

# From Teaching the Law of Real Property to Teaching Property Law in Australasian Law Schools

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'Personal property constitutes a great part of the nation's wealth and personal property law is a vital part of the law curriculum. Although it is an indispensable foundation for the study of core subjects, such as trusts and crime, as well as commercial law options, and a necessary complement to the study of land law, personal property law has not been given the attention it deserves.'

(Michael Bridge, *Personal Property Law*, 1993, at p vii.)

## INTRODUCTION

Professor Bridge's observation quoted above was made with reference to the curricula of law schools in England. He was happy to report that his Faculty of Law at Nottingham University had taken the first step towards rectifying the problem by creating room in their core syllabus for a separate personal property law course. In fact it was partly to provide teaching materials for this course that he wrote his book.

Professor Bridge's observation would apply with equal force to Australasian law schools.<sup>1</sup> Until recently personal property law was not sufficiently covered in most law schools in the region. Student exposure to personal property law was in most schools indirect and rudimentary through various commercial law subjects which, more often than not, were electives. As a result many students may have graduated without a sufficient grasp of the fundamentals of personal property law. However, the last five to ten years have seen a dramatic move to the incorporation of the teaching of personal property law in the law curriculum.<sup>2</sup> In Australia, apart from a few law schools which, like Nottingham University, have made room in their core

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<sup>1</sup> See also S. Fisher, *Commercial & Personal Property Law* (Sydney: Butterworths, 1997) at 16.

<sup>2</sup> The University of New South Wales and Macquarie University, pioneered teaching property over twenty years ago.

syllabi for a separate personal property law course,<sup>3</sup> the approach of most law schools has been to integrate the teaching of personal property law in their real property law courses. In other words they have switched from teaching real property or land law to teaching 'property law'. Currently in Australia, law schools which offer land law as a separate course constitute a rapidly dwindling minority.<sup>4</sup> In New Zealand, Otago University and the Victoria University of Wellington law schools offer an integrated property law course, but in the other schools the teaching of property law as an integrated subject has not yet been adopted.<sup>5</sup> Similarly, the Universities of Papua New Guinea and South Pacific, respectively, continue to teach land law as a separate core course with neither law school offering personal property law as a separate unit.

In Australia, the switch to teaching property law has partly been influenced by the recently implemented *Uniform Admission Rules*.<sup>6</sup> These Rules seek to ensure that persons applying for admission to practice throughout the country have comparable qualifications and experience. The Rules specify 11 'areas of knowledge'<sup>7</sup> and the content of each area of knowledge in which applicants must demonstrate an understanding and competence in order to satisfy the academic qualifications for admission. Relevantly, for present purposes, the *Rules* require that candidates must have undertaken a study of property law, both real (including the Torrens system land) and personal. The topics which should be covered in property are described as follows:<sup>8</sup>

Meaning of property and the concept of property; possession, seisin and title; nature and type (ie fragmentation) of proprietary interests; creation and enforceability of proprietary interests; legal and equitable remedies; statutory schemes of registration; acquisition and disposal of proprietary interests; concurrent ownership; proprietary interests in land owned by another; and mortgages.

Alternatively, candidates should have studied 'topics of such breadth and depth as to satisfy the following guidelines':

[K]nowledge of the nature and type of various proprietary interests in chattels and land, and their creation and relative enforceability at law and equity. Statutory schemes of registration for both general law and Torrens ... A variety of other topics might be included, eg fixtures,

<sup>3</sup> These schools include Sydney University, University of Queensland, and Bond University.

<sup>4</sup> Examples of law schools which still offer a separate land law course include James Cook University and the schools mentioned in n. 3. Some law schools, for example, the University of Western Australia offer a property law unit which essentially appears to be land law (see the property law unit description in the UWA Faculty of Law Handbook 1996 at 39). Schools which most recently switched to teaching property law include Queensland University of Technology and the Northern Territory University.

<sup>5</sup> Auckland and Waikato law schools offer in addition to land law a separate compulsory personal property law unit.

<sup>6</sup> For detailed information, see Centre For Legal Education, NSW, *The Lawyer's Admission Handbook* Issue No.3 April 1996.

<sup>7</sup> They are colloquially known as the 'Priestley 11' after his Honour Justice Priestley, Chairperson of the committee which proposed them, *ibid* at 3.

<sup>8</sup> Appendix A, Uniform Admission Rule, *supra* n. 6.

concurrent interests and more detailed treatment of such matters as sale of land, mortgages, easements, restrictive covenants, etc.<sup>9</sup>

Importantly, the *Rules* do not require these topics necessarily to be taught in a property law unit or any other particular unit. What they require is coverage of these topics in some subject or subjects of a law degree, or other such course undertaken by the candidate. Therefore, the *Uniform Admission Rules* could be complied with by offering the topics in separate land law and personal property law or commercial law units or whatever. The fact that most law schools in Australia have opted to offer a property law unit which covers both real and personal property (ie an integrated property law unit) must be seen as evidence of conviction on their part that that is the best way of incorporating personal property law into the core syllabus.

Since the switch from teaching land law to property law is relatively new in several schools, and the fact that many of the lecturers studied land rather than property, teething problems will inevitably be encountered. The aim of this paper is not so much to persuade land law lecturers who still cling to the traditional land law course to switch to teaching property law, as to share this writer's experience with other property law teachers and to try to generate discussion of teaching property law as opposed to teaching only land law or real property law and personal property law as separate core courses.<sup>10</sup> The paper suggests ways of integrating the teaching of personal property law into existing real property law courses.

#### ADVANTAGES OF TEACHING PROPERTY LAW

One of the main advantages of teaching real and personal property law together is that students obtain a better and more complete picture of the law than they are likely to if they studied only land law or even land law and personal property law as separate courses. Generally, students, especially in their early years of study, tend to think of legal rules and principles as only being applicable to the subject area in which they study them. For instance, they think the rules and principles they learn in land law only apply to land. Equally, seldom does it occur to many students that the same principles may apply to other forms of property. For example, because the principles of joint tenancy and tenancy in common are taught in land law many students might be left with the impression that land is the only property capable of being owned in joint or common ownership. Alternatively, they may be left with the impression that the law applicable to co-ownership of personal property is totally different when in fact it is substantially the same.<sup>11</sup> This

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<sup>9</sup> *Id.*

<sup>10</sup> Integration of property law was discussed in England in 1990 at a seminar organised by the Society of Public Law Teachers. The papers delivered at the seminar were subsequently published in P. Birks, (ed) *Examining the Law Syllabus - The Core* (Oxford: Oxford University Press, 1992). The papers are: K. Gray, 'The Teaching of Property', at 15; W. Swadling, 'Teaching Property Law: An Integrated Approach' at 22; and R. Cotterrell 'Context and Critique in Law Teaching (with reference to Property and Torts)' at 28. Some of the ideas expressed in these papers are referred to herein.

<sup>11</sup> J.W. Carter, P.Lane. G.J. Tolhurst and E.M. Paden Helmore *Commercial Law and Personal Property in New South Wales* (eds) (10<sup>th</sup> ed., Sydney: LBC, 1992) at 58-62.

mode of thinking could persist notwithstanding that *Williams v Hensman*,<sup>12</sup> the leading authority on unilateral severance of joint tenancy, is actually a case on personal property. Another example is the law of mortgages. Usually this is one of the major topics studied in land law. It would be instructive to conduct a survey of graduating students to find out how many of them know (apart from those who might have studied the law of securities over personal property, which is usually an elective unit) that personal property could also be mortgaged and that the general law principles of mortgages apply to mortgage of chattels. Another good example of the problem is the law of restrictive covenants. Students in land law are taught that in certain situations restrictive covenants may be enforced against third parties. Are restrictions imposed on the use of personal property also enforceable against third parties?<sup>13</sup> In the view of this writer, failure to refer to personal property in these instances could leave students with an incomplete picture of the legal position.

There are, of course, aspects of land law and personal property law which differ substantially. Indeed, certain legal principles are unique either to realty or personalty. For instance, the doctrines of tenure and estates which are deeply ingrained in land law do not apply to chattels.<sup>14</sup> Questions likely to arise in a property law class are: why were these doctrines not extended to personal property?<sup>15</sup> Why, at common law, are chattels capable of absolute ownership while land is not? Why is it that legal ownership of real property can be fragmented into smaller estates (such as leases and life estates) whilst legal ownership of personal property cannot be split and smaller legal interests carved out of it?<sup>16</sup> Again, to take another example, a contract of sale of land which is specifically enforceable gives a purchaser an equitable title before conveyance of the legal title, whereas an executory contract of sale of goods does not by itself vest an equitable interest in the buyer.<sup>17</sup> Why is this so? What are the possible policy or theoretical reasons for treating land and personal property differently in this regard? Are the reasons still justified in this day and age? Discussion of such questions could stimulate thinking in class and broaden understanding of law and policy. Moreover, it would encourage students to view the whole law of property in a systematic manner. It is

<sup>12</sup> (1861) J & H 546; 70 ER 862.

<sup>13</sup> In the controversial case of *De Mattos v Gibson* (1858) 14 De G & J 276; 45 ER 108, it was held that in certain circumstances, contractual restrictions relating to the use of personal property may bind third parties in the same way as they would if the object was real property. For a discussion of the principle of this case see S. Gardner, 'The Proprietary Effect of Contractual Obligations under *Tulk v Moxhay* and *Demattos v Gibson*.' (1982) 98 *LQR* 279.

<sup>14</sup> See F.H. Lawson and B. Rudden, *The Law of Property* (2nd ed., London: OUP, 1982) at 81 and 95.

<sup>15</sup> For discussion of some of the reasons for this, see Lawson & Rudden *supra* n. 14 at 95. B. Ziff, *Principles of Property Law* (Toronto: Carswell, 1993) at 140 - 141, suggests possible exceptions to the common law rule which precludes application of the doctrine of estates to personal property.

<sup>16</sup> It has been held that at common law an *inter vivos* gift of a chattel for life, or even for a day, was treated as absolute; Ziff, *Ibid* at 140. Also L.S. Sealy and R.J. Hooley, *Text and Materials in Commercial Law* (London: Butterworths, 1994) at 50, assert that legal ownership must be transferred entirely. Query: Whether bailments are not in fact subject to 'a law of estates'? See Lawson & Rudden, *supra* n. 14 at 96

<sup>17</sup> It has been decided in *Re Wait* [1927] 1 Ch 606 that a purchaser of goods either acquires a legal title or acquires nothing beyond a mere contractual right.

submitted that where the consideration of the legal principles to real and that of personal property are juxtaposed, the differences and similarities are more likely to have a greater impact on students than when they are made to study them in separate land law and personal property courses.

Land law, rightly or wrongly, is reputed to be a difficult and dry (boring) subject. This 'reputation' has been earned partly because of the complex historical origins of the common law principles of land law. A writer described English common law land law as a:

rubbish-heap which has been accumulating for hundreds of years, and ... is ... based upon feudal doctrines which no one (except professors in law schools) understands.<sup>18</sup>

Though many of the ancient common law doctrines and principles have become obsolete or have gradually been replaced by modern statutory law, their study in some instances is still essential to a clear understanding of current land law.<sup>19</sup>

Land law is also difficult because it involves a study of several complex relationships that pertain to land. Because land is a permanent object it is capable of accommodating several concurrent and at times conflicting interests. Students find analysing and conceptualising these various claims intellectually taxing. Furthermore, many students find land law difficult because they do not easily relate to several topics covered in the unit. Topics commonly covered in land law, such as freeholds, life estates, mortgages, land transfers, covenants and easements are as remote from their daily lives as can be.

Personal property law, in contrast with real property law, was largely developed by merchants who operated outside the feudal system and feudal doctrines. The common law did not develop complex diverse proprietary interests in personal property as it did with land. Only two separate legal interests could exist in a chattel at the same time, namely the interest of the true owner who is out of possession and that of a possessor (for example, a finder) asserting ownership.<sup>20</sup> This makes personal property law less confusing than land law.

Many students also find personal property law easier to comprehend than land law because personal property law relates to more day to day matters than that of land law. All students by the time they reach their teens will have had several dealings in personal property. They will have bought and sold some personal property or given and/or received gifts of personalty. Therefore, when studying the creation and transfer of title to goods for example, the factual situation is readily comprehensible to them. They have actually experienced such transactions.<sup>21</sup> An interesting example from this writer's property law class some years ago illustrates

<sup>18</sup> The unnamed writer was quoted by Riddell J in the Canadian case *Miller v Tipling* (1918), 43 OLR 88, 43 DLR 469 (CA) at 97 OLR. For good measure, the learned judge added that the writer implied that 'even the professors do not thoroughly understand [the feudal doctrines] or all understand them in the same way'. Case originally cited in Ziff, *supra* n. 16.

<sup>19</sup> Examples include the doctrine of tenure, old system of conveyancing, future interests, rule against perpetuities and so on.

<sup>20</sup> See Sealy and Hooley, *supra* n. 16 at 50.

<sup>21</sup> For this reason, said one American law professor, studying personal property in the first year is 'a good way of beginning law school'. See D.B. Burke Jr., *Personal Property* (St Paul: West Publishing Company, 1983) at xvii.

this point. When teaching the topic 'co-ownership of property', two mature age students raised several questions regarding co-ownership of land. The questions were evidently based on their personal experience. To get more students involved in the discussion this writer asked whether their parents co-owned their family house. A few students nodded their heads. Several did not seem to be sure. They were then asked whether any of them owned anything in common with someone else. The response to this question was amazing. It transpired that a number of students actually co-owned some of their textbooks. To save money, they had pooled together funds to purchase some of the books. Two students revealed that they had joint bank accounts with their partners. There were some who wanted to know whether their 'car-pool' arrangement amounted to co-ownership. There followed a very lively class discussion concerning the nature of co-ownership and the rights and obligations of the co-owners. Suddenly, it appeared to most students that the class was dealing with real issues which touched their daily lives. The same approach could be used in respect of several other topics in property law.

Property law provides a greater opportunity for theoretical discussion than land law.<sup>22</sup> Most property law units typically commence with a discussion of the concept of property. Coverage under this topic includes the characteristics of property, the changing nature of the object and subject of property, the philosophical justification of property and so on. Though the concept of property could (indeed should) be covered in land law, the scope for its discussion is likely to be limited to land-related issues. Cases which have nothing to do with land could be dealt with only by way of digression. In property law, on the other hand, the scope for discussion of the concept of property is almost limitless. It could range over native title and a whole variety of topics which would test the limits of the concept of property. The American case of *Moore v Regents of the University of California*,<sup>23</sup> which raises the issue whether spleen tissue excised from a patient is property of that patient is one of the intriguing cases discussed in most property law classes.<sup>24</sup> In my experience, most students find the discussion of the concept of property stimulating and very enjoyable. Even though the topic is dealt with at the very beginning of the course, when many students would still be feeling their way round, it generates much more class discussion and interest than any other topic. Essay topics which centre around the theory of property also tend to be very popular.

Besides the concept of property, more theoretical discussion is likely to be generated in property law than land law because of the constant back and forth reference to real and personal property. Whereas in land law students discuss rules

<sup>22</sup> As a testimony to this one needs to compare the content of some of the leading traditional land law textbooks, for example, E.H. Burn, *Cheshire & Burn's Modern Law of Real Property* (14th edn London: Butterworths, 1988); Megarry and Wade, *The Law of Real Property* (5th ed., London: Stevens, 1984); A. J. Bradbrook, S. V. MacCallum and A. P. Moore, *Australian Real Property Law* (2nd ed., Sydney: LBC, 1997); P. Butt, *Land Law* (3rd ed., Sydney: LBC, 1996) with books written on property (for example, Ziff, supra n.16; A.J. Bradbrook, S.V. MacCallum and A.P. Moore *Australian Property Law - Cases and Materials* (Sydney: LBC, 1996); M.A. Neave, C.J. Rossiter and M.A. Stone, Sackville and Neave; *Property Law - Cases and Materials* (5th edn Sydney: Butterworths, 1994).

<sup>23</sup> 271 Cal.Rep. 146 (1990).

<sup>24</sup> Other cases include *Woodworth v Woodworth* 337 NW 2d 332 (Mich.App. 1983), and *Graham v Graham* 574 P 2d 75 (Colo.S C 1978) which raises the issue whether a university degree is property under marital property status.

and principles as they apply to land, in property they go further and consider whether the same rules and principles apply to personal property. As previously indicated, some legal principles apply to real property and personal property in exactly the same way, whilst some do not. The discussion of the possible reasons for the similarities or differences not only infuse the subject with interest but also assist students to develop a more comprehensive appreciation of the law of property.

Teaching property law has certain practical advantages. Firstly, it allows for the integration of personal property law in the school's core syllabus without increasing the number of core courses. As all university lecturers know too well, proposals for the creation of new courses, especially compulsory ones, are sometimes met with apprehension from colleagues (and university committees charged with the duty to approve new courses). They may apprehend the likely impact of the new course on existing electives, teaching load calculation, student load, time-tabling, library resources and so on. Some colleagues may cynically view a proposal for a core personal property law course as an attempt to expand the property or commercial law 'empire' at the expense of other areas of interest, a touchy issue in some schools. A proposal to replace land law with an integrated property law unit is unlikely to cause much controversy because it does not entail creation of another compulsory subject. Even if it is proposed to increase the contact hours for the new course to accommodate personal property law, it is more likely to be accepted by colleagues than a proposal for a fresh and distinct personal property law course. Secondly, since the principles applicable to real and personal property overlap in some respects, valuable lecture time is saved by teaching them in one unit rather than two separate units. These are probably some of the reasons why most law schools in Australia have chosen to incorporate the teaching of personal property law in their core syllabus via property law instead of making room for a separate personal property law course.

#### **DISADVANTAGES OF TEACHING PROPERTY LAW**

Teaching property law has its shortcomings too. Critics may argue that the course does not cover the same number of topics and is not at the same level of depth as when land law and personal property law are taught separately. For example, where land law was previously taught for two hours a week and is then replaced by a property law unit with the same number of lecture hours, it is unlikely that all topics previously covered in land law will be dealt with, or if they are, it is unlikely that they will be covered at the same level of depth as was the case previously. Implicit in this criticism is the proposition that property law students could end up with a superficial knowledge of land law and personal property law.<sup>25</sup> This matter will be taken up again later on.

Another possible shortcoming of teaching real and personal property law together is that students may find the course too difficult and confusing. Land law is already regarded as a difficult course; adding personal property law might make it harder. Critics may argue that whilst an experienced property law lecturer could,

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<sup>25</sup> This probably partly explains why law schools like Sydney University, Auckland University and the University of Waikato, offer separate land law and personal property law courses.

without much difficulty, treat land and personal property law at the same level of comprehension, that would not be the case with students studying the subject for the first time. The back and forth movement from land law to personal property law might confuse students and make the course much more difficult to comprehend. In this writer's experience, however, there is no evidence to show that students find property law more confusing or harder than their counterparts who studied land law separately. A possible reason for this is that there are several legal principles which apply equally to real and personal property and so the form of property does not really make much difference. In fact, in some cases using examples from real and personal property makes it easier to explain and to understand the law.<sup>26</sup> Even where particular legal principles differ in their application to real property and personal property, students are not necessarily confused. As already stated, sometimes the discussion of the differences and the reasons for the differences stimulates student's thinking and understanding and makes the unit more lively. Nevertheless, property lecturers need to be careful not to overwhelm students with divergent principles of property law, especially where the law applicable to personal property and real property differs substantially.<sup>27</sup>

### COURSE MATERIALS

Compared to the situation with land law where the field is almost flooded with reputable textbooks, material on property law is meagre. This may be of some concern to lecturers and students alike. However, it is not an insurmountable problem and, certainly, it should not be a reason for not introducing property law. For users of casebooks there are currently two Australian property law casebooks. First, there is the well known *Sackville & Neave Property Law Cases and Materials*,<sup>28</sup> which was first published in 1971, and is now in its fifth edition. Hitherto, it had almost no competitor as the preferred prescribed casebook for property or land law in virtually all Australian law schools. However, it is now rivaled by the recently published *Australian Property Law - Cases and Materials*.<sup>29</sup> Both are excellent casebooks in terms of their layout, content and coverage of real and personal property law materials. To add variety to the source materials reference could be made to several American and Canadian property law casebooks.<sup>30</sup> Professor R G Hammond's book: *Personal Property: Commentary and Materials*,<sup>31</sup> is also highly recommended for materials on personal property law.

As for property textbooks within the Australasian law schools region, this writer is aware of only Dwyer and Teh's *Introduction to Property Law*.<sup>32</sup> It is good as an introductory book to property law but not as a major textbook. Outside the region,

<sup>26</sup> See the example of co-ownership of property, discussed above.

<sup>27</sup> For example, in the law of securities, the law applicable to mortgage of personal property and real property is very different.

<sup>28</sup> Neave Rossiter and Stone, *supra* n. 22.

<sup>29</sup> Bradbrook, MacCallum and Moore, *supra* n. 22. Significantly, they are also the joint authors of *Australian Real Property Law*, *supra* n. 22, which is prescribed reading in most Australian law schools.

<sup>30</sup> See, for example, D.M. Da Costa, R. Balfour and E.E. Gilles, *Property Law Cases, Text and Materials* (Toronto: Edmond Montgomery Publishers, 1990).

<sup>31</sup> (2<sup>nd</sup> ed., Auckland: OUP, 1990).

<sup>32</sup> (3<sup>rd</sup> ed., Sydney: Butterworths, 1997).



there is Professor Bruce Ziff's *Principles of Property Law*,<sup>33</sup> which, in this writer's my opinion, is one of the best property textbooks in existence. The book is very well written, easy to follow and enjoyable. The bulk of the book deals with the principles of land law, but throughout the author discusses the application of the same principles to personal property. Thus, a reader can immediately see the differences and similarities between real and personal property law. Though the book is Canadian, it has a very good general coverage of property law and constantly makes reference to Australian and New Zealand cases. This writer would recommend it highly, at least as a reference book. The other property law textbook is F H Lawson and Bernard Rudden, *The Law of Property*.<sup>34</sup> This is also an excellent general introductory book on the subject of property law. Students of property law will find it handy. Professor Bridge's *Personal Property Law*, referred to in the introduction to this paper, treats comprehensively personal property law. More directly relevant to Australia is Simon Fisher's recent publication: *Commercial and Personal Property Law*.<sup>35</sup> This book has a comprehensive coverage of personal property law in Australia and, to a certain extent, the position in New Zealand. Property law students may find aspects of this book a little 'heavy' as it tends to be too detailed, otherwise it would be a good reference book for property law.

#### CONTENT OF PROPERTY LAW COURSE

An issue which most property law lecturers are concerned about, especially when designing their first or even second property law course, is the extent of the integration of the teaching of real and personal property law: more specifically, the topics which should be covered and the breadth and depth of such coverage. There would appear to be no simple formula. Much depends on several factors. One of these is the number of lecture hours allocated for property law. The more contact hours per week allocated for the course the more likely extensive the coverage both in breadth and depth. Another important factor to consider is the range and content of other courses offered in the school. For example, if commercial law is offered as a compulsory subject it would be pointless to cover in depth the same topics in property law.<sup>36</sup> Even where other property-related subjects are electives, their content should be taken into account in designing the property law course. For example, Murdoch School of Law offers an elective unit called 'Law of Secured Transactions' which covers, among other things, the law of securities over personal property. Because of this course, in property law the law of mortgages over personal property is cursorily dealt with only to emphasise its similarities and differences with the law governing mortgages of real property. Students who are interested in the subject are advised to take the 'Law of Secured Transactions' unit. Several schools offer specialised courses such as landlord and tenant law;

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<sup>33</sup> *Supra* n. 15.

<sup>34</sup> See *supra* n. 14.

<sup>35</sup> *Supra* n. 1. See also Helmore Commercial Law and Personal Property in New South Wales, *supra* n.11

<sup>36</sup> For example, if creation and transfer of title to goods is (or will be) covered in commercial law, the topic just needs a brief coverage in property law when dealing with transfer of title to land. It would suffice to simply draw students' attention to broad differences and similarities. Sackville and Neave, *Property Law-Cases and Materials*, *supra* n. 22 cover transfer of title in a contract of sale of goods in just over one page (at 244-245).

traditional land rights; conveyancing and so on. The aspects of all these courses which impact on property law, should be taken into account in designing a property law unit. Property law lecturers in Australia should, of course, bear in mind when planning their unit the Uniform Admission Rules required area of knowledge of property law, earlier mentioned.<sup>37</sup>

Taking the above factors into consideration, a property law course should contain a substantial coverage of the concept of property and related issues.<sup>38</sup> Preferably, the concept of property should be dealt with at the beginning of the unit. This will give students a strong theoretical foundation and, hopefully, inject interest into the subject at an early stage. Apart from this theoretical aspect of the course, the property course should be structured around topics traditionally covered in land law.<sup>39</sup> The teaching of personal property law should be incorporated in each topic by considering the application of the relevant legal principle to personal property, illustrated, wherever possible, with case law. In this respect, the coverage of personal property law should constitute no more than twenty five per cent of the unit content, the rest of the course being devoted to real property law.

To some readers this proposal for the property unit content may seem to be a contradiction of the thesis of the paper, but it is not. What is being proposed is a cautious and gradual integration of the teaching of real and personal property. The integration should not be total in the sense that half the unit content is land law and the other half personal property law.<sup>40</sup> There are a number of reasons for this. Firstly, this way, it is easier to teach and for students to learn the subject. Land law has been taught as a core subject for decades and the topics are clearly laid out in a systematic manner in spite of its technicality and complexity. The existing land law course is converted into a property law course simply by introducing personal property law materials into the course as suggested above. The major task is to consider whether and how particular 'land law' principles apply to personal property. If they do not, the question is why? Secondly, structuring the unit around land law ensures that topics traditionally regarded as important to the learning of land law are covered.<sup>41</sup> This is particularly so as many of these topics are not taught in other courses and their omission could impact upon other areas of study. In contrast, various aspects of personal property law are covered in different commercial law electives offered in most law schools. These subjects include sale of goods, securities or credit law, intellectual property law and so on. Students who wish to pursue these topics have ample opportunity to do so. In any case it would be unnecessary duplication to study these topics in detail in property law. Of course, if specialised land law electives are offered in the school, as already indicated, they should also be taken into account in determining the content of the

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<sup>37</sup> See above at p 2.

<sup>38</sup> The extent of coverage depends, inter alia, on time allocated for teaching property. For example, at Murdoch School of Law, property is taught for 3 hours a week for the whole year. The first three weeks of lectures and tutorials are devoted to this topic. In addition, at least one essay topic for student assignments is selected from this area.

<sup>39</sup> These topics include: Doctrines of Tenure and Estates; Future Interests; Registration of Titles; Co-ownership; Leases; Mortgages; Easements and Restrictive Covenants.

<sup>40</sup> Compare Macquarie University School of Law, Property Law (Law310). According to the 1995 University Calendar, the unit 'provides a comprehensive integration of property law in its various manifestations - real, personal and intellectual property'.

<sup>41</sup> See the topics in the *Uniform Admission Rules* area of required knowledge of property, above at p. 2.

property law course. Finally, perhaps out of respect for tradition, land law should be the dominant subject in property law because historically land law has been an important component of the core subjects in all law schools. It would be unfortunate, especially for some of us who genuinely enjoy land law (including its historical development), if its importance in the law core curriculum were diminished by a drastic reduction of its coverage.

It should be stressed, however, that the teaching of personal property law in the property law course should not be treated as a token exercise. Certainly students should not be left with this impression. To ensure that this does not happen, tutorial and examination problems should, wherever possible, include issues on personal property. For example, a question on joint tenancy could focus on severance of joint tenancy of land and chattel or a bank account. Essay topics, wherever possible, should also require students to consider personal property in their discussion.

There are, of course, other ways of structuring an integrated property law course. For example, Swadling proposes an integrated property law course which combines the traditional land law course and aspects of equity or trusts law which deal with property.<sup>42</sup> The property course he proposes is a two year course occupying the same amount of space in the syllabus as the courses it will replace, namely, land law, equity and trusts. Professor Gray,<sup>43</sup> on the other hand, proposes what he terms an 'ideological approach' to teaching property law. He claims that this approach covers more or less the same ground as the integrated approach but is more comprehensive. Central to this approach is a broad definition of property not as a 'thing' but 'a power-relation created by the state's endorsement of private claims to regulate the access of strangers to the benefits or values inherent in particular resources'.<sup>44</sup> Gray argues for adoption of this broad definition: 'the property teacher should focus attention not exclusively or mainly on the legal rules relating to the acquisition and transfer of 'things', but on the totality of legal rules which either reinforce or limit one's total control over the access of strangers to various resources'.<sup>45</sup> He then envisages, as one of the main advantages of the ideological approach, that it compels consideration of the complex structures of the property phenomenon. For example, there is a network of remedial rules scattered and variously labeled in diverse fields of study (such as land law, personal property, tort, contract, fiduciary law, administrative law, trusts, equity and commercial law) which, stripped of the labels, are aimed to determine whether the plaintiff's remedy is recovery of the property in specie or award of a substitute value. The ideological approach, he says, provides a framework for bringing together and analysing systematically these rules. He concedes that the ideological approach to teaching property law can only be realised in the context of a property course spanning three consecutive years. It is the opinion of this writer that Gray's proposal, though intellectually stimulating, appears to be a little too ambitious and revolutionary. If it were adopted it would go to the very root of teaching; not only property law but also several other subjects. It is most unlikely that such a

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<sup>42</sup> 'Teaching Property Law: An Integrated Approach', see *supra* n. 11.

<sup>43</sup> *Supra* n. 11.

<sup>44</sup> *Id.*, at 19.

<sup>45</sup> *Id.*

proposal would be welcome in Australasian law schools or even in law schools elsewhere, at least in the short run.<sup>46</sup>

## CONCLUSION

In this paper an attempt has been made to demonstrate some of the advantages of teaching an integrated property law course as opposed to teaching only land law or to teaching land law and personal property law separately. The manner of integration proposed is fairly simple, but its consequences could be far reaching. Property law lecturers should continuously experiment until they find the ideal integration for their particular school, taking into account several factors. Admittedly, teaching property law has some shortcomings, some of which have been indicated in the paper; however, it is submitted that the advantages far outweigh the disadvantages. It is for this reason perhaps that most law schools in Australasia have in the last ten years switched from teaching land law to teaching property law.

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<sup>46</sup> Perhaps, the most compelling evidence of this is the fact that the University of Cambridge continues to teach land law.