

## MODULE ONE – WHAT IS PROPERTY?

- a bundle of legal rights
- the everyday meaning is that it is a thing – a car, iPod, land, shoes, watch, animals
- for property law purposes we need to understand it as a concept
- legal starting point is that it is understood as a *relationship* an individual has over a tangible thing (eg: land or object) and also over intangible things (eg: copyright)

### Western Society and Law

- value placed on property ownership
  - in feudal times land ownership = power, authority, wealth and the right to control the shape of law, if you weren't a land owner you couldn't vote
- an individual right and property rights attach to that which is capable of ownership and attains some value (even joint ownership the individual has an interest)
- new forms of property emerge as society develops (ie: swords on World of Warcraft)
- indigenous societies – no concept of individual ownership
  - communal ownership of land and resources (everything was shared)

### Pillars of Legal System

- individuals and society
- individuals and individuals
- individuals and objects

### Theories of Property

- theories or justifications for deciding what is property, how property comes about, considerable financial benefits can flow when rights become property rights
- when something has property rights attached it becomes valued
- when something is not capable of ownership, do we value it less?
  - communal property is often valued less than private property, eg: graffiti is often found on trains, walls, but never inside someone's house

### Occupation Theory

- possession is 9/10ths of the law
- whilst it explains the importance of possession, it does not explain ownership
- what happens when you lose possession?

### Labour Theory (John Locke)

- property rights accrue to one who has worked, invested time and effort
  - “natural law protected the right to property that individuals naturally accrued through their labour”

### **Economic Efficiency Theory**

- private ownership of resources rather than government or communal ownership promotes the more efficient use of resources
- the tragedy of the commons illustrates the pitfalls of communal ownership – if everyone was allowed their animals to graze on communal property, the land would become overgrazed and decrease in value

### **Legal Positivism Theory**

- laws represent the will of the political sovereign (as distinct from God's law)
- accepts property rights which are conferred higher authority (by the state)

### **Property / Contract**

- property rights can be enforced against the world (called a **right in rem**)
- contractual rights can only be enforced against the parties to the contract (called **rights in personam**) (mainly comes up in regards to equity)
- interaction with property law (equity also)

### **Characteristics of Property**

- enforceability
- a "thing" (can be intangible)
- alienability (transferable)
- excludability

### **Types of Property**

- real property – land
- personal property – goods, things (everything but land)
- tangible real property
- intangible real property
- tangible personal property
- intangible personal property

### **Real Property Divisions**

- freehold (own the land)
- leasehold (renting the land)
- rights of mortgagor (homeowner)
- rights under an easement / registered document (rights of a third party)

### **Personal Property Divisions**

- bare licence
- contractual licence
- licence coupled with a grant