



# LAWS809

## Property Law

S1 External 2019

*Macquarie Law School*

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#### **Disclaimer**

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## General Information

Unit convenor and teaching staff

Convenor

Teresa Somes

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Contact via via ilearn

MQ Law School, Level 5 Room 569

Wednesday 9-10am

tutor

Dr Liza Rybak

[liza.rybak@mq.edu.au](mailto:liza.rybak@mq.edu.au)

Contact via please see tutor during class times

Credit points

4

Prerequisites

LAWS803

Corequisites

Co-badged status

Unit description

Property is a fundamental legal concept in contemporary western societies. In this unit the property concept is examined from theoretical and practical perspectives. Initially, the question of what the concept should encompass is raised, looking particularly at the person/property distinction and at the boundaries of property such as ownership of the human body and its parts and digital property. Moral implications and economic justifications for the allocation of property rights are then introduced. The major portion of the unit is concerned with a thorough examination of the practical application of property law in Australia beginning with the law of personal property and continuing with systems of title to land (old system, Torrens and native title), the primary interests in land such as mortgages, easements, leases and covenants and concurrent ownership. Analytical and problem solving skills are developed through hypothetical problem exercises and careful consideration of authoritative case law.

## Important Academic Dates

Information about important academic dates including deadlines for withdrawing from units are available at <https://www.mq.edu.au/study/calendar-of-dates>

## Learning Outcomes

On successful completion of this unit, you will be able to:

Describe and analyse the historical development of Australian property law and of the major historical and theoretical principles that underlie it.

Critically analyse the way in which native title has been placed in the framework of Australian property law.

Demonstrate a sophisticated understanding of the major forms of title to land in Australia and analyse the fundamental difference between the creation and transfer of property rights in law and in equity.

Solve complex priority disputes between competing claimants to the same property through the application of doctrinal and procedural rules of law and equity.

Communicate an advanced body of knowledge about property through active and informed participation in class discussion, and the presentation of sophisticated written material.

## General Assessment Information

### *Late Submission Penalty*

Unless a Special Consideration request has been submitted and approved, (a) a penalty for lateness will apply – two (2) marks out of 100 will be deducted per day for assignments submitted after the due date – and (b) no assignment will be accepted more than seven (7) days (incl. weekends) after the original submission deadline. No late submissions will be accepted for timed assessments – e.g. quizzes, online tests and exams.

## Assessment Tasks

Name	Weighting	Hurdle	Due
<u>Quiz</u>	0%	No	Week 3
<u>Assignment</u>	30%	No	26 April 2019 (11.59pm)
<u>Final take home exam</u>	50%	No	14 June 2019 (5pm-9pm)
<u>Tutorial Participation</u>	20%	No	continuous

### Quiz

Due: **Week 3**

Weighting: **0%**

The quiz will be based on the material covered in Lectures 1 – 3. This quiz is for the purposes of

self assessment and carries no weight.

On successful completion you will be able to:

- Describe and analyse the historical development of Australian property law and of the major historical and theoretical principles that underlie it.
- Critically analyse the way in which native title has been placed in the framework of Australian property law.

## Assignment

Due: **26 April 2019 (11.59pm)**

Weighting: **30%**

The assignment question will be available on ilearn in week 1.

The answer provided must be a properly referenced response with appropriate analysis and argument supported by relevant authoritative cases and commentary. The response must be typed and must be kept to a maximum 2000 words (excluding footnotes and the bibliography). The word limit will be strictly applied and work above the word limit will not be marked.

The assignment must be electronically submitted. Plagiarism detection software is used in this unit.

In completing their answer, students must comply with the latest edition of the *Australian Guide to Legal Citation* (AGLC 4) compiled by the Melbourne University Law Review.

Further instructions and information in relation to the assignment, including detailed marking rubrics, will be made available on iLearn. Markers in this unit undertake a process of 'blind marking' to establish a common marking standard and all fail papers are double marked.

Unless a Special Consideration request has been submitted and approved, (a) a penalty for lateness will apply – two (2) marks out of 100 will be deducted per day for assignments submitted after the due date – and (b) no assignment will be accepted more than seven (7) days (incl. weekends) after the original submission deadline, and an assignment submitted after this date, without special consideration will receive zero.

If, for justifiable reasons, a student is unable to submit the assignment on time, he or she may submit an application for special consideration pursuant to the University's Disruption to Studies Policy.

Applications for special consideration pursuant to the Disruption to Studies Policy are made electronically via [ask.mq.edu.au](http://ask.mq.edu.au) and should be accompanied by supporting documentation. Students should refer to the Disruption to Studies Policy for complete details of the policy and a description of the supporting documentation required.

On successful completion you will be able to:

- Describe and analyse the historical development of Australian property law and of the

major historical and theoretical principles that underlie it.

- Critically analyse the way in which native title has been placed in the framework of Australian property law.
- Demonstrate a sophisticated understanding of the major forms of title to land in Australia and analyse the fundamental difference between the creation and transfer of property rights in law and in equity.
- Solve complex priority disputes between competing claimants to the same property through the application of doctrinal and procedural rules of law and equity.
- Communicate an advanced body of knowledge about property through active and informed participation in class discussion, and the presentation of sophisticated written material.

## Final take home exam

Due: **14 June 2019 (5pm-9pm)**

Weighting: **50%**

The final examination in this unit will be a take home examination.

The hypothetical take home problem questions will be based on the material from the whole course and will require a response to two hypothetical problem questions involving property law. Both questions must be answered.

Students will be able to access the final examination paper on iLearn from 5pm on Friday 14 June 2019 and must submit their answers to the final examination paper by 9 pm on Friday 14 June 2019. The assignment must be electronically submitted. Plagiarism detection software is used in this unit.

A student's answers to the final examination paper's questions cannot exceed 2,000 words (exclusive of footnotes). This is an upper word limit and a student need not write 2,000 words if he or she can answer the questions in less than 2,000 words. A bibliography is not required. The word limit will be strictly applied and work above the word limit will not be marked. The answers to the examination questions must be typed.

Students are not required to comply with strict AGLC referencing, however must provide authority which can be provided via footnotes.

Further instructions and information in relation to the final examination will be made available on iLearn.

If, for justifiable reasons, a student is unable to do the final examination at the above time or his or her performance in the final examination is adversely affected, he or she should submit an application for special consideration pursuant to the University's Disruption to Studies Policy, which, if granted, will enable the student to complete an alternative assessment. The alternative assessment may not be in the form of a take home examination - it may take some other form such as a formal sit down examination.

Applications for special consideration pursuant to the Disruption to Studies Policy are made electronically via [ask.mq.edu.au](http://ask.mq.edu.au) and should be accompanied by supporting documentation. Students should refer to the Disruption to Studies Policy for complete details of the policy and a description of the supporting documentation required.

Any student who does not submit answers to the final examination or supplementary examination, as the case may be, on time or at all, will receive a zero mark for the this assessment item.

On successful completion you will be able to:

- Demonstrate a sophisticated understanding of the major forms of title to land in Australia and analyse the fundamental difference between the creation and transfer of property rights in law and in equity.
- Solve complex priority disputes between competing claimants to the same property through the application of doctrinal and procedural rules of law and equity.
- Communicate an advanced body of knowledge about property through active and informed participation in class discussion, and the presentation of sophisticated written material.

## Tutorial Participation

Due: **continuous**

Weighting: **20%**

Students will be assessed on their ability to demonstrate knowledge of the required readings and lecture material and their oral and written discussion of those materials in weekly tutorials. A complete marking rubric will be available on iLearn

On successful completion you will be able to:

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- Demonstrate a sophisticated understanding of the major forms of title to land in Australia and analyse the fundamental difference between the creation and transfer of property rights in law and in equity.
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## Delivery and Resources

### Compulsory Text

Janice Gray, Neil Foster, Shaunnagh Dorsett, Heather Roberts *Property Law in New South Wales* (LexisNexis, 4th edition, 2017).

Recommended additional reference: Students are not expected to purchase this reference: Brendan Edgeworth, *Butt's Land Law*, 7th ed, Thomson Reuters, 2017

### Lectures

Lectures will be delivered live but recorded.

### Tutorials

Wednesday 12-1pm: 25a Wally's Walk, Tutorial Room 208

### On Campus Sessions

Monday 15th - Tuesday 16th April, 9am - 4pm: 4 Western Road, Tutorial Room 335.

External students will also be invited to participate in an online (zoom) revision tutorial run by both the convenor and tutor, prior to the examination period. Date, time and instructions will be available on ilearn towards the end of semester.

### Online Units

Online units can be accessed at: <http://ilearn.mq.edu.au/>.

PC and Internet access are required. Basic computer skills (e.g., internet browsing) and skills in word processing are also a requirement.

## Unit Schedule

Week	Topic

Lecture	
1	Introduction to the Unit. The concept of property: theories of property
2	Fundamental principles: native title
3	Land fixtures and chattels
4	The creation and transfer of interests in land under common law and equity: Old system title
5	Old system priorities: Introduction to Torrens title:
6	Torrens title I; indefeasibility and exceptions; "volunteers" and indefeasibility
7	Torrens title priorities; the place of unregistered interests: Caveats and s43A <i>Real Property Act</i>
8	Common Ownership and Strata Title
9	Lease and residential tenancies
10	Mortgages and other security interests
11	Private land use planning: easements
12	Private land use planning: freehold covenants
13	No lecture this week

## Policies and Procedures

Macquarie University policies and procedures are accessible from [Policy Central](https://staff.mq.edu.au/work/strategy-planning-and-governance/university-policies-and-procedures/policy-central) (<https://staff.mq.edu.au/work/strategy-planning-and-governance/university-policies-and-procedures/policy-central>). Students should be aware of the following policies in particular with regard to Learning and Teaching:



- [Academic Appeals Policy](#)
- [Academic Integrity Policy](#)
- [Academic Progression Policy](#)
- [Assessment Policy](#)
- [Fitness to Practice Procedure](#)
- [Grade Appeal Policy](#)
- [Complaint Management Procedure for Students and Members of the Public](#)
- [Special Consideration Policy](#) (**Note:** *The Special Consideration Policy is effective from 4 December 2017 and replaces the Disruption to Studies Policy.*)

Undergraduate students seeking more policy resources can visit the [Student Policy Gateway](https://students.mq.edu.au/support/study/student-policy-gateway) (<https://students.mq.edu.au/support/study/student-policy-gateway>). It is your one-stop-shop for the key policies you need to know about throughout your undergraduate student journey.

If you would like to see all the policies relevant to Learning and Teaching visit [Policy Central](http://staff.mq.edu.au/work/strategy-planning-and-governance/university-policies-and-procedures/policy-central) (<http://staff.mq.edu.au/work/strategy-planning-and-governance/university-policies-and-procedures/policy-central>).

## Student Code of Conduct

Macquarie University students have a responsibility to be familiar with the Student Code of Conduct: <https://students.mq.edu.au/study/getting-started/student-conduct>

## Results

Results published on platform other than [eStudent](#), (eg. iLearn, Coursera etc.) or released directly by your Unit Convenor, are not confirmed as they are subject to final approval by the University. Once approved, final results will be sent to your student email address and will be made available in [eStudent](#). For more information visit [ask.mq.edu.au](http://ask.mq.edu.au) or if you are a Global MBA student contact [globalmba.support@mq.edu.au](mailto:globalmba.support@mq.edu.au)

## Student Support

Macquarie University provides a range of support services for students. For details, visit <http://students.mq.edu.au/support/>

## Learning Skills

Learning Skills ([mq.edu.au/learningskills](http://mq.edu.au/learningskills)) provides academic writing resources and study strategies to improve your marks and take control of your study.

- [Workshops](#)
- [StudyWise](#)
- [Academic Integrity Module for Students](#)
- [Ask a Learning Adviser](#)

## Student Services and Support

Students with a disability are encouraged to contact the [Disability Service](#) who can provide appropriate help with any issues that arise during their studies.

## Student Enquiries

For all student enquiries, visit Student Connect at [ask.mq.edu.au](http://ask.mq.edu.au)

If you are a Global MBA student contact [globalmba.support@mq.edu.au](mailto:globalmba.support@mq.edu.au)

## IT Help

For help with University computer systems and technology, visit [http://www.mq.edu.au/about\\_us/offices\\_and\\_units/information\\_technology/help/](http://www.mq.edu.au/about_us/offices_and_units/information_technology/help/).

When using the University's IT, you must adhere to the [Acceptable Use of IT Resources Policy](#). The policy applies to all who connect to the MQ network including students.

## Graduate Capabilities

### PG - Capable of Professional and Personal Judgment and Initiative

Our postgraduates will demonstrate a high standard of discernment and common sense in their professional and personal judgment. They will have the ability to make informed choices and decisions that reflect both the nature of their professional work and their personal perspectives.

This graduate capability is supported by:

#### Assessment task

- Tutorial Participation

### PG - Discipline Knowledge and Skills

Our postgraduates will be able to demonstrate a significantly enhanced depth and breadth of knowledge, scholarly understanding, and specific subject content knowledge in their chosen fields.

This graduate capability is supported by:

#### Learning outcomes

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- Demonstrate a sophisticated understanding of the major forms of title to land in Australia and analyse the fundamental difference between the creation and transfer of property

rights in law and in equity.

- Solve complex priority disputes between competing claimants to the same property through the application of doctrinal and procedural rules of law and equity.
- Communicate an advanced body of knowledge about property through active and informed participation in class discussion, and the presentation of sophisticated written material.

## **Assessment tasks**

- Quiz
- Assignment
- Final take home exam
- Tutorial Participation

## **PG - Critical, Analytical and Integrative Thinking**

Our postgraduates will be capable of utilising and reflecting on prior knowledge and experience, of applying higher level critical thinking skills, and of integrating and synthesising learning and knowledge from a range of sources and environments. A characteristic of this form of thinking is the generation of new, professionally oriented knowledge through personal or group-based critique of practice and theory.

This graduate capability is supported by:

## **Learning outcomes**

- Describe and analyse the historical development of Australian property law and of the major historical and theoretical principles that underlie it.
- Critically analyse the way in which native title has been placed in the framework of Australian property law.
- Demonstrate a sophisticated understanding of the major forms of title to land in Australia and analyse the fundamental difference between the creation and transfer of property rights in law and in equity.
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## **Assessment tasks**

- Quiz
- Assignment

- Final take home exam
- Tutorial Participation

## PG - Research and Problem Solving Capability

Our postgraduates will be capable of systematic enquiry; able to use research skills to create new knowledge that can be applied to real world issues, or contribute to a field of study or practice to enhance society. They will be capable of creative questioning, problem finding and problem solving.

This graduate capability is supported by:

### Learning outcomes

- Critically analyse the way in which native title has been placed in the framework of Australian property law.
- Demonstrate a sophisticated understanding of the major forms of title to land in Australia and analyse the fundamental difference between the creation and transfer of property rights in law and in equity.
- Solve complex priority disputes between competing claimants to the same property through the application of doctrinal and procedural rules of law and equity.
- Communicate an advanced body of knowledge about property through active and informed participation in class discussion, and the presentation of sophisticated written material.

### Assessment tasks

- Quiz
- Assignment
- Final take home exam
- Tutorial Participation

## PG - Effective Communication

Our postgraduates will be able to communicate effectively and convey their views to different social, cultural, and professional audiences. They will be able to use a variety of technologically supported media to communicate with empathy using a range of written, spoken or visual formats.

This graduate capability is supported by:

### Learning outcomes

- Describe and analyse the historical development of Australian property law and of the major historical and theoretical principles that underlie it.
- Communicate an advanced body of knowledge about property through active and

informed participation in class discussion, and the presentation of sophisticated written material.

## **Assessment tasks**

- Quiz
- Assignment
- Final take home exam
- Tutorial Participation

## **PG - Engaged and Responsible, Active and Ethical Citizens**

Our postgraduates will be ethically aware and capable of confident transformative action in relation to their professional responsibilities and the wider community. They will have a sense of connectedness with others and country and have a sense of mutual obligation. They will be able to appreciate the impact of their professional roles for social justice and inclusion related to national and global issues

This graduate capability is supported by:

## **Learning outcomes**

- Critically analyse the way in which native title has been placed in the framework of Australian property law.
- Communicate an advanced body of knowledge about property through active and informed participation in class discussion, and the presentation of sophisticated written material.

## **Assessment task**

- Tutorial Participation