

# LAWS205: PROPERTY LAW

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### CONCEPTS OF PROPERTY

- Property = 'legal relationship that an individual has with an object or a resource, tangible or intangible'.
- Relational rather than an object focus.
- 'Property relationship' can include – land, goods, services, shares, benefit of a contract, song lyrics, computer software, ideas, airspace, encumbrances, rights attached to land, Indigenous cultural relationships over land.
- J B Baron, 'The Contested Commitments of Property' (2010) 61 *Hastings Law Journal* 917 at 938: *'First, property is like a system; like any system, property is governed by a 'design principle, albeit an "unstated" one. It works in rem, and to do its work, it needs, inter alia, things. Moreover – and this is a second commitment – property is exceptional. It is different from contract or tort'.*
- Primary definitive feature is the existence of a right to exclude\*\*. Property relationship confers rights of autonomy and control. Enforceable in rem (against rest of world) and not just enforceable between the parties who a privy to the relationship.
- Arguable that right to exclude does not properly identify the complex moral core of the property relationship – EG – Native Title. Their relationship with the land is far more communal in orientation.
- Right to alienation.
- Chattels = personal property.
- Real property = land.

### ASSOCIATED PROPERTY RIGHTS

- 'Bundle of rights'.

- Right to use and enjoy the property.
- Right to possess.
- Right to alienate (right to alter ownership rights – selling, giving, mortgaging, leasing etc).
- Argued that ^ is too simplistic. To fully appreciate the nature of in rem rights we need to discard the idea that a right is a simple relation between one person and an indefinite set of others and refocus on the relationship with the object itself.

### **PROPERTY IS A RELATIONSHIP**

- Legally, property refers to the relationship that an individual has with an object rather than the object itself.
- Relational foundation of property grants capacity to evolve in accordance with the changing nature of society, shifting societal attitudes, and the ever-expanding category of objects and resources capable of being propertised.
- ***Yanner v Eaton (1999) 166 ALR 258***: examines the scope and status of the property relationship, and the rights it confers.
  - FACTS: the appellant was an indigenous Australian who used traditional hunting methods to catch two juvenile crocodiles for their own consumption. They were charged with taking fauna without a permit under the *Fauna Conservation Act 1974 (QLD)*.
  - ISSUE: The meaning of 'property' under this statute. What the statute meant by 'property' was determinative of whether the appellant's native hunting rights had been extinguished by the statute.
  - HELD: HCA ruled in favour of the appellant. the term 'property' does not necessarily mean full, beneficial or legal ownership. Rather, property is a 'legal relationship' with an object which grants a person a right to exercise power over the object in some respect. As such, property is a variable concept which can have different degrees of intensity. Full beneficial ownership would lead to absurd results EG – migratory birds. Native title rights to hunt had not been extinguished.
  - Property conferred an 'aggregate of various rights of control' which included the right to regulate the fauna.

### **PROPERTY IS A LEGAL COSTRUCT**

- Property can only exist where it is supported by a legal system that recognises it (*Wily v St George Partnership Banking (1999) 84 FCR 423 at 431*).
- Native Title rights are recognised in Australia because they have been accepted by the common law.

### **FRAGMENTATION OF PROPERTY**

- Relational nature means it's possible for different forms of property relationships to be enforced against a single object or resource.
- EG – leases, mortgaged property, entitlement from will etc.
- May be fragmented from number of factors:
  - Jurisdiction in which the interest is enforced.