

EXAM STUDY GUIDE

MLP327 Property Law — Exam Study Guide

A Comprehensive Exam Study Guide

2026 Edition

COMPILED 7 MARCH 2026 · PROPERTY LAW

Table of Contents

01	Concept of Property, New Forms of Property, Property Rights & Contractual Rights - MLP327 Exam Notes	3
02	Fixtures, Possession and Title - MLP327 Exam Notes	19
03	Adverse Possession - MLP327 Exam Notes	40
04	Doctrine of Tenure - MLP327 Exam Notes	57
05	Native Title - MLP327 Exam Notes	71
06	Doctrine of Estates - MLP327 Exam Notes	85
06b	Rule Against Perpetuities - MLP327 Exam Notes	102
07	Leases - MLP327 Exam Notes	113
08	Equitable Interests - MLP327 Exam Notes	130
09	Easements - MLP327 Exam Notes	149
10	Restrictive Covenants - MLP327 Exam Notes	171
11	Mortgages - MLP327 Exam Notes	189

Concept of Property, New Forms of Property, Property Rights & Contractual Rights

1. Overview

This topic addresses the foundational question of what constitutes "property" in law. It examines five approaches to defining property: by reference to its features, its content (the "bundle of rights"), as a relationship, as an object of public law, and by distinguishing it from personal (contractual) rights. The topic also considers the boundaries of property — whether new forms (virtual property, carbon rights, human tissue) can be "propertised" — and the critical distinction between property rights (*in rem*) and contractual rights (*in personam*). The lease/licence distinction is a key examinable application of this divide.

2. Key Definitions

TERM	DEFINITION	AUTHORITY
Property (Blackstone)	"That sole and despotic dominion which one man claims and exercises over the external things of the world, in total exclusion of the right of any other individual in the universe"	Blackstone, <i>Commentaries on the Laws of England</i>
Right <i>in rem</i>	A right enforceable against a large and indefinite class of persons (the world at large); requires the continued existence of the thing	Common law; <i>XZS Industries v AF Dreyer (Pty) Ltd</i> 2004 (4) SA 186 (W)
Right <i>in personam</i>	A right enforceable against a specific person; not dependent on the existence of a thing	Common law
Bundle of rights	A metaphor for property as an aggregate of interrelated rights (possess, use, manage, income, capital, security, transmissibility) rather than a single defined notion	Honoré, 'Ownership'
<i>Numerus clausus</i>	The principle that property rights are limited to recognised categories	Common law
Native title	Interests and rights of indigenous inhabitants in land, possessed under traditional laws and customs	<i>Mabo v Queensland (No 2)</i> (1992) 175 CLR 1; <i>Native Title Act 1993</i> (Cth) s 223
Real property	Property interests over land (immovables)	Common law
Personal property	Property interests over chattels/goods (movables)	Common law
Chattels real	Leasehold interests — classified as personalty for historical reasons	Common law; <i>Property Law Act 1958</i> (Vic)
Chose in possession	Tangible personal property capable of physical possession	Common law
Chose in action	Intangible personal property — an enforceable legal right (e.g. debts, shares, insurance policies)	Common law
Lease	A conferral of exclusive possession upon terms for a limited period; a proprietary interest in land	Common law
Licence	Permission to do something on another's land which would otherwise constitute trespass; a personal right, not a property interest	<i>Cowell v Rosehill Racecourse Co Ltd</i> (1937) 56 CLR 605

3. Legislative Framework

Primary Legislation

ACT	KEY PROVISIONS	PURPOSE
<i>Property Law Act 1958</i> (Vic)	General	Governs property interests in Victoria; includes leasehold interests within definition of "land"
<i>Transfer of Land Act 1958</i> (Vic)	General	Torrens system of land registration in Victoria
<i>Native Title Act 1993</i> (Cth) ('NTA')	s 223	Defines "native title" and "native title rights and interests"
<i>Australian Constitution</i>	s 51(xxxi)	Power to acquire property on just terms — recognises native title as "property"
<i>Charter of Human Rights and Responsibilities Act 2006</i> (Vic)	s 20	Protects property rights in Victoria
<i>Human Tissue Act 1982</i> (Vic)	ss 38–39	Prohibits buying and selling of human tissue
<i>Climate Change Act 2017</i> (Vic)	Pt 9	Forest carbon rights — creation, transfer, and registration

Relevant Provisions in Full

Native Title Act 1993 (Cth) s 223(1) The expression *native title* or *native title rights and interests* means the communal, group or individual rights and interests of Aboriginal peoples or Torres Strait Islanders in relation to land or waters, where: (a) the rights and interests are possessed under the traditional laws acknowledged, and the traditional customs observed, by the Aboriginal peoples or Torres Strait Islanders; and (b) the Aboriginal peoples or Torres Strait Islanders, by those laws and customs, have a connection with the land or waters; and (c) the rights and interests are recognised by the common law of Australia.

Human Tissue Act 1982 (Vic) s 38(1) "A person shall not sell, or agree to sell, tissue (including his own tissue) or the right to take tissue from his body."

Human Tissue Act 1982 (Vic) s 39(1) "A person shall not buy, agree to buy, offer to buy, hold himself out as willing to buy, or inquire whether a person is willing to sell to the person or another person — (a) tissue; or (b) the right to take tissue from the body of another person."

Australian Constitution s 51(xxxi) The Parliament shall have power to make laws with respect to the acquisition of property on just terms from any State or person for any purpose in respect of which the Parliament has power to make laws.

4. Key Cases

CASE	CITATION	PRINCIPLE	APPLICATION
<i>Millirrpum v Nabalco Pty Ltd</i>	(1971) 17 FLR 141	Aboriginal customary rights denied property status due to absence of use, exclusion, and alienability — criticised for overstating essential features	Cite to illustrate the danger of applying a rigid features-based definition of property
<i>Mabo v Queensland (No 2)</i>	(1992) 175 CLR 1	Native title recognised as a <i>sui generis</i> form of property right despite not conforming to Western property definitions	Cite to show property is not fixed; the common law can recognise new forms
<i>Yanner v Eaton</i>	(1999) 201 CLR 351	Property is a relationship, not a thing; "property" vested in the Crown under conservation legislation = regulatory control (<i>imperium</i>), not full beneficial ownership (<i>dominium</i>)	Cite to argue property is relational and context-dependent; statutory "property" may confer less than full ownership
<i>Victoria Park Racing and Recreation Grounds Co Ltd v Taylor</i>	(1937) 58 CLR 479	No property in a spectacle — a spectacle is not definable, lacks tangible presence, and its boundaries are unclear	Cite to argue a resource cannot be propertised if it fails the criteria of definability, identifiability, and excludability
<i>Cowell v Rosehill Racecourse Co Ltd</i>	(1937) 56 CLR 605	A ticket to entertainment creates a personal (contractual) right, not a proprietary interest; a contractual licence is revocable even where revocation constitutes breach	Cite to distinguish leases from licences and property rights from contractual rights
<i>National Provincial Bank Ltd v Ainsworth</i>	[1965] AC 1175	New property must be (1) definable, (2) identifiable by third parties, (3) capable in its nature of assumption by third parties, and (4) have some degree of permanence or stability	Cite as the test for whether a new interest qualifies as "property"
<i>Moore v Regents of University of California</i>	(1990) 51 Cal 3d 120	A patient does not retain a sufficient ownership interest in excised cells to support a claim in conversion; policy favours medical research over extending property rights to body parts	Cite to discuss the limits of propertisation of human tissue
<i>Doodeward v Spence</i>	(1908) 6 CLR 406	A human corpse may be property where the application of work or skill has altered its character	Cite to show property in human remains is possible but limited
<i>Roblin v Public Trustee (ACT)</i>	[2017] ACTSC 39 [Citation Needed - verify against AustLII or Jade]	Cryogenically stored semen constitutes private property and forms part of the intestate estate of the donor	Cite to argue regenerative body parts with physical presence may be property

Case Summaries

Millirrpum v Nabalco Pty Ltd^[1]

Facts: An Aboriginal clan claimed that a mining company's operations interfered with their right to perform ritual ceremonies on land. The question was whether Aboriginal customary rights over land constituted "property."

Issue: Whether Aboriginal communal rights to land qualified as property rights in the Anglo-Australian legal sense.

Held: Blackburn J held the rights were not property because three incidents were absent: (1) no right to use and enjoy the land beyond performing rituals; (2) no right to exclude other members or clans; (3) the rights were inalienable. This decision has been criticised for overstating the essential characteristics of property and was effectively overruled by *Mabo (No 2)*.

Exam Application: Use to illustrate the limitations of a rigid features-based approach to defining property. Contrast with *Mabo (No 2)* to show the evolution of the law.

Mabo v Queensland (No 2)^[2]

Facts: Eddie Mabo and other Meriam people of the Murray Islands challenged Queensland's claim of sovereignty and full beneficial ownership of the islands.



Sample Preview

This is a preview of the complete study guide.
The full edition contains all **12 topics** across **~220 pages**.

TOPICS INCLUDED IN THE FULL EDITION:

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