

Principles of Private Law

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Property Rights

Topic	Issue	Principle to Apply	Exceptions to the Rule
What is property?	Blackburn J – ‘Property...generally implies the right to use or enjoy, the right to exclude others, and the right to alienate’		
<i>The right to use or enjoy</i>			
<i>The right to alienate</i>		i. Alienation does not refer to the transferring of the whole thing but creating little parcels of rights	
<i>The right to exclude</i>		i. This is considered to be the most definitive of the three rights (Cohen J) ii. Property right is essentially a private right exercisable against the general public, including the state iii. Public right to pass freely is not a property right Stow v Mineral Holdings	Stow v Mineral Holdings: Respondent was mining on land in Tasmania. Appellant lodged an application for a public right to pass over the land. The court held that members of the public are not entitled to pass over the land.
Property Rights and Contractual Rights			
<i>Licenses</i>	i. What is a license? ii. Is the license bare? iii. Is the license contractual? iv. Is it a license coupled with an interest?	i. Licenses are contracts, which allow a person to use another's land without committing trespass. Licenses confer personal rights and not proprietary rights (which are necessary to sue in others trespass) ii. This refers to the authority given to a person to enter another's property for that person's benefit iii. Contractual license provides an express or implied permission to enter or use the property in exchange for some consideration. Cowell v Rosehill Racecourse Co iv. This license also conveys a property interest eg. Profit a prendre. A license coupled with an interest arises when a person acquires the right to take possession of property located on someone else's land	iii. Whilst a contractual license does not confer a proprietary interest, it may be used to exclude third parties if it is within the purpose of the license Georgski iv. The range of interests that can constitute a proprietary interest are limited by the doctrine of <i>numerus clausus prius</i>
<i>Revocation</i>	i. Bare licenses ii. Contractual licenses	i. Under property law <u>AND</u> contract law (revocable at the will of the licensor for any reason) ii. Under property law (revocable at will, at any time). Under contract law (cannot revoke during the contractual period)	ii. The Commonwealth can terminate a contract license unless it is within the terms. The doctrine of executive necessity can relieve the Commonwealth of its obligations.

	iii. License coupled with an interest	iii. Under property law (cannot be revoked within the term). Under contract law (cannot be revoked within the term) Australian Softwood Forests	from its contractual obligations on the basis of a change in policy. NSI Association
<i>Licenses and Third Parties</i>	i. Is the license enforceable against third parties?	i. Licenses are only enforceable against the licensor, not third parties King v David Allen & Sons	King v David Allen & Sons The licensor formed an agreement allowing the licensee to put up posters for 5 years from date of theatre company on 6 months' notice, licensee put up posters. The licensor then did not refer to original agreement in the contract. The licensee attempted to do so with the other company from doing so. Proprietary rights are enforceable against third parties. A proper clear wording in the contract document.
<i>Numerus Clausus</i>	i. What is the numerous clausus principle? ii. What effect does it have?	i. Landowners cannot simply create new 'types' of rights - if a person receives a type of right, it must be one of the (a 'closed list') of established categories Property law, by contrast to contract, is very restrictive, mostly because of its potential to affect third parties. Georgski v Owners Corporation Strata Plan ii. Categories of property law that qualify as an 'interest' enforceable as property include: <ul style="list-style-type: none"> • Possession: fee simple, the life interest, and the leasehold. • Servitudes: easements, profits, restrictive covenants. • Security interests: mortgages and other charges. 	