

PROPERTY LAW

NOTES

CONTENTS

1 CONCEPT & CATEGORIES OF PROPERTY	3
LEGAL MEANING OF "PROPERTY"	3
Key concepts	3
Rights in Rem vs Rights in Personam	4
Other essential features of property	4
PROPERTY RIGHT	5
Property rights	5
Thing/s the subject of property rights	5
WHAT IS PROPERTY — AUSTRALIAN CASE LAW	6
Sources of property law	6
Native title	6
<i>Yanner v Eaton (1999) 166 ALR 258</i>	6
CLASSIFICATION OF PROPERTY	7
'Real' property vs 'personal' property	7
In rem vs in personam; real vs personal	7
LEGAL AND EQUITABLE RIGHTS	8
How property rights are enforced	8
PROPERTY RIGHTS DISTINGUISHED FROM CONTRACTUAL RIGHTS	8
When contracts become proprietary	8

1 CONCEPT & CATEGORIES OF PROPERTY

LEGAL MEANING OF “PROPERTY”

- Property means different things to different people and the concept is used in different contexts
- “Property is thus ubiquitous and complex, socially important and controversial ... Any general notion of property is notoriously elusive”: JW Harris, *Private and Non-private Property: What is the Difference?*
- Property ownership = social, economic power, power to dictate the rules

What is property?

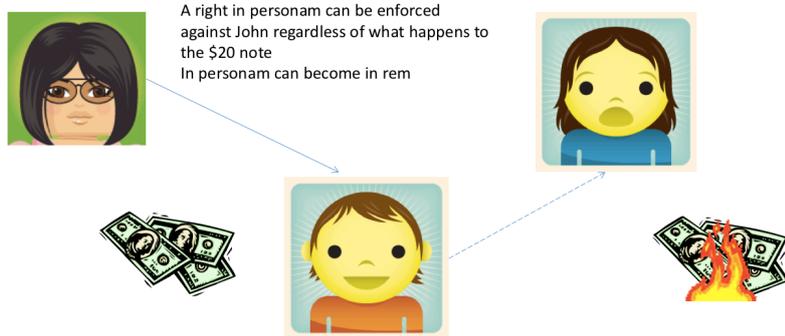
- property is about a **relationship between people and objects**
- property law helps to order these relationships
- objects are **usually tangible**, expanded to meet new social needs and moral perspectives
- property rights are **in rem cf in personam** (see below)
- bundle of rights include **right to use, exclude, transfer, alienate**
- strict definition of property illusory: *Yanner v Eaton*
- property rights can only exist if there is a legal and social framework to support and enforce (Bentham — property and law live and die together)

Key concepts

- **Layperson concept**: “property” is an object or thing
- **Legal concept**: The term “property” refers to the many different kinds of **relationship between a person and an object**, rather than the object itself: *Yanner v Eaton*
- Property is a composite of legal relations that holds between persons that incidentally involves a “thing”: <http://www.yalelawjournal.org/the-yale-law-journal/essay/what-happened-to-property-in-law-and-economics?/>
- Concept: **Fragmentation** — different property rights can attach to the same object
- Concept: Property law as an organising principle for allocating rights to land and resources in a society
- Key concept: **A property right is a right in rem** (latin: against the thing):
 - the holder can enforce their property right in rem **against the world**
 - your right is in the thing without much regard to the people against whom that right might be enforced
 - Contrast: **rights in personam** (latin: right directed to a person); e.g. contract law:
 - enforceable against the person who is privy to the relationship only
 - your right is against the person without much regard to what they might have
 - e.g. contractual right or in a debt

Rights in Rem vs Rights in Personam

Rights in Rem v Rights in Personam



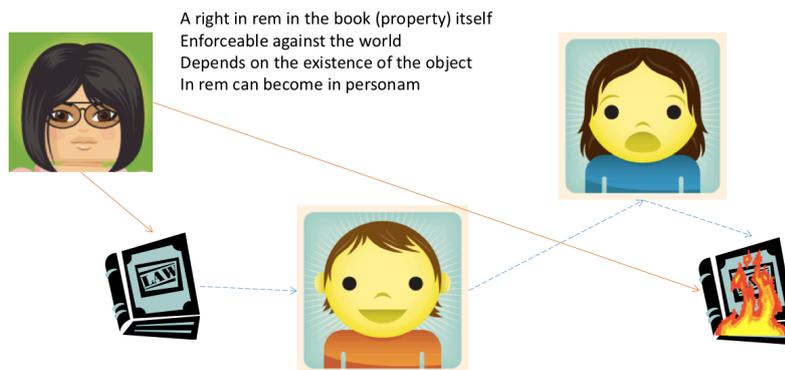
In personam:

- agreement in personam between you and John (an "I owe you" agreement)

- Even though Mary destroys money, you will still have agreement with John to pay back money — therefore **in personam**

Contrast:

Rights in Rem v Rights in Personam



In rem:

- Property right follows the book

- Girl has right against John for losing book + Mary for destroying it — as interest in **in rem** — in the thing itself

Other essential features of property

- property confers upon the holder a 'bundle of rights' which refers to the aggregate of rights associated with property enforcement (this metaphor was originally outlined by Wesley Hohfeld and AM Honore)
- features are contentious and not definitive or exclusive to property rights
- Legal recognition —
 - property rights **must be recognised and legally enforceable**
 - "property and law are born together and die together. Before laws were made there was no property. Take away the laws and property ceases": Bentham
 - "Property is an artificial legal construct - it can only exist where it is supported by a legal system that recognises it. There can be no [property] in the absence of legal enforcement": Finkelstein J in *Wily v St George*

PROPERTY RIGHT

What is a property right?

Common law definition — “There is nothing which so generally strikes the imagination and engages the affections of mankind, as the right of property; or that **sole and despotic dominion** which one man claims and exercises over the **external things** of the world, in **total exclusion** of the right of any other individual in the universe.”: Blackstone Commentaries on the Law of England, Circa 1765

- 1) A physical thing
- 2) Exclusive (despotic ownership)
 - by 19th century acceptance of **property in intangibles** e.g. trade marks and trade secrets
 - exclusive possession of public land
 - 20th century; Wesley Hohfeld conceptualised property as a **set of legal relations** (thus no need for a tangible object) — rights privileges and powers
 - dominion need not be fixed or absolute
 - “rights of exclusion and immunities against divesting”: (1960) 34 Tulane Law Review 453, AM Honore

Property rights

1) Dominion (right to use)

- control exercised by a person over an object
- dominion denotes some legally authorised power

2) Exclusion

- to exclude others from: (a) enjoying the same rights; or (b) interfering with the exercise of rights
- state can enforce exclusion
- no longer ‘total exclusion’

3) (External) things

- things must be separate and apart from ourselves
- physical things (land and chattels)
- intangible things (shares, patents and trademarks)

4) External: demarcation of property/boundaries

Property can be defined with reference to its features, such as:

- a) **transferability of right** — most rights are transferable (including personal rights)
- b) **enforceability of right against other persons** — right in rem; almost universal acceptance
 - “A real right, such as ownership, is as every first year law student knows, enforceable against the whole world”: *XZS Industries v AF Dreyer (Pty) Ltd* (2004) (4) SA 186 (W) 196 F/G
- c) **right to alienate a thing** — cf non-assignable property rights (non-assignable lease) + note native rights not transferable: *Millirpum*
- d) **value** — market value; sentimental value; negative value? (e.g. toxic chemicals)

Thing/s the subject of property rights

Once an entity is designated as property, it becomes possible to exert a legal regime of control over that entity: *Yanner v Eaton* (1999) 166 ALR 258, per majority at 264

- Land, goods; shares, the benefit of a contract; the lyrics to a song, computer software, ideas, airspace, encumbrances, rights attached to land, indigenous cultural relationships over land
- Body parts? Genes? Information? Air? Water?

WHAT IS PROPERTY — AUSTRALIAN CASE LAW

Sources of property law

- property law doctrine introduced when British Crown claimed sovereignty over Australia a > 200 years ago
- **Sources include:** imported English common law (judge-made law and statutes); equity; enactments of local legislature and court decisions; native title; international human rights law having a bearing on property

Examples

- Article 1 of the First Protocol of European Convention on Human Rights impacts on English law:
 - provides a **guarantee** of property rights
 - state conditions for **deprivation** — public interest + compensation
 - allows **control** of the use of property in the general interest by the States
- Kyoto Protocol on global warming — carbon request ration interests

Native title

Native Title = Rights to land held by Aboriginal Australians and Torres Strait Islanders, rights include hunting, gathering, or fishing — in *Mabo* the HCA declared that native title has been a part of the common law since it was first introduced to Australia in 1788, but the declaration was not made until 1992.

Extinguishing Native Title

- NT is extinguished or reduced if the Crown lawfully exercises its sovereignty to do so or grants inconsistent rights to itself or others
- any new rights lawfully granted will take priority over native title

Yanner v Eaton (1999) 166 ALR 258

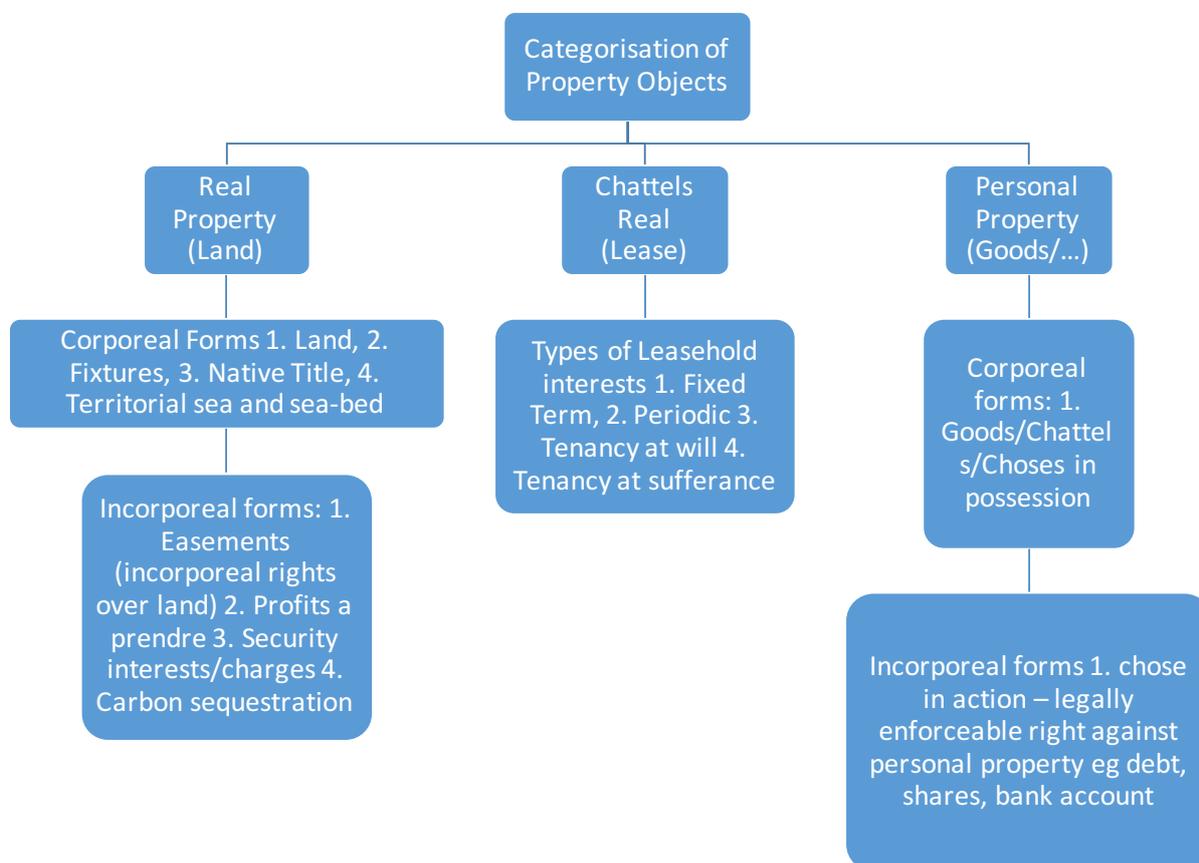
- in 1994 Yanner (famed Aboriginal activist) used traditional harpoon to catch 2 juvenile crocodiles for food under NT rights. Charged with one count of taking fauna without a permit contrary to the *Fauna Conservation Act 1974* (Qld) ('FCA')
- defence claimed NT rights extinguished by FCA. Magistrate held Y not guilty. The informant (police officer) appealed. COA set aside Magistrates' decision. By special leave, Y appealed to HCA

Held (HCA):

- **s 7(1)** of FCA: "All fauna, save fauna taken or kept otherwise than in contravention of this Act, during an open season with respect to that fauna, **is the property of the Crown and under the Control of the Fauna Authority**"
- absolute beneficial ownership must extinguish (all) inconsistent rights
- Issue: **all fauna** is "property" of the Crown —
 - Held property is not an object, but a reference to a degree of power that the property relationship covers
 - **s 7(1)** is **not intending to vest ownership** in objects, rather intends to refer to **aggregate of various rights of control** including the **right to establish a regulatory regime**
 - this is less than full beneficial or absolute ownership — NT to hunt crocodiles not extinguished
- Why crown 'property' is **not equivalent of full or absolute ownership**:
 - difficulty to identify what fauna is owned by Crown
 - meaning of all and beneficial ownership of wild animals?
 - wild animals at common law: limited property rights
 - property in Act cannot be equated to property of domesticated animals
 - ownership connotes right to have and dispose of possession (fauna outside possession and disposition)
 - reasons for vesting fauna in Crown: desirability to provide for some vesting to create royalty system
 - state holds fauna in sense of **imperium** (and **not** in sense of dominium): guardianship of resources
- "referring to the conclusions of Professor Kevin Gray who stated that much of our 'false thinking about property stems for the residual perception that "property" is itself a thing or resource rather than a **legally endorsed concentration of power over things and resources...**' and that (the "ultimate fact about property is that it is an illusion" and that talk of property is merely talk without substances because upon closer inspection it is a concept which vanishes into thin air." CB1.7

CLASSIFICATION OF PROPERTY

- Property is about a **relationships between people and objects**
- Classification or taxonomy is important to understand how property rules relate to each other and other areas of law
- Enables understanding of priorities, remedies
- Many ways to classify



'Real' property vs 'personal' property

- 13th C English legal actions
 - Property rights to land were classified as **'real property' because could bring a 'real action' to recover land/object from someone**
 - Other actions were **'personal' because no real action** to recover the thing itself
 - 'personal' property gives rise to compensation
- E.g. Chattels Real — Property that is not freehold land or a movable object
- E.g. lease (personal property relating to an interest in land)

In rem vs in personam; real vs personal

- Don't confuse distinction between real and personal property with the distinction between *rights in rem* and *rights in personam* — completely different!
- Personal property rights (eg rights to my book) **are not** *rights in personam*

LEGAL AND EQUITABLE RIGHTS

How property rights are enforced

- Legal rights derive from statute and common law; Equitable interests derive from rules and principles of equity
- Most legal property rights have an equitable counterpart

Four areas of equitable jurisdiction relevant today

- 1) Trusts
 - 2) Enforcing informal contracts (estoppel, part performance)
 - 3) Preventing enforcement of legal rights against conscience
 - 4) Granting remedies not available under common law e.g. injunctions and specific performance
- Motives to employ equity are remedy driven eg injunctions, accounts of profits, holding of property under a constructive trust are all equitable remedies
 - E.g. breach of contract of sale – CL remedy?, Equitable remedy?

PROPERTY RIGHTS DISTINGUISHED FROM CONTRACTUAL RIGHTS

Property right

- Confers a **right over a thing**
- Enforceable **against third parties/rest of the world**
- A property right **precludes anybody** (apart from person with better title) **from interfering with property rights**
- Property remedies **prevent interference with rights over the thing** — Eg right to remain on the land
- “no two parcels of land are the same”

Contractual right

- .Not a right to a thing, right against a person
- Contractual right is only enforceable against other party to a contract
- A contract right entitles party to sue in the event of breach of contract by the other party
- Range of personal remedies
- Personal right against other party to get damage for breach of obligation
- Remedy: to make good damage

Why does the distinction matter?

- Property rights are **more powerful** than contractual rights
- Property rights — e.g. specific performance; right to remain on the land
- Contract — usually only damages

When contracts become proprietary

- A relationship between a person and an object can be **both contractual and proprietary**
- Confusing when a contract deals with or regulates property; E.g. contract may give rights to use, possess or exclude
- Right to enforce a contract is resource **capable of forming subject of property relation:**
 - Ownership of contractual right e.g. mortgage
 - Shares, insurance policies and bank accounts
- E.g. a lease contract where the lessor confers exclusive possession upon the lessee creates a lease estate which is a proprietary interest
- **Note:** Contracts that merely give rights over “things” do not automatically become property rights (see *Cowell v Rosehill Racecourse*)
 - What is a lease? What is a licence?

DICTIONARY: PROPERTY LAW

Word	Definition
Absolute beneficial ownership	Absolute meaning no obligations to pay taxes, rates, ie no tenural obligation to landlord. In feudal times, the Crown had absolute beneficial ownership of all the land.
Adverse possession	<p>The occupation of land to which another person (the paper owner) has title, with the intention of possessing it as one's own. The leading case on adverse possession is Pye v Graham [2002] UKHL 30, [2003] 1 AC 419. That case confirmed that, in order to adversely possess land, the adverse possessor ('squatter') must dispossess the paper owner by exercising exclusive physical possession of the land with the intention of possessing it to the exclusion of all others, without the consent of the paper owner.</p> <p>Possession of land contrary to the interests of the rightful owner. Unless the rightful owner intervenes within the limitation period, either by taking court proceedings for possession or by evicting the possessor, the person in adverse possession obtains a title good against all the world, including the rightful owner: for example, Limitation of (QLD) Actions Act 1974 s 19(1). The limitation period runs from the time that adverse possession begins and continues while the true owner remains excluded.</p>
Alienation	<p>The transfer of property (particularly real property) from one person to another.</p> <p>Alienable inter vivos — Can get rid of during your lifetime.</p> <p>Alienable testamentary — Can be left to another via will.</p> <p>The transfer of title to real property, voluntarily and completely. It does not apply to interests other than title, such as a mortgage.</p>
Allodial title	<p>Allodial land = A term used in feudal times to denote land not included in the feudal system, its owner holding the land absolutely without deriving title ultimately from the King. When the feudal system was at its height in England there was no allodial land.</p> <p>Allodial title is a real property ownership system where the real property is owned free and clear of any superior landlord. In this case, the owner will have an absolute title over his or her property. Property owned under allodial title is referred to as allodial land.</p>
Animus Possidendi	Intention to possess.
Bailment	The transfer of the possession of goods by the owner (the bailor) to another (the bailee) for a particular purpose. Examples of bailments are the hiring of goods, the loan of goods, the pledge of goods, and the delivery of goods for carriage, safe custody, or repair. Ownership of the goods remains in the bailor, who has the right to demand their return or direct their disposal at the end of the period (if any) fixed for the bailment or (if no period is fixed) at will.
Beneficiary	<p>(1) A person entitled to benefit from a trust. The beneficiary holds beneficial interest in the property of which a trustee holds the legal interest. A beneficiary was formerly known as the cestui que trust.</p> <p>(2) One who benefits from a will. Also known as 'cestui que trust'.</p>
Bona fide purchaser for value without notice	Is a term used in the law of real and personal property to refer to an innocent party who purchases property without notice of any other party's claim to the title of that property. A BFP must purchase for value, meaning pay for property rather than simply be a beneficiary of a gift.
Bona vacantia	<p>Personal property</p> <p>Unclaimed goods; goods the legal ownership of which cannot be determined. For example, a deceased estate without any heir.</p> <p>Succession</p> <p>The goods of a person who dies intestate without next of kin. Under legislation for the division of property on an intestacy the property belongs to the Crown as <i>bona vacantia</i> (or escheat in Western Australia) if there is no person able to claim under that legislation: (NSW) Wills, Probate and Administration Act 1898 s 61B(7); (VIC) Administration and Probate Act 1958 s 55; <i>Re Menday</i> (1916) 16 SR (NSW) 442 ; 33 WN (NSW) 141; <i>Dyke v Walford</i> (1846) 5 Moo PCC 434 ; 13 ER 557. In practice, the Crown has a discretion to grant the property to a meritorious claim such as a dependent who does not come within an intestacy category.</p>
Caveat	A notice, usually in the form of an entry in a register, to the effect that no action of a certain kind may be taken without first informing the person who gave the notice (the caveator).

Chattels	Any property other than freehold land. Leasehold interests in land are called chattels real because they bear characteristics of both real and personal property. Tangible goods are called chattels personal.
Choses in action	A right (for example a right to recover a debt) that can be enforced by legal action
Choses in possession	<p>A tangible items capable of being actually possessed and enjoyed (for example a book or a piece of furniture)</p> <p>An item of tangible personal property that is capable of physical possession by the owner and of transfer by delivery (for example, a book or chair). Choses in possession are distinguished from choses in action, which are intangible forms of personal property.</p>
Corporeal and incorporeal hereditaments	Corporeal hereditaments are tangible items of property, such as land and buildings. Incorporeal hereditaments are intangible rights in land, such as easements and profit a prendre.
Corporeal property	Corporeal property is the right of ownership in material things. It is property that can be seen and handled. For example, real estate or personal property having tangible form and structure, like a building, equipment or vehicle.
Contingent future interest	A future interest, which is conditional on something happening. A condition precedent. In addition to the death of the life estate
Easements	A right enjoyed by the owner of land (the dominant tenement) to a benefit from other land (the servient tenement). An easement benefits and binds the land itself and therefore continues despite any change of ownership of either dominant or servient tenement, although it will be extinguished if the two tenements come into common ownership.
Estates	<p>The duration of tenure in land.</p> <ol style="list-style-type: none"> 1. An interest in land, enforceable at law and in equity, or in equity only, being one of three types: fee simple, estate tail (also called fee tail; but now obsolete in most jurisdictions), and life estate. 2. By statute, the meaning is sometimes extended, for example to include any interest, charge, right, title, claim, demand, lien, and encumbrance, at law or in equity in land: (NSW) Interpretation Act 1987 s 21(1).
Fee simple	<ol style="list-style-type: none"> 1. In strict feudal theory, an estate capable of inheritance (a 'fee') which may descend to any heirs whatsoever of the original grantee: <i>Commonwealth v New South Wales</i> (1923) 33 CLR 1 2. In modern usage, an estate in land that is as close to ownership of land as the doctrine of tenures and the doctrine of estates allows. For all practical purposes, ownership.
Freehold	<p>The most complete form of ownership of land: a legal estate held in fee simple absolute in possession.</p> <ol style="list-style-type: none"> 1. Ownership of land. 2. In feudal times, the character of land held by a freeman, and subject to feudal services and incidents thought to be appropriate to the status of a freeman. The common law recognised three types of freehold estate: fee simple, fee tail (now obsolete in most jurisdictions), and life estate.
vs	
Non-Freehold	Duration is certain or capable of certainty. Lease
Future interest	Future interests arise when a life estate or leasehold is created. Interest where title is conferred but possession deferred. Residue or leftovers from life estate
Indefeasible	Incapable of being made void. Unable to be brought to an end: for example <i>Dwight v FCT</i> (1992) 37 FCR 178 ; 107 ALR 407.
Interest	A right in or over land. Such a right may be either legal or equitable. The two most important interests in land are the two legal estates, the fee simple absolute in possession (freehold) and the term of years absolute (leasehold).
Inchoate possessory title	Possessory title confers a present enforceable right upon the possessor in physical control as well as a legal right to enforce possession in circumstances where the holder is dispossessed of factual possession
Interstate passes to Crown	When you have not provided for what will happen when you die, you die intestate and your property will pass to the Crown

Jus tertii	<i>A defence raised by a party who is sued in respect of property alleging that some third party has a better claim to the property than the claimant.</i>
Lease	A contract under which an owner of property (the landlord or lessor) grants another person (the tenant or lessee) exclusive possession of the property for an agreed period, usually (but not necessarily) in return for rent and sometimes for a capital sum known as a premium (<i>Street v Mountford [1985] AC 809 (HL)</i>). Unless it satisfies the conditions for a parol lease, a lease must be made by a formal document (a deed), which is itself called a lease. If this is not done, however, there may still be an agreement for a lease or an equitable lease. The lessee must have exclusive possession, i.e. the right to control the property and to exclude everyone else from it (subject to any rights of entry or re-entry reserved to the landlord). If possession is not exclusive, there is no lease but there may be a licence. A lease must be for a definite period that is certain at the date of commencement of the lease (<i>Lace v Chandler [1944] KB 368</i>).
Mortgage	An interest in property created as a form of security for a loan or payment of a debt and terminated on payment of the loan or debt. The borrower, who offers the security, is the mortgagor; the lender, who provides the money, is the mortgagee.
Native title	<p>A communal, group or individual right or interest in relation to land or waters, deriving from traditional laws acknowledged and customs observed by Aboriginal peoples and Torres Strait Islanders by which they have a connection with the land or waters, which has not been extinguished: (Cth) Native Title Act 1993 (Cth), s 223. Rights includes hunting, gathering or fishing.</p> <p>Rights to land held by Aboriginal Australians and Torres Strait Islanders, rights include hunting, gathering, or fishing — in <i>Mabo</i> the HCA declared that native title has been a part of the common law since it was first introduced to Australia in 1788, but the declaration was not made until 1992.</p>
Nemo dat quod non habet	The basic rule that a person who does not own property (e.g. a thief) cannot confer it on another except with the true owner's authority (i.e. as his agent). Exceptions to this rule include sales under statutory powers and cases in which the doctrine of estoppel prevents the true owner from denying the authority of the seller to sell.
Ousted	To deprive of or exclude from possession of something
Personal property	All property that does not comprise land or incorporeal hereditaments
Plenary title / Plenum dominium	<p>when the Crown had exercised its sovereign power to appropriate to itself ownership of parcels of land within the Crown's territory</p> <p>Plenum dominium = Full ownership. Ownership of property along with the right to take and use the income and profits from it,</p>
Possession	Actual control of property combined with the intention to use it, rightly or wrongly, as one's own. In the case of land, possession may be actual, when the owner has entered onto the land, or possession in law, when he has the right to enter but has not yet done so. Possession includes receipt of rent and profits, or the right to receive them.
Profit a prendre	The right to take soil, minerals, or produce (such as wood, turf, or fish) from another's land (the servient tenement) or to graze animals on it.
Radical title	<p>Radical title is less absolute than the beneficial ownership that characterised Crown ownership under the English doctrine of feudal tenure. Radical title is diminished form of ownership which is capable of being burdened by a native title encumbrance.</p> <p>radical title is "a substantial and paramount estate, underlying the [native] title, which became a plenum dominium wherever that title was surrendered or otherwise extinguished." — p. 221 textbook</p>
Real property	<p>Freehold land and incorporeal hereditaments</p> <p>In general usage, land and buildings as a physical entity, as distinct from personal property. In technical usage, includes intangible interests in land, such as easements and profits à prendre.</p>
Rights in personam	A right or class of rights against a person or class of persons. A right in personam is distinguished from a right in rem, which is a right against property.
Rights in rem	<p>A right in property, a right against the world.</p> <p>An example is the right of a purchaser in the land the subject of a contract for sale, or the right of a mortgagee in the mortgaged property. Also known, in Hohfeld's scheme of fundamental legal conceptions, as a 'multital right'.</p>

Radical title	The ultimate ownership rights over land, vested in the Crown. Under English legal theory, the ultimate ownership of all land over which the Crown has assumed sovereignty is vested in the Crown. Land 'owners' own not the land itself but only an estate in the land: Mabo v Queensland (No 2) (1992) 175 CLR 1 .
Seisin	Possession of a freehold estate in land. In modern times it is unnecessary to distinguish between seisin and possession. Possession of a freehold estate in land. To be 'seised' of land is not a legal right but a fact, arising from physical possession of land or the receipt of rent from the person who occupies the land.
Sovereign title	Crown title to land
Sovereignty of power (imperium) vs Sovereignty of title (dominium)	Sovereignty of power = Power to grant land. At colonisation the Crown has 'absolute power over land': Mabo (No 2) Sovereignty of title = Crown title. All the realms and territories under the sovereignty of the crown. Crown has control over land. Crown Grants land to itself. Radical title becomes full beneficial title. At colonization Crown DID NOT automatically get 'absolute sovereignty of title': Mabo (No 2) In <i>Mabo</i> , Brennan CJ separated what he called 'sovereignty of power' (imperium) from 'sovereignty of title' (dominium) concluding that upon settlement, the Crown assumed sovereignty of power (imperium) over all land but only acquired sovereignty of title (dominium) over those lands not already inhabited by indigenous occupants . Where the land was occupied by indigenous inhabitants, Crown retained a radical title encumbered by native title interests.
Subinfeudation	Ability of tenants, who held land under the kind or superior lord to create new distinct tenures through subletting and alienating land (originally did this to avoid paying a fee to their lords)
Tenure	The doctrine of tenure sets out that upon colonisation, the Crown acquired absolute ownership over all land and all grants are a derivation of the Crown. This meant that under a tenure framework, the Crown is the universal owner of all land and, therefore all grants (tenures) must derive from the Crown. The doctrine of tenure is, therefore, a doctrine premised on the assumption that all ownership held by a grantee is derivative and the only absolute and universal ownership in land belongs to the Crown.
Terra Nullius	Land, which has never belonged to any state, or where it's previous Sovereign, has stopped exercising authority over it with the intention of abandoning it. Such land is subject to claim, and its sovereignty may be acquired only through occupation and control amounting to first possession of the territory: Island of Palmas Case (United States v The Netherlands) (1928) II RIAA 82 .
Torrens system	A system of land title under which a State-maintained register of land holdings guarantees indefeasible ownership of land. Torrens title — A system of land title under which a State-maintained register of land holdings guarantees indefeasible ownership of land. The system is contrasted with old system title, which depends on proof of an unbroken chain of title back to a good root of title or even back to the Crown grant of the land. The Torrens system takes its name from its alleged inventor, Sir Robert Torrens.
Trespass	A wrongful direct interference with another person or with his possession of land or goods. Trespass to land usually takes the form of entering it without permission. It is no defence to show that the trespass was innocent (e.g. that the trespasser honestly believed that the land belonged to him). Trespass to land or goods is a wrong to possession rather than to ownership.
Vesting of property	To confer legal ownership of land on someone. The transfer of property ownership rights from one person to another. Where a debtor becomes a bankrupt the divisible property of the bankrupt vests immediately in the trustee in bankruptcy: (CTH) Bankruptcy Act 1966 s 58(1)(a) . After acquired property automatically vests in the same way as soon as it is acquired by the bankrupt: (CTH) Bankruptcy Act 1966 s 58(1)(b) . If a relevant law requires the transmission of property to be registered, the property does not legally vest until the requirements of that law are satisfied. In the meantime, the property vests in equity: (CTH) Bankruptcy Act 1966 s 58(2) .
Vested future interest	An immediate right of legal ownership in land with possession deferred to the future. Vested when recipient is known.

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NATIVE TITLE: Varieties of title

Native title = A communal, group or individual right or interest in relation to land or waters, deriving from traditional laws acknowledged and customs observed by Aboriginal peoples and Torres Strait Islanders by which they have a connection with the land or waters, which has not been extinguished: (Cth) *Native Title Act 1993* (Cth), s 223. Rights includes hunting, gathering or fishing.

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Allodial title = A term used in feudal times to denote land not included in the feudal system, its owner holding the land absolutely without deriving title ultimately from the King. When the feudal system was at its height in England there was no allodial land

Sovereign title = Crown title to land

Absolute beneficial ownership = Absolute meaning no obligations to pay taxes, rates, ie no tenural obligation to landlord. In feudal times, the Crown had absolute beneficial ownership of all the land.

Sovereignty of power (imperium) = Power to grant land. At conlonisation the Crown has 'absolute power over land': *Mabo (No 2)*

Sovereignty of title (dominium) = Crown title. All the realms and territories under the sovereignty of the crown. Crown has control over land. Crown Grants land to itself. Radical title becomes full beneficial title. At colonization Crown **DID NOT** automatically get 'absolute sovereignty of title': *Mabo (No 2)*

Radical title = The crown has sovereignty over all land, and power to exercise land rights, but it does not have literal 'ownership' over every parcel of land in Australia. The right is not exercised until land is granted. Therefore, until fees simple are created, native title right is not extinguished. This fiction of 'radical title' allowed tenure and native title to coexist.

Plenary title = Full ownership. Ownership of property along with the right to take and use the income and profits from it