**Property law**

* **Real property - realty**
* **Personal property – personalty or chattels**

- real property consists of all freehold (as opposed to leasehold) interests in land

Personal property:

* **Chattels real** – leasehold interests in land
* **Chattels personal** – pure personalty, meaning goods that are further subdivided into:
  + **Choses in possession** – tangible, movable objects such as car, watch or pet
  + **Choses in action** – intangible forms of property, i.e. rights such as debts, patents, copyrights, stocks and shares

**Features of ownership/property rights**

* To possess a thing
* The right to use and enjoy
* All others are excluded – exclusive right
* Right to transfer – to alienate, or destroy the ting

**Acquiring property rights:**

* By creating something
* By occupation – abandoned thing, thing with no owner
* By accession – e.g. young animals of the owner’s pet
* By succession

- property represents everything that is or can be the subject of ownership, whether corporeal (physical) or incorporeal (non-physical) such as rights, debts, copyrights, etc. Property means ownership in law.

**Ownership**

- the relationship, which exists between a person and certain rights that are vested in him

- ownership is a de iure relationship, there is no need to possess the thing

Categorization:

* **Sole ownership** – ownership of one, sole owner
* **Co – ownership** – ownership shared by two or more persons
  + **Joint co-ownership** – joint owners own the whole property jointly
  + **Common co-ownership** – each owner has an individual share in the property
* **Corporeal ownership** – actual ownership of land or chattels, ownership of a thing or chose in possession, such as watch
* **Incorporeal ownership** – ownership of a right only, e.g. the right to recover a debt by an action in law, or the ownership of a chose in action
* **Legal and equitable ownership**
* **Vested** (absolute ownership, the owner’s title to ownership is perfect) and **contingent,** **conditional** ownership (owner’s title is not perfect but can become perfect on the fulfillment of some condition)

**Possession**

**-** physical control of a thing by a person

**-** a de facto relationship

- the right under which an individual can exercise control and power over property to the exclusion of all others

- absent evidence to the contrary, it provides evidence of ownership, entitling the possessor to continue peaceful possession against everyone else except someone with a superior right

- possession of a thing for long enough can become ownership

Two types of possession:

* **Actual** – when an individual knowingly has direct physical control over an object at a given time
* **Constructive** – the power and intent to control a particular item, even though it is not physically in that person’s control

(a key to the bank safe-deposit box which contains the property)

- in case of possession acquired without consent, it may also become a property right that will be protected by law and may be enforced against everyone except those who can prove a better right of possession

- **adverse possession** – arising from the occupation and use of land without permission of the owner

**Personal Property**

- all property that is not real property

Acquiring title to personal property

- by sales contract, by taking of a negotiable instrument (bill of exchange, bank check, promissory note), by gift, accession, possession, operation of law, finding, bailment or creation

- the ownership interest of the finder depends on how the true owner became separated from his property – when lost property is found, the finder receives an ownership interest inferior to the interest of the original owner, if personal property has been abandoned, the finder gets title superior to all of others including the original owner

- a common transaction involving bailment is hire purchase, in which the seller lets the buyer have possession of the thing before it is paid for – when it is fully paid, ownership of the thing is transferred from seller to buyer

**Real Property and Land Law**

- real property is land and ordinarily anything erected on, growing on or affixed to it, including buildings and crops

- the term is also applied to any rights that arise from the ownership of land

- the terms **real estate** and **real property** generally refer to land

- the term land also includes everything of a permanent nature over or under it (minerals, oil, gases)

- a person owning or possessing a real property has an estate or an interest in the property

**Legal estates**

- the Crown may only own land in the absolute way

- other persons hold an estate or interest in land, which gives them certain rights over that land for a definite or indefinite period of time

- these rights may be broadly classified as legal estates, legal interests and equitable interests

- since the Law of Property Act 1925 only two legal estates now exist:

* **Fee simple absolute in possession (or freehold estate)**
* **Term of years absolute (or leasehold estate)**

**Fee simple absolute in possession**

* **Fee** – this means that the estate is capable of being inherited. It may devolve to any person under the deceased’s will, or if he died without leaving a will it would devolve to his relatives. A fee estate would end if a person died leaving no will and no relatives – in such case the land would revert to the Crown.
* **Simple** – without a provision as to tail – a fee simple may pass to any relative or anyone else under a will. Fee tail could only pass to lineal descendant. It could not pass, for example, to a brother or a parent or as a gift in will. Fee tail, or a fixed line of inheritance succession was abolished in England in 1925
* **Absolute** – this word distinguishes a fee simple, which will continue forever, from a fee which may be determinable
* **In Possession** – this does not imply only physical possession but also the right to receive rents and profits

- the distinctive feature of a freehold estate is that it is of uncertain duration since it cannot be known when the estate will revert to the Crown

**Term of years absolute**

- this term means a lease

- it is an estate, which, in contrast to a freehold estate, is of certain duration

- it is a grant by landlord to a tenant of exclusive possession of the property leased

**Legal interests**

* **Easement** – a right to use or restrict the use of another person’s land in some way, for example a right of way or a right of water, right of light
* **Mortgages** – a form of security for a loan, a charge on land to secure a debt. It involves the transfer of an interest in land from the borrower (mortgagor) to the lender (mortgagee) with a provision for redemption on repayment of the loan

**Equitable interests**

- they can only exist as a result of an express or implied trust

- a trust arises when a person (trustee) holds property on trust for another (the beneficiary).

- A conveys his property to B for the use of C

- the common law took no notice of A’s intention that B should hold the land for C

- C’s only protection was in equity

- common law acknowledged that at common law the legal estate was vested in B, but B had to act in accordance with A’s intentions

**Leaseholds**

- leasehold is a form of property tenure where one party buys the right to real property for a given time (unlike in fee simple estates which are the estates of uncertain duration)

- a lease is a legal estate that can be bought and sold on the open market

- characteristics of lease are exclusive possession for a fixed of periodic term at a rent.

Types of leaseholds:

* **Estate for years**-leasehold estate for any specific period of time (it is not automatically renewed). Termination can occur because of the parties’ mutual agreement, a condition stated in the lease or an operation of law
* **Periodic tenancy –** for a definite time, often month to month and automatically renews until a contrary notice is given by the lessor or lessee
* **Tenancy at will** – either party may end the tenancy at any time, but usually upon a notice
* **Tenancy at sufferance** – continues after the lease has expired. Most jurisdictions hold that this leasehold becomes periodic tenancy

- a lease is a formalization of a longer, specific period as compared with a rental that creates a tenancy at will terminable or renewable at the end of a short period

- most written agreements contain **covenants** – express statements about the parties’ rights and duties

- covenants ordinarily cover security deposits, rent, lease assignments or subleases

- almost all leases have implied covenants such as:

- landlord has the right to transfer possession

- tenants will not cause waste, that is damage to the property beyond normal wear and tear

- landlord grants quiet enjoyment

- the property is in good repair (warranty or habitability)

- before the term of the lease has expired, it may be terminated because its purpose has been frustrated, the tenant has breached covenants or there has been a constructive eviction (when the landlord has materially impaired the tenant’s ability to enjoy the premise)