

## LAWS4011: Property

Newcastle City Precinct  
Semester 2 – 2023



THE UNIVERSITY OF  
NEWCASTLE  
AUSTRALIA

# OVERVIEW

### Course Description

Introduces students to the notion of property and interests in property, covering such topics as distinctions between real and personal property, notions of title and ownership, legal and equitable interests in property, and the enforceability of proprietary interests. The bulk of the course addresses the area of real property, and the principles of the Torrens system in particular.

### Compulsory Attendance

Attendance at all classes will be monitored and records maintained by the Course Coordinator. In order to satisfy the “Compulsory Attendance” requirement, students must be present at a minimum of 80% of scheduled classes (i.e. ten (10) seminars) as spelled out in the course outline, unless they are able to demonstrate that their absence falls within the Adverse Circumstances policy. Unless this requirement is met, despite marks awarded in other assessment items, the student will receive a zero mark and an CF grade for the course.

Please note that if you miss more than 2 classes for reasons that fall within the University’s adverse circumstances policy you may be required to complete additional assessment items to ensure that you have completed the required volume of learning for this course.

Note also that “Attendance” means attending the given class for its full length. Where a student leaves class early, attendance may not be credited.

### Skills Focus

Indigenous awareness  
Assess and use resources  
Theory and methodology  
Advance problem solving

### Requisites

This course is only available to students enrolled in the Bachelor of Laws and associated combined degree programs or Bachelor of Laws (Honours) and associated combined degree programs.

### Assumed Knowledge

LAWS1010, LAWS1011, LAWS1020, LAWS1021, LAWS2030, LAWS3040, and LAWS3041.

### Contact Hours

**Newcastle City Precinct**  
**Online Activity**  
Online  
2 hour(s) per Week for Full Term  
  
**Seminar**  
Face to Face On Campus  
2 hour(s) per Week for Full Term

### Unit Weighting

10

# COURSE OUTLINE

[www.newcastle.edu.au](http://www.newcastle.edu.au)

CRICOS Provider 00109J

---

<b>Workload</b>	Students are required to spend on average 120-140 hours of effort (contact and non-contact) including assessments per 10 unit course.
-----------------	---------------------------------------------------------------------------------------------------------------------------------------

## CONTACTS

**Course Coordinator** Dr Glen Anderson  
Glen.Anderson@newcastle.edu.au  
02 4921 5980  
Consultation: Friday 5-6PM

**Tutor** Dr David Tompkins  
David.Tompkins@newcastle.edu.au  
Consultation: TBA

**School Office** **Newcastle Law School**  
5th Floor  
NU Space  
409 Hunter Street  
Newcastle  
Law-School@newcastle.edu.au  
+61 2 4921 8666

## SYLLABUS

**Course Content** Topics covered will include:

- Distinctions between real, personal and intangible property,
- The notions of title and ownership,
- The distinctions between legal and equitable interests in property,
- An overview of the schemes for the registration of interests in land, especially the Torrens system,
- The enforceability at law and in equity of proprietary interests and
- The private regulation of land use through easements and restrictive covenants.

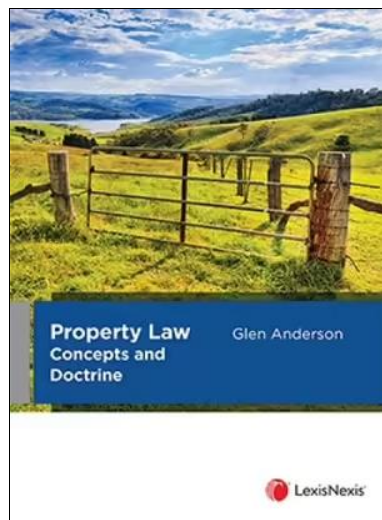
**Course Learning Outcomes** **On successful completion of this course, students will be able to:**

1. Identify the various types of property interests protected by property law in New South Wales (particularly land), and explain how these property interests are created, transferred and extinguished
2. Apply legal principles (using case law and statute) to critically analyse and solve problems that may arise in practice - particularly where property interests overlap or conflict.
3. Demonstrate an aptitude for the acquisition, interpretation, analysis and scholarly utilisation of appropriate research sources
4. Read and analyse cases to see how legal principles operate in practice and gain a better understanding of how common law and statute regulate the holding, use transfer and conflict of property rights. Navigate the relevant property law statutes to identify the relevant sections, and to identify when a section may apply, and how it will operate.
5. Identify policy issues as they apply to Property Law, to critically analyse and synthesise a variety of policy arguments, and develop their own position on a policy issue.
6. Give a concise and accurate briefing on the relevant property law issues and principles of a case. Contribute effectively to group discussion of legal principles in a way that develops the understanding of all members of the group. Summarise and integrate the literature on a key legal policy issue, and articulate their own position within that debate. Write a concise and accurate legal advice on a property law problem.

## Course Materials

The prescribed textbook for this course is:

- Glen Anderson, *Property Law: Concepts and Doctrine* (LexisNexis Australia 2022).



The following books are also recommended for general reading and reference and will be available (mostly on closed reserve) in the Law Library:

- Alexander, Gregory S. and Eduardo Moises Penalver, *An Introduction to Property Theory* (2012).
- Barnes, M., (QC), *The Law of Estoppel* (2020).
- Bartlett, Richard, *Native Title in Australia* (4<sup>th</sup> ed 2019).
- Bennion, Tom, David Brown, Rod Thomas and Elizabeth Toomey, *New Zealand Land Law* (3rd ed 2017) [Highly respected New Zealand text for comparison].
- Bevan, Chris, *Land Law* (2nd ed 2021).
- Bradbrook, Adrian and Marcia Neave, *Easements and Restrictive Covenants in Australia* (3rd ed 2010).
- Bradshaw, Karen, *Wildlife as Property Owners: A New Conception of Animal Rights* (2020).
- Bransdrove, Matthew and Marcus Young, *The Essential Guide to Mortgage Law in Australia* (2013).
- Bridge, Michael, *Personal Property Law* (2015).
- Buck, Andrew R., *The Making of Australian Property Law* (2006).
- Burn, Edward and John Cartwright, *Cheshire and Burn's Modern Law of Real Property* (18th ed 2011) [Excellent UK source on matters of property law].
- Butt, Peter, *Land Law* (6th ed 2010).
- Chambers, Robert, *An Introduction to Property Law in Australia* (4<sup>th</sup> ed 2018).
- Congost, Rosa, Jorge Gelman and Rui Santos (eds) *Property Rights in Land* (2016).
- Cooke, Elizabeth, *Land Law*, (2nd ed. 2012).
- Cooke, Elizabeth, Stuart Bridge and Martin Dixon, *Megarry and Wade: The Law of Real Property* (9th edition 2019) [Excellent source on UK property law with fastidious case law detail stretching back into history].
- Cooke, Elizabeth, *The Modern Law of Estoppel* (2000).
- Davies, Margaret, *Property: Meanings, Histories, Theories* (2007).
- Dixon, Martin, *Modern Land Law* (12th ed 2021) [A UK text for comparison – interestingly Dixon also produces a world-renowned textbook on international law].
- Douglas, Simon, Robin Hickey and Emma Waring (eds), *Landmark Cases in Property Law* (2015).
- Duncan, W. D., and W. M. Dixon, *The Law of Real Property Mortgages* (2007).
- Edgeworth B. J., Chris Rossiter, Pamela O'Connor, Andrew Godwin, Leon Terrill, *Sackville and Neave Property Law: Cases and Materials* (11th ed 2020).
- Edgeworth, Brendan, *Butt's Land Law* (7th ed 2017).
- Esmaeili, Hossein and Brendan Grigg (eds) *The Boundaries of Australian Property Law* (2016).

- 
- Farran, Sue and Donald Paterson, *South Pacific Property Law* (2015).
  - Gray, Janice, Neil Foster, Heather Roberts and Darryn Jensen, *Property Law in New South Wales* (5th ed 2022).
  - Gray, Kevin and Susan Francis Gray, *Elements of Land Law* (5th ed 2009) [Excellent source on UK property law, but with high compatibility and doctrinal cross-over for Australian students and practitioners].
  - Graziadei, Michele and Lionel Smith (eds) *Comparative Property Law: Global Perspectives* (2017).
  - Grinlinton, David, and Prue Taylor (eds) *Property Rights and Sustainability: The Evolution of Property Rights to Meet Ecological Challenges* (2011).
  - Helmore, B. A., *The Law of Real Property* (2nd ed 1966) [Older source on New South Wales property law but still very important]
  - Hepburn, Samantha, *Australian Property Law: Cases, Materials and Analysis* (5th ed 2020).
  - Hepburn, Samantha, *Principles of Property Law* (3rd ed 2013).
  - Hepburn, Samantha, *Real Property Law* (3rd ed 2009).
  - Heydon, D. J., M. Leeming, and P. Turner, *Meagher, Gummow and Lehane's Equity Doctrines and Remedies* (5th ed 2014) [World-leading source on matters of equity with content applicable to the property lawyer].
  - Hudson, Alistair, *Equity and Trusts* (10th ed 2021) [contains discussion of important aspects of equity and property law from a UK perspective].
  - Isdale, William, *Compensation for Native Title* (2022).
  - Jackman, Bronwen and Kip Werren, *Property Law* (2011).
  - Kodilinye, Gilbert, *Commonwealth Caribbean Property Law* (5th ed 2022).
  - Kuprecht, Karolina, *Indigenous Peoples' Cultural Property Claims: Repatriation and Beyond* (2014).
  - Lane, Patricia, Derwent Coshott and S Chapple, *Sale of Land in New South Wales* (6th ed 2018).
  - Laura-Leigh Cameron-Dow, *Property Law* (3rd ed 2017).
  - Lim, Hilary and Anne Bottomley (eds), *Feminist Perspectives on Land Law* (2007).
  - Mackie, Ken, Elise Bennett Hiestad and John Page, *Australian Property Law in Context* (2012).
  - McFarlane, Ben, *The Law of Proprietary Estoppel* (2014).
  - Miller, Robert J., Jacinta Ruru, Larissa Behrendt and Tracey Lindberg, *Discovering Indigenous Lands: The Doctrine of Discovery in the English Colonies* (2010).
  - Moore, Anthony P., Lynden Griggs and Scott Grattan, *Australian Real Property Law* (7th ed 2020) [Excellent textbook on all matters of property law, has an Australian-wide focus, rather than New South Wales specifically].
  - Moore, Anthony P., Scott Grattan and Lynden Griggs, *Australian Property Law: Cases and Materials* (5th ed 2016).
  - Moore, Geoffrey, *Essential Real Property* (2005).
  - Moore, Geoffrey, *Real Property* (3rd ed 2012).
  - Morgan, Pamela, *Lang and Morgan's NSW Estate Agency Law and Practice* (6th ed 2008).
  - Munzer, Stephen R., *A Theory of Property* (1990).
  - Ong, D., *Ong on Estoppel* (2020).
  - Ong, D., *Ong on Specific Performance* (2013).
  - Owusu, Sampson and David Simmons, *Commonwealth Caribbean Land Law* (2015).
  - Peden, Elizabeth and Wayne Muddle, *Strata Law in New South Wales* (2021).
  - Penner, James and Henry E. Smith (eds) *Philosophical Foundations of Property Law* (2014).
  - Perry, Melissa and Stephen Lloyd, *Australian Native Title Law* (2nd ed 2018).
  - Price, Rohan and Lynden Griggs, *Property Law: In Principle* (2nd ed 2008).
  - Proudhon, Pierre-Joseph, edited by Donald R. Kelley and Bonnie G. Smith, *Proudhon: What is Property?* (1994).
  - Purdy, Jedediah, *The Meaning of Property* (2011).
  - Radan, Peter and Cameron Stewart, *Principles of Australian Equity and Trusts* (5th ed 2022) [Excellent source for equity in general – useful content focused specifically on property law matters].
  - Radin, Margaret, *Reinterpreting Property* (1996).
  - Richardson, Victoria, *Property Law* (2009).
  - Seddon, Nicholas, *Seddon on Deeds* (2015).
  - Sheehan, Duncan, *The Principles of Personal Property Law* (2011).
  - Smith, Roger J., *Property Law* (8th ed 2014) [A UK text for comparison].
-

- Sprankling, John, G., *The International Law of Property* (2014).
- Strelein, Lisa, *Compromised Jurisprudence: Native Title Cases Since Mabo* (2nd ed 2009).
- Tooher, J. G., and B. M. Dwyer, *Introduction to Property Law* (4th ed 2002).
- Tyler, E. G., P. W. Young and C. E. Croft, *Fisher and Lighterwood's Law of Mortgage* (2nd Australian ed 2005) [Authoritative source on matters of mortgage law].
- Wallace, Anne, Les McCrimmon and Michael Weir, *Real Property Law in Queensland* (5th ed 2020) [Although focused on Queensland, this work still offers excellent insights into generic aspects of Australian real property law].
- Webb, Eileen and Margaret Stephenson, *Land Law* (5th ed 2020).
- Winchester, Simon, *How the Hunger for Ownership Shaped the Modern World* (HarperCollins 2021).
- Young, P. W., A. Cahill and G. Newton, *Annotated Conveyancing and Real Property Legislation New South Wales, 2017-2018 edition* (2017) [Very useful source for New South Wales legislation].
- Young, Peter, Clyde Croft and Megan Louise Smith, *On Equity* (2009) [Excellent source for equity in general – useful content focused specifically on property law matters].
- Ziff, Bruce, *Principles of Property Law* (6th ed 2014) [A highly respected Canadian text for comparison].

## SCHEDULE

Week	Week Begins	Topic
1	17 Jul	What is Property? Definitions and Classifications
2	24 Jul	Philosophies of Property
3	31 Jul	Tenure, Estates and Fixtures
4	7 Aug	Native Title
5	14 Aug	Creation, Acquisition and Transfer of Legal and Equitable Interests
6	21 Aug	Old System Title and Priorities Between Legal and Equitable Interests
7	28 Aug	Torrens Title I: Indefeasibility and Exceptions
8	4 Sep	Torrens Title II: Priorities Between Unregistered and Registered Interests
9	11 Sep	Mortgages
10	18 Sep	Common Ownership and Leases
11	9 Oct	Easements and Profits à Prendre
12	16 Oct	Covenants
13	23 Oct	No Lecture

## ASSESSMENTS

This course has 3 assessments. Each assessment is described in more detail in the sections below.

	Assessment Name	Due Date	Involvement	Weighting	Learning Outcomes
1	Research Essay	10 September 11PM	Individual	40%	1, 2, 3, 4, 5, 6
2	Seminar Engagement and Participation	NA	Individual	10%	1, 2, 3, 4, 5, 6
3	Formal Examination	TBA by exams	Individual	50%	1, 2, 3, 4, 5, 6

### Late Submissions

The mark for an assessment item submitted after the designated time on the due date, without an approved extension of time, will be reduced by 10% of the possible maximum mark for that assessment item for each day or part day that the assessment item is late. Note: this applies equally to week and weekend days.

### Assessment 1 - Research Essay

Assessment Type      Essay

<b>Description</b>	<p>The first assessment will be an essay question with a word limit of <u>1500 words</u>. The purpose of this assessment is to allow students to explore some of the general legal theory, policy issues and doctrine that arise in current property law and to develop skills in legal research. There are a variety of questions to choose from. Students must indicate the question number (i.e., write the number) on the front coversheet attached to their paper. Students must also type the question at the top of the first page of the essay. These words, along with the footnotes and bibliography, will be <u>excluded</u> from the overall word count.</p> <p>With regards to referencing, please follow the Australian Guide to Legal Citation (fourth edition). The Guide can be viewed online. <a href="https://drive.google.com/file/d/1TGvYqdqQnOU-GtSV3l25ft6EyYlx_w4U/edit">https://drive.google.com/file/d/1TGvYqdqQnOU-GtSV3l25ft6EyYlx_w4U/edit</a></p>
<b>Weighting</b>	40%
<b>Due Date</b>	10 September 11PM
<b>Submission Method</b>	<p>You are required to submit your research essay to Turnitin and provide a Turnitin ID on the cover sheet of your assignment. You may submit assignments for self-checking any time prior to the due date. Note that Turnitin requires you to allow 24 hours between each submission.</p> <p>Please note that all other forms of submission will be disallowed under all conditions. Plenty of advance warning has been given and no deviation from the prescribed submission method will be permitted. For example: papers which are emailed to the co-ordinator will not be accepted. Papers which are submitted after the specified due date or time will incur penalty as prescribed by official university policy.</p>
<b>Assessment Criteria</b>	<p>Copies of the Assignment Cover Sheet may be found at: <a href="http://www.newcastle.edu.au/service/student-forms/Electronic copy">http://www.newcastle.edu.au/service/student-forms/Electronic copy</a></p> <p>Six criteria will be used:</p> <ol style="list-style-type: none"> <li>1. Identifies the relevant principles of property law.</li> <li>2. Develops a persuasive and well-reasoned response to the question.</li> <li>3. Intelligently utilizes relevant research sources including cases, journal articles, books and legislation.</li> <li>4. Writes clearly, concisely and within the word limit.</li> <li>5. Correctly cites authorities and references other people's work using AGLC4 format.</li> <li>6. Structures the analysis in a logical way (using headings where appropriate).</li> </ol>
<b>Return Method</b>	TBA.
<b>Feedback Provided</b>	Yes, but only if formally requested at front of essay.

## Assessment 2 – Seminar Engagement and Contribution

<b>Assessment Type</b>	Seminar Engagement and Contribution
<b>Description</b>	<p>The seminar participation assesses the ability to critically read, analyse and reflect on property law, whilst learning within a collaborative environment.</p> <p>Seminar participation marks will be awarded on the basis of the quality of each student's overall seminar participation.</p> <p>Matters that will be taken into account will be regular attendance and sensible/thoughtful contributions to matters being discussed. Discussion points must relate to the designated subject and be based upon, or referable to, the lecture and readings.</p> <p>A seminar attendance roll will be taken in each class to allow accurate attendance records. Students are responsible for ensuring that if their name has not been called, or if they arrive late to class their attendance has been noted by the tutor. The record of attendance generated at the conclusion of the semester will hence be unassailable and incontrovertible. It goes without saying, of course, that falsely stating that someone has attended when they have not is academic misconduct, and would be likely to impact on the issue of whether someone was a "fit and proper" person to be admitted as a legal practitioner. Students who depart half way through a seminar without providing their tutor with a satisfactory explanation will not be recorded as having attended the class. Half class attendance does not count for this assessment item. If there is an ongoing academic clash for any part of the seminars (which may include clinical requirements for attendance at the Legal Centre), students should contact the co-ordinator as soon as becoming aware of this to discuss the attendance issue. Should illness affect attendance on a particular occasion, students may notify the co-ordinator by email, either before, or within the week after, the occasion. It is emphasized here that a</p>

law degree is a serious academic undertaking and cannot be properly attempted if seminars are not attended.

- There is a compulsory attendance requirement in this course. In order to satisfy the "Attendance" requirement, students must be present at a minimum of 80% of scheduled classes as spelled out in the course outline, unless they are able to demonstrate that their absence falls within the Adverse Circumstances policy. Unless this requirement is met, despite marks awarded in other assessment items, the student will receive a zero mark and an CF grade for the course.

Please note that if you miss more than 2 classes for reasons that fall within the University's adverse circumstances policy you may be required to complete additional assessment items to ensure that you have completed the required volume of learning for this course.

**Weighting**

**Due Date**

**Submission Method**

**Assessment Criteria**

10%

NA

NA

Five criteria will be used:

1. Relevance to the question or discussion point.
2. Accuracy of information/argument.
3. Demonstrated links to corresponding readings.
4. Clarity of expression.
5. Reasoned interaction with points made by other students (including tolerance of different viewpoints).

**Return Method**

**Feedback Provided**

NA.

No.

## Assessment 3 – Formal Examination

**Assessment Type**

**Description**

Formal Examination

This will be an open book examination conducted in the examination period and scheduled through the University central administration. Notes and books (other than University library books) may be brought into the examination room. The exam will require application of the principles taught in the course to particular fact situations. Further information will be provided by the convenor regarding the general content of the examination closer to the formal examination period. Students are of course responsible for arranging to be present for the allocated examination dates when they are published according to University procedures.

**Weighting**

**Due Date**

**Submission Method**

**Assessment Criteria**

50%

TBA

NA

Three criteria will be used:

1. Identifies and applies the relevant principles of property law.
2. Develops a persuasive and well-reasoned response to the question(s).
3. Structures the analysis in a logical way (using headings where appropriate).

**Return Method**

**Feedback Provided**

NA

No

## ADDITIONAL INFORMATION

**Grading Scheme**

This course is graded as follows:

Range of Marks	Grade	Description
85-100	High Distinction (HD)	Outstanding standard indicating comprehensive knowledge and understanding of the relevant materials; demonstration of an outstanding level of academic achievement; mastery of skills*; and achievement of all assessment objectives.
75-84	Distinction (D)	Excellent standard indicating a very high level of knowledge and understanding of the relevant materials; demonstration of a very high level of academic ability; sound development of skills*; and achievement of all assessment objectives.
65-74	Credit (C)	Good standard indicating a high level of knowledge and understanding of the relevant materials; demonstration of a



		high level of academic achievement; reasonable development of skills*; and achievement of all learning outcomes.
50-64	Pass (P)	Satisfactory standard indicating an adequate knowledge and understanding of the relevant materials; demonstration of an adequate level of academic achievement; satisfactory development of skills*; and achievement of all learning outcomes.
0-49	Fail (FF)	Failure to satisfactorily achieve learning outcomes. If all compulsory course components are not completed the mark will be zero. A fail grade may also be awarded following disciplinary action.

\*Skills are those identified for the purposes of assessment task(s).

## Communication Methods

Communication methods used in this course include:

## Course Evaluation

Each year feedback is sought from students and other stakeholders about the courses offered in the University for the purposes of identifying areas of excellence and potential improvement.

## Oral Interviews (Vivas)

As part of the evaluation process of any assessment item in this course an oral examination (viva) may be conducted. The purpose of the oral examination is to verify the authorship of the material submitted in response to the assessment task. The oral examination will be conducted in accordance with the principles set out in the [Oral Examination \(viva\) Procedure](#). In cases where the oral examination reveals the assessment item may not be the student's own work the case will be dealt with under the [Student Conduct Rule](#).

## Academic Misconduct

All students are required to meet the academic integrity standards of the University. These standards reinforce the importance of integrity and honesty in an academic environment. Academic Integrity policies apply to all students of the University in all modes of study and in all locations. For the Student Academic Integrity Policy, refer to <https://policies.newcastle.edu.au/document/view-current.php?id=35>.

## Adverse Circumstances

The University acknowledges the right of students to seek consideration for the impact of allowable adverse circumstances that may affect their performance in assessment item(s). Applications for special consideration due to adverse circumstances will be made using the online Adverse Circumstances system where:

1. the assessment item is a major assessment item; or
2. the assessment item is a minor assessment item and the Course Co-ordinator has specified in the Course Outline that students may apply the online Adverse Circumstances system;
3. you are requesting a change of placement; or
4. the course has a compulsory attendance requirement.

Before applying you must refer to the Adverse Circumstance Affecting Assessment Items Procedure available at:  
<https://policies.newcastle.edu.au/document/view-current.php?id=236>

## Important Policy Information

The 'HELP for Students' tab in UoNline contains important information that all students should be familiar with, including various systems, policies and procedures.

## Wellness Contacts

There are a variety of pressures on law students, and being able to perform well academically under pressure, without excessive stress will contribute to enhanced outcomes in wellbeing and academic results. Reach out to support services and learn ways to maintain your mental health, deal with stress and common issues like perfectionism, procrastination and anxiety.

To access UON support:

<https://www.newcastle.edu.au/current-students/support/personal>

Ph: 4921 6622 or email: [counselling@newcastle.edu.au](mailto:counselling@newcastle.edu.au)

For support outside of office hours call the University Crisis Support Line on 1300 653 007 or for chat sms 0488 884 165.



---

For immediate support contact Lifeline 24/7 on 13 14 11 or <https://www.lifeline.org.au/>

*This course outline was approved by the Head of School. No alteration of this course outline is permitted without Head of School approval. If a change is approved, students will be notified and an amended course outline will be provided in the same manner as the original.*

© 2023 The University of Newcastle, Australia