

Introduction-What is Property?

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- “Property is the institution by means of which societies regulate access to material resources” (Sackville and Neave, *Australian Property Law*, 9th ed 2013, 1.1)
- ‘property is the sole and despotic dominion which one man claims and exercises over the external things of the world, in total exclusion of the right of any other individual in the universe’

Three dimensions to the concept of property:

- Analytical:
- What do we mean by the term property?
 - Blackstone’s three basic elements:
 - Dominion
 - Exclusion
 - External things: chattel, land and intangible things ie shares
 - Add on the right to transfer or alienate
 - Refer to A M Honore for a more indepth analysis
- Is property a relationship or thing?
 - Limitations of thing view
 - To own property is to stand in a particular relationship with others broken down into powers, duties, rights, immunities etc
- Philosophical: what justifications are there for a particular regime of property rights?
- Doctrinal: What are the legal rules classifying, defining and delimiting property rights, and so marking out the boundary between property rights and other rights?

Objects of property:

- Real property, or realty
 - Corporeal: land, buildings and fixtures
 - Incorporeal: easements and profits relating to the land
- Personal property, or personalty
- Pure, chattels personl: Choses in possession (tangible) versus choses in action (intangible)

Land:

- Is permanent and immovable
- Ownership can be split into multiple interests both physically and according to the doctrine of estates
- Land has been important for its use and for the status that it gave rather than as a commodity to be traded to increase wealth
- Airspace:

- Subject to zoning laws, land owners can use their airspace to build to any height and for any purpose
- Is entitled to use as much of the airspace as necessary for the reasonable enjoyment of the land
- *Woollerton v Costain* [1970] 1 WLR crane jib constitutes a trespass
- See 2.8 for many examples
- Trespass excludes overhanging trees which falls under nuisance
- Damage by Aircraft Act 1952 (NSW)-no right to sue for trespass for flight over property at a height
- Boundaries:
 - Bounded by tidal waters 2.13
 - Bounded by non tidal waters 2.14
 - Accretion and erosion 2.15
- Fixtures:
 - Are chattels which have become part of the realty by being attached or annexed to it
 - Sale of land only confers rights to the land, not the chattels on it
 - General principle: *quicquid plantatur solo, solo credit*: whatever is attached to soil becomes part of the soil
 - *Holland v Hodgson* provides test for annexation of chattel:
 - Degree of annexation
 - To the object or purpose of annexation
 - 2.19 has examples of tapestries as both chattel and fixture
 - *Sanwa Australia Leasing v National Westminster Finance* (1988) 4 BPR 9514 by Powell J:
 - the nature of the chattel in question
 - the manner in which it is usually, or most conveniently utilised,
 - the degree of annexation of the chattel to the land,
 - the degree of time for which the chattel has been annexed to the land,
 - the purpose for which the chattel has been annexed to the ground,
 - any statements of intention made by, or agreements entered into between the owner of the chattel and the owner of the realty
 - Tenant Fixtures:
 - Basic rule if a tenant can remove fixtures:
 - If they are of a trade, domestic or ornamental kind
 - Did not intend to make a permanent improvement to the property

Estates and Interests in Land:

- Entitlements to land:
 - Those that confer possession: the estates; the fee simple, the life interest and the leasehold.
 - The ‘servitudes’ such as easements, profits, and restrictive covenants.
 - The security interests” mortgages and other charges

- Freehold Estates:
 - The fee simple
 - Largest estate in that it lasts the longest
 - Is the closest to absolute ownership
 - It is an inheritable estate, capable of descending to the widest range of heirs
 - It is freely alienable during the life of the holder
 - Can be either absolute, determinable or conditional
 - The fee tail
 - An inheritable freehold estate
 - Could only pass to lineal descendants
 - Sequence of inheritance was defined and restricted, not simple
 - Inalienable estate, attempting to tie up wealth in a certain branch of the family
 - The life estate
 - Endures only for the life of the person on whom it is conferred
 - May be an ordinary life estate (a life estate *pur sa vie*), or dependent on the life of some other person (*pur autre vie*).
 - Is alienable but not inheritable
 - The holder of a life estate has full beneficial ownership of the estate, that is, the right to use and enjoy the property during their own lifetime subject to the doctrine of waste
 - Doctrine of Waste:
 - Grantor retains a continuing interests in the land
 - Will wish to have the land improved or atleast maintained to its original standard so it is not devalued
 - In this context waste refers to permanently altering the land
 - Voluntary: some positive damage to the property eg the opening and exploitation of mines and the cutting down of timber
 - Permissive: a failure to attend to the upkeep and allowing it to fall into disrepair
 - Ameliorating: occurs when the life tenant makes some changes to the land in a way that enhancing its value-rare ie historical building demolished for apartment block
- Leasehold Interests:
 - Not always considered to be estates in land but as mere contractual interests
 - The chattel real
 - Primary difference is its duration

Determinable and Conditional Interests:

- Determinable fee is limited by a happening which may or may not occur, the uncertainty of which is unavoidable because a fee simple is by definition a fee of indefinite duration
 - Automatically transfer back to grantor at the occurrence of the determining event

- If the determining event becomes impossible to satisfy it will become an absolute fee
- Should the condition subsequent fail because it is found to be void it can't be severed the whole grant will fail it inherently being apart of the estate itself
- Conditional interest:
 - Sometimes called defeasible or modified
 - Refer to an estate which is subject to a condition subsequent
 - If it occurs the grantor has the right of re-entry but the grantor can decide themselves whether to exercise this right
 - Must physically take possession or rely on a court order to regain possession
 - Should the condition subsequent fail because it is found to be void it can be severed leaving the rest of the grant intact
- Void Limitations:
 - Denying the power to alienate: enshrined in ownership
 - Being against public policy
 - Being directed against the course of action prescribed by law
 - Uncertainty
- Future Interests:
 - Delays or postpones the right of possession to some time in the future
 - Reversion:
 - Is what the grantor is left with after granting an estate less than the one held
 - Ie having a fee simple but granting a life estate amounts to future interests
 - Remainder:
 - Interest in a grant which is to be taken by the grantee in the future after the interest in possession has come to an end
 - Ie to A for life, remainder to B and her heirs
 - Vested:
 - May be vested in interest or possession or both
 - If in both it is classified as a present interest
 - If it is in interest and not possession it is a future interest
 - Contingent:
 - Gives no interest at all until certain conditions precedent are satisfied
 - Ie A for life, remainder to B and her heirs, A must die for B to take possession
- Numerus Clauses principle:
 - To rank as an interest in land, a right must come within one item on this menu of interests, If not, it will fail to be enforceable as property; and that means it will be impotent against successors in title, even if they have full knowledge of its existence at the time they acquire their interest.