## Index

Aboriginal title claims	rights of property owners, 69-70
anthropological evidence, 242	temporary protection works, 70
approach to determining, 239-240	statutory provisions, 68
challenges for law and anthropology, 243-245	title to land survives inundation, 74
comparative jurisprudence, 240-241	Crown's claim to foreshore, and, 75-76
constrictions of Australian doctrine, 240	rejection of rule, 76-77
critical legal studies, 186-187, 188, 194	Applied property research
content of title, 188	challenges of approach, 227-228
subjectivity and property, 189	defining, 223
temporality and property, 188-189	empirical research, and, 222
territorial theory of ownership, 186	importance of approach, 222
geographical scope, 243	overview, 222-223, 228
judicial recognition, 239, 241	qualitative elements, 224
overview, 186-187, 233, 236-237, 238-239, 245	action, 225
post-colonial law, 239	judgment, 224-225
processes for claims, 241	knowledge, 224
spatialisation of property, 233-234	qualitative functions, 225
Ambulatory boundaries	documentation management, 225
•	risk management, 226
boundaries defined by survey, 77	time management, 225-226
amendment of boundaries, 78, 79	transactional approach, 223, 228
erosion by sea, 77-79	framing the inquiry, 226
land, definition, 78	organising by market context, 227
climate change, and, 69, 70, 82-83, 84	organising by transaction timeline, 226-227
managed relocation, 84	
possible responses, 83-84	patterns in transactions, 223-224, 226 qualitative elements, 224-225
sea defences, 83-84	
compensation for lost land, 79, 82, 83	qualitative functions, 225-226
acquisition, loss as, 81	Australian Consumer Law
common law, 79-80	consumer guarantees, 111
statutory provisions, 80-81	
Crown's ownership of foreshore, 75-76	Boundaries – see also Ambulatory boundaries
doctrine of accretion, 67-68, 69, 72, 76	overview, 231
Australian cases, 77-79	relational geography, 232
doctrine of avulsion, 73-74 mean high-water mark, 71	<b>Building defects</b>
calculation, 71	home building reforms, 113
movement of boundaries, 72	planning law reforms, 114
avulsion, 73-74	strata title reforms, 111
gradual and imperceptible change, 72-73	builders and developers, 112-113
natural processes, 72	consumer guarantees, 111
natural processes, 72 nature of boundaries, 71	independent defects reports, 112
overview, 67, 71	planning law reforms, 114
	window safety laws, 113
sources of uncertainty, 68, 71 antiquated rule, 74	willdow salety laws, 113
*	Canada
coastal zone inquiry, 2009, 69 doctrine of accretion, 68, 69	Aboriginal title claims, 186-187, 188, 194, 233, 241

## Canada - continued utopian aspirations, 56, 57, 58 overview, 99 Aboriginal title claims - continued review of legislation, 99, 100, 101 content of title, 188 geographical scope, 243 Comparative law method spatialisation of property, 233-234 challenges for comparative lawyers, 204, 210 subjectivity and property, 189 effect of studies, 210-211 temporality and property, 188-189 terminology, 210 territorial theory of ownership, 186 vertical dynamics, 211 Climate change conduct of research, 204, 206 equivalent situations, 206-207 ambulatory boundaries, and, 69, 70, 82-83, 84 functional comparative method, 207-208, 210 managed relocation, 84 historical comparative method, 208 possible responses, 83-84 methodological questions, 209-210 sea defences, 83-84 terminology, 207 Coastal zone - see Ambulatory boundaries three-level approach, 208-209 other approaches, and, 211 Commonhold overview, 203-204, 211 academic concerns, 90-91 reasons for using, 204, 210 compulsory winding-up, 92 courts, 205-206 developers' position, 91-92 vertical dynamics, 204-205 lenders' position, 92-93 background to introduction, 85-86, 87 Compensation commonhold associations, 87, 88, 89, 90-91 land lost to the sea, 79, 82, 83 commonhold community statements, 87-88, 90-91 acquisition, loss as, 81 current usage statistics, 90 common law, 79-80 ending a scheme, 90, 92 statutory provisions, 80-81 compulsory winding-up, 90, 92 Covenants future directions, 97-98 community management statements, 55, 61 land registration, 88, 89 United Kingdom, 85 leasehold titles, comparison, 86-87 leasehold titles, 86-87 nature of commonhold, 86 overview, 86, 98, 99 Critical legal studies property industry response, 93 Aboriginal title claims, 186-187, 188, 194 analysis of survey responses, 96-97 content of title, 188 results of survey, 93-96 subjectivity and property, 189 setting up a scheme, 87-88 temporality and property, 188-189 transactions involving units, 89-90 territorial theory of ownership, 186 unit-holder's rights and duties, 89-90 critical race theory, 201 **Community interests** form of property, 191-192 actor-network theory, 192-193 liberal model of property, 36, 39 contradictory forms, 192 stewardship model of property, 37, 40, 42 feudal concepts, 192 Community title legislation – see also Strata title legal fabrication, 192 reforms overview, 169, 187-188, 194 intentional communities, 51, 53, 62 power and property, 193 contravention of law, 62 trusts, 193 equality of lot owners, 59 university protests, 193-194 exclusion, and, 60 subject-object paradigm, 189-190, 191 registration of schemes, 54 subjectivity and property, 189-190 security of proprietary entitlements, 55 temporality and property, 188-189

Crown	qualitative research, 182
ownership of foreshore, 75	quantitative data, 182
	tasks of researcher, 181
Definitions	theoretical frameworks, 182
anthropology, 236	overview, 176-177, 178, 179-180, 185
avulsion, 73	socio-legal research, comparison, 178-180
community, 52	example, 180-181
economics, 212	value of research, 177-178
empirical legal research, 177, 178, 179	
high-water mark, 71	Environmental planning instruments
intentional communities, 52	regulatory instruments, 55
land, 78	Feminist research approach
regulatory instrument, 55	
servitude, 5	challenges for researchers, 253-254
socio-legal research, 167, 168, 178	truth claims, 254
utopia, 56	doctrinal approach, distinction, 248-249
•	home, 247, 248, 249
Doctrinal research approach – see also	anti-social behaviour, 250
Socio-legal research approach; Theoretical	domestic violence, 249-250
research approach	safe haven, as, 249-251
criticisms of approach, 160, 165	social housing, 250-251
empirical research approach, comparison, 178	home ownership, 247, 251
example, 180	methods of research, 248
features of an analysis, 161-162	couple relationships, 249
current law, 163, 164	nature of analysis, 248-249
literature reviews, 162	overview, 169, 247-248, 254
primary aims, 163	relationship breakdown, 247, 251-252, 253
primary materials, 162-163	common intention to share, 252-253
result of analysis, 163-164	subject-object paradigm, 189-190
theories of others, 162	
feminist approach, distinction, 248-249	Feudalism – see Servitudes
overview, 160, 161, 164-165, 175, 178	Freehold tenure – see also Commonhold;
purpose of rule identification, 164	Community title legislation; Leasehold
uncertainty, and, 164-165	titles; Strata title
Empirical research approach	overview, 99
applied property research, and, 222	Home building reforms
challenges, 177, 183	building defects, 114
accessing data, 185	New South Wales, 113
ethical implications, 185	·
funding, 184-185	Indigenous issues – see Aboriginal title claims;
lack of training, 183-184	Law and anthropology
character of information, 177-178	Intentional communities
doctrinal approach, comparison, 178	
example, 180	community, concept, 52-53
empirical legal research, definition, 177, 178, 179	community management statements, 54-55
essential characteristics, 177	contravention of law, and, 61-62
example, 180-181	covenants, 55, 61
methods of research, 181, 183	eco-friendly communities, 58
hypothesis, 182	fetters on agreements, 55
lack of training, and, 184	human behaviour, and, 58
, , , , , , , , , , , , , , , , ,	matters for inclusion 55

<b>Intentional communities</b> – <i>continued</i>	efficiency of property rights, 213
community management statements - continued	neoclassical theory of markets, 213, 214
original by-laws, 61	assumptions, 214
underlying rationale, 57-58	overview, 212-213, 221
utopian aspirations, and, 57-58	property as an institution, 213
community title legislation, 51, 53, 62	Coase's new institutionalism, 214, 215-216,
contravention of law, 62	217
equality of lot owners, 59	distribution of wealth, 214-215
exclusion, and, 60	neoclassical theory of markets, 213-214
registration of schemes, 54	sample applications, 215-217
security of proprietary entitlements, 55	social costs, 214, 215, 216
utopian aspirations, 56, 57, 58	property remedies, 217
covenants, 55, 61	allocation of property rights, 218
definition, 52	hybrid remedies, 217-218
eco-friendly communities, 53-54, 58	nuisance, 217-218
establishment, 53, 54	transaction-cost analysis, 219
historical development, 53	resource conservation, 219, 220
ideologies, 53-54, 62	common-pool users, 220
overview, 51, 52, 62-63	government regulation, 219, 220
registration of schemes, 54	private ownership, 219, 220
shared values, 54, 57	Legal research – see Property law research
exclusion, and, 60	Legal research – see Property law research
utopian aspirations, 51, 56, 60, 62, 63	Leasehold titles
community management statements, 57-58	overview, 99
Marxist foundation, 57	United Kingdom, 86-87
pursuit of common goals, 56-57	
utopia, definition, 56	Legal pluralism, 169
value tensions, 51, 58	Liberal model of property
exclusion problem, 59-60	community interests, 36, 39
individual-collective dialectic, 58-59	liberty to waste or destroy, 45-46
inside-outside problem, 61-62	Lockean natural rights, and, 36, 37, 40, 45-46, 48
Law and anthropology	-
Aboriginal title claims, 236-237, 238-239	Limited real rights – see also Servitudes
anthropological evidence, 242	overview, 3, 4, 10, 11
approach to determining, 239-240	South Africa, 19-20
challenges, 243-245	Lockean natural rights
comparative jurisprudence, 240-241	_
constrictions of Australian doctrine, 240	common of natural resources, 38, 41-42
geographical scope, 243	positive community, 42
judicial recognition, 239, 241	duties owed to God, 41, 42-43, 46, 47
post-colonial law, 239	labour justification, 38-39, 191
processes for claims, 241	liberal model of property, and, 36, 37, 40, 48
anthropology, definition, 236	liberty to waste or destroy, 45-46
contemporary contributions, 238	limits on property rights, 43, 49, 50
historical background, 237-238	charity obligation, 45
concept of property, 238	duty not abuse or destroy, 47-48
overview, 236-237, 245-246	prohibition against waste, 45-47
	sufficiency proviso, 43-44, 45
Law and economics approach	overview, 36, 50
economics definition 212	prohibition against waste, 45-46

Lockean natural rights - continued	New Zealand
prohibition against waste - continued	Maori land entitlements, 239
duties owed to God, 46, 47	Numerus clausus
introduction of money, 46-47	
scope of property rights, 39, 40-41	overview, 206
spoilage proviso, 39, 42, 43	servitudes, 4, 6, 9-10, 11, 12, 13, 14, 15, 16, 20,
state intervention, 48-50	21, 22, 23 Australian approach, 18
taxation, 49	economic approach, 25
stewardship model of property, and, 37-38, 40-41,	Scottish developments, 17
48, 50	South Africa, 18-19
limits on property rights, 43-48	•
shared foundational themes, 42-43	Planning law reforms
similarities, 41-43	building defects, 114
traditional interpretation, 38-39	Drogressive property approach
Master-planned developments, 52, 99	Progressive property approach
	competing claims, 154
Native title – see Aboriginal title claims	eminent domain, 156-158
Natural rights – see Lockean natural rights	adequacy of public purpose, 157
Tratulal lights See Lockean natural lights	Kelo decision, 157 ownership-as-risk, 158
New South Wales	purpose of power, 157
ambulatory boundaries, 67	values, 158
climate change, and, 83-84	government redistribution schemes, 158-159
compensation for lost land, 79, 80-82	human need, 158-159
Crown's ownership of foreshore, 75	mortgage foreclosure crisis, 156
doctrine of accretion, 68, 77-79	equal protection of property, 156
sources of uncertainty, 68-71	property as contract approach, 155-156
statutory provisions, 68	property rights, 155
civil and administrative tribunal, 131-132	responses to crisis, 155
community title legislation, 51, 62	values, 156
contravention of law, 62	overview, 153, 154
equality of lot owners, 59	protection of property rights, 156, 158-159
exclusion, and, 60	rivalrous nature of property, 154
registration of schemes, 54	values, 154, 156, 158
review of legislation, 99, 100, 101	Property law research
security of proprietary entitlements, 55	
utopian aspirations, 56, 57, 58	applied research – see Applied property research
consumer, trader and tenancy tribunal, 130	approaches to research, 142-144, 150-151, 160
Crown's ownership of foreshore, 75 home building reforms, 113	categories of research, 143
planning law reforms, 114	jurisdictional differences, 142
strata title reforms, 99, 100	comparative law – see Comparative law method
aim of reforms, 100	contributors to special issue, 140
budgets and levies, 121-124	critical legal studies – see Critical legal studies
built environment, 111-121	doctrinal approach – see <b>Doctrinal research</b>
by-laws, 124-129	approach
dispute management, 130-133	empirical research – see Empirical research
governance, 101-110	approach
window safety laws, 113	funding, 147-150, 160-161
Torrens title, 68	empirical research approach, 184-185
· · · · <b>· · · · · ·</b>	successful funding rates 147-150

Property law research – continued	Servitudes
funding bodies, 145-147	anti-feudalism narrative, 4, 7, 14, 24, 25
law and anthropology – see Law and	absoluteness of ownership, 12
anthropology	compelling aspects, 12
law and economics – see Law and economics	contested aspects, 12-13
approach	creation of servitudes, and, 12
overview, 139, 140, 160	economic liberty, 26
social and cultural history – see Social and	efficient land-use narrative, distinction, 14
cultural history	feudal land-use rights, 7-8, 11
socio-legal approach – see Socio-legal research approach	individual liberty and autonomy, 8, 10, 11, 24-25
space and property – see Space and property	limited real rights, 10, 11
survey of researchers, 139, 140	medieval split ownerships, 8, 9
analytical issues, 140-141	move toward unified ownership, 9, 10
background to survey, 139	numerus clausus, 9-10, 11, 12, 13, 14
jurisdictional categories, 141	post-feudal property doctrine, 9
practical issues, 140-141	anti-fragmentation controls, 4, 11, 12-13, 14
survey results, 142, 150-151	anti-feudalism narrative, 4, 7-14, 24, 25, 26
approaches to research, 142-144	economic liberty, 25-26
funding applications, 147-150	efficient land-use narrative, 5, 14-24, 25, 26,
funding bodies, 145-147	30
institutions, 145-147	ex ante controls, 4, 6, 17, 18, 20, 21, 24
sources of funding, 149, 150	ex post controls, 4, 6, 13, 17, 18, 20, 21, 23, 24,
substantive research areas, 144-145	26, 27, 29, 30, 33, 35
successful funding rates, 147-150	liberty, 8, 10, 11, 25-28
theoretical approach – see Theoretical research	normative framework, 4-5, 6
approach  Real rights	numerus clausus, 4, 6, 9-10, 11, 12, 13, 14, 15, 16, 17, 18-19, 20, 21, 22, 23, 30
3	touch and concern doctrine, 4, 12
anti-fragmentation controls, 3-4	application of principles, 12
limited real rights, 3, 4, 10, 11 South Africa, 19-20	changed circumstances, 14, 15, 20, 23, 29-30
	creation of servitudes, 6, 12, 14-15, 22-23
overview, 3 servitudes – see Servitudes	definition, 5
South Africa, 19-20	development of modern law, 6-7
South Africa, 19-20	efficient land-use narrative, 5, 14, 24, 30
Remedies	anticommons concerns, 21, 22
law and economics approach, 217	anti-feudalism narrative, distinction, 14
allocation of property rights, 218	Australian approach, 18
hybrid remedies, 217-218	changed circumstances, 14, 15, 20, 23
nuisance, 217-218	costs of re-bundling, 22
transaction-cost analysis, 219	doctrinal version, 16-20, 23-24
•	economic analyses, 20-24
Resource conservation	economic liberty, 25-26
law and economics approach, 219, 220	ex ante controls, 17, 18, 20, 21, 24
common-pool users, 220	ex post controls, 17, 18, 20, 21, 23, 24
government regulation, 219, 220	limits on new property rights, 23
private ownership, 219, 220	numerus clausus, 14, 15, 16, 17, 18-19, 20, 21, 22, 23, 25
Scotland	Scottish developments, 16-17
servitudes, 16-17	South Africa, 18-20
	United States, 17, 18

Servitudes – continued	theoretical insights, 197-198
kinds of servitudes, 30	Socio-legal research approach – see also Critical
liberty, 5, 24, 27-28, 31	legal studies
choice and coercion, 26-27	aims of research, 167
constitutional right, property as, 27	challenges in property law, 172-174
democratic approach, 28, 32	law-first approach, 173
economic liberty, 24, 25-26	methodological challenges, 172-173
ex post controls, 26, 27	definition, 167, 168, 178
individual liberty and autonomy, 8, 10, 11,	difficulties in defining, 166
24-25	development of approach, 166-167
meaning, 4, 5	empirical research approach, comparison, 178-180
historical background, 5-6	example, 180-181
numerus clausus, 4, 6, 9-10, 11, 12, 13, 14, 15, 16,	empirical studies, 168-169, 170-171
20, 21, 22, 23	interdisciplinarity, 167
Australian approach, 18	law in context, 167-168
economic approach, 25	legal consciousness studies, 172
Scottish developments, 17	overview, 167, 168, 175, 178-179
South Africa, 18-19	phenomenological research, 171-172, 173,
overview, 4, 24	174-175
personal interest servitudes, 30	social constructionist theory, 171-172
public interest servitudes, 30	social theory, 169
South Africa, 5, 6, 20, 29, 30	examples of theories, 169-170
changed circumstances, 29-30, 34-35	theory-based research, 170-171
constitutional questions, 31-34	value of research, 174
economic development of land, 30	judiciary, 174
ex post controls, 29, 30, 33, 35	multiowned housing, 174-175
lack of academic interest, 29, 30	<u>-</u>
liberty, 32	South Africa
numerus clausus, 18-19, 30	Constitution, 31, 32
touch and concern doctrine, 4, 12	access to housing, 33-34
urban or spatial planning servitudes, 30-31	economic interests, and, 33, 34
Social and cultural history	guarantees, 32-33
application in property law, 199	real rights, 19-20
abolition of slavery, 200-201	servitudes, 5, 6, 20, 29, 30
informal and formal meaning, 199-201	changed circumstances, 29-30, 34-35
legal history, 199, 200	constitutional questions, 31-34
practical difficulties, 201-202	definition, 5
reconstructing narrative, 199-200	economic development of land, 30
relationship with other methods, 201-202	ex post controls, 29, 30, 33, 35
categories of cultural history, 195	lack of academic interest, 29, 30
decentring the narrative, 195-196	liberty, 32
stance of the historian, 196	numerus clausus, 18-19, 30
methods, 195-196	Space and property
overview, 195	Aboriginal land claims, 233-234
usefulness in property law, 196-197	absolute space, 231, 232
customary practice, 198	boundaries, 231, 232
evidentiary base, 197	gentrification struggles, 233
insights into everyday life, 198	legal geography, 229-230
paratextual analysis, 197	neighbour law, 229
status of groups 198-199	noighbour law, 22)

Space and property –continued	common property, 116-118
neighbour law -continued	defects and maintenance, 111-114
trees, 229, 230-231	staged development, 118
overview, 229, 234-235	summary of reforms, 118-121
relational space, 231-232	collective sales and renewals, 114
spatial ordering, 230	less than unanimous support, 114-115
temporal dimensions, 233	proposed model, 115
	committees, 102, 103
Stewardship model of property	appointments to committees, 103-104
community interests, 37, 40, 42	conflict of interests, 104
duties of owner, 40, 42	vacancies, 107
limits on property rights, 43, 44	common property, 116
duty not abuse or destroy, 47	abandoned goods, 117
Lockean natural rights, and, 37-38, 40-41, 48, 50	leasing powers, 117-118
limits on property rights, 43-48	maintenance and repair, 117
shared foundational themes, 42-43	maintenance by-law, 116
similarities, 41-43	owner renovations, 116-117
sufficiency proviso, 44	defects and maintenance, 111
overview, 36-37, 50	budgets and levies, 121-122
scope of property rights, 39, 40-41	builders and developers, 112-113
stewardship, concept, 40	common property, 116, 117
sustainable development, 37	consumer guarantees, 111
	documents assisting maintenance, 113
Strata title	independent defects reports, 112
power to make by-laws, 55	maintenance schedules, 112-113
termination of schemes, 114	planning law reforms, 114
Strata title reforms	window safety laws, 113
	dispute management, 130
aim of reforms, 100	civil and administrative tribunal, 131-132
annual general meetings, 107	consumer, trader and tenancy tribunal, 130
defects and rectification, 111	non-attendance at mediation, 130
key financial information, 122-123	summary of reforms, 132-133
by-laws, 124-125	electronic documents, 101, 102
breaches, 126-127	
car parking, 127	governance, 101
cigarette smoke, 125	participation, 101-102
hardwood floors, 126	red tape, 107
maintenance by-law, 116	summary of reforms, 107-110
overcrowding, 126	transparency and accountability, 103-107
pet ownership, 126	managing agents, 105
review of by-laws, 125	duration of contracts, 105-106
summary of reforms, 128-129	inspection of agreements, 106
budgets and levies, 121-122	third-party commissions, 105
earned income, 123	overview, 99, 100
key financial information, 122-123	power to make by-laws, 55
outstanding levies, 123	records and information, 106
realistic levies, 122	access to information, 106-107
summary of reforms, 123-124	electronic documents, 101, 102
unit entitlements, 122	staged development, 118
built environment, 111	tenant participation, 102
collective sales and renewals, 114-115	voluntary charters, 125

Strata title reforms – continued	current usage statistics, 90
voting, 104	ending a scheme, 90, 92
proxies, 104-105	future directions, 97-98
secret ballots, 102	land registration, 88, 89
window safety laws, 113	leasehold titles, comparison, 86-87 nature of commonhold, 86
Sustainable development	property industry response, 93-97
stewardship model of property, 37	setting up a scheme, 87-88 transactions involving units, 89-90
Theoretical research approach – see also Doctrinal research approach; Socio-legal research approach	unit-holder's rights and duties, 89-90 covenants, 85, 86-87
challenges in application, 159	domestic violence, 249-250
eminent domain, 156-157	leasehold titles, 86-87
adequacy of public purpose, 157	relationship breakdown, 251-252, 253
Kelo decision, 157	common intention to share, 252-253
ownership-as-risk, 158	socio-legal research, 166
progressive property approach, 157-158	United States
purpose of power, 157	
values, 158	abolition of slavery, 200-201
kinds of inquiries, 152, 153	eminent domain, 156-157
mortgage foreclosure crisis, 155	adequacy of public purpose, 157
equal protection of property, 156	Kelo decision, 157
progressive property approach, 156	ownership-as-risk, 158
property as contract approach, 155-156	progressive property approach, 157-158
property rights, 155	purpose of power, 157
responses to crisis, 155	values, 158
values, 156	equal protection of property, 156
overview, 152-153, 159	intentional communities, 53, 61
progressive property approach, 153, 154	mortgage foreclosure crisis, 155
competing claims, 154	progressive property approach, 156
eminent domain, 156-158	property as contract approach, 155-156
government redistribution schemes, 158-159	property rights, 155
human need, 158-159	responses to crisis, 155
mortgage foreclosure crisis, 155-156	servitudes, 17, 18
rivalrous nature of property, 154	socio-legal research, 166
values, 154, 156, 158	Utopian communities - see Intentional
protection of property rights, 156, 158-159	communities
Tidal waters – see Ambulatory boundaries	
Torrens title	
indefeasible title, 68	
overview, 68	
United Kingdom	
commonhold, 86, 98	
academic concerns, 90-93	
background to introduction, 85-86, 87	
commonhold associations, 87, 88, 89, 90-91	
commonhold community statements, 87-88,	
90-91	