The concept of property

- Property (legally) — relationship between a person and the thing — If I had a property interest in something, more accurately captures the legal notion of property.
- Tangible vs intangible and problematic property such as humans, animals, organs.
- Legal concept of property — HC in Yanner v Eaton (1999) — Property = a description of legal relations with a thing...a degree of power that is recognised in law as power permissibly exercised over the thing.
- What sort of relationship
  - Judges in Yanner v Eaton point to the work of Kevin Grey (a property law scholar) — argues that property is a legally endorsed power relationship between a person/subject and a thing/object or between persons with respect to a thing.
  - If someone as property in a thing it means that he has the right to control access to and use of that thing to some extent — if a person has full ownership of a thing that means the person who has ownership can make personal use of the thing, can decide if other people can use/access it — Full ownership - backed up law.
  - There are various regulations that society tends to put around use of land — just because you own property and land — you can’t do whatever you want with it because the law has put other regulations — environmental, zoning, building etc.
  - Law directed at ensuring animal welfare — animals are things capable of being owned under law — however owners cannot treat animals however they please.
  - In order to preserve values of society — society in order to function, people being able to live with each other — puts constraints around ownership and exercising control over things.
  - Property rights in land — property as a bundle of rights that can be pulled apart
  - Example: I borrow money from the bank to buy a house — the bank is probably going to insist that the house serves as hostage for repayment of the loan — mortgage over the land — instead of moving into the house after buying I rent it — renter moves in and discovers after that I have given the backdoor neighbour a right to walk across the unfenced garden of the house to get to the shops — each of the people has or may have a property right in this same piece of land — renter possesses land pursuant to a lease, I have the estate, bank has mortgage, neighbour may have an easement.
  - Yanner v Eaton — HC judges noted that one way of conceptualising property is as a bundle of rights that a person has in a thing — usual rights in the property bundle:
    - **The right to exclude** — hallmark characteristic — right to stop others in some particular way from using the property if not in all possible ways.
    - **Right to alienate or transfer** — near universal characteristic — owner can sell, or give it away — there are some property interests which can’t be transferred but are still property interests.
    - **Right to use and enjoy** — there are many ways in which land can be used and enjoyed — depending on the nature of the object can be broken down into a variety of separate more specific rights — various different ways of enjoying land
  - I can pull a part this bundle (as the fee simple owner) if I have ownership of it all and I can hand it out to people — as per the example given — I give the renter the possession sticks of the bundle (landlord can’t barge into the house — lease gives you possession) — the bank has been given the right to take possession of the land and sell it if loan isn’t repaid — neighbour got the right to use the land — after all this I still retain some parts of the bundle — I get the income from renting the land and the right to realise the capital value of the land (tenants don’t have the right to sell the land only I can).
  - Property interests in an object can be co-owned — husband and wife will be tenants in common in the fee simple in their home — joint tenants (another type of co-ownership) — same bundle of rights — we won’t explore this in FPL.
- What is property — property as a bundle of rights
  - “[R]ather than referring directly to an object such as a parcel of land or the tractor that cultivates it, the concept of property is often said to refer to a ‘bundle of rights’ that may be exercised with respect to that object — principally the rights to possess the property, to use the property, to exclude others from that property, and to dispose of the property by sale or gift....But the same bundle of rights does not attach to all forms of property. For a variety of policy reasons, the law limits or even forbids the exercise of certain rights over certain forms of property.” (e.g. the transfer of property in some cases) Moore v Regents of California (1990) 793 P 2d 479 per Mosk J
  - “I think that property in its many forms, generally implies the right to use or enjoy, the right to exclude others and the right to alienate. I do not say that all these rights must co-exist before there can be a proprietary interest, or deny that each of them may be subject to qualification” Milirrpum v Nabalco (1971) 17 FLR 141 per Blackburn J