

# Topic 1: Concept and Form of Property

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## What is property?

The range of **objects and rights** that an individual or group of individuals or corporation has in their **control and possession** and which is accepted by the rest of the world.

**\*\*Note:** no true definition because it is always changing and evolving- the definition is illusory.

## Fundamental characteristics

- **Legal relationship:** property is a description of a *legal relationship* between a person and a thing/object/resource- *Yanner v Eaton*
  - 'It refers to a degree of power that is recognised in law as power permissibly exercised over the thing.'
  - Owner may exert a legal regime of control over the property- *Yanner v Eaton*
- **Bundle of rights-** see below
- **Category?**- is the interest real or personal? Is the item tangible or intangible? Is the interest legal or equitable?
- **Exclusion against the rest of the world:** all property relationships confer a right *in rem*- enforceable against the rest of the world

### Yanner v Eaton (1999) 166 ALR 258

#### Facts:

- Appellant, a member of an aboriginal tribe, caught two juvenile estuarine crocodiles.
- Charged with taking and keeping fauna without permit under the *Fauna Conservation Act 1974 (Qld)*.
- Magistrate found the appellant not guilty based on their connection with the land. Court of appeal set aside magistrates decision. Appellant appealed to the HCA.

#### Issue:

- Did the appellant have a native title right to hunt for crocodiles without a licence?
- Does the government have property rights in the fauna?)

#### Held:

- Fauna Act did not prohibit the NT appellant from hunting for crocodiles.
- Legislation did not vest in the Crown ownership of the fauna, but rather various rights of control over the fauna.

#### Rule:

- Property is a description of a legal relationship between a person and a thing/object/resource.
- All property relationships will confer upon the holder rights to exclude the rest of the world.

## Creation of new property

New property must be **identifiable**, its scope and form must be **ascertainable**, it **must not impinge upon accepted moral boundaries** and generally, the rationale validating new property must be that the **interest is beneficially socially, economically and/or environmentally**.