TERMS

<u>Core concepts in simple terms</u>

1. *Legal ownership vs equitable ownership*

- **Legal ownership:** This is what the law sees as formal ownership (e.g., having the name on the title of a house).
- **Equitable ownership:** This is fairness-based ownership. It arises when the law says someone else has a fair right to benefit from the property (e.g., a trust beneficiary)

2. *Proprietary rights vs personal rights*

- **Proprietary rights:** Rights tied to property itself. These follow the property, meaning they can be enforced against anyone who has the property.
  - E.G. You own a car. If someone steals it, you can claim it back because your right to the car follows the car
- **Personal rights:** Rights tied to the person. These rights only let you demand something from a specific person, not from others.
  - E.G. You loan someone money. You can demand repayment from them, but if they sell their assets, you can't go after the buyer.

3. *Equitable proprietary rights*

- A **special type of proprietary right** created by equity (fairness). These rights:
  - Attach to property
  - Are enforceable against third parties, but only under certain conditions
  - Arise in situations like trusts or informal agreements to create security over property
- E.g. If your friend uses $10,000 to buy shares in a company, you have an **equitable proprietary right** to the shares because they were purchased with your money.

EQUITABLE PROPRIETARY INTEREST

Rule	Notes	Exam sentences

General principles	• For all assets in the world, there *only* exists legal title and until something happens to engage equitable conscience
	• Equity recognises and enforces interests in property that are *not* recognised at CL
	  ○ Beneficiaries interest under a fixed trust
	  ○ Partner's interest in the partnership
	  ○ Proprietary interest that are CL counterparts (e.g. equitable fee simple, equitable lease) differing from CL interest by method of creation and extent of enforceability;
	  ○ Equitable security interests (eg. equitable charge, created more informally than a CL mortgage and entitles the charge to a more limited relief in the event of chargor's default); and
	    ■ **Security interest** = temporary proprietary interest which secures the performance of a personal obligation; defeased on performance of the obligation
	• Equitable rights over land which do not have to be created by deed (e.g. equitable easement or restrictive covenant over land)
	• LEGAL INTEREST → the formal ownership
	• EQUITABLE CONSCIENCE → when fairness or justice demands recognition of a party's claim over the property, even if it's not recognised at common law
	• Equity = supplements common law by recognising and enforcing property rights that are more flexible and responsive to fairness	

Personal v proprietary distinction	<u>What is property?</u> • An object or thing capable of being owned by a person, or	In determining the nature of ______ [Plaintiff's] right to _____ [right being asserted e.g. right to property], it most likely to be

	● The proprietary rights (**rights to ownership**) to that object or thing ● *Yannar v Eaton* [1999] bundle of rights → right to possess, right to use, right to manage <u>What is a proprietary right?</u> ● A proprietary right is a right that attaches to the property itself and is enforceable against third parties. To qualify as proprietary, a right must satisfy the *Ainsworth* criteria ‘ **1. Definable**: the right must have clear boundaries or terms. E.g. a lease agreement for specific land is clearly defined **2. Identifiable by Third Parties**: the right must be recognised by others dealing with the property e.g. a registered mortgage is identifiable to anyone searching property records **3. Capable in its Nature of Assumption by Third Parties**: The right must be transferable or inheritable e.g. ownership of land or shares can be sold or passed to someone else **4. Have some degree of permanence or stability:** The right must have some enduring nature e.g. A long-term lease has stability, while a mere promise of occupation does not <u>What is a personal right</u> ● A personal right is a right enforceable only against specific individuals who are under an obligation to act or refrain from acting in a certain way. Unlike proprietary rights, personal rights do not attach to property and cannot be enforced against third parties ○ E.g. *Ainsworth* → Mrs Ainsworth’s rights were deemed personal because they lacked the permanence and definability required for proprietary status ■ THEREFORE: Lord Wilberforce determined that the deserted wife’s right to occupy the family home was a **personal right** only against her husband, not against third parties like the bank. This means the bank could sell the home. ■ It was **personal** because:	characterised as **PERSONAL RIGHT** as it is only enforceable against ____ [specific class e.g. if I lend someone money, I can only demand repayment from them] OR **PROPRIETARY RIGHT** since the right is 1. Definable 2. Identified by third parties 3. Capable in its nature of assumption by third parties; 4. Have some degree of permanence or stability *(Ainsworth)*

<table>
<tr><td></td><td><u>Definable</u>: her right to occupy the home was vague and lacked clear terms. She was not listed on the title of the house, she was not a co-owner or beneficiary.
<u>Identifiable by third parties</u>: there was no record or mechanism (e.g. registration or agreement) to notify third parties, such as the bank, of her claim.
<u>Capable of Assumption by Third parties:</u> her right arose solely from her relationship with her husband and was personal to her. It could not be transferred, sold or inherited
<u>Permanence or stability:</u> the right was contingent on her status as a deserted wife and could terminate if her martial circumstances changed (e.g. reconciliation or divorce)</td><td></td></tr>
<tr><td>Equitable personal right</td><td><u>Examples</u>
Creditor’s right to repayment of a debt
Beneficiary under an express trust per Youyang has the right to enforcement of the trust terms, as the paramount duty to the trustee is to obey the terms of the trust
Ainsworth - the husband’s duty was to provide suitable accommodation to his wife; her rights were merely exercisable against her husband but not a third party, as the right was not specific to the property in question
So this was not equitable since it did not arise from a relationship governed by equity (e.g. a trust or fiduciary duty) but merely from marital obligations
Livingston - beneficiary is entitled to personal remedies to compel the administration of an estate (but do not yet have a proprietary interest in the estate)</td><td>____ [Plaintiff] has acquired a personal right as it is only enforceable against ____ [Defendant]</td></tr>
<tr><td>Equitable proprietary right</td><td>Definition: a type of proprietary right recognised in equity, enforceable against third parties if it meets the proprietary criteria (Ainsworth).
Arises when equity recognises a <u>person’s interest in specific property</u> (e.g. beneficiaries rights in a trust)</td><td>Applying DKLR (No 2), if ____ (title holder) holds legal title to ____ (property), they hold the entire beneficial interest in the property and there is no distinction between</td></tr>
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	● Equity is concerned with the creation, enforcement and protection of equitable proprietary rights, such as: ○ Beneficiary rights in trust ○ Equitable charges or mortgages <u>Cases</u> *DKLR (No 2)* FACTS ● The case involved a **transfer of property** where the transferred, DKLR, argued that only a **bare legal title** had been transferred, with the equitable interest retained by the transferor (29 Macquarie) ● The argument was significant because **stamp duty** (tax on property transactions) is based on the value of the property transferred ● DKLR claimed that only nominal stamp duty should apply because it argued that the beneficial interest had not been transferred ● The court had to decide whether DKLR acquired the entire ownership (legal and beneficial) or just the legal title with 29 Macquarie retaining the equitable interest HELD ● When legal title is transferred, the entire beneficial interest also transfer unless a trust or equitable obligation is clearly created ● Brennan J: Equitable interests are not **carved out of the legal estate** but are **impress upon it -** meaning they overlay obligation on the legal owner ● The court rejected the argument that 29 Macquarie retained equitable title ● Instead, the legal title and beneficial interest were transferred in full, and any equitable obligation (e.g. a trust) would arise later is explicitly created PRINCIPLE: the court held that legal title transfers the full beneficial interest unless <u>equity imposes obligations through a trust or equitable arrangement.</u> Equitable proprietary rights are not carved out of legal ownership but impressed upon it, requiring clear intention to separate beneficial and legal ownership. *Beconwood*	legal/equitable ownership. However _____ [describe circumstances] raise the question of whether ____ [party] has acquired an *equitable interest* in the property. Turning to the terms of the specific agreement _______ (*Beconwood)* ____ IF NO TRUST DEED/FORMAL AGREEMENT/TRANSFER OF LEGAL TITLE WITH A CLAIM THAT EQUITABLE OWNERSHIP WAS RETAINED ● *DKLR (No 2)* - no separate equitable right existed until the creation of a trust in favour of 29 Macquarie ○ Brennan J - equitable interest is not carved out of legal estate, but *impressed upon it* IF IT VAGUELY REFERS TO SOMETHING WITH NO SPECIFIC PROPERTY IDENTIFIED E.G. "SHARES" AND IF LOAN OR COLLATERAL ARRANGEMENT PROPERTY USED AS SECURITY ● *Beconwood Securities* - must look to evidence of the parties' intentions to determine whether an equitable security interest over the property was intended in the agreement; intention to convey an *equivalent* not the *exact*

	FACTS
	
	• Beconwood entered into an agreement to receive shares as security, but the agreement did not specify the exact shares to be transferred
	• Beconwood argued that it had an equitable security interest (proprietary right) over the shares
	• The court had to decide if an equitable proprietary interest arose from the agreement
	
	HELD
	
	• The court held that no equitable proprietary interest existed because:
	    ○ The shares were not specifically identified, and there was no clear intention to transfer an interest in specific shares
	    ○ Beconwood's interest was only personal and not proprietary
	• The **intention** of the parties it **critical** to determining whether an equitable security interest is created
	• Without specificity and clear intention, no equitable proprietary right arises
	
	PRINCIPLE: an equitable right requires specific property to be identified and a clear intention to create a proprietary interest. Agreements that convey only a general equivalent (not specific property) do not create proprietary rights.
	• So Beconwood only had a **personal right** to enforce the agreement, meaning they could sue the other party but wouldn't claim ownership over specific shares
	
	Ainsworth
	
	FACTS
	• Mrs Ainsworth, a deserted wife, claimed a right to occupy the family home
	• The bank, which had a legal charge over the home, argued that her right could not bind them as it was not proprietary
	• The court had to decide if Mrs Ainsworth right to occupy the home was a proprietary right or merely a personal right
	
	HELD
		shares meant that Beconwood had no interest as a mortgagee and could not establish a proprietary right over the shares
		    ○ Pledge;
		    ○ Contractual lien;
		    ○ Equitable charge;
		    ○ Mortgage;
		
		IF PERSONAL RIGHT + THIRD PARTY
		• *Ainsworth* - equitable person right becomes proprietary if it can be identified in relation to a *specific thing*
		    ○ Equitable interest must be proprietary to be binding on third parties
		
		IF CLAIMING BEFORE ADMINISTRATION IS COMPLETE
		• *Livingston* - beneficiaries under a will has no proprietary interest in the assets of an estate *until the administration is complete*

- Mrs Ainsworth’s right was not a proprietary right because:
    - It was not tied to the property itself but arose from her relationship with her husband
    - It failed the proprietary criteria (*Ainsworth*) test
        1. **Definable**: the right was vague and lacked clear terms
        2. **Identifiable by third parties**: the right was not apparent to others, like the bank
        3. **Capable of assumption by third parties**: the right could not be transferred or inherited
        4. **Permanent or stable:** it was temporary and dependent on her marital status
- Her right was personal, enforceable only against her husband, and could not bind third parties

PRINCIPLE
- For a right to be proprietary, it must attach to specific property and satisfy the proprietary criteria. Personal rights arising from relationships (e.g. marital obligations) are not proprietary

Livingston
FACTS
- A beneficiary under a will claimed a proprietary interest in the deceased’s estate before it was fully administered
- The court had to decide if the beneficiary’s interest in the estate assets was proprietary or personal during the administration process

HELD
- The beneficiary’s right was personal and not proprietary until the administration of the estate was complete
- During administration
    - The executor hold legal title to the estate assets
    - The beneficiary only has a person right to compel the executor to perform their duties properly
- Once administration is complete, the beneficiary may gain a proprietary interest in specific assets