

Butt's Land Law 7th edition

Brendan Edgeworth

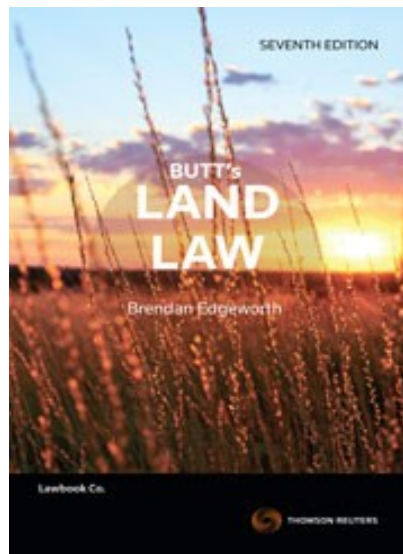


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Chapter 1 – Origins (previously Sources of Land Law)

- Chapter 1 deals with fundamental concepts in an innovative way;
- Continuity with previous editions is emphasised.

Chapter 2 – Land

- Title to sue – protection of rights to land protected primarily by the torts of trespass and nuisance.
- Unmanned aerial devices (drones)
- *Petroleum, including coal seam gas*
- *Geosequestration, Carbon Sequestration* - A current dilemma for courts and legislatures is the need to
- make provision for carbon storage technologies.
- Crops and trees.
- Fixtures and related matters – the aspect of the nature of land, encompassed in the concept of “fixtures” is considered here.
- Chattel or fixture?
- Encroachments and building on the land of another

Chapter 3 – The Doctrine of Estates (previously Fixtures and Related Matters)

Topics covered:

- Tenure and estates
- Freehold estates
- Determinable and defeasible (or conditional) fees
- The Fee Tail
- Abolition Of Fees Tail In Australia
- The Life Estate
- Ordinary Life Estate
- Estate Pur Autre Vie
- Dower And Curtesy
- Words of limitation
- Equitable Estates In Fee Simple
- Words of limitation: life estate
- The Rule In Shelley’s Case
- Reversions And Remainders
- Enjoyment By Life Tenant
- Termination of life estate
- Limitation of successive estates
- Leasehold interests

Chapter 4 – Equitable Interests in Land (previously The Doctrine of Tenures)

- Following is the introductory paragraph to this chapter, outlining the content that follows:

This chapter will examine what might be described as the fifth dimension of land law. It covers the role played by equitable doctrines in the creation of rights over land. Because equitable doctrines were developed in a different jurisdiction to the common law – in the Court of Chancery rather than the common law courts, this may be called a jurisdictional dimension of rights over land. We will explain below first, the difference between legal and equitable interests; and, second, the manner in which the fragmentation of rights into legal and equitable interests occurs. Finally, the chapter will briefly refer to legislative reforms which allow courts to substantially overreach the common law and equitable rules in the domestic context. The primary mechanism by means of which equitable interests in land are created is the trust. In order to understand the way the trust operates in relation to land, a brief historical survey is required.

Chapter 5 The Alienability of Land (previously Ownership and Possession of Land)

- Restraints on alienability
- Perpetuities
- The “modern” rule against perpetuities
- *Statement of the rule:*

At paragraph [5 11] In its format common law, the modern rule against perpetuities could be expressed thus:

An interest limited to arise in the future is void from the outset unless it must vest (if it is to vest at all) within the perpetuity period. The perpetuity period is the period of a life or lives in being at the date on which the instrument creating the interest comes into operation, plus a further 21 years (and, if necessary, a yet further gestation period for an unborn child).

- The chapter discusses and analyses the detail of the above rule.
- Legislative rule of perpetuities is also discussed.

Chapter 6 - Co-ownership (previously The Doctrine of Estates)

- Types of co-ownership (eg tenancy in common, joint tenancy)
- The four unities (unity of title, unity of interest, unity of possession, unity of time)
- The right of survivorship (the concept and the fact that all jurisdictions now allow a corporation to hold property in joint tenancy)
- Creation of co-ownership
- Improvements and repairs (right to claim)
- Income and profits
- Encumbrances and interests
- Leases and licences
- Trespass and waste
- Title documents
- Terminating co-ownership
- Partition and sale

Chapter 7 – Leases (previously Uses, Trusts and Equitable Interests)

- This chapter focuses on the general law of leases which continues to apply in the commercial context, and specifically outside the agricultural, retail and residential contexts, and where freedom of contract principles are most visibly present.
- Leasehold estate at Common Law: Creation
- The right to exclusive possession
- Lease or licence?
- Licences over land
- Types of tenancies
- Other periodic tenancies
- Tenancies by stoppels
- Formal requirements for creating leases
- Rights and obligations of landlord and tenant: covenants in leases
- Assignments and subleases
- Land under the Torrens system
- Remedies of landlord and tenant
- Merger, surrender and frustration

Chapter 8 – Leases Regulated by Statute (previously The Fee Simple)

- *Residential Tenancies Act 2010 (NSW)* – amendments to this Act have been extensively covered, with a lot of new case law included. There were 3 amending acts in 2016 to the *Residential Tenancies Act 2010 (NSW)*.
- Amendments to the *Retail Leases Act 1994 (NSW)* passed in Feb 2017 are incorporated into this chapter. Amendments were made by the *Retail Leases Amendment (Review) Act 2017*, not proclaimed at the time of the book going to press.
- Examples of recent cases referred to: *Pyrmont Point Pty Ltd v Westacott* [2016] NSWCA 33; The premises may, or may not, include ‘common areas’: *Moreton Bay Regional Council v Mekpine Pty Ltd* (2016) 329 ALR 179; (2016) 90 ALJR 420; Misleading and deceptive conduct is not confined to actual representations, but may include silence: *OXS Pty Ltd v Sydney Harbour Foreshore Authority* [2016] NSWCA 120.

Chapter 9 – Easements and similar interests (previously The Fee Tail)

- Corporeal and incorporeal interests in land - this chapter deals primarily with the law of easements.
- Easements and other rights compared
- Dominant and servient tenements
- Creation of easements
- Rent charges

Chapter 10 – Covenants Affecting Freehold Land (previously The Life Estate)

- This chapter focuses predominantly on the private law rules relating to agreements to control of the use of land between individuals.
- Enforceability of covenants
- The benefits of covenants at common law
- The benefits of covenants in equity
- Statutory requirements for creating covenants
- Covenants created on subdivision of land
- Freehold covenants and the Torrens system
- Remedies for breach of covenant
- Extinguishment of covenant

Chapter 11 - Mortgages and Other Security Interests (Chapter 18 – Mortgages- in previous editions)

- New title for this chapter in 7th edition is – Mortgages and Other Security Interests – a new conceptualisation of this chapter by the author.
- Nature of a security interest
- History
- Creation of mortgages
- Mortgages of land under Torrens title
- Mortgages under the credit code

- Mortgages under Corporations Act
- Clogs on the equity of redemption
- Competition and consumer protection legislation and restraint of trade
- Rights and remedies of the mortgagee
- Right to assign
- Right to possession
- Power to lease
- Power of sale
- Miscellaneous rights and duties of mortgagor

Chapter 12 – Torrens Title (previously Perpetuities)

- This chapter begins an analysis of the “title” systems under which land in Australia is held.
- Proof of title
- Deeds
- The Torrens System

Chapter 13 – Strata Title (previously Settlements and Trusts for Sale)

- A critically important, if comparatively recent, development in land law, which reflects the proliferation of high-rise urban living, is the extension of the Torrens system into “strata title” to meet popular demands for a secure form of title to the various parts of multi-storey buildings. Although something of a late starter in the global shift towards greater urban consolidation, Australia has led the world in this legal field.
- Forms of high rise title are discussed, eg tenancy in common, company title, stratum title
- Present day strata title legislation – esp *Strata Schemes Development Act 2015* (NSW), *Strata Schemes Management Act 2015* (NSW)
- Other forms of strata title subdivisions, eg strata leasehold, part building strata subdivision, staged development, community title subdivision, variation or termination
- Time share interests in property
- Retirement villages

Chapter 14 – Indigenous Land Rights (previously Chapter 25 - Native Title)

- NSW – there is hardly any native title in NSW, but lots of ALR tenure.
- Aboriginal Land Rights content has been expanded to balance native title material.
- Indigenous land rights in Australia today
- Aboriginal land rights legislation in NSW
- Claims and title to land
- Claimable Crown Lands
- Procedure
- Native title – Mabo litigation
- Native title at Common Law
- Native Title Act 1993
- Establishing native title under the Act
- Extinguishing native title under the Native Title Act
- Compensation
- Recognizing and protecting native title under the Native Title Act
- Future acts affecting native title
- Indigenous land use agreements
- Native Title Act 1994 (NSW)

Chapter 15 – Crown Lands (previously Leases)

- This chapter has substantial discussion of *Crown Land Management Act 2016* (NSW) the object of which is to bring all the legislation pertaining to Crown land under this one statute.
- History – development of the “Crown lands” system
- Categories of tenure discussed: purchase tenures, perpetual leases, term leases, permissive occupancies
- *Crown Lands Act 1989* (NSW) – this Act swept away much of the complexity of the existing system and reduced the kinds of tenure that could be granted in the future while preserving tenures in force at the time of the repeal of *Crown Lands Consolidation Act 1913* and 19 other central Acts.
- Sale of Crown land, lease of Crown land, licence of Crown land, enclosure permits,
- Statutory conditions on holders of Crown land are discussed – with relation to residence, Improvements and fencing, payment for existing improvements, restrictions on transfer.
- Crown lands under the Torrens system.

CHAPTER 16 – PRIVATE TAKING OF LAND: POSSESSORY TITLE, PRESCRIPTION AND COURT-ORDERED RIGHTS (PREVIOUSLY EASEMENTS AND SIMILAR INTERESTS)

- Adverse possession – the statutory provisions
- Adverse possession - criteria, relevant circumstances, payment of rates and taxes, discontinuous possession and possession of part only, use inconsistent with true owners' intended use, acquisition by tenants, extent of land acquired, abandoning possession, series of possessors (possessors claiming through each other and independent trespassers).
- Recovery of possession by documentary owner – discussion of various ways in which possession can be recovered.
- Possessory title under the Torrens system
- Creation of interests by prescription
- Court-ordered easements
- Encroaching buildings
- Building on the land of another

Chapter 17 – Compulsory Acquisition of Land

- This chapter is new to the book – an important area of land law and also important in practice.
- History of compulsory acquisition detailed.
- Interpretation of s 51(XXI) of *the Constitution Act 1901* (Cth)
- Compulsory acquisition in Federal system
- Commonwealth Constitutional property protection
- Compulsory acquisition of land in the States and Territories.