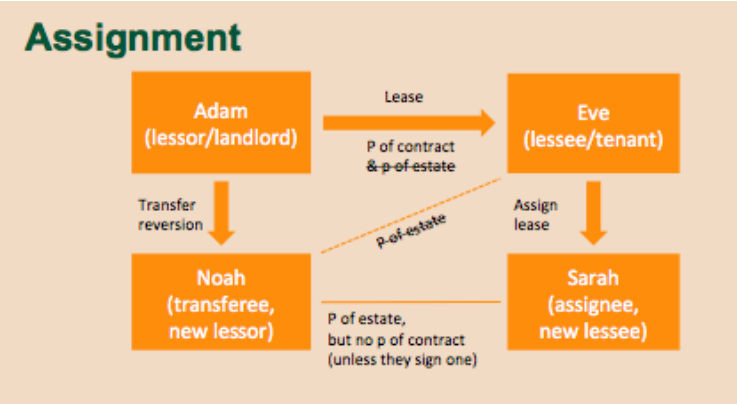
i. Leases

Fatac

Puhinui owned a piece of land, which included a quarry. Puhinui gave Atlas a right to quarry on the land for 12 years. However, P reserved the right to access the property provided it did not disrupt the activity of Atlas. P then sold the land to Fatac. Fatac and Atlas renegotiated, and Fatac reserved the right to quarry everything other than the stole Atlas was quarrying (bc Atlas only quarried one stone) and Fatac still had the right to enter the premises etc. Issue is whether the relationship between Fatac and P is a license or a lease.

John Fuller v Brooks

Brooks had the right to occupy a stall within the premise of a theater, she had the only key to the sall, however the owner, Fuller, had control of the lighting system, power to the refrigerator of her stall, and the only key to the theaters main door (so Fuller determined when Brooks could access her stoor).



City of London v Fell CA 1993 - the lessee leased premises from the landlord for 10 years, they entered into a contract whereby the lessee promised to pay rent for the 10 year contractual term. The lessee assigned the lease to Grovebell (assignee). The assignee remained in possession after the lease between the landlord and original lessee/ assignor transpired. Grovebell was in liquidation and failed to pay rent.

- Held that privity of contract and privity of estate apply. Privity of contract binds parties to the contract. Privity of estate (covenants) binds the assignee and transferee provided they 'touch and concern the land'
- The original lessee is only bound to by the original contract with the lessor due to their privity of contract. Grovebell, as assignee, is only liable for covenants in the original contract which "touch and concern the land" (this is privity of estate).
- A tenancy can exist independently of a contract: here, the tenancy continued during the holdover period even though the contract between the landlord and original lessee/ assignor had expired.

ii Breaching leases: personal covenants

Kalmac (CA, 1974)

Kalmach purchased a building which contained a shop in which DF was the tenant/ assignee/ new lessee. Kalmac wanted to obtain possession of the shop, however, DF refused. Kalmac then began demolishing the building around the shop. DF sought an injunction claiming a breach of the covenants of quiet enjoyment and derogation from the grant

Norden (HC 1996)

Norden (lessor) of a building, leased one floor to Blueport (computer company). Another floor's lease was assigned to a brothel company, with the consent of the lessor. At the time, brothels were illegal. The brothel created noise, vomit, urine, and brothel clients were going to Blueports floor and proposition clients.

Tram Lease (CA, 2003)

C had a lease over one site. KF had a lease over an adjacent site. There was a wall between the two sites. Tram Lease acquired ownership over both sites. Tram Lease wanted to demolish the wall so that it could develop both sites as one. C refused. Tram Lease brought proceedings seeking a declaration that C's right over the wall had ended. C argued that demolishing the wall was a derogation from the grant and breach of quiet enjoyment

Southwark v Tanner

Multistory state housing building that was not soundproof; tenants complained of noise caused by their upstairs neighbours normal domestic activities e.g kids running around.

Roman Catholic Bishop v RFD (HC 2015)

RFD owns buildings with multiple units, Holy Cross Chapel occupies one unit, and a Bishop is the registered lessee. The lease was for 999 years and rent was $1 per year. The building was damaged in the CHCH earthquakes. Instead of repairing the building, RFD offered it to the Crown. The Crown paid $9m for the premise. The Bishop brought proceedings seeking to share in the Crown payment. Cl 25 of lease agreement required the lessor to repair damage if the premise was damaged/destroyed by earthquake unless the cost outweighs the insurance pay out. If the repair is not possible, the lessee must be paid part of the insurance payout.

iii Easements

Re Ellenborough Park (1955)
Land surrounding Ellenborough Park was divided into plots. Purchasers of each plot were granted a right to use and enjoy the park (they were the dominant owners). The park and plots of land were passed on to new owners. Issue = whether the rights granted by the original vendor to the original purchasers were enforceable by the new plot owners against the new park owner? The Court held that the right to use and enjoy the park was attached to the plots of land, and could be passed onto subsequent purchasers. There was and can be an easement to use the park for recreational purposes, and the benefit/ burden passed onto new owners.

Barry v Fenton (SC, 1952)
The defendant (dominant tenement) had a legal easement giving him road access over the plaintiff's (servient tenements) land. The easement was for "vehicular driving only." The Court held that while the right to walk over another's land is lesser than the right to drive over another's land, allowing foot traffic would constitute a greater burden on the servient land than the easement allowed. Thus, the dominant tenement did not have the right to walk over the servient tenement's land.

Peacock v Custins (CA, 2002)
Custins and his tenants (the dominant owners) have a right of way over Peacock's land (servient owner) to get to farm the red land. However, sometimes Custins and his tenants use the right of way to access and farm the red land as well.

iii Easements - landlocked land

Murray (CA, 2020)
The Murray's purchased a house in a hilly suburb which only had pedestrian access via a footpath. They sought an order under s 329 granting vehicular access to their property through a neighbor's driveway on the basis that the house was landlocked. They argued that current access was dangerous (they were old and frail), impractical, and causing them health problems

Kingfish Lodge Ltd v Archer
Tourist lodge only accessible by sea or air, not land. Owners want the court to impose an easement so they can build and upgrade a road to increase the number of tourists who visit the lodge (they had an economic interest). Negotiations with neighbours had failed.

Squally Cove (CA, 2013)
Several property owners had road access to their land through neighbouring properties, however, there was no legal easement - the access depended on the good will of the other land owners, which at the time of the court case was denied. Squally Cove wanted the property owners to use a different albeit slower route (the yellow road), and proposed to grant the property owners a legal easement in return for payment and contributions to maintain the road. The property owners did not want to use the yellow road, and applied under s 329 seeking an order for reasonable access, so they can obtain road access through the road they have always been using.

iii Modification and extinguishment of easements

Harden v Collins (HC, 2010)
Collins (dominant owner, the first respondent) owned land that was divided into multiple plots. There was an easement over the plots, providing all of the owners access to a reserve. The applicants all owned lots in the subdivision. The first and second applicants owned lots from the subdivision and were dominant tenements with respect to the easement. The third appellant owned a lot in the new subdivision and was a servient tenement. The appellants applied to the court seeking modification of the easement under s 317, alleging that the easement was impassable at certain points due to a wall that Collins had built.

Schmuck
Schmuck (dominant tenement) owned a boat repair business close to water. He was granted an easement (under the Reserves Act) over the reserve to get to the water. Opua tried to judicially review the easement on the basis it was not legitimate because it used extrinsic evidence, and valid easements should not require examination of extrinsic evidence.

iv Covenants

Tulk v Moxhay: Position at Equity
Tulk owned vacant land, and sold the land to Elm. Elm (burdened owner) covenanted/ promised to maintain the land and allow occupants to use the garden on the land. Elm sold the land to Moxhay who purchased the land with notice of the covenant but gave no promise to Elm. Moxhay wants to build a house on the land, however, Tulk who still owns a house on the square argues that he covenanted for the land to be a garden. Thus Tulk sued Moxhay.
- Note that the burden of covenants to bind a successor in title in equity requires the covenant to be restrictive in nature. The PLA now binds the successors of both positive and restrictive covenants

Synlait Milk v NZ Industrial Park (NZIP): Modification of Covenants
The covenant was created in 1998. Winstone Aggregates, the then owner of the benefited land, covenanted to restrict the use of the burdened land to farming and forestry. This would protect Winstone Aggregates ability to quarry (for you are much more likely to get resource consent for a quarry when there is no residential area surrounding the potential quarry). Since then, the benefited and burdened land had been subdivided, recombined and sold quite a few times. This case concerns Synlait (the applicant) who now owns both part of the benefited and burdened land due to the chain of subdivision and repurchasing. However, the majority of Synlait's dairy factory was on burdened land, which was an apparent breach of the covenant, because this activity was not farming or forestry. Thus Synlait applied to the court to extinguish or modify two covenants under s 317 and order compensation to the respondent/benefited land, NZIP.

iv Covenants Continued

ANZCO v AFFCO (CA, 2006)

AFFCO meat processing company, sold processing plant. Prior to this, AFFCO registered an encumbrance over the land, preventing the land from being used for meat processing for 20 years (this was essentially a covenant in gross because there is no dominant land). MF brought the property and leased it to Riverlands who used the land to process meat. Later on, ANZCO purchased the land and leased it to Itohman, who wished to use it for meat processing. AFFCO sued ANZCO, Itoham and Riverlands for breaching the covenant

Big River Paradise Ltd v Congreve: Relationship between PRA and RMA

Cosgrove Family Trust purchased land to the right side of a river. To the left of the river is 190 hectares of land later brought by Big River Paradise. Big River (the burdened owner) covenanted with Cosgrove (benefited owner) not to *subdivide* their property. They agreed that there would be no more than three lots on the burdened land, with no more than one dwelling on each lot. However, Big River applied for resource consent for the construction of 54 buildings, and planned to lease the land for 30 years. Considering that leases less than 35 years are allotments, and that only after 35 years do leases become subdivisions, Big River argued they were not breaching the covenant.

V Mortgages - equity of redemption

Fairclough v Swan Brewery (HoL 1912)

Fairclough leased a brewery. It borrowed money from Swan Brewery and mortgaged the lease. Under the terms of the lease, Fairclough was to pay the debt off over 20 years, meaning that is only able to repay the debt one month before the lease ends, and they can only sell Swan Brewery's beer during the term of the mortgage.

Knightsbridge Estates Trust v Bryne (CA, 1989)

Knightsbridge (mortgagor, borrower) entered into a mortgage with Bryne (mortgagee, lender) in 1931. They agreed that the loan would be repaid over 40 years. 6 years after they entered into the agreement, Knightsbridge wanted to pay the full sum of debt and repay the property. K came to court claiming that postponement of 40 years was a clog

Jones v Morgan (CA, 2001)

William Morgan and John Morgan are trustees of a farm, and own shares in the farm. WM wanted to develop the farm into a nursing home. In 1994, WM (mortgagor, borrower) borrowed money from their neighbour Jones (mortgagee, lender), and mortgaged the farm. The 1994 loan agreement stipulated that Jones would receive the repayment of the loan, 15% interest, the farm would be security, and the parties also covenanted that jones would get 50% interest in any company set up to run the business. In 1997, the nursing home plan collapsed, This lead to the 1997 written agreement between the parties, where the brothers would sell part of the farm to pay of the debt and interest, however, they were still owing £50,000 and thus the parties agreed Jones would retain a 50% share in the retained property. In 1998, the mortgage was redeemed. Jones wanted specific performance on the agreement to transfer the 50% share of the property after redemption

V Reopening oppressive mortgages

GE Custodians v Bartle

A couple with a combined pension of 21k per year, and a house as their main asset, entered into an asset lending scheme. They (mortgagor; borrower) loaned 630,000 from GE Custodians and used their house as security, even though it was only worth approx 400,000. However, the Bartle's believed that they were only borrowing 130,000 and that Blue Chip would also provide security. Thus, the Bartle's failed to understand the nature of the asset lending scheme

Mortgagee's right to possession and sale

Apple Fields v Damesh

Apple Fields (mortgagor; borrower) owned land that was mortgaged to Damesh and ANZ (mortgagees; lenders). ANZ was pressuring AF to sell the land. AF and Damesh agreed to a mortgagee sale of the land to Parshelf. However, Apple Fields later sued Damesh claiming it had breached its duty to take reasonable care to obtain the best price reasonably obtainable at the time of sale under s 176 (because it did not wait for the land to be rezoned which would have increased its value) AND its equitable duty to exercise the power of sale in good faith for the purpose of realising security (because Parshelf's owners is the CEO of Damesh)