

Property Rights

Topic	Issue	Principle to Apply	Exception to the Rule	Significant Facts
What is property? Blackburn J- 'Property... generally implies the right to use or enjoy, the right to exclude others, and the right to alienate'				
<i>Milirrpum v Nabal Co., Pty Ltd. (1971) 17 FLR 141</i>				
<i>The right to use or enjoy</i>				
<i>The right to alienate (right to assign property to others)</i>		I. Alienation does not refer to the transferring of the whole thing but creating little parcels of rights		
<i>The right to exclude (exclusive rights against others)</i>		<p>I. This is considered to be the most definitive of the three rights (Cohen J)</p> <p>II. Property right is essentially a private right exercisable against the general public, including the state</p> <p>III. Public right to pass freely is not a property right (Stow v Mineral Holdings)</p>	<p><i>Stow v Mineral Holdings (right as the public has is not exclusive proprietary right)</i></p> <p>Respondent was mining on land adjacent to the South West National Park in Tasmania. Appellant lodged objections to mining with the warden on the grounds that prospecting or mining would damage the Park.</p> <p>Held: All members of the public have a public right to pass freely but none have in their capacity as members of the public any estate or interest in the land.</p> <p>An individual who enjoys a right as the public does not have a proprietary right.</p>	
<i>Property Rights and Contractual Rights</i>				
<i>Licenses</i>	<i>I. What is a license?</i>	Licenses are contracts, which allow a person to use another's land without committing trespass. Licenses confer personal rights		<p><i>Cowell v Rosehill Racecourse Co. (ticket is contractual license which can be revoked at licensor's will though in breach of contract)</i></p> <p>Plaintiff claimed to have contractual license with the owner</p>

		and not proprietary rights (which are necessary to sue in other trespass)		of the land- so that he could remain on the racecourse and his license would not be revoked. The defendant claimed the plaintiff was trespassing on his land and when the plaintiff refused to leave the grounds, his servants and agents then removed him using no more force than was necessary for the purpose. Plaintiff claimed for assault.
	II. Is the license bare?	This refers to the authority given to a person to enter another's property for that person's benefit		
	III Is the license contractual?	Contractual license provides an express or implied permission to enter or use the property in exchange for some consideration. <i>(Cowell v Rosehill Racecourse Co.)</i>	Whilst a contractual license does not confer proprietary interest, it may be used to exclude third parties if that is within the purpose of the license <i>(Georgski)</i>	Held: the majority held that the license (ticket) give no proprietary right but a mere contractual right which is enforceable only in personam by an action in damages. The contractual right did not give rise to a proprietary right.
	IV Is it a license coupled with an interest?	This license also conveys a property interest. E.g. Profit a predre, a license coupled with an interest arises when a person acquires the right to take possession of property located on someone else's land.	The range of interests that can constitute a proprietary interest are limited by the numerus clausus principle	
<i>Revocation</i>	I Bare license	Under property and contract law: revocable at the will of the licensor for any reason		
	II Contractual licenses	Under property law: revocable at will, at any time) Under contract law: cannot revoke	The commonwealth cannot terminate a contractual license unless it is within the terms. The	<i>NSW Rifle Association Inc v Commonwealth [2012] NSWSC 818 (contractual license could not be revoked within terms to third parties)</i>

		<p>during the contractual period/ breach of contract if revoked.</p>	<p>doctrine of executive necessity did not relieve the Commonwealth from its contractual obligations on the basis of a change in policy. <i>NSW Rifle Association.</i></p>	<p>The plaintiff Rifle Association occupied an area of Commonwealth land on the Malbar Headland pursuant to a contractual license for use as a rifle range. Defendant government proposed to transfer the land to the State of NSW for use as a national park, which would be inconsistent with the plaintiff's use of the land as rifle range. Plaintiff sought an injunction to restrain an anticipatory breach of contract.</p> <p>Held: granted the injunction</p> <p>Restraining the Commonwealth from transferring the land, unless the transfer were on terms that entitled the plaintiff to enforce against the transferee the rights it enjoyed under its licence granted by the Commonwealth.</p> <ul style="list-style-type: none"> ● there are equitable remedies. Even though at law, licence to occupy land is terminable at will, even in breach of contract, equity will enforce contract over property to grant injunction. ● One cannot simply terminate a contractual licence that entitles a license to occupy land.
	<p><i>III License coupled with an interest</i></p>	<p>Under property law: cannot be revoked within the terms</p> <p>Under contract law: cannot be revoked within the terms</p>		

<p><i>Licenses and third parties</i></p>	<p><i>I Is the license enforceable against third parties?</i></p>	<p>Licenses are only enforceable against the licensor, not third parties if it did not create a proprietary right. => No proprietary right =>cannot exclude third parties.</p>	<p><i>King v David Allen & Sons (contractual license to put up posters which cannot be applied to third party)</i></p> <p>The licensor formed agreement in the form of a 'license' with the licensor allowing the licensee to put up posters on the property walls. License: Minimum 4 yrs from date of theatre construction and thereafter terminable by either party on 6 months' notice. Licensor would not allow any other company to put up posters. The licensor then leased the property to another company, which did not refer to original agreement with licensee. After completion of the theatre, the licensee attempted to put up posters, but was forcibly stopped by the other company from doing so. Licensor protested to no avail.</p> <p>Held: only proprietary rights can be enforced against third parties. (no proprietary right with this license). Therefore, not enforceable against the new tenant.</p> <p>An interest is not proprietary simply because it is enforceable against third parties. A proprietary interest could have been created through clear wording in the contract as a lease (shows importance of construing the document).</p>
<p><i>Numerus Clausus</i></p>	<p><i>I What is the Numerus Clausus principle?</i></p>	<p>I Landowners cannot simply create new types of rights- if a person receives a type of right, it must be one of the (a closed list) of established categories.</p> <p>Property law, by contrast to contract, is very restrictive, mostly because of its potential to affect third parties. <i>Georgski v Owners Corporation Strata Plan</i></p>	<p><i>Georgski v Owner Corporation Strata Plan (Where a slipway & jetty was built with a contractual license).</i></p> <p>Plaintiff held a license from the Crown over the riverbank, upon which they built a jetty and slipway. Defendant held an easement from western edge of plaintiff's land to riverbank. The plaintiff sought an order declaring her rights over the jetty and slipway, and forbid the defendant from trespassing on them</p> <p>Held: Easement is a proprietary right, you will have a right to exclude others;</p>

				<p>The plaintiff only has a contractual right instead of proprietary right which means he didn't have a right to sue for trespass.</p> <p>The plaintiff's right of occupation rests in contract only (whether or not there is an interest in the nature of a profit a prendre to take away the jetty and the slipway after termination of the licence) and that she has no leasehold or other right of possession in respect of the relevant land.</p> <p>If no right of possession is involved the only person who could sue is the licensor.</p> <p>But if an interest is coupled with the license the licensee then will be able to sue.</p>
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