

OXFORD

PROPERTY LAW
GUIDEBOOK

Chris Davies

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PREFACE

One of the first things you might notice about property law is that many of the concepts are more difficult than those in other subjects you have already encountered. If you find yourself initially struggling with some of the concepts, do not panic—not yet, anyway—as it is standard for students to struggle when first confronted with concepts such as the perpetuity period and future interests. In fact, you will probably find these concepts as difficult as any you will encounter in your whole law degree.

This brings us to the purpose of the *Property Law Guidebook*. It forms part of Oxford University Press's *Law Guidebook Series*, which you may already be familiar with. As with the other books in the series, its aim is to provide concise and easy-to-understand material relating to the subject, with the specific aims of the *Property Law Guidebook* being to provide:

- a concise summary of the general principles relating to property law
- an understanding of the often complicated principles of property law
- clear definitions of the important concepts in property law
- examples to show how these concepts and principles work in a practical setting
- an idea of how to approach property law problem questions.

When using the book, you will find that at the beginning of each chapter, the cases to remember and the relevant statutes have been listed. While students will obviously need to know the relevant statutes from their own jurisdiction, it is also useful to have at least an awareness of similar statutes in other jurisdictions. Even as an undergraduate student, you will find the list useful to see how the statutes relevant to your state fit in with those in other states. This is because many of the cases that provide useful examples of the law may well originate from other jurisdictions, particularly since sheer population numbers means that there are more cases from a state like NSW. Lists of relevant statutes throughout the chapters give pinpoint references for particular areas of law.

The main points for each chapter have been highlighted in the text, while a comprehensive set of definitions is provided in a glossary. Also appearing throughout the book are some practical examples, which present the concepts in everyday situations. At the end of each chapter, some 'Think about It' questions and, when appropriate, assessment preparation questions have also been provided to help you think about and apply the material covered in that chapter. Suggested answers to these problem questions, together with comments on these suggested answers, are available online at www.oup.com.au/orc/davies.

Many thanks to Katie Ridsdale and Estelle Tang from Oxford University Press for their assistance with this book, and to Dr Alex Amankwah for teaching me the principles of property law.

Chris Davies
August 2009

GUIDELINES FOR ANSWERING QUESTIONS

As part of the property law course assessment, you may be required to write an essay of around 2000 words on a property law topic. It is also almost certain that you will be required to answer some problem-style questions in your end of semester exam. Below, therefore, are some ideas on how you may approach essays and problem-style questions.

ESSAY QUESTIONS

The reason why you may be required to write a 2000 word assignment is that this type of assessment requires good research, writing, analysis and understanding of the material, all of which are useful and necessary skills. You should also find that going into one aspect of property law in more depth than can be covered in lectures will give you a better understanding for the subject as a whole.

Everyone writes a little differently, so you are advised to feel comfortable with that and develop your own style within the restraints that law assessment places on writing, for example, not using too informal a style. Perhaps the one consistency in all good legal writing is that it flows. How this is achieved will vary. Some people will use relatively long sentences, while Lord Denning, recognised as one of the best legal writers, used very short sentences. Sometimes it is the combination of both short and long sentences that will create a good flow. Obviously, good content is also important in law as, even if the actual writing style is very good, it will still be lacking in quality if it has little substance.

A good structure to an essay is always important. Keep in mind the basic structure of introduction, body and conclusion. The introduction does two things: it gives a very brief overview of the subject area and then informs the reader what the writer is going to be doing with the paper. An introduction could comprise two relatively small paragraphs, one for each of these two aspects. The body is where the main material of the essay is found, and you will usually need to be fairly descriptive in the early part of this section as it is not possible to be analytical until you have described and summarised the relevant area of the law.

Headings should be considered a vital part of legal writing. All judgments now use them. How many headings you will need will depend on the topic, and there is no hard and fast rule about how many you will need. You may need to use subheadings, though for a 2000 word paper you may not need them, and you certainly will not need to further subdivide the subheadings. It is important, however, to physically differentiate the headings and the subheadings. For instance, the Australian Guide to Legal Citation uses upper case for headings and italics for subheadings. Different numbering or lettering systems will also help to differentiate the heading levels. If you have a subheading for

each paragraph, or even every couple of paragraphs, then you have too many. Headings and subheadings will help the reader understand the material, but too many will make the essay disjointed. Starting each paragraph with a sentence containing the words you were thinking of including in the subheading can be just as effective in communicating that a new idea is being introduced, but does so in a way that keeps the flow of the essay going. As for the paragraphs themselves, there is no hard and fast rule about how big each paragraph should be, though three to four sentences is a good average, and each new idea should definitely go into a new paragraph.

Legal argument requires good authority, which is why good referencing by means of footnotes is required to support your argument and also to prevent any problems with plagiarism. As a rough guide, a 2000 word assignment should probably have thirty to forty footnotes, though again there is no hard and fast rule on the actual number.

Finally, it needs to be kept in mind that it is hard to write a good essay in one draft, and that there is really no such thing as good writing, just good re-writing. So start your assignments early and give yourself plenty of time to complete several drafts of the essay.

PROBLEM SOLVING: THE IRAC METHOD

As for all substantive law subjects, there is a set way in which to answer problem questions relating to property law. This involves first of all identifying the **issues** in the problem, then stating the **rules**, principles or law that relate to those issues. This law then needs to be **applied** to the specific facts given in the problem before reaching a **conclusion**. Such a system is often referred to as either the IRAC, IPAC or ILAC method:

- I—Issues
- R/P/L—Rules, principles or law
- A—Application or argument
- C—Conclusion

It does not matter which term you use to refer to it as they are essentially the same system. While IRAC, IPAC or ILAC may appear to be a rigid system, it should be noted that a good answer will often need to merge some aspects of this system, particularly the rules and application stages. Thus, how IRAC, IPAC or ILAC is best applied will vary depending on the actual problem that is being answered. A number of problems relating to various areas of property law have therefore been presented at the end of some chapters. Suggested answers and some comments explaining the approaches to the questions have been made available online. It is also suggested that students consult with their lecturer or tutor in regard to how

they expect an answer to be constructed, since each suggested answer is just one of a number of ways that a particular problem may be answered.

ISSUES

The first step is to identify all the issues that are present in the problem. This requires a careful examination of the facts given to you in the problem, as well as a good understanding of the relevant law. There are then two ways to state the issues for a particular problem. The first is to list all the issues at the beginning of the answer. The second way is to list the issues as you go along. In this approach, you would state the issue, give the law in relation to the issue, apply the law and make a conclusion on that issue, before moving onto the second issue and repeating the process. Your answer then effectively becomes a series of little IRACS. Both approaches are perfectly acceptable and suitable for a property law problem and it can simply be a personal choice which one you prefer, though it should also be noted that one of the methods may suit a particular problem better than the other.

RULES (ALSO PRINCIPLES OR LAW)

In the rules section you need to mention all the relevant statute and case law with the appropriate level of detail. For instance, the relevant significance of some cases can be more succinctly presented than it can for other cases, while cases that are directly on point for a particular issue can be discussed in more detail than general principle cases. It is important that the law you write down is relevant to the problem you have been given, since doing well in this section is not a question of regurgitating all of your lecture material on that particular area of property law. Obviously, if you put all your material relating to co-ownership, for example, in a problem answer, then some of it is going to be on point. However, this will never impress the marker as much as the student who has homed in on the material that is directly relevant to the problem. Including irrelevant material in an answer will also indirectly cost you marks, due to the time wasted in writing about law for which no marks have been allocated.

Property law involves extensive legislation and therefore, when examining the rules for a particular problem, one of the first considerations is which statute applies. Due to the fact that there are different statutes in each state, the problems presented in this book have been deliberately written to reduce the need to rely on statutes when answering them. Students should therefore be aware that for most of their exam questions a greater use of the relevant statutes will be required.

To indicate that you have moved on from the issues stage to the rules stage, you do not need a heading. All that is required is a new paragraph which, if it begins with 'Section 5 of the ...' or 'In *Smith v Brown* ...' will be sufficient to clearly indicate that you are now dealing with the rules section of the answer.

APPLICATION

The application stage involves applying the relevant law to the facts you are given in the problem. It is important to carefully read and understand the significance of the facts of the problem. When applying the law, it is not good enough to simply say that '*Smith v Brown* applies here'. What is required is that you show why the rule applies to the problem by applying the case to the specific facts that you have been given. Alternatively, if you feel the problem can be distinguished on its facts from a case you have studied, you need to explain what the significant differences in the facts are and why it should therefore not be applied in the problem.

If the facts in the problem seem ambiguous, it is perfectly acceptable to answer a question in two different ways. For example, the issue of whether a co-ownership arrangement was a joint tenancy or a tenancy in common may arise. After applying the rules, your conclusion on this issue may be that a joint tenancy existed. You should clearly state this and apply the law accordingly. However, you can also state what the situation would be if the relationship was a tenancy in common.

Again, no section heading is needed. A new paragraph beginning with something like: 'In the present case ...' will be sufficient.

CONCLUSION

The final stage is making a conclusion based on your application of the law to the facts. It should be noted that you may already have made some conclusions earlier in the answer, which will affect the way you approach the rest of the question, as with the question of co-ownership above. What was also previously mentioned was that an answer may involve a set of independent IRACS, and therefore a number of conclusions may appear throughout the answer. If this is so, it is still a good idea to make an overall conclusion, particularly if you have been asked a specific question, such as: 'Advise Mary'. For this type of question, you will need to make an overall conclusion addressing that specific question. If the question is a more general 'Discuss' type question, an overall conclusion is still a good idea, even if a number of conclusions have been reached in the course of the answer.