

## **3011LAW Property Law 1: Comparative Concepts**

### **Course Description**

This course is a mandatory core course provided within the LLB program at Griffith Law School, Qld, Australia. The course is taught over 13 weeks at both the Gold Coast and Nathan campuses by Dr Allan Ardill and Dr Roshan de Silva Wijeyeratne (<http://www.griffith.edu.au/criminology-law/griffith-law-school/staff>)

This course assumes knowledge of the relationship between liberalism and law. Students explore the theoretical and liberal origins of the justifications for property as well as a critique of those justifications.

A major focus of this course is a theoretical and critical assessment of the legal justifications for property, and the relationship between property and its significance for race, class and gender.

### **Delivery**

Property Law 1 is taught through two interconnected modes: (1) lectures and discussion (assessed through the end-of-semester exam); and (2) a self-paced learning module comprised of instruction and readings (assessed through a multiple choice quiz). These two modes overlap and complement each other. The lectures introduce property concepts, theories, histories, and critique. The self-paced learning module focuses on the key interrelated property concepts of “possession”, “ownership”, and “title”, as well as introducing students to the law of personal property.

### **Aims**

This course is important for law students because ‘property’ is fundamental to human life. Property has also played a crucial role in the evolution of Western political and legal theory. Students who complete this course will appreciate the uniqueness of Australian property law as well as its historical foundations

in English law in the context of the colonisation of Australia. This course challenges students to critically assess the institutions assumed to justify and maintain property relations in Australia.

By the end of this course students should:-

- have a conceptual understanding of property and why we focus on Anglo-Australian property law.
- have the capacity to critically assess the institutions assumed to justify and maintain property relations in Australia
- have a practical understanding of the law relating to property, both real and personal
- have some conceptual understanding of the significance of Indigenous conceptions of land and country and Native Title.

## **Objectives**

After successfully completing this course you should be able to:

1. have a theoretical understanding of property as a concept in Western thought;
2. have the ability to critically assess theories justifying Western property rights;
3. be able to apply a theoretical understanding to the property law doctrines covered in the course;
4. have an understanding of the historical origins of Australian property law;
5. understand how English land law and property concepts travelled to Australia through the British colonisation of Australia and were established in the Australian colonies;
6. understand the context of Native Title and why and how it is still subordinate to the legal interests in land created by the common law;
7. be able to critically assess the 'public/private divide' in property; and
8. be able to communicate property theory, and concepts to others.

## Topics and readings

	Topic	Readings
1	<b>Introduction to the course:</b> Justifications and Boundaries - From Feudalism to Capitalism. Doctrines of Tenure and Estates.	MacDonald, McCrimmon, Wallace & Weir, <i>Real Property Law in Queensland</i> , third edition, LBC, 2010, Chapter 2.
2	<b>Justifications for Property:</b> property in ideas. The literary property debate and <i>Millar v Taylor</i> .	<i>Millar v Taylor</i> (1769) 98 ER 201; and M. Rose (1994) "The Author as Proprietor: Donaldson v Becket and the Genealogy of Modern Authorship" in B.Sherman & A. Strowel (eds) <i>Of Authors and Origins: Essays on Copyright Law</i> , Clarendon Press, pp. 23 – 55.
3	<b>Justifications for Property:</b> Hobbes, Locke and the Social Contract: property as a natural phenomenon or social construct - introducing the colonial relation.	M.D.A. Freeman (2001) (Extract) "Natural Law and the Social Contract" in <i>Lloyd's Introduction to Jurisprudence</i> , Sweet & Maxwell, pp 83 – 90 & 105 – 112; G. Sabine & T. Thorson (1973) "Chapter 24 Thomas Hobbes" in <i>A History of Political Theory</i> , Dryden Press, pp. 422 – 440; and C.B. Macpherson (1962) (Extract) "Locke: The Political Theory of Appropriation" in <i>The political theory of possessive individualism: Hobbes to Locke</i> , Oxford University Press, pp. 194 – 221.
4	<b>Hegel and Property:</b> idealism, dialectics, property and social relations.	M. Radin (1982) "Property as Personhood" 34 <i>Stanford Law Review</i> 957; and R.R. Williams (1997) "Chapter 7 Persons, Property, and Contract" in <i>Hegel's Ethics of Recognition</i> , University of California Press, pp. 133 – 151.
5	<b>Property as Social Relations:</b> Hegel and Marx.	K. Marx, Chapters 30, 31 & 32 in <i>Capital: A Critique of Political Economy</i> , Vol 1, Penguin Books, 1990, pp. 908 – 940; and K. Marx & F. Engels (1948) "Manifesto of the Communist Party" in <i>The Communist Manifesto and its relevance for today</i> , Resistance Books, 1998, pp. 45 – 74.
6	<b>Marxism and Property:</b> historic materialism and property.	<i>Ibid.</i>
7	<b>Neo-Marxism, Poststructuralism and</b>	P. Gabel (1982) "Reification in Legal Reasoning" in P. Beirne & Quinney (eds.) <i>Marxism and Law</i> , John

	<b>Property:</b> Property as ideology and the collapse of the public private divide.	Wiley & Sons, pp. 262 – 278; R.W. Gordon (1995) “Chapter 5 Paradoxical Property” in J. Brewer & S. Staves (eds) <i>Early Modern Conceptions of Property</i> , Routledge, pp. 95 – 110; and C. Sumner (1982) “The Ideological Nature of Law” in P. Beirne & Quinney (eds.) <i>Marxism and Law</i> , John Wiley & Sons, pp. 255 – 261.
8	<b>Women and Property:</b> Social construction and property as identity, identity as property.	S. Berns (1993) “Women in English Legal History” 12 <i>Uni. Tasmania LR</i> 26; M. Davies (2007) (Extracts) <i>Property: Meanings, histories, theories</i> , Routledge, 43 – 44, and 107 – 113; and J. Rifkin 1982) “Toward a theory of law and patriarchy” in P. Beirne & Quinney (eds.) <i>Marxism and Law</i> , John Wiley & Sons, pp. 295 – 301.
9	<b>Colonialism, Sovereignty, and Dispossession:</b> Perspectives of Land, Mapping, and Pastoralism - contrasts between North America and Australia.	J.C. Weaver (1996) “Beyond the Fatal Shore: Pastoral Squatting and the Occupation of Australia, 1826 – 1852” 101 <i>American Historical Review</i> 981. S. Ryan (1997) (Extract) “Land as a system of signs” in <i>The Cartographic Eye: How Explorers Saw Australia</i> , Cambridge University Press, pp. 121 – 127. L. Gandhi (1998) “Chapter 7 One World: the vision of postnationalism” in <i>Postcolonial Theory: A Critical Introduction</i> , Allen & Unwin, pp. 122 – 140. P. Fitzpatrick (2001) “Chapter 5 Imperialism” in <i>Modernism and Grounds of Law</i> , Cambridge University Press, pp. 146 – 182.
10	<b>Mabo and Common Law Native Title:</b> From Terra Nullius to limited rights.	R. Bartlett (1993) “Mabo: Another Triumph For The Common Law” 15 <i>Sydney Law Review</i> 178; L. Behrendt (1994) “No One Can Own the Land” 1 <i>Australian Journal of Human Rights</i> 43; D. Bird Rose (1996) “Chapters 1 & 2 – Country, and Wilderness and the Wild” in <i>Nourishing Terrains: Aboriginal Views of Landscape and Wilderness</i> , Australian Heritage Council, pp. 7 – 21; Dorsett (1998) “Chapter 11 Land Law and Dispossession: Indigenous Rights to Land in Australia” in S. Bright & J. Dewar (eds.) <i>Land Law: Themes and Perspectives</i> , Oxford University Press, pp. 279 – 301; A. Howe (1995) “A Poststructuralist Consideration of Property as Thin Air –Mabo, A

		Case study" 2 <i>E-Law: Murdoch University Electronic Journal of Law</i> ; R. Hunter (1996) "Chapter 1 Aboriginal Histories, Australian Histories, and the Law" in B. Attwood (ed) <i>In the Age of Mabo: History, Aborigines and Australia</i> , Allen & Unwin, pp. 1- 16; M. Mansell (1992) "Perspectives on <i>Mabo</i> : The Court Gives An Inch But Takes Another Mile" 2 <i>Aboriginal Law Bulletin</i> 4; and S. K. Muir (1998) "'This Earth Has An Aboriginal Culture Inside': Recognising the Cultural value of Country" Issues Paper No 23, <i>Native Title research Unit</i> , Australian Institute of Aboriginal and Torres Strait Islander Studies.
11	<b>Native Title after Mabo:</b> Limited rights curtailed. <i>Mabo to Yorta Yorta</i> .	<i>Ibid.</i>