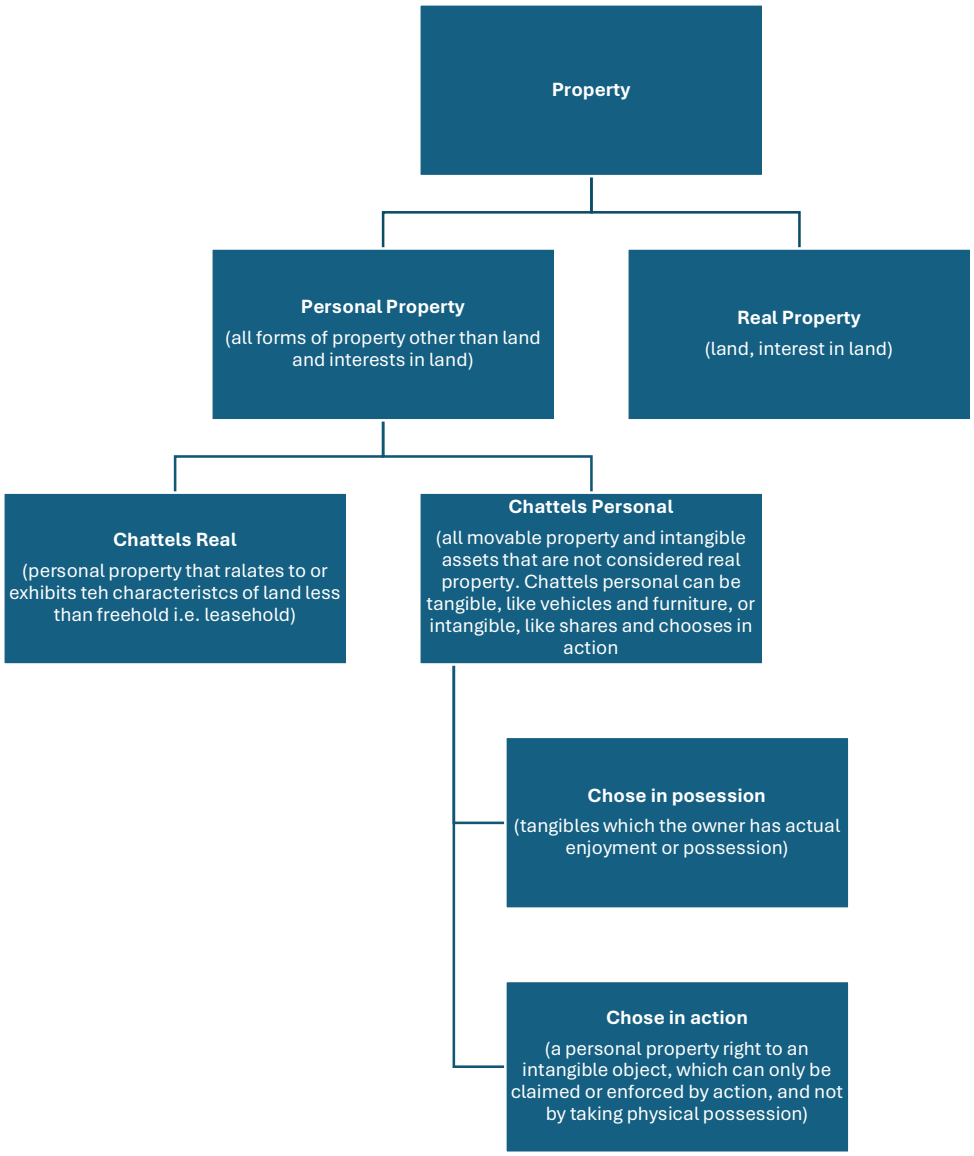
LPAB08 – Commercial Transactions

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Topic 1: Introduction to Commercial Transactions + Types of property



Introduction to concept of personal property and relevance for most common commercial transactions.

DESIRED OUTCOMES

- Distinguish real from personal property.
- Distinguish tangible and intangible forms of personal property.
- Understand basic rules of possession/ownership/delivery.
- Be aware of interaction of principles with other areas of law e.g. sale of goods (including title retention), contract, wills, securities, finance, liquidation, bankruptcy.

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INTRODUCTION	

TYPES OF PERSONAL PROPERTY	• Tangible AND Intangible
	• Legal and equitable
	
	• **Personal Property** (all forms of property, other than land and interests in land)
	• **Real Property** (land, interest in land).
	• *Eaton v BC & MRR Co's*: Property is the right of any person to possess, use, enjoy and dispose of a thing.
	Yanner v Eaton
	• concept of property: aboriginal man who had killed 2 animals for his own consumption. He was charged with taking "fauna" form the area without a licence as fauna was property of the Crown. The HC found in favour of the aboriginal man. Here, property was not described as "full beneficial, or absolute, ownership".
	
	• Personal property is divided into 2 categories:
	  ○ Chattels real: personal property that relates to or exhibits the characteristics of real property (it's largely obsolete, not important for this course).
	  ○ Chattels personal: any form of personal property (tangible or intangible, other than a chattels real), (i.e.: if I buy bricks and they are outside my door, that's my property, I can sell it. On the other hand, if I build my house with those bricks and I decided to sell the house, that's not my bricks anymore, that's part of the house) (It's important in this course).

Choses	• **Choses in possession:** Physical items - tangibles-an object with a physical form which can be possessed. Capable of something to have possession, to hold in your hand (tangible), object that is capable of being touched.
	• *Henderson's case* money moves from choses in possession to choses in action.
	  ○ Money can be in my hand, but when I deposit into my bank it converts into "chose in action". My right is intangible to recover from the bank with regards to the credit that I hold in the bank.
	• *Armstrong v Winnington* concept of choses in possession: these are moveable things with a physical existence (car, furniture, jewellery, etc).
	• Fixtures are no longer choses in possession (it is part of the land already). Whether an item
	• is sufficiently annexed depends upon the degree of the annexure and the purpose of
	• annexation (*TEC Desert v Commissioner*).
	• **Choses in action:** (Legal and equitable): is not capable of being touched (it is incorporeal) (i.e.: property rights, debts of various kinds: debentures, dividends, rights to rent, and not capable of physical possess, such as shares). Intangibles-rights-personal property that can only be claimed or enforced by action, not by taking possession
	• Intangible items:
	  ○ intellectual property (confidential information, copyright)
	  ○ choses in action (shares, debts, negotiable instruments, interests of a beneficiary under a trust or will).
	  ○ *Section 196(1) of the Copyright Act* provides that "copyright is personal property and, subject to this section, is transmissible by assignment, by will and by devolution by operation of law".
	• *Szanto v Aston:* Lotto win.
	  ○ Facts: Winning lottery ticket was located in the testator's home at the time of death. The testator's will bequeathed 'all furniture and chattels that are in the house' as at the date of his death to his daughter and son-in-law. The residue of the estate was to be shared between the testator's three other children.
	  ○ Issue: Whether the lottery ticket was a chattel 'in the house'.

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Topic 2: Transfer of Possession including Bailment

DESIRED OUTCOMES	A good understanding of when a bailment arises, interaction with contract and the advantages and disadvantages of this legal concept over other actions in case of loss.
Relevance of Possession generally	*Finders Keepers, Conversion, Bailment, Securities*

BAILMENT

Bailment is a legal term that refers to a relationship established when one party, the bailor, transfers physical possession of personal property to another party, the bailee, for a specific purpose, while retaining ownership. The bailee must intend to possess, and actually take physical possession of, the bailable chattel or asset, and must return it to the bailor. For example, leaving your car with a valet is a common form of bailment.

Duties of the Bailor:

- Disclose Known Faults: The bailor must inform the bailee of any known faults in the goods being bailed.
- Bear Expenses of Bailment: In a non-gratuitous bailment, the bailor should bear all the necessary expenses.
- Indemnify the Bailee: If the bailee suffers any loss due to the bailor's defective title to the goods, the bailor must indemnify the bailee.

Duties of the Bailee:

- Take Proper Care of Goods: The bailee must take care of the goods as an ordinary prudent person would take care of their own similar goods.
- Not Make Unauthorized Use: The bailee should not use the goods in an unauthorized manner. If they do, the bailor can terminate the bailment and claim damages.
- Keep Goods Separate: The bailee must keep the bailed goods separate from their own unless given permission to mix them by the bailor.
- Not Set Adverse Title: The bailee must not claim ownership or any other title adverse to the bailor's rights.
- Return Goods: The bailee is obliged to return the goods to the bailor after the purpose of the bailment is fulfilled or upon the expiration of the bailment period. Failure to do so makes the bailee liable for any loss or damage to the goods, even if it occurs without negligence.

What is Bailment?	• **To constitute a bailment:** 1. there must be a transfer of possession of the goods from one person to another person 2. without any intention to transfer ownership of the goods. 3. The bailee receives the good for a specific purpose (e.g. keep the goods in safe custody, carry form one place to another or do something to the goods) 4. and then return to the bailor. • A bailment is formed by delivery of personal property without transferring the title by the bailor to the bailee, usually under an agreement (but not necessarily a contract) for a particular purpose, giving rise to a duty of care, and upon completion of the purpose, the bailee is obliged to return the (identical) bailed property to the bailor or to deal with the property as directed by the bailor.

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