

Property and Commercial Law Notes

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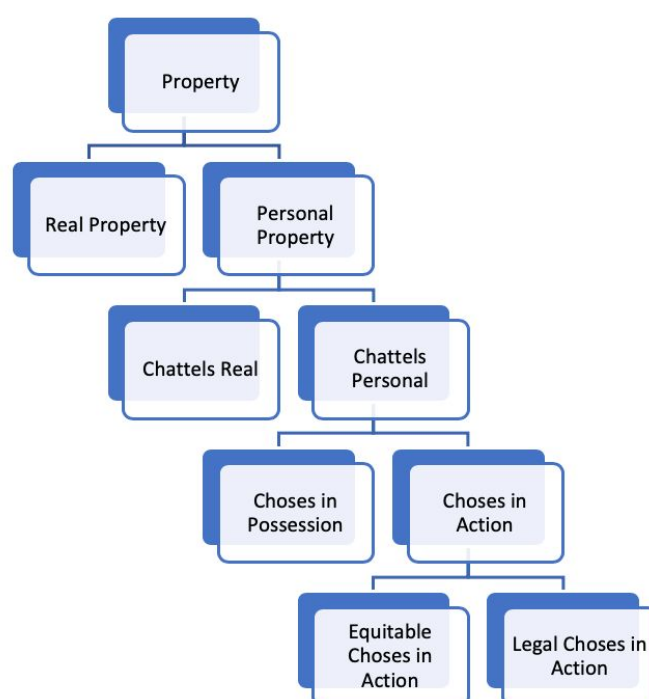
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Concepts of Property

- *Yanner v Eaton* (1999)
 - Property does not refer to a thing alone; it refers to the description of a legal relationship with a thing
- Property denotes two concepts:
 - 1. Things
 - The object itself which can be owned and dealt with
 - 2. Rights in things
 - The relationship between the persons in respect of a thing
 - Rights enforceable against the world at large - *in rem*
 - Rights enforceable against a specific person - *in personam*

Real Property

Real Property	
Land	Land, including interests in land.
Fixtures	Things attached to land with an intention of remaining fixed. <ul style="list-style-type: none">- Indestructible, immoveable, unique, affixed with the intention to remain affixed to the land
Incorporeal Hereditaments	An intangible item of property which can be inherited e.g. easement.
Fructus Naturales	Natural fruits of the land.



Personal Property

Personal Property			
<ul style="list-style-type: none"> Personal property is all that is not real property, it includes chattels real and chattels personal. 			
Chattels Real	Chattels Personal		
<p>Real chattels are interests issuing out of or annexed to real estates.</p> <p>Includes leasehold and other interests in land which are less than freehold.</p> <ul style="list-style-type: none"> Interest of a leaseholder (<i>AMP Society v Gregory</i> (1908)) Interest of a judgement creditor in land belonging to the judgement debtor upon the enforcement of a writ (<i>Johns v Pink</i> [1900]) 	Chose in Possession	Chose in Action	
	TANGIBLE	INTANGIBLE	
	<p>Choses in possession is a thing which a person may have not only ownership but also physical existence.</p> <ul style="list-style-type: none"> Book Car Jewelry Furniture 	<p>Personal right of property which can only be enforced by action, and not by taking physical possession (<i>Torkington v Magee</i> [1902]).</p>	
		Equitable Chose in Action	Legal Chose in Action
		<p>Rights recoverable by a suit in equity.</p> <ul style="list-style-type: none"> Share in a partnership Interest in a trust fund 	<p>Enforceable by an action at law.</p> <ul style="list-style-type: none"> Debts Bills of exchange Intellectual property

Ownership

- Ownership is the right to exclusive enjoyment of a thing (*Austin*)
 - Right to use, right to sell, right to security etc.
- Ownership is the highest possible right / interest in a thing that a person can have

Possession

- If one has exclusive control over the object and intends to exclude all others from that control; they have possession
- Possession does not necessarily concur with title

Elements of Possession		
Control	The exercise of factual control or power over the chattel.	<i>Button v Cooper</i> [1947]
Exclusion	The concomitant intention to exclude others from the exercise of control.	

Forms of Possession	
Actual or De Facto Possession	<p>Actual possession occurs when a person is presently in control of property.</p> <p>A person with actual or de facto possession has title against all but the person with a better title (<i>Toll (FGCT) Pty Ltd v Alphapharm Pty Ltd</i> [2003]).</p> <p>To demonstrate actual or de facto possession → must evidence effective occupation or control over the property.</p>
Custody	<p>Custody does not of itself amount to possession at law (<i>FCT v ANZ Banking Group Ltd</i> (1979)), it exists where there is a physical holding of goods. E.g. by an employer.</p>
Legal Possession	<p>Legal possession can exist without actual possession (e.g. owner's employee, agent, licensee or bailee at will has physical possession).</p> <p>Person in possession of the tangible goods has exclusive control over the goods and are entitled to use them free from interference by any other person except the owner (<i>Knapp v Knapp</i> [1944]).</p>
Constructive Possession	<p>Occurs when an individual has actual control over chattels but does not have physical control over them.</p> <p>At law, a person with constructive possession stands in the same legal position as a person with actual possession.</p>

Transfer of Possession

- Possession can be transferred by; delivery, loss or abandonment, finding

Delivery

- Where delivery occurs there is a change of possession (*Re Cole, a Bankrupt* [1964])
- Delivery must result in control of the goods passing from the transferor to the transferee
 - If the transferor retains the same control over the goods after the putative transfer of possession, then there is, in law, no delivery (*Young v Cockman* (1943))

Forms of Delivery	
Actual Delivery	<p>Requires the deliverer to hand over the goods physically to the deliverer (<i>Olsson v Dyson</i> (1969)).</p>
Constructive Delivery	<p>Takes place without any change in their physical possession → symbolic delivery (<i>Gamer's Motor Centre (Newcastle) Pty Ltd v Natwest Wholesale Australia Pty Ltd</i> (1987)).</p> <ul style="list-style-type: none"> - Example: handing over keys to a car

Finders Rights

- Finding a chattel is a way of acquiring possession (*Parker v British Airways* (1982))
- Generally, the rights acquired by a finder of a chattel will be superior to any other person other than the true owner (*Armory v Delamirie* (1722))

Parker v British Airways:

- Rights and obligations of the finder:
 - The finder of a chattel acquires no rights over it unless (a) it has been abandoned or lost and (b) he takes it into his care and control
 - The finder of a chattel acquires very limited rights over it if he takes it into his care and control with dishonest intent or in the course of trespassing
 - A finder of a chattel, whilst not acquiring any absolute property or ownership in the chattel, acquires a right to keep it against all except for:
 - The true owner
 - One who can assert a prior right to keep the chattel which existed at the time when the finder took the chattel into their control
 - Finders who find a chattel in the course of their employment or agency does so on behalf of their employer or principal
 - Finders have an obligation to take measures to determine the true owner
- Rights and liabilities of the occupier:
 - An occupier has rights superior to those of a finder over chattels in or attached to that land / building if they are aware of the presence of the chattel
 - An occupier of a building has rights superior to a finder if they had manifested an intention to exercise control over the building and the things which may be upon or in it
 - An occupier who manifests an intention over a building and the things which may be upon or in it has an obligation to take measures to find the true owner
 - An occupier of a chattel (e.g. car) is to be treated as if they are the occupier of a building

Articles found in, or attached to the land

- Owner / possessor of land has a better title than the finder (*Elwes v Brigg Gas Co* (1886))

Articles found on land

- Where the chattel is found on land occupied by another, the question will be whether there is evidence that the occupier has manifested a prior intention to exercise control over the premises and chattels found on the premises
 - If the occupier has not manifested such an intention, the finder will acquire possession of and possessory rights in the chattel (*Parker v British Airways* (1982))
- Exclusive possession of residential premises will suffice to establish the required manifest intention of the occupier to possess all chattels found on those premises (*Chairman, National Crime Authority v Flack* (1998))

Articles found in the course of employment

- Articles found in the course of employment belong to the employer (*City of London Corp v Appleyard* (1963))
- Where employment isn't the cause of finding but merely incidental to it → the employee is entitled to the goods (*Bryne v Hoare* (1965))