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Update Summary

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LAND TITLES LAW AND PRACTICE

**Sharon Christensen, Bill Dixon
and Anne Wallace**

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UPDATED ANNOTATIONS

Part 5 – Joint holders in a lot

Anne Wallace has updated commentary to s 59 (Severing joint tenancy) of the *Land Title Act 1994* to include a number of older authorities and to address the following cases:

- [5.430] Severing a joint tenancy under the general law
 - *Hycenko v Hrycenko & Hrycenko* [2016] VSC 247, with regard to a statement being sufficient to indicate intention to sever joint tenancy; and
- [5.450] Effect of severance
 - *Anderson v Anderson* [2016] NSWSC 1204, with regard to a transfer under s 97 of the *Real Property Act* (NSW) to sever a joint tenancy being executed under a power of attorney in circumstances where the person executing the transfer did not have power to act as a substitute attorney.

References to Duncan and Vann, *Property Law and Practice* and *Real Property in Queensland* have been updated where they appear in the commentary to Part 5.

Part 6 – Divs 4-6 Easements, Adverse Possessor, Trusts

Anne Wallace has updated commentary to s 82 (Creation of easement by registration) to include a decision made by Mullins J regarding the determination of 10 hours as an appropriate length of time for parking under the parking easement for the marina berths, see:

- [6.10320] Covenants in an Easement
 - *Multiplex Bluewater Marina Village Pty Ltd v Harbour Topics Pty Ltd (No 2)* [2016] QSC 192.

Part 9 – Registration of Instruments and its Effect

Anne Wallace has updated commentary to s 184 (Quality of registered interests) to include the following case in relation to the fraud exception to indefeasibility:

- [10.3070] The fraud exception to indefeasibility
 - *Anderson v Anderson* [2016] NSWSC 1204.

Commentary to s 188 (Compensation for deprivation of lot or interest in a lot) has been updated to include reference to the following case. See:

- [10.5200] Measure of compensation
 - *Astell v Australian Capital Territory* [2016] ACTSC 238, in support of the view that the measure of damages for loss of an interest in land through fraud is determined on the basis that the plaintiff is entitled to be put in the same position as if the wrongful deprivation had not occurred.

NEW ANNOTATIONS

Anne Wallace has provided new commentary to s 180 (Benefits of registration) relating to whether indefeasibility protects a volunteer against a particular claim in personam, see:

- [10.810] Volunteers and the in personam exception
 - *Leighton Contractors Pty Ltd v O’Carrigan & Ors* [2016] QSC 223; and
 - *Fistar v Riverwood Legion and Community Club Ltd* [2016] NSWCA 81.

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- [6.10320] Covenants in an Easement
 - *Multiplex Bluewater Marina Village Pty Ltd v Harbour Topics Pty Ltd (No 2)* [2016] QSC 192.

Part 9 – Registration of Instruments and its Effect

Anne Wallace has relocated and updated commentary to s 184 (Quality of registered interests) to improve clarity and include material relating to a forfeiture order made under the *Criminal Proceeds Confiscation Act 2002*, see:

- [10.2840] Registered proprietor takes subject to other registered interests; and
- [10.3110] Overriding statutes as an exception to indefeasibility
 - *State of Queensland v Statham* [2016] QSC 189.

Anne Wallace has also updated commentary to s 184 (Quality of registered interests) to include the following case in relation to the fraud exception to indefeasibility:

- [10.3070] The fraud exception to indefeasibility
 - *Anderson v Anderson* [2016] NSWSC 1204.

Commentary to s 185 (Exceptions to s 184) has been updated to include material and cases relating to an action for money had and received taken against a third party volunteer recipient, see:

- [10.3350] An equity arising from the act of the registered proprietor
 - *Leighton Contractors Pty Ltd v O’Carrigan & Ors* [2016] QSC 223; and
 - *Fistar v Riverwood Legion and Community Club Ltd* [2016] NSWCA 81.

Commentary to s 188 (Compensation for deprivation of lot or interest in a lot) has been updated to include reference to the following case in support of the view that the measure of damages for loss of an interest in land through fraud is determined on the basis that the plaintiff is entitled to be put in the same position as if the wrongful deprivation had not occurred. See:

- [10.5200] Measure of compensation
 - *Astell v Australian Capital Territory* [2016] ACTSC 238.

