

1. Property, Title, Possession

Property

Definition and Nature of Property

“The word ‘property’... may denote either **objects of proprietary rights** (ie. pieces of land and machines); or the **proprietary rights** themselves.

Proprietary property rights may exist in relation to physical objects, or to tangible things such as debts or patent rights. Each separate piece of property consists of a bundle of proprietary rights relating to a particular object...”

McCaughey v Commissioner of Stamp Duties

“Bundle of Rights” – 8 sticks

- **Right to possess**
 - The state of having, owning or controlling something;
 - Right to demand or retain actual possession of the thing which can be assert against the world;
- **Right to use**
 - Right to personally enjoy the thing;
- **Right to manage**
 - Right of the owner to decide who can touch their things and how they can touch/use them;
- **Right to income**
 - Keep value or profit;
 - Right to make money off property;
- **Right to capital, consume or destroy the item;**
- **Right to security**
 - Enjoy possession or ownership of the thing without the government interference;
 - To exclude anybody else from using the item); and
- **Transmissibility**
 - Power to transfer that item to somebody else;
- **Absence of term/duration**
 - The right to enjoy forever or for the period.
- **Liability to execution**
 - Capacity of owner to subject his or her title to the interests of creditors;
- **Residuary character**
 - Title is the ultimate or interest in the thing – ownership can be traced back to the owner.

There is also a duty of others **not to use** or **refrain** from using something that is **exclusive to owner**.

Also, there exists a **liability to execute or have taken away the “thing” to satisfy any debt** (sold to repay). And residual rights exist, where rights have lapsed.

Characteristics of Property

‘Before a right or an interest can be admitted into the category of property, or of a right affecting property, it must be **definable, identifiable by third parties, capable in its nature of assumption by third parties** and have some degree of **permanence or stability**.’

National Provincial Bank Ltd v Ainsworth.

- Capable of being **assigned** although there are **exceptions** e.g. statutory rights
- Must be able to be **viewed as of some value to a third party**

There is **no property** so long as there is **only one person**.

- **Property essentially involves relations between people.”**

Private property is a **relationship** among **human** beings such that the so-called owner can exclude others from certain activities or permit others to engage in those activities and in either case secure the assistance of the law in carrying out the decision.

Property Rights v Personal Rights

- **Property rights** are **enforceable against the world**.
- **Personal rights** are **enforceable against other parties in the contract** or an individual only (such as a tort claim).
 - **Personal rights** are **vulnerable to insolvency**, death and missing persons.
 - Personal rights do not create an interest in the property.
 - Also, known as a right *in personam*.

Typical features of a Proprietary Right

1. The **person who holds that interest** can **assert it against other people** who attempt to deal with the subject;
2. It is **capable of transfer** to third parties.
3. It **co-exists** with the thing and is **extinguished** if the thing is **destroyed/disappears**.

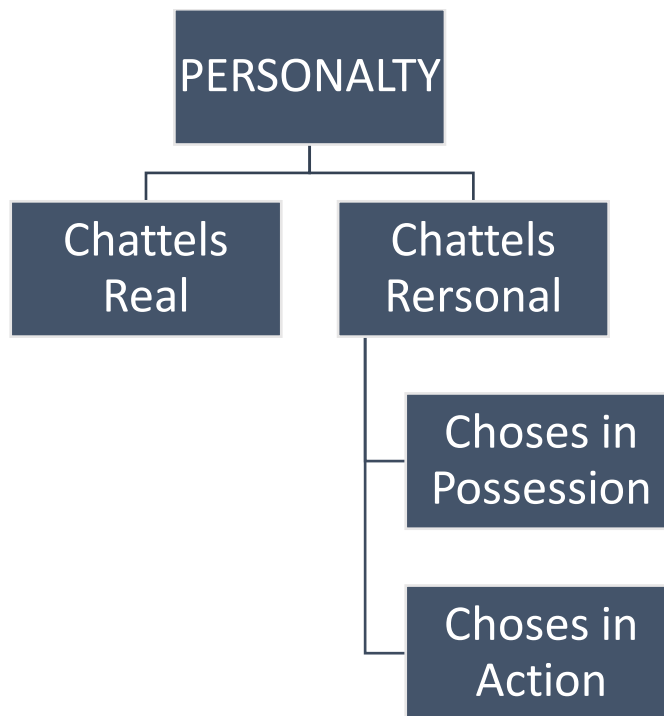
Distinction between Real Property and Personal Property

Real Property

- **Land** and all things **embedded in land or attached to it** (minerals, trees, buildings) cannot be removed – permanently fixed to the land with intention of never being removed
- **Indestructible**, immovable, appreciates in value
- **Unique** – contractual remedy specific performance rather than damages.

Personal Property

- Separated into two categories: **chattel reals**, and **chattels personal**;
- **Chattels real** e.g. leases (not covered in this course)
- Impermanent, moveable, temporal, fragile, often depreciates in value
- Common/not unique (related remedies damages unless unique e.g. work of art)
- Includes choses in action, equitable and legal choses



Personal Property

Chattel Real

- Includes **interests in land for fixed terms**.
 - Such as lease hold interest.
- It is **personal property** in land

Chattels Personal

Chattels Personal – these are further broken down to 2 sub-categories

- **Choses in possession** (chattel) (**note**: focus of the course)
 - **Tangible objects** that are **capable of physical possession**.
 - Real, tangible objects - can be touched, handled, possessed etc. e.g. chair, pen, table etc.
 - Can be converted into realty and back into personality.
- **Choses in action**
 - **Intangible legal and equitable rights** that cannot be physically possessed.
 - **Legal choses** – debts, bills of exchange. shares, the benefit of a contract and copyright
 - **Equitable choses** – Interest in a partnership, interest in a trust, a legacy, a reversionary interest under a will.

OWNERSHIP AND POSSESSION

What is Ownership?

- **Ownership** may include a **right to use, sell, give away, put into a trust**, use as **security** for a loan, share with co-owners and leave in will.
 - **Co-ownership**: where joint tenants or tenants own common rights.

- **Tenants in common**; shares proportionate to the size of their contribution

What is meant by 'title' in law?

- 'Title' typically means ownership
- If you own property, then you have legal title
- But there are forms of title and characteristics of title which don't necessarily go together with being the owner e.g. where you have possession of something
- **Possession is a form of title**, it gives the person possessing the item, the legal power to do certain things and to enforce certain rights even though they are not the owner;
- **Law presumes that a person who possesses an item is the legal owner of the item**
 - A defeasible form of title; defeasible to the true owner, to someone who has a superior title.

What is Possession?

To possess property means to demonstrate an intention to exercise exclusive control (or dominion) over the item: **Parker v British Airways**.

Types of Possession:

- **Actual**: physical custody and intention to exercise exclusive control (possession in fact).
 - Includes **physical control** (*corpus possessionis*) AND **intention to possess** (*animus possidendi*)
 - Compare mere physical custody with no knowledge or intention to control.
- **De Facto**: exercise of **dominion** and **control over item**—not mere physical custody (eg. Hiding an item). Employer's rights in goods used by an employee.
- **Legal: possession in the eyes of law**. This allows the person to **sue in relation to the item**. Holder of legal possession presumed to be the owner.
 - Will usually coincide with actual possession, but need not.
 - Legal possession remains even if actual possession abandoned.
- **Right to Possession**: **enforceable right to obtain actual possession** (ordinary incident of ownership). Treated as possession for certain purposes.
 - Bailee acting under terms of bailment has right to possession, not the bailor (owner).
 - **Right to possess** will ordinarily coincide with **legal and actual possession** (except for wrongful dispossession ie. theft).
- **Constructive Possession**: a **right to possession without** having **actual or legal possession**.

Legal Significance of Possession

Possession confers a legal right to retain control of an object against any other person except the person with ownership rights.

- Except for bailee acting under terms of bailment. Possession may allow the possessor to institute or defend legal proceedings in respect of the item.

Finding an Item

Armory v Delamirie

"That the finder of a jewel, though he does not by such finding acquire an absolute property or ownership, yet he has such a property as will enable him to keep it against all but the rightful owner, and consequently may maintain trover (conversion)" – **Parker v British Airways** per Donaldson LJ.

Thus, merely finding an item is not enough, the exercise of an intention to exercise exclusive control needed.

Authority

- Right to retain possession against all but the true owner.

Finding an Item (Cases)

Category One - Items found attached to land

RULE: Where an **article is found in or attached to land**, then as between the owner or the possessor of the article, the **owner or lawful possessor of the land has better title**.

- Owner must show *intention to control the property*.
 - **Attached** – means bolted or buried in the land.