

MLP327 PROPERTY LAW

Complete Exam Notes & Problem-Solving Guide

Topics 1–11 | Cases | Legislation | Exam Frameworks

Includes:

- Comprehensive topic notes
- Case summaries
- Victorian legislation
- Problem-question frameworks
- Issue-spotting checklists
- Exam attack guides
- Condensed revision pages

Independent student-authored study notes. Not affiliated with or endorsed by Deakin University.

Contents

Topic 1 — What is Property?

Property as a legal concept • Proprietary v personal rights • *Yanner v Eaton* • *Victoria Park*

Topic 2 — Possession, Finders & Fixtures

Possessory title • Relativity of title • Finders • Fixtures • Degree and purpose of annexation

Topic 3 — Adverse Possession

15-year limitation period • Factual possession • Intention to possess • Continuity • Statutory consequences

Topic 4 — Doctrine of Tenure & Radical Title

Topic 5 — Native Title

Topic 6 — Doctrine of Estates

Topic 7 — Leases

Topic 8 — Equitable Interests

Topic 9 — Easements

Topic 10 — Restrictive Covenants

Topic 11 — Mortgages

Additional resources

- Master Case Law Table
- Master Legislation Table
- Fact-Pattern Trigger Guide
- Exam Attack Framework
- Last-Minute Panic Guide

Topic 3 — Adverse Possession

Core concept

Adverse possession concerns the effect of sufficiently long possession of land by someone other than the paper title holder.

In Victoria, the doctrine operates principally through the ***Limitation of Actions Act 1958*** (Vic).

The basic sequence is:

Adverse possession begins → limitation period runs → right to recover land becomes barred → title consequences follow

Key statutory provisions

Provision Exam significance

LAA s 8 15-year limitation period for recovery of land

LAA s 9 Accrual of the right to recover land

LAA s 14 Adverse possession and accrual

LAA s 18 Extinguishment of title following expiry of the limitation period

Elements

A claimant generally needs to establish:

1. Factual possession

A sufficient degree of physical custody and control over the land.

Relevant conduct may include:

- fencing;
- locked access;
- cultivation;
- maintenance;
- occupation;
- exclusion of others.

2. Intention to possess

An intention to exercise control over the land to the exclusion of others.

Intention to possess ≠ intention to become owner.

Key authority — *JA Pye (Oxford) Ltd v Graham*

***JA Pye (Oxford) Ltd v Graham* [2003] 1 AC 419**

The case is a leading authority for the requirements of:

factual possession + intention to possess

Victorian authority — *Whittlesea City Council v Abbatangelo*

***Whittlesea City Council v Abbatangelo* [2009] VSCA 188**

The claimant's conduct should be assessed as a whole. A series of acts over time may collectively demonstrate the necessary possession.

Adverse Possession — Exam Attack

STEP 1 — Identify the paper title holder

Who presently has the legal right to possession?

STEP 2 — Identify the alleged adverse possessor

When did occupation begin?

STEP 3 — Factual possession

Look for:

fencing + locks + exclusion + occupation + maintenance + control

STEP 4 — Intention to possess

Was there an intention to exercise control over the land?

STEP 5 — Permission?

Check for:

- lease;
- licence;
- neighbourly permission;
- family arrangement;
- other consent.

Consent may prevent occupation from being adverse.

STEP 6 — Calculate the period

s 8 → 15 years

STEP 7 — Check interruption

Consider:

- abandonment;
- owner re-entry;
- successive possessors;
- disability;
- fraud.

STEP 8 — Consequence

If the statutory requirements are established:

s 8 → recovery action barred

s 18 → title consequences

Sample — Master Case Law Table

Case	Topic	Principle	Fact-pattern trigger
<i>Yanner v Eaton</i> (1999) 201 CLR 351	Property	Property concerns legally recognised rights and relationships rather than simply physical ownership	“What counts as property?”
<i>Asher v Whitlock</i> (1865) LR 1 QB 1	Possession	Prior possession can defeat a later possessor without better title	Competing possessors
<i>JA Pye (Oxford) Ltd v Graham</i> [2003] 1 AC 419	Adverse possession	Factual possession + intention to possess	Long occupation without permission
<i>Mabo v Queensland (No 2)</i> (1992) 175 CLR 1	Tenure / Native title	Radical title does not automatically amount to full beneficial Crown ownership	Crown title/native title
<i>Radaich v Smith</i> (1959) 101 CLR 209	Leases	Exclusive possession is central to lease/licence distinction	Agreement labelled “licence”
<i>Westfield Management Ltd v Perpetual Trustee Co Ltd</i> (2007) 233 CLR 528	Easements	Scope of registered easement depends upon the properly construed grant	Easement used for additional land
<i>Tulk v Moxhay</i> (1848) 41 ER 1143	Covenants	Restrictive burden may run in equity	Successor breaches restriction
<i>Forsyth v Blundell</i> (1973) 129 CLR 477	Mortgages	Mortgagee must exercise power of sale consistently with the governing duty	Poor mortgagee sale

What should immediately trigger each topic?

Fact pattern	Think
Item found on land	Possession / finders
Building, machinery or equipment attached to land	Fixtures
Fence shifted for 15+ years	Adverse possession
Indigenous traditional rights over land	Native title
"To A for life, then to B"	Estates
Occupier described as a "licensee"	Lease v licence
Purchase money paid but title held by another	Resulting trust
Shared finances + failed relationship/property venture	Constructive trust
Access across neighbouring land	Easement
"Only one dwelling may be built"	Restrictive covenant
Bank sells property after default	Mortgagee power of sale

Core Property Law question

Who has what interest in the property, against whom, and with what priority?

30-Second Topic Snapshot — Leases

Lease

Exclusive possession + certain duration + valid creation

Lease v licence

Key issue: exclusive possession

Authority: *Radaich v Smith*

Duration

Must be sufficiently certain.

Authority: *Lace v Chantler*

Legal lease fails?

Consider:

***Walsh v Lonsdale* → equitable lease**

Assignment

Whole remaining leasehold interest transferred

Sublease

Less than whole remaining interest transferred

Privity

Contract → original contracting parties

Estate → current landlord and tenant

Exam sequence

Lease/licence → exclusive possession → certainty → formalities → legal/equitable → assignment/sublease → privity → breach → remedy