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TERMS

Core concepts in simple terms

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 <i>only</i> exists legal title and until something happens to engage equitable conscience • Equity recognises and enforces interests in property that are <i>not</i> 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 • <i>Yammar v Eaton</i> [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 <i>Ainsworth</i> 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. <i>Ainsworth</i> → 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 (<i>Ainsworth</i>)
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	• <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 marital circumstances changed (e.g. reconciliation or divorce)	
Equitable personal right	<u>Examples</u> • Creditor's right to repayment of a debt • Beneficiary under an express trust per <i>Yongwang</i> has the right to enforcement of the trust terms, as the paramount duty to the trustee is to obey the terms of the trust • <i>Ainsworth</i> - the husband's duty was to provide <i>suitable</i> 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 • <i>Livingston</i> - beneficiary is entitled to personal remedies to compel the administration of an estate (but do not yet have a proprietary interest in the estate)	____ [Plaintiff] has acquired a personal right as it is only enforceable against ____ [Defendant]
Equitable proprietary right	• Definition: a type of proprietary right recognised in equity, enforceable against third parties if it meets the proprietary criteria (<i>Ainsworth</i>). ◦ Arises when equity recognises a <u>person's interest in specific property</u> (e.g. beneficiaries rights in a trust)	Applying <i>DKLR (No 2)</i>, if ____ (title holder) holds legal title to ____ (property), they hold the <i>entire</i> beneficial interest in the property and there is no distinction between

	- 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> <i>DKLR (No 2)</i> 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. <i>Beconwood</i>	legal/equitable ownership. However ____ [describe circumstances] raise the question of whether ____ [party] has acquired an <i>equitable interest</i> in the property. Turning to the terms of the specific agreement ____ (<i>Beconwood</i>) ____ IF NO TRUST DEED/FORMAL AGREEMENT/TRANSFER OF LEGAL TITLE WITH A CLAIM THAT EQUITABLE OWNERSHIP WAS RETAINED <i>DKLR (No 2)</i> - 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 <i>impressed upon it</i> IF IT VAGUELY REFERS TO SOMETHING WITH NO SPECIFIC PROPERTY IDENTIFIED E.G. "SHARES" AND IF LOAN OR COLLATERAL ARRANGEMENT PROPERTY USED AS SECURITY <i>Beconwood Securities</i> - 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 <i>equivalent</i> not the <i>exact</i>
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	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 is 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 <u>clear intention to create a proprietary interest</u>. 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 <i>Ainsworth</i> 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 • <i>Ainsworth</i> - equitable person right becomes proprietary if it can be identified in relation to a <i>specific thing</i> ◦ Equitable interest must be proprietary to be binding on third parties IF CLAIMING BEFORE ADMINISTRATION IS COMPLETE • <i>Livingston</i> - beneficiaries under a will has no proprietary interest in the assets of an estate <i>until the administration is complete</i>
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	• 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 (<i>Ainsworth</i>) 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	
	<i>Livingston</i> 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	