



THE UNIVERSITY OF  
NEW SOUTH WALES

**SCHOOL OF LAW**

**LAWS 2382**

Property and Equity 2

Undergraduate Core  
Units of Credit: 6  
Contact hours per week: 4

**COURSE OUTLINE**

**SESSION 2 2010**

Convenor: Lyria Bennett Moses

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**Course Outline Appendices available at:**

[https://www.law.unsw.edu.au/secureweb/docs/2010/law\\_school\\_course\\_outline\\_appendices.pdf](https://www.law.unsw.edu.au/secureweb/docs/2010/law_school_course_outline_appendices.pdf)

**Appendix 1 - UNSW LAW SCHOOL GRADUATE ATTRIBUTES**

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**Notice on Distressing Course Material**

**Occupation Health and Safety**

**School of Law Office**

## 1. COURSE INFORMATION

### 1.1 Teaching Staff and Classes

#### Teaching staff

- Lyria Bennett Moses (convenor) – Room 315 ([lyria@unsw.edu.au](mailto:lyria@unsw.edu.au); x52254). Not available Wednesdays.
- Janice Gray – Room 318 (e: [j.gray@unsw.edu.au](mailto:j.gray@unsw.edu.au); x52841)
- Cathy Sherry – Room 373 (e: [c.sherry@unsw.edu.au](mailto:c.sherry@unsw.edu.au); x59659)
- Sarah Williams – Room 232 (e: [sarah.williams@unsw.edu.au](mailto:sarah.williams@unsw.edu.au); x52224)
- Chris Rossiter – TBA (e: [c.rossiter@unsw.edu.au](mailto:c.rossiter@unsw.edu.au))

Please email teachers if you need a consultation.

#### Your classes

Details about your classes – times, venues & dates are available from the Law School website at [http://www.law.unsw.edu.au/current\\_students/timetable/index.asp](http://www.law.unsw.edu.au/current_students/timetable/index.asp).

#### Blackboard

Some lecturers will run a Blackboard page (in which case, your lecturer will announce this in class). Blackboard is an online materials and support site designed to complement your learning. Students are provided with personalised usernames (z plus your Student ID number) and passwords (zPass) to log on to the site to access information and resources specifically related to the courses in which they are enrolled.

The content of the Blackboard site will vary between classes, but may include course handouts and discussion areas. If your lecturer runs a Blackboard page, you should log into it regularly, as it may be a useful place to find information and materials to supplement your studies.

UNSW Blackboard supports the following web browsers for Windows XP or VISTA:

- Internet Explorer (IE) version 7 or 8
- Firefox 3.0.x (must run version 3.0.3 and above)

UNSW Blackboard supports the following web browsers for Mac 10.4 or 10.5,

- Firefox 3.0.x (must run version 3.0.3 and above)
- Safari 2 or 3

Note: Mac OS 10.3 is not supported.

To log on to your Blackboard site, you will need to follow these steps:

1. Go to the TELT gateway (<http://telt.unsw.edu.au/>) and click the link to log into Blackboard.
2. Enter your Student ID and your zPass to login.
3. Choose from the courses that you are enrolled in.

Information and Blackboard support can also be found on the TELT gateway (<http://telt.unsw.edu.au/>). For information on the zPass or how to create your zPass, visit <http://www.it.unsw.edu.au/students/zpass/index.html>

### 1.2 The Relationship between Research and Teaching

It is the policy of the Law School as far as possible to allow teachers to teach in their area of research and expertise. This means that students are exposed to academics and researchers who are experts in their fields. The areas of expertise of this course vary.

**Dr Lyria Bennett Moses (convenor)** is interested in definitions of “property” and how “property” is treated in comparison to other rights. Her research includes a discussion of the applicability of property law in new contexts such as virtual worlds and in relation to in vitro embryos. She recently published a chapter in *Property and Security: Selected Essays* (Lawbook Co 2010) examining writing requirements for equitable dealings in personalty and proposing amendments to sections 12 and 23C of the *Conveyancing Act 1919* (NSW). She is an author of the *Butterworths Property Reports*. Lyria is also interested in the interaction between law and technological change, the topic of her doctoral thesis, and is currently looking at regulatory issues in nanotechnology and the government’s internet filtering proposal.

**Janice Gray** has published nationally and internationally in the areas of native title, equity, property law and water law. Her (co-authored) book, *Property Law in New South Wales*, was first published by Butterworths in 2003. A significantly revised, second edition was published in 2007. Another of Janice’s (co-authored) books, *Water Resources Law*, was published by LexisNexis in 2009. Janice also devised and teaches the LLM Course ‘Contemporary Issues in Water Law and Policy’, as well as the MLS Course, ‘Introduction to Property Law’. She has contributed book chapters to international publications in this field, as well as published journal articles. Her research has been used by industry. In the second half of 2009 Janice was a Visiting Scholar at both Wolfson College and the Centre for Socio Legal Studies, the University of Oxford.

**Cathy Sherry** researches strata and community title. She has a particular interest in the role of property law in urban planning and teaches a postgraduate course in the area, *Strata and Community Title Law* Laws 4015. Cathy is a former author of the *Butterworths Property Reports* and has published in a number of property and planning journals in Australia and overseas.

**Dr Sarah Williams** was previously the Dorset Fellow in Public International Law at the British Institute of International and Comparative Law, a Senior Legal Researcher at the UK Foreign and Commonwealth Office and a Lecturer at Durham Law School, University of Durham, UK, where she convened and taught the compulsory land law course. Sarah has also practised as a commercial property and construction solicitor in Sydney and London. While her main research areas are in international law, Sarah is also interested in international dimensions to property law, such as cultural property, reparations for property loss and damage during armed conflict, international territorial disputes, property as a human right, adverse possession, and property aspects of post-conflict reconstruction.

**Dr Chris Rossiter** researches and teaches property law, commercial land dealings and equity. He is the General Editor *Journal of Equity*, Editor *Butterworths Property Reports*, the author of *Principles of Land Contracts and Options in Australia* and co-author of *Sackville and Neave’s Property Law: Cases and Materials*. He has published extensively in academic journals.

### 1.3 Course Description

Property and Equity 2 is a compulsory “core” course and the principles examined are essential for all later commercial law electives. The course builds on the contract course, as many property rights are created and transferred by contractual agreement. More particularly, it builds on *Property, Equity and Trusts 1*, by analysing doctrines focused on in that course, in the context of the Torrens system and other domains of land law such as leases, mortgages, co-ownership, restrictive covenants and easements.

### 1.4 Aims

The main objective of the course is to ensure that students gain a sound understanding of basic principles of land law and the role that equitable doctrine plays in the formation and modification of property rights. The course does not attempt to cover every aspect of property law; students are expected to master the fundamental common law (that is non-statutory) principles, to examine the role of equitable doctrine, and to attain a solid understanding of the Torrens system.

### 1.5 Expected Learning Outcomes

The course does not aim to produce students capable of immediately undertaking the work of a solicitor in such fields as conveyancing or commercial property transactions, although the course examines what routinely occurs in legal practice. The course is designed to give students skills important for lawyers, who work both inside and outside private practice. These outcomes are closely linked to UNSW Law School graduate attributes which follow.

### 1.6 Learning Outcomes and Graduate Attributes

The UNSW Law School also aims to develop specific *attributes* (or capabilities) in all of its law graduates. Thus this course aims to give students the ability:

- to solve legal problems by reasoned analysis of property rights → Law School graduate attribute 5: *personal and profession skills*;
- to argue clearly and persuasively, both verbally and in writing → Law School graduate attribute 4: *communication skills*;
- to interpret legislation and understand the interplay between law and equity in the creation and transfer of property rights → Law School graduate attribute 1: *core disciplinary knowledge*;
- to evaluate critically case- and statute law with a view to possible reforms → Law School graduate attribute 2: *transferable intellectual skills*;
- to analyse the notion of property as a key concept in the economy and society → Law School graduate attribute 2: *transferable intellectual skills*.

Graduate attributes are described more fully in the Course Outline Appendix 1, [https://www.law.unsw.edu.au/secureweb/docs/2010/law\\_school\\_course\\_outline\\_appendices.pdf](https://www.law.unsw.edu.au/secureweb/docs/2010/law_school_course_outline_appendices.pdf)

### 1.7 Teaching Rationale

The approach to learning and teaching adopted in this course reflects the law school’s traditional commitment to interactive, student-centred teaching. This rationale derives from the idea that good teaching and learning is primarily a matter of effective two-way

communication and that good communication is best achieved by respectful attention to other students' contributions as well making one's own contributions to discussion.

A range of assessment tasks will be used to facilitate deep learning. A mid-session test, an exam, problems and class participation ensure that legal principles are seen from many angles. We encourage students to see law critically, with a view to reforming the law where it is outdated, obscure or unfairly disadvantages some groups.

As a number of teachers will be involved in this subject, teaching strategies may vary a little from group to group. The teacher will lead discussion of prescribed materials which have been read beforehand by students. This approach is designed to foster skills referred to above in the student learning outcomes section. It is particularly devised to encourage a thorough understanding of material which frequently presents conceptual difficulties. Class discussion following thorough preparation has been found to be the best way to gain deeper insights into the material. **Class participation may be optional, compulsory, or maximisable, depending on teacher preference.** Teachers will inform classes at the beginning of semester of their preference, but **any student who is unsure of the class participation requirements for their class MUST ask their teacher as soon as possible.**

## 2. ASSESSMENT

### 2.1 Assessment Scheme

Assessment for this course comprises three components:

- |  |                                 |
|--|---------------------------------|
| 1) Class Participation (nb teacher preference) | 0 or 20/100                     |
| 2) In class midsession test                    | 30/100 (Second class of Week 6) |
| 3) Examination (open book)                     | 50 or 70/100                    |

**Class participation:** Students must attend a **minimum of 80% of classes** to be eligible to undertake assessment in this course. Class participation is designed to encourage preparation for class and assist students to develop the capacity to think clearly and to present oral arguments. Assessment for class participation (including criteria and whether it is opt-in, maximisable, or compulsory) is at the discretion of each class teacher.

**In class midsession test:** In the second class of Week 6, there will be an in class midsession test covering all material taught up to that point (Torrens and Co-ownership). The format will vary by class and may include short answer questions, multiple choice questions and more extended problem questions. Your class teacher will provide further details closer to the time.

**Examination:** The entire semester's work is examinable (including material assessed in the midsession test). More information about format will be available closer to the time.

**Students with less than 45% in the final exam will fail the course, regardless of other marks.**

## 2.2 Assessment Criteria and Overall Grading

### *Criteria*

The main criterion for assessment is your understanding of the fundamental principles of property law presented in the course. You are strongly discouraged from using notes made by other students, in particular notes from previous years which will be out of date.

### *Grading*

**High Distinction [85% and over]:** demonstrates an extensive understanding of concepts taught in the course and the commensurate high order ability to analyse and evaluate the law, policy goals and the broader legal, economic and social context in which property law operates.

**Distinction [75% to 84%]:** demonstrates a thorough understanding of the concepts taught in the course and the unambiguous ability to analyse and evaluate the law and policy goals in the context in which property law operates.

**Credit [65% to 74%]:** demonstrates a sound understanding of the concepts taught in the course and the ability to analyse and evaluate the law and policy goals in the context in which property law operates.

**Pass [50% to 64%]:** demonstrates a basic understanding of the concepts taught in the course and some demonstrated ability to analyse and evaluate the law and policy goals in the context in which property law operates.

**Fail [less than 50%]:** demonstrates insufficient understanding of the concepts taught in the course or lack of ability to analyse and evaluate the law and policy goals in the context in which property law operates.

## 2.3 Assessment Timetable -Links to Learning Outcomes & Gas

Assessment Type	Date Due	Marks	Link to Learning Outcomes and GAs.
Class Participation	Each class	0 or 20 (depending on teacher's policy)	Analytical, reflective and oral skills, GAs 1,2,4,5
Mid-session test	Second class of week 6	30	Analytical, problem-solving & writing skills GAs 1,2, 4,5
Examination of 2 hours (plus 10 minutes reading time)	Date to be set by examination centre	50 (for those with CP mark) <b>or</b> 70 (for those without CP mark)	Analytical, problem-solving and writing skills GAs 1,2,4,5

## 2.4 Formal Matters

### ***UNIVERSITY POLICIES ON ASSESSMENTS***

Information produced by the UNSW Law School regarding assessments can be found through the Law School website, <http://www.law.unsw.edu.au> .

**Further information about Formal Matters relating to Assessment can be found in the Course Outline Appendix 2 at**

[https://www.law.unsw.edu.au/secureweb/docs/2010/law\\_school\\_course\\_outline\\_appendices.pdf](https://www.law.unsw.edu.au/secureweb/docs/2010/law_school_course_outline_appendices.pdf)

### ***ACADEMIC MISCONDUCT AND PLAGIARISM***

No essays or assignments can be accepted unless you sign the academic misconduct declaration that is included on the Law School assignment cover sheet.

**It will be assumed that you are thoroughly familiar with the policies re academic misconduct and plagiarism of the Law School and UNSW.**

**See the Course Outline Appendix 3 at**

[https://www.law.unsw.edu.au/secureweb/docs/2010/law\\_school\\_course\\_outline\\_appendices.pdf](https://www.law.unsw.edu.au/secureweb/docs/2010/law_school_course_outline_appendices.pdf)

## 3. COURSE SCHEDULE

### 3.1 Course Materials

#### Prescribed text:

- Edgeworth, Rossiter, Stone, O'Connor *Sackville and Neave's Property Law: Cases and Materials* (LexisNexis, 8<sup>th</sup> ed, 2008).

#### Recommended texts:

- Gray, Edgeworth, Foster and Grattan *Property Law in New South Wales*, (Butterworths, 2<sup>nd</sup> ed, 2007).
- Bradbrook, Maccallum and Moore, *Australian Real Property Law*, 4th ed, Thomson, (2007);
- Peter Butt, *Land Law* (Thomson, 6<sup>th</sup> ed, 2010)

#### Further reading:

- Bradbrook and Croft, *Commercial Tenancy Law in Australia* (Thomson, 2<sup>nd</sup> ed, 1996)
- WD Duncan *Commercial Leases in Australia* (Lawbook Co, 4<sup>th</sup> ed, 2005)
- Meagher, Heydon and Leeming, *Meagher, Gummow and Lehane's Equity: Doctrines and Remedies* (LexisNexis, 4<sup>th</sup> ed, 2002);
- W D Duncan and W M Dixon, *The Law of Real Property Mortgages* (Federation, 2007)



### 3.2 Guide to Reading

Week / Class	Topic	PRIOR Reading (S&N)
1/1	Introduction	5.1-5.6; 5.7-5.24 (skim)
1/2	The principle of indefeasibility	5.25-5.51
2/1	Indefeasibility – for what and for whom?	5.52-5.73; new ss 42(3), 56C.
2/2	The fraud exception	5.74-5.87
3/1	The in personam exception	5.88-5.107
3/2	Other exceptions; overriding statutes	5.108-5.124; 5.199; <i>Bonaccorso</i> extracts on course homepage
4/1	The Register, equitable interests and caveats	5.140-5.163
4/2	Competing equitable interests	5.164-5.179
5/1	Co-ownership – Introduction; creation	6.1-6.25
5/2	Co-ownership – enjoyment inter se	6.26-6.47
6/1	Co-ownership – severance; termination	6.48-6.82
6/2	<b>MID-SESSION TEST</b>	
7	READING WEEK AND MIDSESSION BREAK	
8/1	Leases – Introduction	8.1-8.51
8/2	Leases – Covenants	8.52-8.71; 8.76-8.89; 8.112-8.117
9/1	Leases – Assignment	8.103-8.111, 8.118-8.138
9/2	Leases – Remedies	8.139-8.167
10/1	Leases – Remedies	8.168-8.190
10/2	Covenants	9.1-9.4 (skim); 9.24-9.40; 9.87-9.89; 9.93-9.96; 9.101
11/1	Monday is a public holiday; Tu/F classes can use this class as catch-up or make-up or can cancel it; check with your teacher.	
11/2	Easements – Requirements	10.1-10.28
12/1	Easements – Types, Creation, Extinguishment, Torrens	10.29-10.51; 10.90-10.100; 10.113.
12/2	Mortgages – Introduction, Priorities, Power of sale	11.1-11.13 (skim); 11.22-11.30; 11.59-11.70
13/1	Mortgages – Power of sale; Possession	11.71-11.79; 11.82-11.103; 11.117-11.118; new s111A CA.
13/2	Revision / Catch up	N/A

#### **4. ADDITIONAL RESOURCES FOR STUDENTS**

Additional material will be posted on the homepage for Property and Equity 2 at <http://www.law.unsw.edu.au/course/laws1082/>

Please note: Course Materials for postgraduate students are no longer posted by Student Administration. All Course Materials and textbooks can be purchased from the UNSW Bookshop.

#### **5. CONTINUAL COURSE IMPROVEMENT**

##### **5.1 CATEI Evaluation Policy**

Student feedback is very important to continual course improvement. This is demonstrated within the School of Law by the implementation of the UNSW Course and Teaching Evaluation and Improvement (CATEI) Process, which allows students to evaluate their learning experiences in an anonymous way. The resulting evaluations are ultimately returned to the course Convenor, who will use the feedback to make ongoing improvements to the course.

##### **5.2 Course Evaluation and Quality Enhancement for this Course**

The surveys administered as part of the UNSW Course and Teaching Evaluation and Improvement process ("CATEI") revealed that over 90% of students were satisfied with Property and Equity 2 in 2008 (the last time this was assessed). There was some dissatisfaction with the long research essay; this year there is a midsession test.

#### **6. ADMINISTRATIVE MATTERS**

For information about expectations of students, procedures for submission of assignments, student support services, occupation health and safety and School of Law Office see Course Outline Appendix 4 at

[https://www.law.unsw.edu.au/secureweb/docs/2009/law\\_school\\_course\\_outline\\_appendices.pdf](https://www.law.unsw.edu.au/secureweb/docs/2009/law_school_course_outline_appendices.pdf)