

Table of Contents

Week 2	2
TOPIC 1: THE CONCEPT OF PROPERTY	2
Week 3	19
BAILMENT	19
Week 4	26
AGENCY – PART 1	26
Week 5	39
MISLEADING OR DECEPTIVE CONDUCT	39
PART 1 – KEY CONCEPTS	39
Week 6	43
MISLEADING OR DECEPTIVE CONDUCT CONTINUED	43
PART 2	43
Week 7	49
MISLEADING OR DECEPTIVE CONDUCT CONTINUED	49
PART 3	49
Week 8	57
SECURITY INTERESTS IN PERSONAL PROPERTY	57
Week 10	66
SALE OF GOODS (PART ONE)	66
Week 10	74
SALE OF GOODS (PART TWO)	74
Week 11	81
SALE OF GOODS (PART THREE)	81
Week 11	85
SALE OF GOODS (PART FOUR)	85
Week 12	92
CONSUMER GUARANTEES – GOODS	92
Week 13	98
CONSUMER GUARANTEES – SERVICES	98

Week 2

TOPIC 1: THE CONCEPT OF PROPERTY

Outline

1. The concept of property
2. Traditional classification of property
3. The nature of personal property
4. The indicia of property rights
5. The bundle of rights concept
6. The importance of identifying property

1. What do we mean by 'property'?

- 'Property' refers to the **legal relationship** we have with a thing (degree of power exercised over the thing)
- Our focus is not on the thing itself, but on our **rights** to it, and **remedies** that flow from those rights
- If the facts required to prove a particular form of property can be established, the holder of that property may be able to convince a third person of his or her superior legal position by asserting and documenting that claim
- Failure to do so will require the contending parties to seek judicial resolution
- Thus, the **'property relationship'** can only exist if there are **rights** and **remedies**

Some examples of property rights:

- **Chattels or goods:** person in possession has property; rights arise from common law and statute e.g., *Sale of Goods Act 1896* (Qld) and the Australian Consumer Law in the *Competition and Consumer Act 2010* (Cth)
- **Books (particular type of chattel or good):** person in possession has property, but the author is the owner of the copyright in the work and can prevent unauthorised copying of the work pursuant to the *Copyright Act 1968* (Cth)

2. Types of property

- Our next topic is the different species of property that are recognised by Australian legal system

2 main branches:

- **real property** (land and interests in land)
- **personal property** (goods/ chattels)

There are two different **types of rights** in relation to property

- **Proprietary rights:**
 - rights *'in rem'*: enforceable against the world at large. e.g., rights in relation to real property, such as land
- **Personal rights:**
 - rights *'in personam'* enforceable only against the person from whom you derived the right. e.g. Pursuant to a legally enforceable contract
 - e.g. contractual rights are only enforceable by the other party to the contract not the world at large

3. Traditional classification of property

- **Chattels real:** leaseholds
- **Chattels personal:** two types
 - **Chose in possession:** tangible chattel goods (eg car)
 - **Chose in action:** intangible personal (eg a share in a company or a debt); cannot be physically possessed
 - Can only be enforced in a court of law
- **Fundamental difference** between chose in possession and chose in action: whether the 'thing' is 'corporeal' (can be physical possessed)
- 'Goods': Goods are tangible, moveable and capable of possession
- But the taxonomy (like all taxonomies) gives rise to some difficulties of classification
- For example, land is not goods, but can crops be goods?
- Are minerals goods?
- Are fixtures goods?
- Is computer software goods?

The classification of property is sometimes determined by statute

- For example:
- *Sale of Goods Act 1896(Qld)* defines "goods":
- *"includes all chattels personal other than things in action and money, and also includes emblements and thing attached to and forming part of the land which are agreed to be severed before sale or under the contract of sale"*
- Australian Consumer Law, s2: "goods" includes:
- (c) minerals, trees, crops, whether on, under or attached to land or not; and
- (d) gas and electricity; and
- (e) computer software

4. The indicia of property rights

Next question is: How do we establish when a property rights exists? To answer this question we turn to the indicia of property rights

- 'Property' requires a degree of 'control or dominion' over the object

In addition, all forms of property confer **three primary rights**:

- (1) Use and enjoy it
- (2) Exclude others from it
- (3) Alienate it

Judicial authority for this approach:

- Blackburn J in *Milirrpum v Nabalco Pty Ltd* (1971) 17 FLR 141
- *"I think that property in its many forms generally implies the right to use or enjoy, the right to exclude others, and the right to alienate. I do not say that all these rights must co-exist before there can be a proprietary interest or deny that each of them may be subject to qualification."*

5. Bundle of rights

The three primary rights are sometimes expanded

Bundle of rights

- To possess (exert physical control)
- To use
- To take benefit (receive income)
- To transfer or sell
- To exclude others (management power)
- To consume
- To modify or destroy
- To rent out or lease

- 'Property' does not require all rights to co-exist in the particular thing

Yanner v Eaton (1999) 201CLR 351

- s7 *Fauna Conservation Act 1974* (Qld) (FCA) – fauna = 'property' of the Crown
- S54 – licence, permit or similar needed to take fauna
- Did the FCA extinguish Mr Yanner's native title rights under the *Native Title Act 1993* (Cth) (NTA)?
- High Court: The term 'property' "does not refer to a thing; it is a description of a legal relationship with a thing. It refers to a degree of power that is recognised in law as power permissibly exercised over the thing."
- The term "property" comprehends a wide variety of different forms of interests; "its use in the Act does not, without more, signify what form of interest is created."
- Court held that the term 'property' as used in the Act conferred on the Crown rights less than full beneficial and absolute ownership.
- The Act had not extinguished Mr Yanner's native title rights and the Crown's rights could co-exist with Mr Yanner's
- ...
- The HC concluded that the term property in s 7 did not mean full exclusive and beneficial ownership [17] the word property refers to something that belongs to another but in the fauna act property does not refer to a thing it is a description of a legal relationship with a thing it refers to a degree of power that is recognised in law as power exercised over the thing. The concept of property is usually treated as a bundle of rights'.
-

6. The importance of identifying 'property'

- In conclusion, identifying the type of property will determine the property owner's rights
- We can work out who has property in an object and thus what they are entitled to do with it.
- We can work out what remedial action that person is entitled to take against others if their property rights are violated.