

# Personal Property

by Sophia



## WHAT'S COVERED

In this lesson, you will learn about a particular type of property and the conditions surrounding its ownership. Specifically, this lesson will cover:

## 1. Classification of Property

Let's begin with an understanding of the differences between types of property. This is important, because different laws apply to different types of property. While it might be perfectly legal to destroy a piece of **personal property** (like a chair) without obtaining permission from the government, destruction of **real property** is a different matter altogether.

### IN CONTEXT

The owner of an office building who wishes to demolish it would be subject to many local laws, such as requirements to obtain the necessary permits. Such an activity might also be subject to further legal scrutiny, if the building in question holds particular historic value, for example. Let's compare this to the destruction of a chair, which is personal property.

Even if the chair is the one that James Madison sat in while drafting the United States Constitution, as long as the chair is owned by the person who wishes to destroy it, the owner may simply load it into his or her truck and haul it to the dump. No special permission is required, because there are few legal restrictions to the destruction of private personal property.

As you can see, property can be classified as real or personal. Real property is land, and certain things that are attached to it or associated with it. Real property thus includes raw land, such as a forest or a field, as well as buildings, like a house, a condominium, or an office building.

Additionally, things that are associated with land, like mineral rights, are also real property. People often talk about real property by using the term "real estate," which reflects both the concept of real property and the ownership interest concept of estate.

Many businesses, from grocery stores to coffee shops to hotels, rely on real property for customers or clients to visit to conduct business. Today, many businesses are also conducted virtually, and have only virtual shops. Virtual stores, such as those found on eBay, are not forms of real property.

Personal property, then, is any property that is not real property.

### IN CONTEXT

Sounds simple, right? Your iPad, your cell phone, and your computer are all personal property. Your dorm room, apartment, or house is real property. So far, so good. But imagine that you found a Jacuzzi for sale that you loved. You plunked down \$5,000 to buy it, and you have it delivered to your house. You pay for construction of a deck to surround it and plumbing to service it. Is the Jacuzzi personal property or real property? This is an example of personal property that becomes attached to the land as a fixture. A fixture is something that used to be personal property, but has become legally a part of the land. Fixtures are treated like real property. Accordingly, when real property is transferred, fixtures are transferred as a part of the real property. In our example, if you move, you will have to leave your beloved Jacuzzi behind, unless you make express provisions to remove it. What if you were just renting? Since removing a fixture would cause substantial harm to the property, that fixture remains with the land.

Some things that are attached to the land are not fixtures, but are part of the real property itself. Imagine a farm with one thousand acres planted in corn. Is the corn crop personal property or real property? Or imagine a forest. Maybe the owner has been thinking about timbering the forest for some extra money. Is the forest personal property or real property? Both the corn crop and trees are examples of real property that can become personal property, if they are severed from the land. This means that when an ear of corn is picked from the stalk, the ear of corn becomes personal property, even though it was real property when it was growing and still attached to the land. Likewise, when a tree is felled, that tree is transformed from real property to personal property.



### TERMS TO KNOW

#### Real Property

Real estate, as in land and buildings, and associated rights, such as mineral rights.

#### Personal Property

All property that is not real property.

---

## 2. Types of Personal Property

There are two distinct types of personal property:

- Tangible property
- Intangible property

### 2a. Tangible Property

**Tangible property** is something that can be touched. Moveable, tangible personal property is called **chattel**. Many businesses exist to sell personal property.

➞ **EXAMPLE** The primary purpose of retailers such as Wal-Mart, Amazon.com, and Target is to sell

personal property.

Some property can also be described as **fungible property**. Property that can easily be substituted with identical property is said to be fungible.

➞ **EXAMPLE** If you bought a pound of sugar from a container containing ten pounds of sugar, you wouldn't care which specific grains of sugar made up your purchase, because all the sugar in the container is fungible. Other types of fungible goods include juices, oil, metals such as steel or aluminum, and physical monetary currency.



#### TERMS TO KNOW

##### **Tangible Property**

Property that can be felt or touched, either real or personal.

##### **Chattel**

An article of personal property.

##### **Fungible Property**

Goods of which any unit is identical to all other units such as grain or oil. The opposite of fungible property is property in specie, meaning the goods are distinct within a particular class.

## 2b. Intangible Property

Some personal property is intangible. **Intangible property** does not physically exist, but it is still subject to ownership principles, including acquisition, transfer, and sale.

➞ **EXAMPLE** The right to payment under a contract, the right to exclude others from a patented product, and the right to prohibit others from using copyrighted materials are all classified as intangible property.



#### TERM TO KNOW

##### **Intangible Property**

Personal property that cannot be felt or touched and exists only in connection with something else, such as goodwill of a business, trademarks, copyrights, stock in a company, etc.

---

## 3. Property Ownership

Besides property types, property can be classified by ownership, too. Personal property and real property can be either:

- Private property
- Public property

### 3a. Private Property

**Private property** is owned by someone or something that is not the government. Individuals, corporations, and partnerships, for instance, can own private property.

Private property can include real property like land or buildings, and personal property, such as automobiles, furniture, and computers.



#### TERM TO KNOW

##### Private Property

Property that belongs absolutely to an individual or business with an exclusive right to dispose of it as the owner desires, protected from public use.

### 3b. Public Property

Property that is owned by the government is **public property**.

➞ **EXAMPLE** Yellowstone National Park and the Gifford Pinchot National Forest are both public property that is real property.

Public property can also include personal property, such as automobiles, furniture, and computers owned by state or local governments.



#### TERM TO KNOW

##### Public Property

Property that is owned by a government, such as a state, nation, or municipality and not a private person.

---

## 4. Methods of Acquiring Personal Property

Personal property may be acquired for ownership in several different ways.

### 4a. Ownership by Production

If you produce something, then you may own it. This is ownership by production. The exception to this is if you are producing something in the capacity of your work for someone else.

➞ **EXAMPLE** If you buy four yards of wool fabric and sew a coat out of it, then you own that coat by virtue of having produced it with your own materials. However, if you sew a coat as part of your job while working for your employer, then the employer will own the coat.

### 4b. Purchase

If you are in the business of producing coats to sell, then you may be a merchant, and the rules of the Uniform Commercial Code (UCC) would govern transactions involving the sale of goods and the purchase of supplies from other merchants.

Regardless of whether someone is a merchant or not, purchase is a means of acquiring ownership. Indeed, in today's world, purchase may be the most common method of acquiring property.

### 4c. Gifted Property

Property may also be gifted. A **gift** is a voluntary transfer of property. Generally, the **donor** of the gift must intend to gift the property, the donor must deliver the gift, and the gift must be accepted by the intended recipient, known as the **donee**.

A **conditional gift** is a gift that requires a condition to be met before the gift will transfer.

➞ **EXAMPLE** If your parents said, "You can have a new car if you graduate from school," that would

be a conditional gift. If you do not graduate from school, then you cannot have the gift of the car.



## TERMS TO KNOW

### Gift

A voluntary transfer of property that is given without consideration.

### Donor

The person who gives a gift.

### Donee

The person to whom a gift is given.

### Conditional Gift

A gift that is subject to a condition, such as “I gift my car to my son if he marries.”

## 4d. Found Property

What if you find something? The concept of “finders keepers” is one known to every preschooler. However, in law, things are not quite so simple. Property that someone finds can be classified in several ways.

A finder of personal property may claim ownership of the property if it is abandoned. The owners of **abandoned property** must intend to relinquish ownership in it.

➔ **EXAMPLE** If you take your chair to the landfill, you have abandoned the chair. Someone may come along and take possession of it, which will place ownership of the chair with that person. If you change your mind later, that’s too bad. The chair now belongs to the new owner.

However, if the property is simply lost or mislaid, then the finder must relinquish it once the rightful owner demands its return. If the finder refuses to return lost or mislaid property to its rightful owner, the owner can sue for **conversion**, which is a tort. Conversion is intentional, substantial interference with the chattel of another.

Another classification of personal property applicable to found property is a **treasure trove**. A treasure trove is money or precious metals, like gold, for which the concept of “finders keepers” is sometimes applicable.

### CASE STUDY: *Apple v. Gizmodo*

Imagine finding the next-generation iPhone just lying on a bar stool. It has not been released yet, but there you are with an actual prototype in your hands! This is valuable property because it embodies the cutting-edge intellectual property of Apple, both in utility and design. Brian Hogan found himself in this position. Apparently, an Apple software engineer had accidentally left the prototype on a bar stool one evening. Hogan decided to sell the prototype to Gizmodo, a tech site, which was willing to pay for it so that it could write an early and exclusive review of this soon-to-be hot item on the market. Gizmodo subsequently discovered that Apple had lost an iPhone prototype and wanted it returned. Regardless of that fact, Gizmodo dismantled the prototype and published photos on its website. Subsequently, it returned the property to Apple.

Was the prototype of the next-generation iPhone abandoned, lost, mislaid, or a treasure trove? If Apple filed a civil lawsuit against Gizmodo, what would the claim be and who should win? Since we know that Apple wanted the property back, we know that it had no intention of relinquishing ownership of it. Therefore, the property was not abandoned. Since a next-generation iPhone is not

money or precious metals - even though it is very valuable and worth a lot of money to Apple - the concept of a treasure trove does not apply. A phone is not actual coin or cash. In this case, the property was either lost or mislaid because it was unintentionally relinquished or set down for later retrieval, but the owner had forgotten where it was placed.

If the phone had not been returned, Apple could have brought a suit for conversion. A successful conversion claim would have awarded damages to Apple. Just like any successful conversion claim, damages would not include a requirement to return the property itself. Incidentally, California has captured the duty to return lost or mislaid property in its criminal statutes, and the facts of this case were investigated for possible theft charges.

*Edward C. Baig, "Gizmodo: Lost Next-Gen iPhone Returned to Apple," USA Today, April 21, 2010*



## TERMS TO KNOW

### Abandoned Property

Property to which the owner has relinquished all right, title, and interest with no intention of reclaiming it, such as property knowingly and intentionally placed for trash pickup.

### Conversion

Unauthorized assumption and exercise of ownership over goods belonging to another.

### Treasure Trove

Money or coin, gold, silver, or bullion found hidden in a private place, the owner of which is not known; the finder is thus entitled to it in favor of the landowner, absent a law stating otherwise.



## SUMMARY

In this lesson, you learned that **property is classified** as real property or personal property. Personal property can be transformed into real property when it is affixed to the land. Real property can be transformed into personal property when it is severed from the land. There are **two types of personal property**: tangible or intangible. **Tangible property** can be touched, whereas **intangible property** does not physically exist but can be owned nevertheless.

**Property ownership** also differs by type. **Private property** is owned by a person or entity that is not the government, and **public property** is owned by the government. **Personal property can be acquired** for ownership through **production, purchase, or gift**. In certain circumstances, a person may claim ownership of **found property**.

Best of luck in your learning!

Source: THIS TUTORIAL HAS BEEN ADAPTED FROM (1) "BUSINESS LAW AND THE LEGAL ENVIRONMENT" VERSION 1.0 BY DON MAYER, DANIEL WARNER, GEORGE SIEDEL, AND JETHRO K. LIEBERMAN. COPYRIGHT 2011. ISBN 978-1-4533-3050-0. (2) "THE LEGAL AND ETHICAL ENVIRONMENT OF BUSINESS" VERSION 1.0 BY TERENCE LAU AND LISA JOHNSON. COPYRIGHT 2012. ISBN 978-1-4533-2750-0 (LICENSEE PRODUCT: BUSINESS LAW), BOTH SOURCES REPRINTED WITH PERMISSION FROM FLATWORLD.

**Abandoned Property**

Property to which the owner has relinquished all right, title, and interest with no intention of reclaiming it, such as property knowingly and intentionally placed for trash pickup.

**Chattel**

An article of personal property.

**Conditional Gift**

A gift that is subject to a condition, such as "I gift my car to my son if he marries."

**Conversion**

Unauthorized assumption and exercise of ownership over goods belonging to another.

**Donee**

The person to whom a gift is given.

**Donor**

The person who gives a gift.

**Fungible Property**

Goods of which any unit is identical to all other units such as grain or oil. The opposite of fungible property is property in specie, meaning the goods are distinct within a particular class.

**Gift**

A voluntary transfer of property that is given without consideration.

**Intangible Property**

Personal property that cannot be felt or touched and exists only in connection with something else, such as goodwill of a business, trademarks, copyrights, stock in a company, etc.

**Personal Property**

All property that is not real property.

**Private Property**

Property that belongs absolutely to an individual or business with an exclusive right to dispose of it as the owner desires, protected from public use.

**Public Property**

Property that is owned by a government, such as a state, nation, or municipality and not a private person.

**Real Property**

Real estate, as in land and buildings, and associated rights, such as mineral rights.

**Tangible Property**

Property that can be felt or touched, either real or personal.

**Treasure Trove**

Money or coin, gold, silver, or bullion found hidden in a private place, the owner of which is not known; the finder is thus entitled to it in favor of the landowner, absent a law stating otherwise.

