

CONTENTS

TOPIC 1: THE CONCEPT OF PROPERTY

1.1 What is property?	6
1.1.1 <i>Property as a Bundle of Rights</i>	6
1.1.2 <i>What Can Be Objects of Property?</i>	6
1.1.2.1 <i>Are Persons Property?</i>	6
1.1.2.2 <i>Property and Body Parts</i>	6
1.1.3 <i>Private Property, Communal Property, State Property and No Property</i>	7
1.2 Justifications for Private Property Rights	8
1.3 Recognition of New Property Interests	8
1.4 The Boundary between Property and Contract	9
1.4.1 <i>Licenses</i>	9
1.4.2 <i>Enforceability of a Contractual Licence against the Grantor</i>	10
1.4.2.1 <i>Common law position</i>	10
1.4.2.2 <i>Position in equity</i>	10
1.4.3 <i>Enforceability of a Contractual Licence against Third Parties</i>	10
1.5 Distinction between Real and Personal Property	10
1.6 Forms of Personal Property	11
1.7 Legal and Equitable Interests	11

TOPIC 2: SOME KEY LAND LAW CONCEPTS

2.1 The Definition of 'Land'	12
2.2 The Doctrine of Tenure	12
2.2.1 <i>The Historical Roots of the Doctrine of Tenure</i>	13
2.2.2 <i>The Doctrine of Tenure in Australia</i>	13
2.3 The Doctrine of Estates	14
2.3.1 <i>The relationship between the doctrine of tenure and the doctrine of estates</i>	14
2.3.2 <i>Freehold Estates</i>	14
2.3.3 <i>Leasehold Estates</i>	15
2.3.4 <i>Future Interests</i>	16
2.3.5 <i>The Doctrine of Waste</i>	16
2.4 Crown Land, General Law Land and Torrens System Land	17
2.5 Native Title	18
2.5.1 <i>The Recognition of Native Title</i>	18
2.5.2 <i>The Native Title Act</i>	18
2.5.3 <i>The Legislative Definition of Native Title</i>	19

TOPIC 1: THE CONCEPT OF PROPERTY

1.1 What is property?

Property rights share two common characteristics that distinguish them from personal rights:

1. A property right always relates to, and depends upon the **existence** of, some particular thing (tangible or intangible)
2. A property right can be **enforced** not just against specific persons, but against a wide range of persons

Property = “a description of legal relations with a thing...a degree of power that is recognised in law as power permissibly exercised over the thing” *Yanner v Eaton* (1999)

1.1.1 Property as a Bundle of Rights

“Rather than referring directly to an object such as a parcel of land or the tractor that cultivates it, the concept of property is often said to refer to a ‘**bundle of rights**’ that may be exercised with respect to that object – principally the rights to **possess** the property, to **use** the property, to **exclude others** from that property, and to **dispose** of that property by sale or gift... But the same bundle of rights does not attach to all forms of property. For a variety of policy reasons, the law limits or even forbids the exercise of certain rights over certain forms of property” – *Moore v Regents of California* (1990)

1.1.2 What Can Be Objects of Property?

Property law excludes those things that are intrinsic to the person. It requires that a distinction be drawn between the person and the thing.

1.1.2.1 Are Persons Property?

Human beings are no longer considered objects of ‘property’ but they once were (e.g. slavery).

Australian law does now allow one person to have property rights to another living person.

1.1.2.2 Property and Body Parts

★ See *Moore v Regents of the University of California* (1990)

Two categories of human tissue:

1. Dead human tissue (such as a corpse)
2. Living human tissue (such as an organ removed for transplant)

Dead human tissue

- Courts have been reluctant to say that a human corpse is a thing capable of being subject to property rights