Law for Professional Engineers and Professional Geoscientists

Property

Law and Ethics Seminar
Spring 2019
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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