

PROPERTY CASES

TOPIC 1 – CONCEPT OF PROPERTY

CHARACTERISTICS OF PROPERTY

CASE NAME	FACTS	ISSUE	HELD	APPLICATION/RULE
Milirrpum v Nabalco	<ul style="list-style-type: none"> - Aboriginals sued mining company for possession and enjoyment of 'their' land being mined - argued that their native law was required to be upheld by CL 	<p>Could the Aboriginals use native title to save their land? No</p> <p>The Aboriginals could not prevent the mining</p>	<ul style="list-style-type: none"> - there was a recognised system of law but not of property - Blackburn J said the indigenous people failed to show recognisable characteristics as the courts recognised over the land, and therefore fell short of the standard to demonstrate a property interest. 	<p>Characteristics of a proprietary interest – doctrine of tenure</p> <p>RULE by Blackburn J: property rights are to use & enjoy; exclude; alienate</p> <p>NOTE this was the first litigation on native title</p>
King v David Allen & Sons Billposting	<ul style="list-style-type: none"> - Licensor formed agreement with licensee allowing posters on the wall - licensor then leased property to another company that no longer allows the posters 	<p>Can you enforce the promise on a new party? No</p>	<ul style="list-style-type: none"> - this agreement was not an interest in land, just a personal obligation to allow licensees to use the wall for advertising - can't enforce a contractual promise on a 3rd party - but licensor did not fulfil his obligation & liable for breach 	<p>Difference between proprietary & contractual interests</p> <p>RULE: prop rights are enforceable against the world, unlike contractual obligations</p>
Tulk v Moxhay	<ul style="list-style-type: none"> - Leicester Square - sale of property with restrictions - when subsequent purchaser sold 	<p>Can you enforce a restrictive covenant on a 3rd party? Yes</p>	<ul style="list-style-type: none"> - covenant runs with the land in equity (so long as purchasers have notice) - doesn't matter if it wasn't 	<p>EXCEPTION TO NUMEROUS CLAUSES</p> <p>A legal proprietary interest will bind everyone BUT an equitable prop</p>

	again, issue of whether the 3rd owner was bound by covenant		created by contract - demonstration of where court was willing to recognise a new prop. Interest!!! - Lord Cottenham argument about buying land cheap indicates he's bound	interest will bind everyone except a later purchaser who pays for their interest & does not have notice of the equitable interest (so equitable interests have a narrower scope)
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NOVEL TYPES OF PROPRIETARY INTERESTS

Mabo v Queensland	- government wanted to take some native Aboriginal land - Aboriginals argued that they had native title over the land that overruled statute	Can courts recognise a new form of prop interest? Yes NOTE This was the first time that native title was recognised in Australia	- native title applied - courts ignored the legislation - characteristics are culturally specific - alienability not required to be shown as per indigenous custom	- native title demonstrated that you do not need to have all 3 elements to recognise a prop right - demonstrates a shift in political, social and historical context (different outcome to Milirrpum) - NT did not depend on the Crown's grant. NT rights fall outside the tenurial system and were a clear qualification on the crown's acquisition of ownership. - But: Brennan J: "it is far too late in the day to contemplate another system of land ownership" –
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				therefore the doctrine of tenure could not be totally overturned
Victoria Park Racing v Taylor	- D made fence to view races over neighbours fence & broadcast	Can you have property in a spectacle? No	<p>- no property in a spectacle, no new prop right recognised Dixon J – freedom of view may give value to land but it is a characteristic that is not a legally protected interest.</p> <p>- Latham CJ- any person is entitled to look over the fence of neighbours.</p> <p>- Dixon J- any person is entitled to open as many windows, onus on the neighbour to shut out disturbances (within the bounds of the law)</p> <p>- Evatt (dis)- the use of suburban bungalow in an unreasonable and grotesque manner. (Lockes Labour Theory- reap where had not sown.)</p>	RULE: there is no property in a spectacle. You can't own a spectacle