

## (LAW2213 PROPTERTY & TRUSTS A)

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## 1. PROPERTY

### MEANING:

- MAY be the object OR the proprietary rights to that object.
- '...Much of our false thinking about property stems from the residual perception that 'property' is itself a thing or resource rather than a legally endorsed concentration of things and resources': *Yanner v Eaton (1999) 201 CLR 351*
- 'to talk about property is to talk not about objects but about relations between human beings or more accurately about relations between persons in relation to things...private property must at least involve the right of the owner to exclude others from doing something in respect of the object of ownership' Felix Cohen 'Dialogue on Private Property' (1954) 9 *Rutgers LR* 357

### TYPES:

- Real v Personal
- Personal → choses in action (intangible rights eg. debts, shares) and choses in possession (tangible)

## 2. OWNERSHIP / POSSESSION

### Two elements:

1. physical control and
2. mental intention to possess/exclude others (animus possidendi): ***Button v Cooper [1947] SASR 286***

### Possession definition:

- Relationship between a person and some material object - arises out of the factual situation" – *Button v Cooper [1947] SASR 286 at 292*
- Does not necessarily concur with title.

### Ownership definition:

- Embraces subsidiary rights such as exclusive enjoyment, to destroy, to alienate or to alter, and, of course, the right to maintain, and to resume and recover possession from other persons: *Knapp v Knapp [1944] SASR 257*

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