

**LAW56005**  
**PROPERTY LAW**

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# INTRODUCTION

Monday, 26 February 2018

8:47 PM

## General Principles of Property:

- **Defined**- Property is the right, supported by the state, to use a tangible or intangible thing and to exclude others from using it
  - Definition may vary depending on the context
    - i.e. If in statute it may have its own definition
- **Not everything can be property**
  - No right to privacy
  - No right to ownership of your personality or image
  - Body parts are not property [Moore]
  - No property in a dead body [Dobson]
    - Exception perhaps where it has been preserved- i.e. mummies and foetus preserved in a jar [Doodeward]
    - Used to discourage trade in body parts and to prevent the 'devaluation' from treating it as a commodity.
    - Cf *Yearworth*; "products of a living human body intended for use by the persons whose bodies have generated them"
      - Stored sperm was property

## Elements of Property:

1. Dominion- individual or limited group able to exercise control over something
2. Exclusion- a right to exclude others from the thing
3. External- the thing is external to the person, this can be extended to intangible things.
4. Transferable [this point is debatable]- generally not essential

## Philosophical Justification of Property Rights

- First Occupancy
- Investment in labour
  - Expenditure of effort entitles me to rewards
- Utility/Economic Efficiency
  - Better to give property to some otherwise everyone will waste it
- Personhood
  - Property to express who I am
- Justice and Equality
  - Property ought to be fairly distributed [Karl Marx]

## Classification of Property

- **Realty** - Essentially means land
  - Incorporeal [intangible- i.e. Easement]
  - Corporeal [tangible- i.e. Land itself]
- **Personalty**- everything else [Chattels]
  - Chattels- real- i.e. Leases
    - 'lease' technically falls into this category but is generally treated like real property
  - Chattels- personal [tangible, intangible-items]

## Property Rights Vs Contractual Rights

- Property rights are right *in rem* – Good against the world
- Contract rights are rights *in personam* - Good between 2 parties

# PERSONAL PROPERTY AND FIXTURES

Wednesday, 7 March 2018

9:15 PM

## Possession

- **Defined**- actual control coupled with an intention to use it as one's own
  - May mean actual possession, legal possession or the right to possess [not all are required, nor are they mutually exclusive]
    - Do not require physical immediate possession [i.e. so when arrested and goods confiscated the items are still in your possession] [Mulholland]
- **Legal rights gained by possession**
  - Chimney sweep/brooch that was stolen- even though he stole it and was not the true owner his possession gave him legal right which was supported against all but the true owner [Armory v Delamirie]
    - Possessory title - as good as absolute title against all but the absolute owner [Russell v Wilson]
  - Criminal code offences requires possession- not necessarily ownership [McKiernan]
  - Not necessarily in possession of employees/agents holding property on behalf of another [Brunett]
    - I.e. directors of company not in possession of chattels owned by company as they could not recover these if the company went bankrupt
      - Even if they had control over how these chattels were used
- **The finders cases - finders keepers?**
  - If the true owner [or heir] can be identified then they have the superior right
  - If the item is found in a public place and no one can be identified then generally the finder has a title against the whole world [Armory]
  - For an item found on private land
    - If it affixed to the land the owner of the land will own it [Elwes]
    - If it is not affixed then it will belong to the finder unless the occupier of the premises can show they asserted control over that area and its contents [Parker]
      - Usually if found in private residential premises there will be a presumption of control by the occupier [Flack]
  - **Even if property obtained illegally- there is no automatic bar to have having possession**
    - e.g. Drug related money was seized, no prosecution though- court ordered money be returned as D has better possessory rights than police [Webb]
    - e.g. stolen car- original owner couldn't be found, no charges laid, car had to be returned [Costello]
    - There is an exception where possession itself is unlawful
      - e.g. possession of firearms without a license

## Title to Goods

### General Principles

- *Nemo dat quod non habet*: "Someone who does not have title cannot give it."
  - Need to establish a "chain of title" to be complete