

LLB204
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WEEK 1 - Preliminaries, the Concept of Property and Fixtures and Chattels

The Concept of Property

- 'Property' refers to the legal relationship we have with a thing.
- Our focus is not on the thing itself, but on our rights to it, and remedies that flow from those rights.

What do we mean by property is a relationship?

- 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

What do we mean by 'property'?

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 CL and statute e.g., Sale of Goods Act 1896 (Qld) and the Australian Consumer Law in the Competition and Consumer Act 2010 (Cth)
- Books: 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)

Types of property

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

Two (2) main branches:

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

There are two different types of rights:

- Proprietary rights:
 - Rights 'in rem': enforceable against the world at large.
- Personal rights:
 - Rights 'in personam': enforceable only against the person from whom you derived the right. e.g. Pursuant to a legally enforceable contract.

Chattels real: leaseholds

Chattels personal: two types

- Chose in possession: tangible chattel goods (e.g. car)
- Chose in action: intangible personal (e.g. a share in a company or a debt); cannot be physically possessed

Fundamental difference between chose in possession and chose in action: whether the 'thing' is 'corporeal' (can be physically 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, s 2: 'goods' includes:

- (c) minerals, trees, crops, whether on, under or attached to land or not; and
- (d) gas and electricity; and
- (e) computer software

The indicia of property rights

Next question is: How do we establish when a property right 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 in the object:

- Use and enjoy it
- Exclude others from it
- 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.'

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

Yanner v Eaton (1999) 201 CLR 351

- Section 7, Fauna Conservation Act 1974 (Qld) (FCA) – fauna = ‘property’ of the Crown
- Section 54 – 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 FCA had not extinguished Mr Yanner’s native title rights and the Crown’s rights could co-exist with Mr Yanner’s rights.

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.

What is a fixture?

- ‘Whatever is attached to the soil becomes part of it.’
- In certain circumstances, objects (chattels) will pass with the land so that the owner of the land automatically acquires title to the object.
- The test is whether the circumstances, viewed objectively, evidence an intention on the part of the owner (the affixer), that the item should remain permanently on the land?

Blackburn J in *Holland v Hodgson* (1872) LR 7 CP 328:

‘There is no doubt that the general maxim of law is that what is annexed to the land becomes part of the land; but it is very difficult, if not impossible, to say with precision what constitutes an annexation sufficient for this purpose. It is a question which must depend on the circumstances of each case, and mainly on two circumstances, as indicating the intention, viz the degree of annexation and the object of annexation ...’

Blackburn J in *Holland v Hodgson* cont’d

‘When the article in question is no further attached to the land than by its own weight, it is generally to be considered a mere chattel ... But even in such a case, if the intention is apparent to make the articles part of the land they do become part of the land.’