



# Are licences property?

Approaching Exercise 9.2 in *Land Law*  
Mark Davys

2

## Are licences property?

This may be a short question, but that does not mean that it requires a short answer, tempting though it may be to simply write, 'Yes' or 'No'.

You need to start your preparation by filling in the gaps in the question. What is it asking you to do? Assuming that this is a question addressed to undergraduates, a fuller version might read:

**Critically consider whether licences are [should be] recognised as property by English land law?**

## Are **licences** **property**?

Essentially, the question is asking you to consider whether one group of concepts (**licences**) fall within or outside another concept (**property**).

Consequently, you need to:

- research and understand:
  - the scope of the term **licences** and the characteristics of such **licences**; and
  - the characteristics that characterise **property**;

so that you can:

- determine how far the two sets of characteristics overlap.

# Are licences property?

## Scope of licences

In the context of Chapter 9 of *Land Law*, the term 'licence' refers to a right to occupy or use land that does not fall within the list of estates and interests recognised at law and in equity (see Chapter 2, and especially, Section 2.2 and Figure 2.1). You should explicitly state in your answer how you have construed the term. This makes it clear that you understand what you are referring to and why.

Adopting this definition means:

- that you do not need to consider other types of licence (such as licences to sell alcohol or licences to use someone else's process or product);
- that you must consider **all of the four types of licence** referred to in Chapter 9.

# Are licences property?

## What are the characteristics of property?

The nature of property rights are briefly introduced in Section 1.4 of Chapter 1 of *Land Law*.

Lord Wilberforce identified four main characteristics of a property right in *National Provincial Bank Ltd v Ainsworth* [1965] AC 1175 (summarised in the quotation from pages 1247-8 of the report in Section 1.4.2 of *Land Law*). However, despite its convenience, there are major flaws with the approach taken in *Ainsworth* and should not be used uncritically in answering this question. Good places to start with further reading are:

- Kevin Gray and Susan Francis Gray, 'The idea of Property in Land', in Susan Bright and John K Dewar (eds), *Land Law: Themes and Perspectives* (Oxford University Press 1998), 15; and
- Kevin Gray, 'Property in Thin Air' (1991) 50 *Cambridge Law Journal*, 252.

By the end of your research, you need one or more test that you can use to determine whether something is or is not property.

6

Are **licences** **property**?

**What are the characteristics of the different types of **licence**?**

The four types of licence are introduced in Chapter 9 of *Land Law*.

Consider the case law and use (and make use of the suggested further reading and other resources) until you are able to evaluate each type of licence against your understanding of what makes something 'property'.

# Now, use what you have discovered to plan and write your answer.

- **Introduction:** briefly explain key issues and terms and summarise your answer to the question.
- **Body:** start by considering what 'property' is; then, test each of the types of licence against the criteria you have identified. Some types of licence may have none of the relevant characteristics; others may have some, but probably not all of them (in which case, are they property or not?).
- **Conclusion:** try to avoid simply restating your introduction. You could, for example, consider whether some types of licence should be property; or the different judicial and socio-economic attitudes to the question; or whether the parties should be entitled to decide the nature of the relationship for themselves (compare the property/contract tension central to the law of leases).