

Law for Professional Engineers and Professional Geoscientists

Property

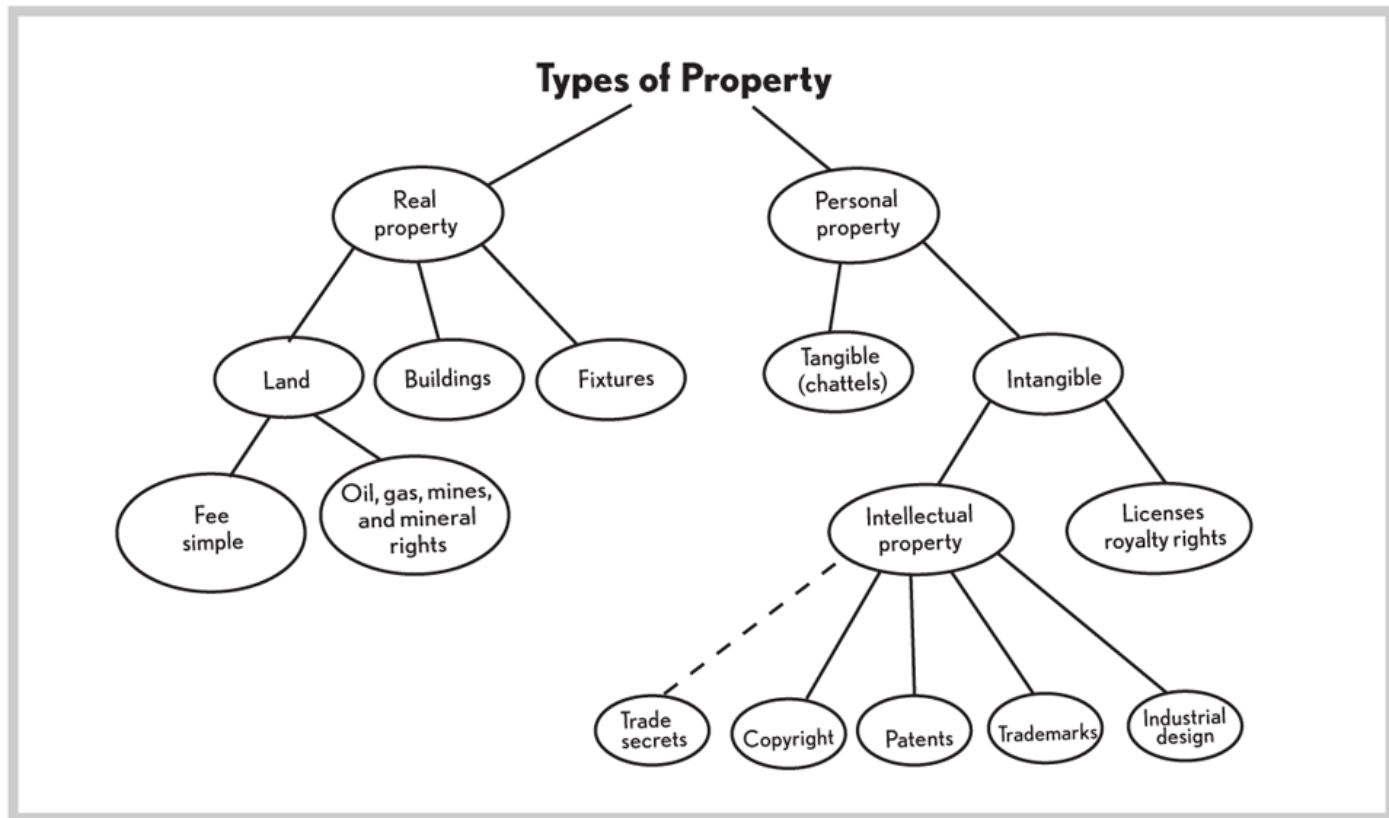
Law and Ethics Seminar
Fall 2018

Property Law

- Two categories:
 - real property, and
 - personal property (an item can change from being one to the other)
- Personal property is either tangible (chattels), or intangible
- Property should be viewed as a collection of rights: different people may own different rights in the same item of property

Types of Property

FIGURE 4-1 Types of Property



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Real Property

- Real property law derived from English law
- Government has transferred rights in real property to private owners
- Government typically retained the right to expropriate, and the right to extract specified resources such as minerals
- Fee simple is the greatest right an individual can have in real property
 - includes the right to sell, lease, occupy, mortgage
 - can be held jointly: joint tenancy or tenancy in common

Real Property: Mines, Minerals, Oil, and Gas

- Minerals often viewed as Crown or Freehold
 - Rights to resources generally excluded from fee simple rights
 - Crown rights retained may be held by either the provincial or federal government, which may grant licence to third party to extract the resources
 - Freehold minerals were often granted with early land grants (ex. CPR, HBC, early settlers)
- Right to the resources generally includes the right to access the land to extract them

Real Property: Registration of Rights

- Torrens system of registration:
 - Used in Saskatchewan (but not in all provinces)
 - Certificate of title shows all rights and owners
 - Act of registration creates legal rights
 - The order of registration of interests bears on priority
 - Land Titles Registration in Saskatchewan is through Information Services Corporation (ISC)

Real Property: Specific Rights

- Lease: exclusive right to occupy
- Mortgage: property as security for a debt
- Easement: the right to use in some way
- Restrictive covenant: conditions of use
- License: contractual right to use in some way
- *Profit à prendre*: right to extract value
- Lien: statutory right to register a debt against land (*The Builders Lien Act*)

Chattels

- Tangible personal property
- Often called goods
- No registry for ownership, only for registration of security interests (priority determined partly on order of registration)
- Saskatchewan Personal Property Registry
- Sale may be governed by legislation e.g. *The Sale of Goods Act*

Intellectual Property

- Protects the expression of ideas
- Can be viewed as a bundle of rights
- Governed by federal legislation and international treaties

Copyright

- Protects “works” e.g. literary, musical, dramatic, artistic, computer software, engineering drawings
- The “work” must be original, permanent, published and the product of skill
- Term of protection in Canada = 50 years
- Copyright can be contractually assigned (sold or licensed); moral rights cannot be assigned (but can be contractually waived)
- Protection not dependent upon registration

Patents

- Protect inventions: process, machine, composition of matter, or an improvement on one of those
- Invention must be new and useful
- No protection without registration
- No protection if publicly disclosed before registration
- Term of protection in Canada = 20 years (non-renewable)

Trademarks

- Protects marks used to distinguish goods or services (ex. Coca-Cola)
- Must be distinctive, and actually used, to be registerable
- Registration gives the right to exclusive use of the trademark throughout Canada
- Term of protection = 15 years, renewable

Industrial Designs

- Protects the shape, configuration and general look of mass produced items
- Term of protection = 10 years

Integrated Circuit Topographies

- Protects the design of integrated circuits in electronic equipment
- Term of protection = 10 years

Questions

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