
Index

Accommodation sharing

- agreements 137, 138
 - terms of agreement 138-139
- innkeeper and guest 142
- leases, as 137, 139, 140
 - intention of parties 138
 - residential tenancies 140, 141
 - statutory requirements 140
- licences, as 137, 140
 - intention of parties 138, 139
 - residential tenancies 141
- overview 137, 142-143
- Queensland 137-143
- residential tenancies 140
 - compliance with requirements 141
 - definition 140
 - holiday purposes 141
 - part of a house 141-142
 - residential premises, definition 140-141

Acquisitions on just terms – see Constitution**Adverse possession**

- against the Crown 55-57
 - Crown agency, definition 56
 - Crown land, definition 55, 56
 - relevant definitions 55-56
 - unalienated Crown land, definition 55
- against true owner 53-55
 - legislative requirements 54-55
 - limitation period 54-55
- South Australia 46, 49, 52-57
- states' position 52-53

Agrarian land

- Crown leasehold system 165-166, 168
- Crown perpetual leasehold 163, 164-165, 166
 - policy behind creation 164
- early settlement 161-162
- overview 161, 166
- pastoral leases 163, 166
- selection tenure 163
- squatting 162-163, 165
 - emphyteusis*, and 165
 - pastoral licences 163
 - “squattocracy” 162

Airbnb – see Accommodation sharing**Airspace – see also Strata title**

- overview 173

Bitcoin

- asymmetric encryption 184
- double spending 183-185
- maintenance of ledger 185
- overview 183, 185
- verification of transactions 184

Blockchain technology

- Bitcoin example 183, 185
- asymmetric encryption 184
- double spending 183-185
- maintenance of ledger 185
- verification of transactions 184
- land administration systems 181-182, 185-186, 191, 194
 - advantages 188
 - derivative interests 188, 189
 - double sale of one property 191-192, 194
 - false certificates of title 192-193, 194
 - flexible securitisation 190
 - fraud scenarios 191-194
 - identity theft 192, 193, 194
 - illustration using central registries 186-188
 - joint ownership 189, 192, 194
 - “off register” interests 188, 189
 - operation 186
 - poor governance regimes 182
 - proof requirements 189-191, 193
 - reliability 190
 - trust 189-191
 - meaning 182-183

Boarders and lodgers

- Western Australia 149

Body corporate – see Strata title**Bona vacantia**

- New Zealand 214
- South Australia 46, 48-49

Index

- Charitable trusts**
- Islamic law 66
 - Torrens indefeasibility 66-67
- Choses in action**
- absolute assignments 91, 92-93, 94
- Common intention constructive trusts**
- detrimental reliance 134
 - indefeasibility of title 136
 - mortgage repayments 131, 132, 133
 - proprietary estoppel, and 134
 - Singapore 131, 132, 133, 134-135, 136
- Community title – see Strata title**
- Competing equitable interests**
- Western Australia 150
- Compulsory acquisitions**
- Constitution 27, 28, 44-45
 - acquisition of advantages 33-34
 - competing claims 37-39
 - countervailing property 30-31
 - devaluations 35-36, 42
 - enhancement of property 31
 - extinguishment of native title 17
 - general regulation 37-39, 42
 - incongruity 36-37
 - indirect acquisitions 29-30, 32
 - invalidity 39-41
 - limited jurisdiction 32
 - litigation 41, 42
 - money 35
 - operation of provision 28
 - property, concept 34
 - qualified power 28, 43
 - scope of provision 29-31
 - significance of qualification 29
 - statutory gratuities 37, 42
 - statutory rights 34-35
 - taking of property 32-33
 - temporary occupations 30
 - uncertainty 41-42
 - United States Constitution, comparison 27, 42-44
 - weaknesses 31-42
 - extinguishment of native title 7, 17
 - clear legislative intention 7, 8-9
 - Nigeria 204, 210
 - compensation 205, 208, 210
 - conceptual framework 204-205
- Constitution 204, 208
- denial of compensation 204, 205, 208-210
- half hectare rule 208
- Land Use Act 205-210
- penal revocation 208-210
- Singapore 69-70
- state parliaments 32
- United States Constitution 27, 42
 - devaluations 42-43
 - differences to Australia 43-44

Constitution

 - acquisitions on just terms 27, 28, 44-45
 - acquisition of advantages 33-34
 - competing claims 37-39
 - countervailing property 30-31
 - devaluations 35-36, 42
 - enhancement of property 31
 - extinguishment of native title 17
 - general regulation 37-39, 42
 - incongruity 36-37
 - indirect acquisitions 29-30, 32
 - invalidity 39-41
 - limited jurisdiction 32
 - litigation 41, 42
 - money 35
 - operation of provision 28
 - property, concept 34
 - qualified power 28, 43
 - scope of provision 29-31
 - significance of qualification 29
 - statutory gratuities 37, 42
 - statutory rights 34-35
 - taking of property 32-33
 - temporary occupations 30
 - uncertainty 41-42
 - United States Constitution, comparison 27, 42-44
 - weaknesses 31-42

Contractual licences – see also Retirement villages

 - overview 166

Contractual licensees

 - exclusive occupation 89
 - licensor's permission to sue 88, 90-92, 95, 98, 99
 - consequential damages 95-96
 - denial of power of attorney 92-93
 - implied power of attorney 93

- Contractual licensees – continued**
licensor's permission to sue –continued
 injunctions to compel 93-95
not in possession 87, 95
 absolute assignments 91, 92-93, 94
 consequential damages 95-96
Hill v Tupper 88, 90-92, 95, 96, 97, 98, 99
licensor's obligation to remove 89, 95
licensor's permission to sue 88, 90-96, 98, 99
Manchester Airport Plc v Dutton 96-98
private nuisance 87, 88-89, 90-91, 93, 95, 98
standing to sue 88-89, 97
summary of remedies 95
trespass 87, 88-89, 90-91, 93, 95, 98
trespass to person 90
- Conveyancing – see Electronic conveyancing**
- Crown – see Bona vacantia; Escheat**
- Crown leasehold system**
overview 165-166, 168
- Crown perpetual leasehold**
overview 163, 164-165
policy behind creation 164
- Definitions**
Crown agency 56
Crown land 55, 56
res communae 59
residential premises 140-141
residential tenancy 140
residential tenancy agreement 141
retail shop lease 78-79
rooming accommodation 142
tenancy dispute 146
trust 189
unalienated Crown land 55
- Development conditions**
successors in title 215
Tighe v Pike 215-218
- Doctrine of tenures**
escheat 47-48, 57
 forms of escheat 48
 South Australia 48, 49
- Easements**
Queensland 215
- Tighe v Pike* 215-218
Singapore 67-69
- Electronic conveyancing – see also PEXA**
client authorisations 222
duplicate certificates of title 221
 abolition 221-222
South Australia 221-222
verification of identity 222
- Environmental protection**
public trust doctrine 61-62, 65
 contemporary cases 63-65
United States 60-61, 65
Upper Mooki Landcare Inc v Shenhua Watermark Coal Pty Ltd 64-65
- Equitable interests**
Western Australia 150
- Escheat**
forms of escheat 48
historical background 47-48
overview 46, 57
South Australia 48
- Extinguishment of native title**
common law 3-4, 6, 7, 16, 25-26
 impairment of rights 16
 inconsistency of rights test 6, 11, 12-13, 14
 non-exclusive possession leases 6-7
 non-statutory extinguishment 6, 7, 9-11, 12-13
 regulatory controls 9, 14-16
 statutory extinguishment 6, 7-9, 11, 13
compulsory acquisitions 7, 17
 clear legislative intention 7, 8-9
effect of extinguishment 7, 13-14
equality for native title 7-8, 21, 24
impairment of rights 16
inconsistency of rights test 6, 11, 12-13, 14, 16, 19-20, 23-24, 25-26
 necessarily inconsistent 11, 12-13
 use of land 13
non-statutory extinguishment 6, 7, 9
 clear and plain intention 10-11, 20-21
 inconsistent Crown grants 9-11, 12-13
overview 3, 16
Queensland v Congoo 3-4, 16, 25
 background to case 4-5
 clear and plain intention 20-21, 24
 divergences in judgment 16, 25-26

Index

- Extinguishment of native title – *continued***
- Queensland v Congoo* – *continued*
- equality for native title 21, 24
 - inconsistency of rights test 19-20, 23-24, 25-26
 - regulatory controls 21
 - statutory intention or purpose 17-18, 22-23, 26
 - suspension and revival 21-22, 24-25
- regulatory controls 9, 14-15, 21
- clear and plain intention 9
 - underlying rights 15-16
- statutory extinguishment 6, 13
- clear and plain intention 7-9, 11, 13, 20-21
 - statutory intention or purpose 17-18, 22-23
 - exclusive possession 17, 18, 23, 26
- suspension and revival 13-14, 21-22, 24-25
- distinction 13-14
- Fee simple**
- overview 163, 166
 - retirement village licences, distinction 168
- Fraud** – *see Blockchain technology; Verification of identity*
- Identity** – *see Verification of identity*
- Innkeeper and guest**
- accommodation sharing 142
- Intellectual property**
- acquisitions on just terms 33, 34
 - Ukraine 107
- Intestacy**
- bona vacantia 48-49
- Islamic law**
- charitable trusts 66
 - Torrens indefeasibility 66-67
- Jurisdiction**
- acquisitions on just terms 32
- Laches**
- defence, as 70-71
- Land administration systems** – *see also Torrens system*
- blockchain technology 181-182, 185-186, 191, 194
 - advantages 188
 - Bitcoin example 183-185
- derivative interests 188, 189
- double sale of one property 191-192, 194
- false certificates of title 192-193, 194
- flexible securitisation 190
- fraud scenarios 191-194
- identity theft 192, 193, 194
- illustration using central registries 186-188
- joint ownership 189, 192, 194
- meaning 182-183
- “off register” interests 188, 189
- operation 186
- poor governance regimes 182
- proof requirements 189-191, 193
- reliability 190
- trust 189-191
- choices for government 180
- foundational elements 180-181
- old system title 180, 190-191
- overview 179-180, 194
- proof requirements 180-181, 189-191, 193
- registration-based systems 180
- trust 181, 182, 189, 194
- definition 189
 - proof requirements 189-191
- Land registries** – *see Electronic conveyancing; Verification of identity*
- Land tenures** – *see Agrarian land; Residential land*
- Leases**
- accommodation sharing 137, 139, 140
 - intention of parties 138
 - residential tenancies 140, 141
 - statutory requirements 140
- Crown leasehold system 165-166, 168
- Crown perpetual leasehold 163, 164-165, 166
- licences, distinction 139
- minerals 6-7, 177
- native title 6
- extinguishment 6-7
 - suspension 14
- pastoral leases 6-7, 163, 166
- retail shops – *see Retail shop leases*
- Licences**
- accommodation sharing 137, 140
 - intention of parties 138, 139
 - residential tenancies 141
- contractual licences – *see Contractual licences*
- leases, distinction 139

Minerals

historical background 176, 178
leases and licences 6-7, 177
public ownership 176-177

Mortgages – see also Verification of identity

common intention constructive trusts 131, 132, 133
equitable accounting 133
indefeasible interest 150, 151
intention to defraud 150-151
resulting trusts 131-132, 133
Singapore 131-133
Western Australia 150-151

Native title

extinguishment – *see Extinguishment of native title*
leases 6-7, 14
regulatory controls, and 64
suspension and revival 13-14, 21-22, 24-25

Natural resources – *see Minerals; Resource consents; Water resources*

New Zealand

resource consents 127, 130
Greenshell decision 129-130
Hampton decision 128-129
personal property, as 127
possessory rights 129-130
property rights 127, 128-129, 130
range of consents 127-128
unit titles 211
amendments to Act 211
body corporate 212-213, 214
body corporate levies 211-212
body corporate powers 213-214
bona vacantia 214

Nigeria

compulsory acquisitions 204, 210
alienation without consent 208-209
breach of right of occupancy 209-210
compensation 205, 208, 210
conceptual framework 204-205
Constitution 204, 208
denial of compensation 204, 205, 208-210
half hectare rule 208
Land Use Act 205-210
penal revocation 208-210
Land Use Act 205, 210

nationalisation view 205, 206, 207

penal revocation 208-210
private property rights view 205, 206-208
right of occupancy 207, 209-210

Nuisance – *see Private nuisance*

PEXA

benefits of system 117
consumer advantages 119-120
financial savings 120
governance 118
overview 117-118, 120-121
verification of identity 73, 118, 120

Possessory title

adverse possession 49, 52
against the Crown 55-57
against true owner 53-55
states' position 52-53
historical background 49-50, 51
real actions 50
inchoate possessory title 51-52, 56-57
caveatability 57
indicia of possession 51-52
overview 57-58
South Australia 46, 49, 50-58

Private nuisance

licensees not in possession 87, 90, 98
licensor's obligation to remove 89, 95
licensor's permission to sue 88, 90-91, 93, 95
standing to sue 88-89
overview 88

Private property

bundle of rights 102
choice architecture 105
exercise of rights 102-103
externalities 103, 104
legal relationship 103
obligations 104, 105, 110, 111
overview 102-103
regulatory framework 101, 102, 103-104
development 105
Ukraine 109-111, 113, 114, 116
Ukraine 100-101, 102, 105, 107, 116
Civil Code 2003 107-109
failures 111-115
register of proprietary rights 115

Index

- Private property – continued**
- Ukraine – *continued*
 - regulatory framework 109-111, 113, 114, 116
- Public trust doctrine**
- contemporary cases 63-64
 - Upper Mooki Landcare Inc v Shenhua Watermark Coal Pty Ltd* 64-65
 - overview 61-62, 65
 - United States 59, 62, 65
 - environmental protection 60-61, 65
 - historical background 59-60
 - res communae* 59
 - utility of doctrine 60-61
- Queensland**
- accommodation sharing 137, 142-143
 - agreements 137, 138-139
 - innkeeper and guest 142
 - leases, as 137, 138, 139, 140, 141
 - licences, as 137, 138, 139, 140, 141
 - residential tenancies 140-142
 - terms of agreement 138-139
 - development conditions 215
 - successors in title 215-218
 - easements 215
 - Tighe v Pike* 215-218
 - residential tenancies 140-142
 - definition 140
 - holiday purposes 141
 - part of a house 141-142
 - residential premises, definition 140-141
 - rooming accommodation, definition 142
 - Retail Shop Leases Act 78, 81-82
 - amendments to Act 78-82
 - contracting out 80
 - excluded leases 78-79
 - lessee protections 79-80
 - lessor benefits 81
 - rent reviews 80
 - retail shop lease, definition 78-79
 - strata and community title 122, 126
 - Ainsworth v Albrecht* 122-126
 - balancing of competing interests 122, 124, 125
 - reasonable decisions 122, 123-124
 - reasonable opposition 124, 125-126
 - resolutions without dissent 126
 - verification of identity 72, 77, 203
 - ARNECC standards 72-77
- English decision 76, 77
- further inquiries 75-77
- reasonable steps 72, 74-75
- safe harbour 72, 73, 75
- witnesses 73, 74
- Real estate agents**
- code of conduct 149-150
- Real property law**
- agrarian land 161, 166
 - Crown leasehold system 165-166, 168
 - Crown perpetual leasehold 163, 164-165, 166
 - early settlement 161-162
 - pastoral leases 163, 166
 - selection tenure 163
 - squatting 158, 162-163, 165
 - airspace 173
 - strata title 173-175
 - Australianness* 158, 159, 161, 178
 - common law 159, 160, 161
 - fee simple 163, 166
 - role of judges 160
 - historical background 158-159, 161-162, 176, 178
 - land surface 161, 173
 - agrarian land 161-166
 - residential land 166-169
 - water resources 169-173
 - legislation 159, 160
 - role of legislators 160
 - theory of legislation 159-160
 - legislative innovation 159, 160, 161, 178
 - agrarian land 161-166
 - minerals 176-178
 - residential land 166-169
 - strata title 173-175
 - water resources 169-173
 - minerals 176
 - historical background 176, 178
 - leases and licences 177
 - public ownership 176-177
 - overview 158, 178
 - retirement villages 166-167
 - company title 167
 - fee simple, distinction 168
 - limitations on licence holder 169
 - right to occupy 167
 - South Australia 167-169
 - strata title 174-175
 - development of law 173-174

-
- example 174
 Torrens system, and 175
 sub-surface 176
 minerals 176-178
 water resources 169, 173
 irrigation regulation 170-171
 private property rights 171-173
 public management 171
 recent reforms 171
 riparian rights 169-170, 171, 172
 water licences 171-172
- Residential land**
 overview 166
 retirement villages – *see Retirement villages*
- Residential tenancies**
 accommodation sharing 140-142
 compliance with requirements 141
 holiday purposes 141
 part of a house 141-142
 definition 140
 destruction of personal property 144-145
 existence of agreement 145, 146-147
 Queensland 140-142
 rent payments 146-147
 residential premises, definition 140-141
 rooming accommodation, definition 142
 South Australia 144, 148
 Schaffer v Usca 144-148
 tenancy dispute, definition 146
- Resource consents**
 New Zealand 127-128, 130
 Greenshell decision 129-130
 Hampton decision 128-129
 personal property, as 127
 possessory rights 129-130
 property rights 127, 128-129, 130
 range of consents 127-128
- Resulting trusts**
 detrimental reliance 134
 indefeasibility of title 135-136
 mortgage repayments 131-132, 133
 Singapore 131-132, 133, 134, 135-136
- Retail shop leases**
 definition 78-79
 Queensland 78, 81-82
 amendments to Act 78-82
- Retirement villages**
 company title 167
 fee simple, distinction 168
 limitations on licence holder 169
 overview 166-167
 right to occupy 167
 South Australia 167-169
- Sales representatives**
 code of conduct 149-150
- Sharing economy** – *see Accommodation sharing*
- Singapore**
 actions for account 70
 laches as defence 70-71
 charitable trusts 66
 Torrens indefeasibility 66-67
 common intention constructive trusts 131, 132, 133, 134-135
 detrimental reliance 134
 indefeasibility of title 136
 compulsory acquisitions 69
 comparability of land 69-70
 easements 67-68
 implication 68-69
 indefeasibility of title 66-67, 135-136
 mortgage repayments 131
 common intention constructive trusts 131, 132, 133
 equitable accounting 133
 resulting trusts 131-132, 133
 proprietary estoppel 133, 134
 resulting trusts 131-132, 133, 135
 detrimental reliance 134
 indefeasibility of title 135-136
- South Australia**
 adverse possession 46, 49, 52
 against the Crown 55-57
 against true owner 53-55
 legislative requirements 54-55
 limitation period 54-55
 bona vacantia 46, 48-49
Carey Gulley squatter 46, 49, 57, 58
 adverse possession 53, 54, 55, 56
 details of case 46-47
 inchoate possessory title 52, 56-57
 possessory title 50-51, 52, 53, 54, 55, 56-57
 electronic conveyancing 221, 223
 client authorisations 222

Index

- South Australia –continued**
- electronic conveyancing – *continued*
 - duplicate certificates of title 221-222
 - verification of identity 222
 - escheat 46, 49, 57
 - abolition 48
 - historical background 47-48
 - inchoate possessory title 51-52, 56-57
 - caveatability 57
 - possessory title 46, 50-51, 57-58
 - adverse possession 49, 52-57
 - historical background 49-50, 51
 - inchoate possessory title 51-52, 56-57
 - indicia of possession 51-52
 - priority notices 220
 - fraud prevention 220-221
 - residential tenancies 144, 148
 - destruction of personal property 144-145
 - existence of agreement 145, 146-147
 - rent payments 146-147
 - Schaffer v Usca* 144-148
 - tenancy dispute, definition 146
 - retirement villages 167-169
 - Torrens system 219-220, 222-223
 - electronic conveyancing 221-222
 - possessory title 46-58
 - priority notices 220-221

Squatting

- Carey Gulley squatter* 46, 49, 57, 58
 - adverse possession 53, 54, 55, 56
 - details of case 46-47
 - inchoate possessory title 52, 56-57
 - possessory title 50-51, 52, 53, 54, 55, 56-57
- historical background 51, 162-163, 165
 - emphyteusis*, and 165
 - pastoral licences 163
 - “squattocracy” 51, 158, 162
- legality 51

State parliaments

- compulsory acquisitions 32

States and territories

- adverse possession 52-53

Statutory gratuities

- acquisitions on just terms 37, 42

Statutory rights

- acquisitions on just terms 34-35

Strata title

- balancing of competing interests 122, 124, 125
- decision-making 122
 - Ainsworth v Albrecht* 122-126
 - reasonable decisions 122, 123-124
 - reasonable opposition 124, 125-126
- development of law 173-174
- example 174
- New Zealand 211-214
- overview 174-175
- resolutions without dissent 126
- Torrens system, and 175

Torrens system – see also Electronic conveyancing; Verification of identity

- adverse possession 52-53
- duplicate certificates of title 221
 - abolition 221-222
- Islamic charitable trusts, and 66-67
- overview 52, 180, 219-220
- South Australia 219-220, 222-223
 - electronic conveyancing 221-222
 - possessory title 46-58
 - priority notices 220-221
- strata title, and 175
- uniform legislation 220

Trespass

- licensees not in possession 87, 90, 98
 - licensor’s obligation to remove 89, 95
 - licensor’s permission to sue 88, 90-91, 93, 95
 - standing to sue 88-89
- overview 88

Trespass to person

- licensees not in possession 90

Trusts – see also Charitable trusts

- actions for account 70
 - laches as defence 70-71

Ukraine

- Civil Code 2003 106-107
 - intellectual property 107
 - private property 107-109
 - property rights 107
- independence 102, 106
 - declaration of independence 106
 - major problems 111-112
 - referendum 106
- private property 100-101, 102, 105, 107, 108, 116

compensation for harm 108-109
corporate raiding 113-114, 115
extreme poverty 111, 112-113, 115
failures 111-115
ineffective security 115
inheritance 109
land 108-110
Land Code 2001 108, 109, 112
legally enforceable protections 113
privatisation by seizure 112
property taxes 114-115
register of proprietary rights 115
regulatory framework 109-111, 113, 114,
 116
tax avoidance 114-115

United States

public trust doctrine 59, 62, 65
environmental protection 60-61, 65
historical background 59-60
res communae 59
utility of doctrine 60-61

United States Constitution

compulsory acquisitions 27, 42
devaluations 42-43
differences to Australia 43-44

Verification of identity

English decision 76, 77
further inquiries 75-77
immediate indefeasibility 195, 196
 exception to indefeasibility 195-196
 moral hazard 196, 199
mortgagee's obligations 196, 202, 203
 case law 202-203
 failure to take reasonable steps 197, 200
 purpose of amendments 199-200
 Registrar's power 197-198, 200-202
 text of provision 197
overview 72, 77, 195-196
PEXA 73, 118, 120
Queensland 72-77, 203
reasonable steps 72, 74-75, 196
 failure to take reasonable steps 197, 200
safe harbour 72, 73, 75
South Australia 222
Victoria 196-202
 recent amendments 203
witnesses 73, 74

Victoria

irrigation regulation 170-171
verification of identity 196-202
 failure to take reasonable steps 197, 200
 purpose of amendments 199-200
 recent amendments 203
 Registrar's power 197-198, 200-202
 text of provision 197

Water resources

irrigation regulation 170-171
overview 173
private property rights 171-173
public management 171
recent reforms 171
riparian rights 169-170, 171, 172
 suitability to Australia 170
water licences 171-172

Western Australia

boarders and lodgers 149
code of conduct 149-150
competing equitable interests 150
mortgages 150
 intention to defraud 150-151