

JURD7150 / LAWS1150

Principles of Private Law

THE EXAM BIBLE

Summary notes: doctrine, key cases and quick-reference tables.

T1 2026 • 2hr in-person • 1 problem + 1 essay • 50%

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★ **General and Finance Facilities v Cooks Cars (Romford) Ltd** [1963] 1 WLR 644 [MUST-CITE]

Facts: Finance company demanded return of a car from garage.

Principle: Detinue requires: (i) immediate right to possession in plaintiff; (ii) wrongful refusal to deliver up; (iii) measured demand. Remedy: return or value + damages for detention.

Use it when: Detinue rule statement.

★ **Hollins v Fowler** (1875) LR 7 HL 757 [MUST-CITE]

Facts: Innocent broker sold stolen cotton.

Principle: Good faith is no defence to conversion; the innocent purchaser is a converter.

Use it when: Nemo dat / innocent purchaser scenarios.

Armory v Delamirie (1722) 93 ER 664

Facts: Chimney-sweep's boy found jewel; goldsmith refused to return it.

Principle: Finders have possessory rights against all but the true owner.

Use it when: Finders scenarios.

Parker v British Airways Board [1982] QB 1004

Facts: Passenger found gold bracelet in executive lounge.

Principle: Occupier's rights to found chattels depend on manifest intention to exercise control over things found on premises.

Use it when: Finders vs occupiers disputes.

Doodeward v Spence (1908) 6 CLR 406

Facts: Preserved two-headed fetus in a jar.

Principle: Human tissue generally not property, but 'work and skill' exception: specimen acquires property status through preservation.

Use it when: Property-in-the-body debates.

Moorgate Mercantile v Finch & Read [1962] 1 QB 701

Facts: Hirer let third party use car for smuggling; car forfeited.

Principle: Conversion by disposition: a dealing so dramatic (leading to loss) can amount to conversion even without intent to deprive.

Use it when: Intermediary dealings causing loss.

Morris v CW Martin & Sons [1966] 1 QB 716

Facts: Fur sent for cleaning; sub-bailee's employee stole it.

Principle: Sub-bailees owe duties to the original owner; conversion of the fur fell within employment.

Use it when: Sub-bailment / employment contexts.

C2 Licences, leases, and the numerus clausus principle

Property law recognises only a closed (numerus clausus) list of interests in land: fee simple, life estate, leasehold, easements, covenants, mortgages, and equitable interests. A licence is personal — permission to enter — not proprietary. Distinguishing licence from lease depends on whether exclusive possession has been granted (*Radaich v Smith*), not the label the parties use.

PART E — AGENCY

Agency is a legal relationship by which one person (the agent) is authorised to act on behalf of another (the principal) so as to bind the principal contractually with third parties. Authority may be actual (express or implied), apparent (ostensible), or conferred retrospectively by ratification. Agency problems in JURD7150 typically involve a business being sued on a contract entered into by an employee or representative who claimed more authority than they had.

E1 Types of authority — the three doors

Type	Source and effect
Actual — express	The principal expressly authorises the agent (orally or in writing, or by a power of attorney). Binds the principal. (<i>Hely-Hutchinson v Brayhead</i> ; <i>Tobin v Broadbent</i>)
Actual — implied	Inferred from appointment to a position (incidental authority), custom and usage in the trade, or past dealings. (<i>Hely-Hutchinson — Managing Director</i> ; <i>Watteau v Fenwick</i> for general-scope authority)
Apparent / ostensible	Principal's representation to the third party that the agent has authority (by words, conduct, or position). The principal is estopped from denying authority. (<i>Freeman & Lockyer v Buckhurst Park Properties</i> ; <i>Crabtree-Vickers v Australian Direct Mail</i>)
Ratification	Principal adopts an unauthorised act after the event. Requirements: principal competent and existed at the time; act done on their behalf; ratified within reasonable time; principal knew of the material facts. (<i>Keighley Maxsted v Durant</i> ; <i>Bolton Partners v Lambert</i>)
Usual authority	Authority customary to the role. Binds principal even where undisclosed (<i>Watteau v Fenwick — controversial</i>).
Authority by estoppel / holding out	Overlaps with apparent authority; principal held the agent out as having authority.

E2 Issue framework — AGENCY

- Step 1 — Was there actual authority (express or implied)? Start here — if yes, no need to run apparent authority.
- Step 2 — If not actual, was there apparent authority? Look for (a) representation by principal, (b) reliance, (c) alteration of position. (*Freeman & Lockyer* four-step test.)
- Step 3 — Can the principal ratify? Check the five conditions: principal in existence, competent, named or identifiable, act within ratifiable scope, ratified within reasonable time.
- Step 4 — If undisclosed principal — can the principal enforce or be sued? (*Keighley Maxsted v Durant*; *Siu Yin Kwan v Eastern Insurance*.)
- Step 5 — Remedies: the principal is bound on the contract; the agent may be liable for breach of warranty of authority (*Collen v Wright*).

E3 Scenario bank — AGENCY

Scenario 1 — Managing Director / CEO — implied actual authority.

A person appointed to a senior executive position has implied actual authority to do acts customary to that position (*Hely-Hutchinson v Brayhead*). The Managing Director, for example, has implied authority to bind the company in

- Step 2 — Does the covenant touch and concern the dominant land? (Must benefit it; not merely personal.)
- Step 3 — Did the original parties intend it to run with the land? (Burden passes in equity if so; benefit passes at law and in equity under different rules.)
- Step 4 — Does the successor take with notice? Under Torrens, recorded covenants bind; unregistered equitable interests bind if registered proprietor is not a bona fide purchaser without notice.
- Step 5 — Extinguishment: release; change of neighbourhood; statutory extinguishment (Conveyancing Act 1919 (NSW) s 89).

Scenario bank — COVENANTS

Scenario 1 — Restrictive covenant binding successor.

A covenant restricting the use of [servient land] to residential purposes for the benefit of [dominant land] is a restrictive covenant running with the land in equity (Tulk v Moxhay). On the facts, [successor] took with notice of the covenant (or it is recorded on title), and is bound.

Scenario 2 — Positive covenant — does not run.

A covenant requiring the servient owner to do something (e.g., maintain a fence) is a positive covenant and does not run with the land at equity (Rhone v Stephens). On the facts, only the original covenantor is personally bound; successors are not.

Scenario 3 — Covenant does not touch and concern.

A covenant that is personal to the parties rather than benefiting the dominant land does not run (Federated Homes v Mill Lodge — construction). On the facts, the covenant does not affect the use or value of [dominant land]; it does not bind.

Scenario 4 — Statutory extinguishment — change of neighbourhood.

Under s 89 Conveyancing Act 1919 (NSW), the court may modify or extinguish a restrictive covenant where its purpose has failed, the character of the neighbourhood has changed, or it imposes no practical benefit. On the facts, the surrounding land is now [commercial / redeveloped]; the covenant should be modified.

13 Co-ownership — joint tenancy v tenancy in common

Two people can co-own land as joint tenants (with survivorship — the *jus accrescendi*) or as tenants in common (each holds a distinct undivided share that passes under the will). Classification depends on the 'four unities' (possession, interest, title, time) and the language of the grant (Williams v Hensman; Wright v Gibbons).

Issue framework — CO-OWNERSHIP

- Step 1 — Joint tenants or tenants in common? Four unities required for JT (possession, interest, title, time); language; presumption (at common law JT; in equity TIC where unequal contributions, commercial relationship, or mortgage).
- Step 2 — Severance of a joint tenancy? Three Williams v Hensman modes: (i) act of a joint tenant operating on their own share (alienation, mortgage); (ii) mutual agreement; (iii) course of dealing showing common intention.
- Step 3 — Partition / sale: s 66G Conveyancing Act 1919 (NSW) empowers trustee for sale to divide co-owned land.
- Step 4 — Liability and benefits between co-owners: accounting for rents, improvements, occupation rent.

Scenario bank — CO-OWNERSHIP