

PROPERTY LAW REVIEW

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ARTICLES

Reconceptualising property: Towards a sustainable paradigm – John Page

The conceptualisation of property may seem esoteric or remote from the practical imperative of the sustainability of human landscapes. Yet how we “see” property has important consequences for how we treat our landscape and its resources. Rather than being constrained by existing paradigms, alternative reconceptualisations present fresh opportunities for property to reconnect with place and the physicality of our surroundings, and in the process remove the shackles of abstraction. This article canvasses the expansive concept of property plurality, and its implications for recontextualising property with place. It examines the respective strengths and weaknesses of property in the diversity of its forms, and questions a number of fundamental propositions that lie at the intersection of property and the human environment. 86

The story of water management in Australia: Balancing public and private property rights to achieve a sustainable future – Penny Carruthers and Sharon Mascher

As the driest inhabited continent on earth, water has always been a precious resource in Australia. Faced with a drying climate and a growing, and often competing, demand for water, the sustainable management of water resources in Australia presents a significant challenge. In facing this challenge, property law will play a major role as the creation and allocation of property rights ultimately determines who is entitled to access this scarce resource and on what terms. This article will examine the evolution of property rights associated with water in Australia and contrast this with the theoretical story about the evolution of property rights generally. The theoretical story postulates three stages of property rights when resources are growing scarcer. The third and final stage, according to the story, is the creation of full-blown individualised property rights. How does this final stage compare with the current reality regarding water rights in Australia? In addressing this question the article examines the development of water legislation in Australia, noting particularly the national reforms which have led in recent times to a transition from statutory access rights to tradeable proprietary water entitlements. Finally, the article will consider the recent High Court of Australia case of *ICM Agriculture Pty Ltd v Commonwealth* (2009) 240 CLR 140; 261 ALR 653 before turning to ask whether, in effect, Australia has come full circle and returned water rights to the commons to achieve the sustainable management of water for this and future generations. 97

Joint tenancies and English commorientes: A question of survivorship or severance?
– *Mark Pawłowski and James Brown*

The aim of this article is to provide a critical appraisal of the English law in relation to the doctrine of commorientes with particular reference to its implications in respect of property held on a joint tenancy. The article suggests a measure of reform which would produce a fairer distribution of joint property in circumstances where all joint tenants have died in a common disaster and it cannot be ascertained which joint tenant died first. 122

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