

LAWS1150 Exam Notes

<p>CONTRACTS</p> <p>Agreement</p> <ul style="list-style-type: none"> - Offer <ul style="list-style-type: none"> ▪ Invitation to treat ▪ Counter-offer ▪ Mere puff - Acceptance <ul style="list-style-type: none"> ▪ Communication of acc. ▪ Can't stipulate silence (<i>Felthouse</i>) ▪ Conduct may imply acc. (<i>Empirnall</i>) ▪ Standard form of agreement ▪ <i>Electronic Transaction Act 2000</i> ▪ Postal rule of acc. <p>Consideration</p> <ul style="list-style-type: none"> - Benefit/ Detriment - Bargain (quid pro quo) - Sufficiency <ul style="list-style-type: none"> ▪ Past consideration (exception: <i>Pao On</i>) ▪ Existing legal duty <ul style="list-style-type: none"> • No fresh consideration • Exceptions <ul style="list-style-type: none"> ○ Practical benefit (<i>Musemeci</i>) ○ Bona fide (<i>Wigan</i>) <p>Intention</p> <ul style="list-style-type: none"> - Presumptions (<i>Ermogenous</i>) - Commercial (<i>Banque Brussels</i>) - Domestic (<i>Todd v Nicol</i>) - Government (<i>PNG v Leahy</i>) - Preliminary (<i>Masters v Cameron</i>) 	<p>Certainty</p> <ul style="list-style-type: none"> - Elements <ul style="list-style-type: none"> ▪ Uncertainty (<i>Upper Hunter</i>) ▪ Incompleteness (<i>Hall v Busst</i>) ▪ Illusory (<i>Meehan v Jones</i>) - Resolved <ul style="list-style-type: none"> ▪ Imply objective standard ▪ External standard ▪ Contractual machinery - Severed/ Waived <p>Privity</p> <ul style="list-style-type: none"> - <i>Coulls v Bagots</i> (joint promisees) - <i>Trident v McNiece</i> (circumventing) <p>Remedies</p> <ul style="list-style-type: none"> - Damages <ul style="list-style-type: none"> ▪ Expectation loss (caused by breach) - Specific performance - Injunction <p>PROPERTY</p> <p>Proprietary interest (rights in rem)</p> <ul style="list-style-type: none"> - Right to use/enjoy (<i>Yanner v Eaton</i>) - Right to alienate - Right to exclude <p>Boundaries</p> <ul style="list-style-type: none"> - Human tissue outside of body (<i>Doodeward v Spence</i>) - Land in virtual world - Spectacle (<i>Victoria Park Racing</i>) <p>Numerous Clauses (closed list)</p> <ul style="list-style-type: none"> - Possession (fee simple, leasehold) - Servitudes (easements, profits) - Security interest (mortgages) 	<p>Licenses</p> <ul style="list-style-type: none"> - Bare (no contract, no interest) - Contractual (no interest) - Coupled with an interest (irrevocable) <p>Equitable Remedies</p> <ul style="list-style-type: none"> - Specific performance (<i>Cowell, Verrall</i>) - Injunction (<i>NSW Rifle, Heidke</i>) <p>Licenses with third parties</p> <ul style="list-style-type: none"> - <i>King v David Allen & Sons</i> (Privity – unenforceable against third parties) - <i>Georgeski v Owners Corporation</i> (Licensee cannot bring an action for trespass; jetty case) <p>Fixtures/ Chattels</p> <ul style="list-style-type: none"> - Degree of annexation (<i>Belgrave</i>) <ul style="list-style-type: none"> ▪ Easily removable w/out damage? - Intention (objective, subjective) - Tenants <ul style="list-style-type: none"> ▪ Right to remove ▪ Annexed w/out authorization ▪ Unjust enrichment <p>Possessory Torts</p> <ul style="list-style-type: none"> - Trespass (<i>Penfolds</i> – interference w/ actual possession) - Conversion (unauthorized act of dominion) - Detinue (wrongfully retains) - Action on the case (direct interference w/ reversionary interest) <p>Jus Tertii</p> <ul style="list-style-type: none"> - Title to sue? Anyone with superior title (<i>Jeffries v GWR</i>) - <i>Winkfield</i> (Bailor, Bailee liability) 	<p>Adverse Possession</p> <ul style="list-style-type: none"> - Test <ul style="list-style-type: none"> ▪ In possession (<i>Whittlesea</i>) <ul style="list-style-type: none"> • Factual • Intention ▪ Without consent ▪ For the relevant limitation period (land s 27(2) – 12 years) - Successive (s 38(2)) - Extension <ul style="list-style-type: none"> ▪ Disability (ss 52, 53) ▪ Fraud/ mistake (ss 55,56) - Limitation period 30 yrs max (s 51) <p>Formalities (passing land interests)</p> <ul style="list-style-type: none"> - Contract <ul style="list-style-type: none"> ▪ Agreement (essential terms) ▪ Writing and exchange (s 54A <i>Conveyancing Act</i>) <ul style="list-style-type: none"> • In writing • Signed by the party to be charged - Settlement <ul style="list-style-type: none"> ▪ OS: deed (s23B) + chain of ownership ▪ Torrens: register (s 41 <i>Real Property Act</i>) <p>Part Performance</p> <ul style="list-style-type: none"> - <i>Mason v Clarke</i> (oral agreement, formalities weren't followed) - <i>Pipikos v Trayans</i> (2018) two limbs <ul style="list-style-type: none"> ▪ Unequivocally referable ▪ Admits of explanation
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ESTOPPEL By Conduct <ul style="list-style-type: none"> - Common Law (by representation - defence) <ul style="list-style-type: none"> ▪ Existing fact (<i>Jorden Money</i>) - Equity <ul style="list-style-type: none"> ▪ Future conduct ▪ Promissory <ul style="list-style-type: none"> • Pre-existing relationship? (<i>Walton Stores VS Ashton v Pratt</i>) ▪ Proprietary (sword) <ul style="list-style-type: none"> • <i>Inwards v Baker; Dillwyn v Llewelyn</i> - Elements <ul style="list-style-type: none"> ▪ Assumption ▪ Inducement ▪ Detrimental reliance ▪ Reasonableness ▪ Unconscionable (Overriding!!) <ul style="list-style-type: none"> • <i>Austotel</i> (commercial dealings, refused to commit, not unconscionable) - Innocent third party <ul style="list-style-type: none"> ▪ <i>Giumelli v Giumelli</i> (the other son) ▪ <i>Sidhu v Van Dyke</i> (the wife) 	AGENCY Actual Authority <ul style="list-style-type: none"> - Express - Implied <ul style="list-style-type: none"> ▪ Incidental (to acts expressly authorized) ▪ Usual (agent of the type would usually have authority to do) ▪ Customary (reasonable business practice across a particular industry) ▪ Conduct (allowed/ previous transactions) Ostensible Authority <ul style="list-style-type: none"> - Elements <ul style="list-style-type: none"> ▪ Representation <ul style="list-style-type: none"> • Manner; Conduct; Who; To Whom ▪ Reliance ▪ Detriment - Reasonable third party <ul style="list-style-type: none"> ▪ <i>Freeman</i> ▪ <i>Crabtree-Vickers</i>
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Possible intersections with first half of the course

LICENSE - Privity

- Need you to be able to tell what the rule is (not required in so much detail as in the assignment)

ESTOPPEL - Contract between parties (potential issue in certainty, skim over other aspects in formation)

SPECIFIC PERFORMANCE - Binding contract? Certainty

CONTRACT - formation

Q1. Problem question: provide legal advice in relation to a factual scenario.

(40 marks)

Q2. Essay question: demonstrate knowledge of topics covered in the course

(20 marks)

PROPERTY; LICENSES

Real Property (land, immovable) (specifically recoverable, i.e. can bring a real action)

- Corporeal hereditaments (rights of possession, tangible, e.g. fee simple)
- Incorporeal hereditaments (lesser rights over land, intangible, e.g. easements)

Personal Property (chattels, movable) (may only have a personal action for damages)

- Choses in possession (movable, tangible, i.e. chattels)
- Choses in action (intangible, e.g. patents, shares, goodwill)

Proprietary interest (rights in rem; stronger than contractual) (*Milirrpum v Nabalco*)

- Right to use/enjoy
 - *Yanner v Eaton* – crocodile meat = property?
 - Property does not necessarily mean full legal ownership
- Right to alienate (transfer/sell; lease/license; mortgage)
 - *R v Toohey* – some form of property is inalienable
- Right to exclude (Exercisable against general public; Public rights cannot be regarded as property rights (*Stow v Mineral Holdings*))
- Cohen argues that it is the right to exclude others that is the most defining feature of property rights. Some argue that it has gone too far, that we should look for more inclusive approaches to property.

Boundaries/ Extent of Property

- Human tissue outside of body (*Doodeward v Spence*)
 - by the lawful exercise of work or skill so dealt with a human body in his lawful possession; acquired some attributes differentiating it from a mere corpse awaiting burial, he acquires a right to retain possession of it
- Land in virtual world
- Property right to privacy/ spectacle
 - Victoria Park Racing – no right to exclude defendant from broadcasting what he sees occurring on plaintiff's land; not an interest protected at law or in equity

Numerous Clauses (closed list of property rights; restrictive because of its potential to affect third parties)

- Possession (fee simple, leasehold)
- Servitudes (easements, profits)
- Security interest (mortgages)

Boundaries of land

- Airspace rights (restricted upon such height as is necessary for the ordinary use and enjoyment of land (*Baron Bernstein of Leigh v Skyviews & General Ltd*)
 - Aircrafts above your land (depends on the height; reasonableness)
 - Restrictive covenant (can't build more storeys to block your view)

- Below the surface (Surface owner's rights extend downwards to prevent trespass and to give rights to minerals under the surface) (*Bulli Coal Mining Co v Osborne*)

Licenses (gives you right to occupy for a specific period/reason)

- Bare (no contract, no interest) - revocable
- Contractual (no interest)
 - Contract formation may come in
 - *Wood v Leadbitter/ Cowell v Rosehill* – defendant can remove plaintiff with reasonable force if license revoked
- Coupled with an interest (irrevocable)
 - Property right; e.g. profit a prendre, easement
- If wrongfully revoked, breached, liable for damages (CL) → 'would giving them money put them in the position where they wanted to be?' (expectation loss)
- If insufficient...

Equitable Remedies

- Specific performance (*Cowell, Verrall*)
 - Test
 - Binding Contract
 - Where damages are inadequate
 - And none of the Limitations apply
 - Hardship; Clean hands (unconscious); Laches (delay); Personal services
 - *Verrall* – council repudiate license when convention was about to start, identity of licensee, difficult to find a replacement; grant of specific performance
- Injunction – negative obligation (*NSW Rifle, Heidke*)
 - Prohibitory (right); Mandatory (e.g. force you to rip the extra storey out)
 - *NSWRA v Cth* – injunction granted to restrain Cth from transferring
 - *Heidke* – council repudiate license when festival has already started (Injunction granted to prevent council from repudiating)

Licenses with third parties

- *King v David Allen & Sons* (Privity –unenforceable against third parties)
- *Georgeski v Owners Corporation* (jetty case)
 - Licensee cannot bring an action for trespass
 - Title to sue – exclusive possession of the land