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## What is property law?

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# What is Property Law?

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## Introduction

What is law? When you study law at law school you study a number of different subjects: ‘contract law’, ‘torts law’, ‘property law’, ‘corporations’ law’, ‘criminal law,’ and so on... But really, these categories of law are artificial. When you study corporations law and you may spend time looking at contract law and trade practices law. You may examine industrial torts and you will certainly spend some time looking at the conduct that corporations’ law makes criminal. So, in other words, each of these areas of law overlaps.

There are even new subjects on many university law curricula , such as ‘sports law’ or ‘animal law’, that aim to look at the different areas of law through the lens of their particular subject. For example, ‘sports law’ may consider, *inter alia*:

1. What contracts are used in different sporting situations? What types of contracts are pertinent to:
  - a. Sportspeople. This may encompass the law of contract, as well as industrial and employment law.
  - b. Sponsors. Contract law and media law may be relevant.
  - c. The media rights to broadcast sporting events. Here considerations of contract law may be important, as well as media and trade practices law.
2. How does the corporate structure of a sporting club affect the way it goes about its business? This will involve examining corporations’ law, taxation and commercial law.
3. What happens when a sportsperson is injured? Such a question may require reference to torts and contract law.

A series of articles will take a look at these different areas of law, starting this edition with ‘property law’ (which I just happen to think is one of the most interesting! Nerdy you may think. How can property law be interesting? Read on!) Future articles will discuss other categories of law: torts law, international law and so forth. Hopefully you will get an idea of not only what the area encompasses in a general way, but start to see how the different pieces of the legal jigsaw puzzle fit together.

Finally, the purpose of these articles is not to give you a dry boring summary of all the issues you might study in a law degree subject, but instead to give you some of the underlying principles. This way you can understand why different aspects of the law in these various areas are important to everyday life, to the way people live their lives, run their business and deal with each other. The other purpose is to look at some of the complex and interesting ‘cutting edge’ questions of the law in these areas. So I am pretty sure that, if you are thinking I am a nerd now, you will be happy

to call yourself one after reading these articles!

## Live on the Coke side of life!

Feel the brightness! BRRR! Coke is it! Coke adds life! Whoops! Did that heading just break the law? Should I have written ‘Live on the Coke side of life!’<sup>TM</sup> to show that the Coca-Cola Corporation owns that particular phrase and that those words are their property? But hang on...can a corporation own words? How is that possible? Surely words belong to all of us and a corporation can not appropriate them for their own? What about ‘BRRR!’ You have all seen the ads, ‘Release the BRRR inside you!’ Is it correct to say that the Coca-Cola Corporation is somehow now the owner of the sound ‘BRRR’ that we all make to show we are cold?

The answer is, yes. The combination of words ‘Live on the Coke side of life’ and the sound ‘BRRR’ (and the letters BRRR) now belong to that one corporation. Interestingly, because Coca-Cola now has a certain legal property in those particular words, it might also be a breach of their property rights if another person or corporation used a variation of those words. If, for example, Pepsi used the letters BRRRRR on some advertising (unlike Coca-Cola’s ‘B’ with 3 ‘R’s’), or used the phrase ‘Live the Pepsi side of life!’ Coca-Cola could probably take them to court, and the court would probably prohibit Pepsi from continuing to use those words or phrases and give Coca-Cola damages as a result.

You may have heard the stories of McDonalds suing other corporations that use similar names, or variations of its ‘Golden Arches’, and these stories are true. Because in business and marketing a name is so important, the law has said that a name can be the property of a person and that another name that is likely to confuse consumers into believing it is somehow associated with the first can be an infringement of the first person’s property rights to that name. So, if you open a burger-joint called ‘McBurgers’ or if you open a Thai restaurant using a big yellow, curved ‘M’ in the name ‘Massaman Thai’, expect a visit from a lawyer. Take, for example, Alan and Verma Bowes, who found themselves on the receiving end of a law suit from Sir Richard Branson’s company for their lawn care and rubbish removal company name ‘Virgin Home Services’. However the Bowes won that one!

In the same way that words or sounds can be property, so can shapes, colours and reputation. Using another McDonald’s example, if you were an unemployed postman in rural England who decided to distribute some pamphlets about the nutritional deficits of McDonald’s food, you too could expect to be sued (as really happened).

As you can see from these examples, when the law recognises that one person has property rights in a word, phrase, colour or thing, it gives the owner the right to prevent others from using their property in certain ways.

But let’s take it back a step further...

## A bottle of coke

I am the owner of a 7-11. I sell you a bottle of Coke. There it is in your hand...BRRR... nice and cold! Refreshing! But is it your property? Is it a piece of property at all? What is it according to the law? If it is your property, can you do what you want with it? After all, if you bought it, it is yours and so you should be allowed to do what you want with it, right? Can the law interfere with what is your property?

One of the best ways to look at the bottle of Coke is as a cluster of different properties or a bundle of rights. This means that the bottle of coke is partially your property and partially the property of other people. Look at it. There is the bottle itself, made of glass or plastic. This belongs to you. There is the 'Coke' inside the bottle. This liquid is yours too, you can drink it or, if you want to prove the point that you can do anything you want with it, you can pour it down the drain. But the liquid is made up of a variety of components: water, fizz and Coke formula. Although you own this bit of liquid that contains formula, you do not own the formula itself. You cannot, for instance, go away and extract the formula, get a scientist to figure out what is in it, and make your own cola and sell it. Coca-Cola would sue you for breaching their property rights to the formula. So, although you own the 'Coke', you do not own the formula that is an intrinsic part of it.

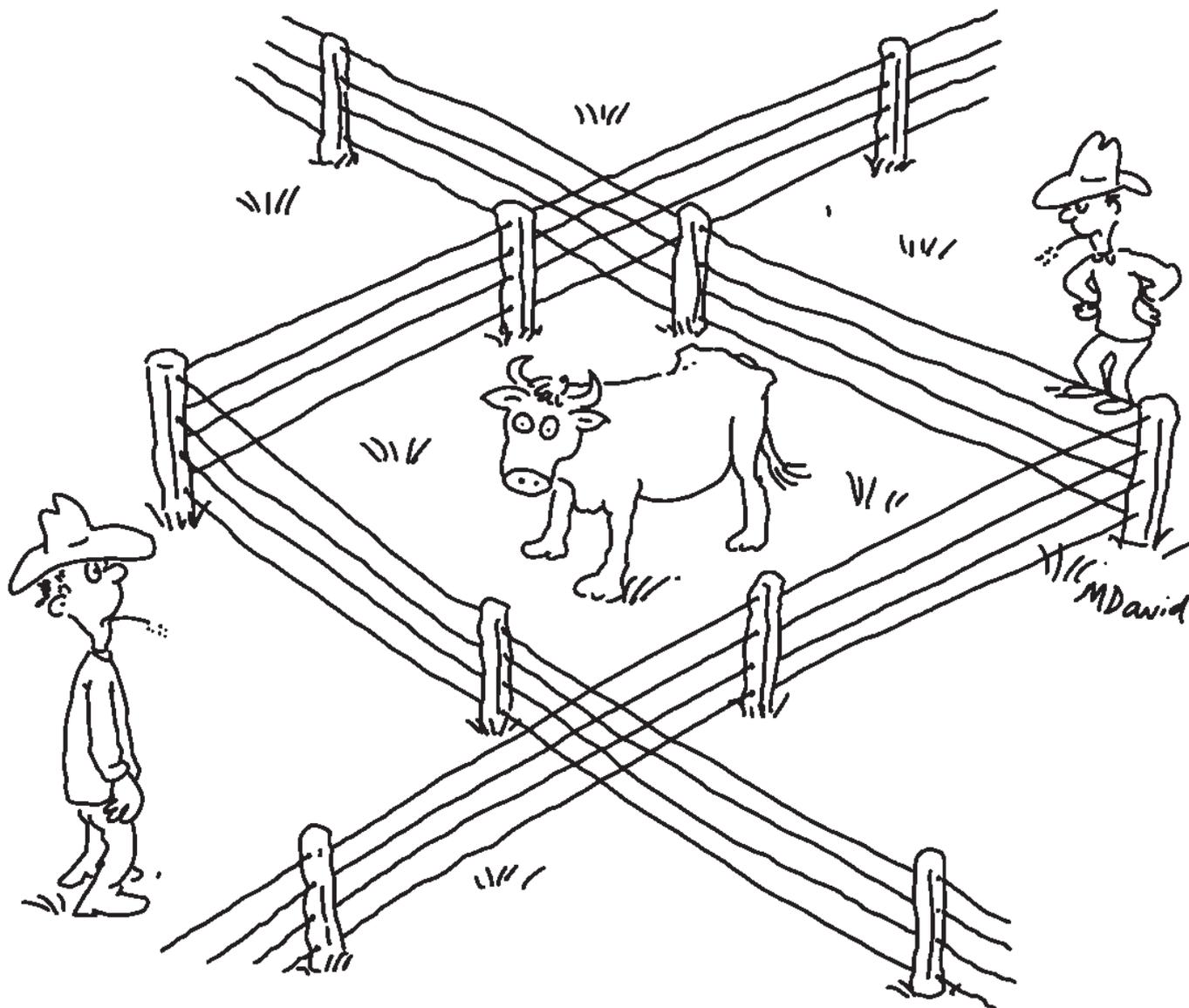
Then there is the label. This is a piece of paper, attached with some glue. You can do certain things with it. You can peel it off and shred it or set it on fire, but the shape, words and colours on the label all belong, to some extent, to the Coca-Cola Corporation. You cannot use it on advertising,

you cannot use it, in fact, in any way that you would profit as a result of its 'Cokeness' or in any way that would damage Coca-Cola. For instance, if you made a brochure with it and placed the words 'Coke tastes crap!' on it and began distributing it, you, like the unemployed postman in rural England, just might get a visit from a lawyer. Similarly, do you think the bottle is yours? Maybe... but the shape of the bottle is Coke's property. Complicated huh?

And this is the nature of property law, complicated. Most things you can think of might be referred to by the average person as someone's property but the law may find in that thing a myriad of different properties, giving different people different rights to do different things with that thing or parts of it, or to prevent other people from using it in a certain way.

Here are a few more examples. What is the property interest in each of these cases? What rights might different people have in the particular property mentioned?

1. A piece of jewellery you find in the local kebab shop on the floor. Someone has obviously lost it. Who has a better right to it? The kebab shop owner? You? Someone else?
2. Your spleen. One day you get sick and supply some of the



Worrying overlap in Property law

cells from your spleen to your doctor to conduct tests. Fortunately, you recover. The doctor uses the remaining spleen cells (which turn out to be unusual, genetically unique spleen cells) to develop a miraculous new cancer cure that earns him ten billion dollars. You did not give him permission to use your spleen cells in any other way than to find out what was wrong with you. Do you have any property rights to the doctor's miraculous cure? After all, it is based on, indeed made from, your genetically unique spleen cells.

3. The airspace above the rural property in Australia that you own. Imagine you are a millionaire rock star, do you own the airspace above your property? How much of it? How high above your property? Is it high enough to get a legal injunction to prevent those pesky paparazzi from buzzing your house to get the latest snap of you and whichever hot star/starlet you happen to be dating today? Is it high enough to stop the protesters who have hired a sky-writer to write offensive messages decrying your obscene wealth? And if you own all the airspace above your property, does that mean you can do anything you want with it? Can you light a huge fire and fill the air with smoke? Can you play your music through massive amplifiers and scare the neighbours' horses? Can you stop airliners flying 15 kilometres above your property en-route from Sydney to London?
4. River water. Presume you are still that rock star and the source of a river is on your massive property, running through it for 10 kilometres before it leaves your property and travels another 30 kilometres through another rural property to the sea. Can you dam it to make a recreational watersports lake? What about if this would prevent your neighbours downstream from growing their crops?
5. A sword. You (Mr/Ms Rockstar) then go and buy a big rural property in England so you can have a restful retreat when you are on tour in the United Kingdom. While excavating for your new mansion your workers discover, what the British museum decides is probably King Arthur's sword, Excalibur. It is worth millions, perhaps it is even priceless. You think it is pretty cool and intend putting it on your wall, perhaps dressing up as King Arthur and every now and then, when you have over indulged in your rock star life style, joust with it with your fellow band members. What a jolly lark! The British Museum and the Government are appalled. They say such an important piece of British heritage belongs to the British

people and no one person can own it. Whose property is it?

6. A painting. You decide to buy a unique and famous painting. Perhaps the Mona Lisa (your career has really taken off and the French government needs a bit of cash!) You intend to cut it into pieces and stick a bit on each of the Christmas cards you make annually to send to your friends and admirers. You have bought it. It is yours! The United Nations condemns you as an international cultural vandal, claiming that such a piece of cultural work belongs to all mankind. They threaten to invade your estate and send in the peacekeepers to restrain you.
7. A video of a performance. A person living next to Wembley Stadium in a high rise apartment, has, from her balcony, recorded a video of your latest concert. She is selling it, for millions, to the Fox Network to broadcast. Your sponsors are pretty upset because they paid you \$50 million for the sole right to broadcast the concert. You argue that it was your performance, so the performance and any and all reproductions of it are your property. The girl who filmed you says there is no such property right. She says that since she filmed it from her balcony she owns the video and can do anything she wants with it. (She also has some pictures of you on your property sunbaking nude, which she took with a long range camera from inside a helicopter. Is her property right to these pictures different to her property right to the video?)

All of these are examples taken loosely from real cases where the law has had to make a decision about what property is, and as you can see, the answer is not always simple.

This is because property is not just about things. It is about rights in relation to things and as some of these examples show, different things have different rights attached to them. This often depends on who you are, your relationship to the thing (or part of it) and how you intend to use it. Sometimes different people retain different rights to a single thing, which makes the task, of determining how that thing can be dealt with by the parties, complex.

At any rate property law is important because it regulates how we are permitted to use things in the world, from words, colours, shapes, pictures, water, air, land to pretty much everything. Property law is one of the areas of law that is used to define the relationships between people in relation to each of those things, whether you are a rockstar, an unemployed postman, or me and you. And you thought property law was nerdy! Live on the Coke side of life! <sup>TM</sup>

## DID YOU KNOW?

### Legal Terminology

**Copyright** – Intangible property which allows the copyright owner, or those authorised by the copyright owner, the exclusive right to prohibit or to do certain acts.

**Injunction** – A court order of an equitable nature requiring a person to do, or refrain from doing, a particular action. Injunctions may be classified as final or interlocutory; mandatory or prohibitory; ex

parte or inter partes; and equitable or legal.

**Trade mark** – A sign used, or intended to be used, to distinguish goods or services dealt with or provided in the course of trade by a person from goods or services so dealt with or provided by any other person.

(Source: *Butterworths Concise Australian Legal Dictionary*, 3rd edn, 2004).