and, thus, there is a license) where: (*Fatac*)
 - The landowner's right of entry to provide services is inconsistent with exclusive possession.
 - The lease can be terminated pursuant to a legal relationship extraneous to the landowner-tenant relationship (e.g. an employee occupying an employer's premises, occupation incidental to holding an office, or being a mortgagee in possession).
- **License:** Permission to enter or use the land non-exclusively. No interest in the land is granted. (*Fatac*)
- **Bailment:** A temporary transfer of control of **personalty** for a **particular purpose**. (*Crawford*)
 - The **locus of title** is the difference between a bailment and a sale;
 - If chattels are transferred, but are to be returned in the same or altered condition, it's a **bailment**. Title remains with the original owner throughout; the bailee only has control.
 - If the chattels are exchanged for money or chattels of similar value, it is a **sale**.
 - If the transferee had **dominion** over the chattels (i.e. could use them for any purpose), then he is the beneficial owner, which indicates a transfer of title (and thus, a sale).
 - **E.g.** A gives B his cattle provided that an equal number of cattle be returned to him, and in the interim B may keep any profits from them. Sale (B had dominion, beneficial ownership) (*Crawford*)
 - **E.g.** A gives B grain; the same quantity/type/quality must be returned. B may only store it, and has no right to deal with it otherwise. Bailment – no transfer of title. (*Busse*)

Servitudes Over Property

- A servitude is a "**metaphysical fixture**"; it passes with the land, and binds future owners to certain conditions on land.

Easements

- A servitude where one property provides a benefit to another (typically a right to use).
- **Elements** of an easement (at common law):
 - **Dominant** and **servient** tenements (i.e. defined properties; no easements "to the world")
 - **Accommodation**: The dominant tenement obtains some benefit from the servient tenement. The benefit must inure in the land, not the particular owner.
 - At the time of creation of the easement, the tenements must be owned by **different owners**.
 - The easement must be capable of being **granted**
 - (i.e. Description of properties/rights can't be vague, can't confer exclusive possession, *etc.*)
- There is no easement for protection from the elements, but there is an easement of support. (*Phipps*)
 - A right to protection from the elements would prevent the owner from demolishing the building to improve the land ("hamper legitimate development"). Such a restrictive arrangement could only be obtained via an explicit covenant, obtained in contract. (*Phipps*)
 - "the law has been very chary of creating any new negative easements" (i.e. easements that prevent the servient owner from doing something). E.g. no right to wind, or to a view. (*Phipps*)
- **Statutory Easements**: Do not require a dominant tenement; they provide a benefit to the public.
 - The statutory **right of way** is such an easement. This is a charge on land, if registered. (*LTA* s. 218)

Covenants

- **Elements** of a covenant (at common law): (*Tulk*)
 - There must be **dominant** tenement.
 - It must burden the **servient** tenement.
 - It must be **negative**, restricting use of the property.
 - All the limitations on **equitable remedies** apply
 - Most importantly, that of BFPVWNs (i.e. a purchaser with notice is bound by the covenant)
 - **Note**: The *LTA* statutorily defines similar elements for registerable covenants. (*LTA* s. 221)
- **Privity of covenant**; only the person benefitting may sue for enforcement. (*Suomalainan*)
 - Where two properties are part of a statutory building scheme, the owner of one property may sue the owner of another to enforce it (i.e. they are both parties to the covenant) (*Suomalainan*)
- The *Land Title Act* regulates covenants:
 - Statutory covenants in the Crown may be positive or negative, needn't have a dominant tenement, and may include a variety of provisions (laid out in the *LTA*) (*LTA* s. 219)
 - Statutory building schemes may be registered against land (*LTA* s. 220)
 - A registerable covenant has requirements similar to a common law covenant (cf. *LTA*) (*LTA* s. 221)
 - Discriminatory covenants are prohibited (*LTA* s. 222)
 - Previously, the courts only disallowed them in certain circumstances (e.g. residential lot can't be sold to Jews – *Drummond Wren*), and allowed them in others (e.g. cottage can't be sold to Jews – *Noble & Wolf*)
- **Note**: Group homes of 10 people or less are not subject to many bylaws and covenants that would prevent them from being constructed (*Community Care and Assisted Living Act* s. 20)
- **Note**: Just because a charge is registered doesn't mean that it's valid. (*LTA* ss. 26(2), 221(2))

Index of Cases

Short Name	Ct./Year	Keywords	Page
<i>Andrews</i>	UK 1971	Rule of construction for perpetuities; closure of class.	Z 260
<i>Bancroft</i>	NSSC 1936	Common law presumption of joint tenancy.	C 362
<i>Beblow</i>	SCC 1993	Constructive trusts as remedies for unjust enrichment.	C 294
<i>Caroline</i>	AQB 1987	Land transferred for use as community hall. Perpetuities.	C 317
<i>Chippewas</i>	OCA 2000	Indian band suing for return of ~2500 acres; 161 years later.	C 434
<i>Christensen</i>	ACA 1999	Devise land to wife "until she no longer needs it"	C 246
<i>Crawford</i>	OCA 1952	Caring for another man's cattle. Bailment or ownership?	C 357
<i>Creelman</i>	JCPC 1919	π buys land from HBC; then can't pay during the recession.	C 445
<i>Crow</i>	OSC 1984	Joint life tenant bros.; one dies before nieces born.	C 340
<i>Derrickson</i>	SCC 1986	Claim for 1/2 interest in matrimonial property on-reserve.	C 416
<i>Drummond Wren</i>	OSC 1945	Covenant disallowing Jews in residential lot is not OK.	Z 376
<i>Fatac</i>	NZ 2002	New Zealand going back to exclusive possession for leases.	C 350
<i>Harmeling</i>	BCCA 1978	Man sells trout farm; builds house. Ex-wife wants partition.	C 380
<i>HJ Hayes</i>	NBQB 1987	Father leaves land to son; if he resides on it. Son waits 10 years.	C 320
<i>Holt Renfrew</i>	ACA 1982	Lawyer says that client will still be interested; despite lease.	C 455
<i>Khan</i>	BCSC 2004	Applies <i>Estate Administration Act</i> s. 96 to a 1/2 interest in spousal home	-
<i>Leonard</i>	OCA 1990	Racist scholarship trust.	C 324
<i>McCulloch</i>	AQB 1991	Land titles office makes an error; removes caveat.	C 465
<i>McKeen</i>	NBQB 1993	Testator's wife outlives the remainders. When does residue vest?	C 313
<i>Noble & Wolf</i>	OHC 1948	Covenant disallowing Jews in cottages is A-OK.	Z 377
<i>Pacific Savings</i>	BCCA 1982	π defaults on mortgage; Δ acquires title; π then pays off debt.	C 471
<i>Paul</i>	SCC 1986	Certificate on possession on reserve; matrimonial division?	C 430
<i>Pecore</i>	SCC 2007	Joint acct. w/ daughter. Advancement vs. resulting trust.	C 285
<i>Phipps</i>	UK 1965	Easement to be protected from the weather rejected.	C 489
<i>Scurry-Rainbow</i>	SCA 2001	Lease for oil extraction with indeterminate ending.	C 343
<i>Sorensen</i>	ACA 1977	Ex-wife partitioning property; "encyclopedia" of severance.	C 367
<i>Soulos</i>	SCC 1997	Real estate broker's wife buys property client wants.	C 302
<i>Stonehouse</i>	SCC 1962	Wife transfers her interest w/o husband's knowledge.	C 375
<i>Stuartburn</i>	MQB 2001	City councillor doesn't live in city; but has a remainder interest.	C 310
<i>Tataryn</i>	SCC 1994	Son left out of will ("hard to raise"); legal/moral obligations.	C 392
<i>Taylor</i>	SSC 1982	Devise land to wife; leftovers to daughters (recent; loose rule)	C 239
<i>Trinity College</i>	OSC 1995	School given right of refusal; but land already gifted away.	C 336
<i>Tulk v. Moxhay</i>	UK 1843	Restrictive covenants enforced against those with notice.	C 508
<i>Walker</i>	OSC 1924	Devise land to wife; leftovers to kids (old; strict rule)	C 237
<i>Walsh</i>	SCC 2002	Cohabiting couples excluded from Matrimonial Property Act	C 403
<i>Williams v. Hensman</i>	-	Unilateral action by a joint tenant severs the tenancy	-
<i>Woodwest</i>	BCSC 1982	Former lawyer buys property w/ unregistered leases.	C 447

Z is the Ziff textbook

C is the course pack

Appendix I

- Approach to the construction of interests:
 1. Interpretation
 - View it from the testator's perspective, try to construe the gift to the testator's full intention
 - Presumption of early vesting
 - Presumption against intestacy.
 2. Apply basic rules to contingent interests:
 - What kinds of interests are involved? (Determinable, defeasible)
 - Does the *Statute of Uses* apply? (Does it say “use” or “trust”?)
 - Vested or contingent? Vested in possession, or future interest?
 - Effect of invalidity of condition? (Right of re-entry, reverter)
 - Void for public policy, uncertainty, or restraint on alienation?
 3. Evaluate remainder
 - Common law legal remainder rules (Invalidate shifting or springing interests, wait and see)
 - Rule against perpetuities (esp. timely vesting)
 - If a valid contingent interest, apply common law rule
 - If the Rule is violated, is the interest saved by the *Perpetuity Act*?