

★ KEY PROPERTY LAW CONCEPTS ★

GENERAL PRINCIPLES

DEFINITION OF PROPERTY	“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 concept of property may be elusive. Usually, it is treated as a ‘bundle of rights’.” (<i>Yanner v Eaton</i>).
FRAGMENTATION OF PROPERTY RIGHTS	Property rights can be fragmented and vested in different people: • By reference to space (ref Doctrine of Tenure, Topic 2.2) • By reference to time (ref Doctrine of Estate, Topic 2.5) • By reference to the nature of the title (ref Torrens Title, Topic 2.3; Native Title, Topic 3; Adverse Possession, Topic 4) • By reference to type of interest (ref whether the interest is equitable or legal, Topic 2.4) • By reference to the nature of the right • By reference to whether the right is shared with another person
DOCTRINE OF ESTATES	A. <u>Freehold Estates</u> (uncertain duration) • Fee Simple – unlimited duration ◦ Can use alienate and exclude • Fee Tail (no longer possible since 1 January 1886 (s249 PLA) ◦ Fee tails created prior to that date can be converted to a fee simple • Life Estates – for the lifetime of a person ◦ Can also be granted to a person other than the grantee ★ Future Interests: ◦ Reversionary Interest – When the grantor has not set out where the remainder of the interest of the fee simple will go, it will revert back to themselves (i.e. a reversionary interest) ◦ Remainder Interest – When a life estate over a fee simple has been granted to someone, and that after this person’s death, another person will attain the fee simple, this person has a remainder interest. (e.g. X grants a life estate to Y and remainder to Z) ■ Vest Remainder • Precise identity of person to take the interest <u>must be known</u>; and • There must be <u>no condition</u> precedent to interest falling into possession (apart from the natural end of the prior estate or estates). ■ Contingent Remainder • Precise identity of person to take the interest is <u>not known</u> at the date of the grant; and/or • There <u>is a condition</u> precedent to interest falling into possession (apart from the natural end of the prior estate or estates).

STEP 1: IDENTIFY THE REGISTERED PROPRIETOR	
Under the <i>Transfer of Land Act 1958 (Vic)</i> (“ <i>TLA</i> ”), the registered proprietor is the legal owner of the land. However, s42(2)(b) <i>TLA</i> provides an exception such that the title is not protected against someone who has obtained title through adverse possession.	
FEE SIMPLE OWNER OR	Based on the facts, [title owner] is the original fee simple holder and [possessor] is trying to claim adverse possession of the land. The possessor has rights enforceable in rem (<i>Perry v Clissold</i>) subject only to those with better rights in relation to the property (<i>Armory v Delaware</i>).
LEASEHOLDER	[Title owner] owns the fee simple estate in [land]. In [year / date], [leaseholder] obtained a lease over [the land] from [title owner]. This gives [him / her / them] a leasehold estate (a proprietary interest). [S/he is / They are] entitled to exclusive possession during the lease term, subject to lease’s terms. [Possessor] had no legal or equitable interest at the start. S/he simply entered and occupied the land without permission (a trespasser).
STEP 2: WORK OUT WHEN THE CAUSE OF ACTION AROSE	
- This means identifying the date when the registered owner’s right to recover possession first began – usually when the adverse possessor first took possession without consent - From that date, the <i>LAA</i> starts running	
Time starts to run when [title owner] [disposed / ceased possession of] the land on [insert date] (s9(1) <i>LAA</i>) and [the possessor] commenced his/her possession of the property on [date of possession] satisfying s14(1) <i>LAA</i> . These two requirements being satisfied resulted in the 15-year limitation period commencing.	
STEP 3: CHECK FOR PERMISSION FROM TITLE OWNER	
WITHOUT PERMISSION OR	There is no evidence that [title owner] gave [the possessor] permission to be in possession of the land. Possession by [the possessor] is therefore adverse.
WITH PERMISSION	In [year / date], [title owner] gave [possessor] permission to use the land. This converts the occupation from adverse to permissive. Time does not run against the true owner when occupation is with permission (<i>JA Pye (Oxford) Ltd v Graham</i>).
STEP 4: WAS THERE FACTUAL POSSESSION?	
- The possession must be continuous, uninterrupted and exclusive - Mere use of the land falls short of possession (such as casual acts of trespass) (<i>Abbatangelo</i>) - Possession needs to be “open not by secret; peaceful not by force; and adverse, not by consent of the true owner” (<i>Mulcahy v Curramore</i>) - Peaceful means that possession must have occurred without violence	

- ★ **Leases:** Proprietary; Lessee has a right to exclusive possession
- ★ **THREE (3) Types of Licences:**
 1. **Bare Licences:** No property; No contract (e.g. inviting someone into your home)
 2. **Contractual Licences:** Contractual but borderline
 3. **Licence Coupled with a Grant**

To look for in a question:

- What type of licence is it?
- Can A revoke B's licence?
- Can the licence be enforced on a third party?

STEP 1: IDENTIFY WHAT TYPE OF LICENCE IS IT?

Based on the facts, this is likely to be a licence granted to [licensee].

1. BARE LICENCE	As [licensee] has unilateral permission to enter/use [licensor's] land and there is no requirement for anything in return, this is a bare licence. e.g. inviting someone to your home
2. CONTRACTUAL LICENCE	As there is an enforceable agreement involving [licensor] giving [licensee] permission to [enter/use] the land in order for them to fulfil a specific obligation being [state the obligation based on facts], this is a contractual licence. e.g. paying a plumber / paying an entry fee for a party
3. LICENCE WITH A GRANT	As there is an agreement to [enter/use] the land that co-exists alongside a property right, this is a licence with a grant. In such cases, the licence cannot be revoked and can be enforceable against and assignable to third parties. e.g. an easement for your neighbour to cross your land is a property right but also comes with a personal agreement

STEP 2: CAN THE LICENCE BE REVOKED?

1. BARE LICENCE	In such cases, there is no enforceable contract and this licence can be revoked at any time.
2. CONTRACTUAL LICENCE	A contractual licence can be revoked at any time, but in doing so there may be a breach in contract where equity can intervene and grant an injunction, specific performance or damages (<i>Cowell v Rosehill Racecourse Co Ltd</i>). *Remedies: [Licensor] may seek an injunction to eject the [licensee] from the land. However, there is an implied stipulation for the [licensor] to not unlawfully revoke the contractual licence so they may still be liable to pay damages to the [licensee] (<i>Sigma Constructions v Maryvell Investments</i>). – “equitable remedies are at the discretion of the courts, all factors may be satisfied and the court may still refuse to award a remedy”.