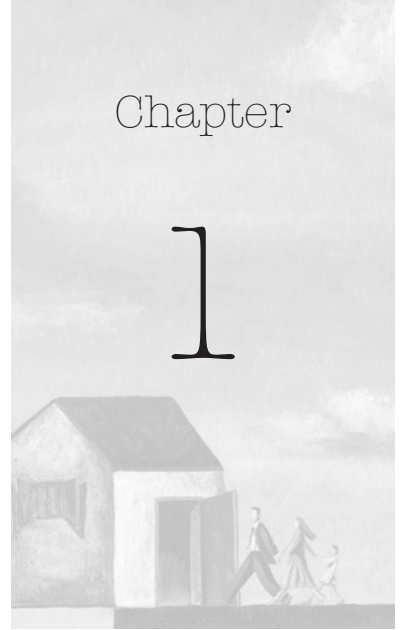


Introduction: Land Law



1.1 The Meaning of Land Law

[1.1.1] General

Land law has a number of aspects. One is concerned with defining what is meant by land itself—identifying the physical limits of land. At first sight this would appear to be a simple task: a block of suburban land in Australia is easily identifiable, commonplace. Nonetheless, there may be problems with the boundaries of that block, with its fencing, with encroachments on the airspace above it, or with the ownership of minerals in the subsoil below. Items of personal property may have been brought onto it. Do these become part of the land? The resolution of these problems and questions is the task of land law, and there is a substantial body of law on this aspect (see Chapter 2).

More importantly, land law is about ownership. If the block of suburban land is for sale, and P expresses interest in purchasing it, one of his or her major concerns is being sure of obtaining ownership of the block once the purchase price has been paid. But for mainly historical reasons there are different types of ownership and P technically cannot even *own* the land (see Chapter 3). Rather he or she will obtain an interest in it called an *estate*. Land law is concerned with defining the types of these estates and establishing the way they are created and transferred to others. It is also concerned with the mechanics of the transaction—often referred to as the conveyancing process—in respect of the sale of the estate in the land from the former owner, called the vendor, to the new owner, the purchaser. Fundamentally, land law establishes the means by which the purchaser obtains *title* to the land (see [1.2.1] below).

Apart from the purchaser of the suburban block, there may be other people or institutions with an interest in that block. For example P, the purchaser, often needs to borrow money from a bank to enable the purchase to be made. P then grants a mortgage for this loan to the bank, which gives the bank an interest in the land. Identification of these other types of interests, and the relationships between them, is also the concern of land law. Chapters 10 to 14 deal with some of these interests.

In a general way, these are the major aspects of the law relating to land.

[1.1.2] Real property

Land is not the only form of property. Most Australians own a variety of things, ranging from clothes to furniture, electronic equipment, cars, boats, shares, superannuation and insurance policies. The extent of our property can be surprising, as may be revealed by filling out a simple insurance proposal.

From early times, however, the law has always drawn a distinction between *real* property on the one hand and *personal* property on the other. The distinction is historical, and arguably not logical, but it persists to this day. Originally, if one was dispossessed of an object, the only way to get it back again was by a legal action, called a 'real' action or an action *in rem*. These actions were limited to cases where the object in question was land. Accordingly, land was classified as 'real' property. For objects other than land, it was not possible to bring a real action if the owner had been wrongfully dispossessed. There was a 'personal' action available against the wrongdoer, but if the plaintiff was successful, the defendant would simply be ordered to pay damages. This action, called an action *in personam* (against the person) did not order the return of the object. As a consequence, land has always been called real property, and objects other than land, personal property.¹

[1.1.3] Legal meaning of property

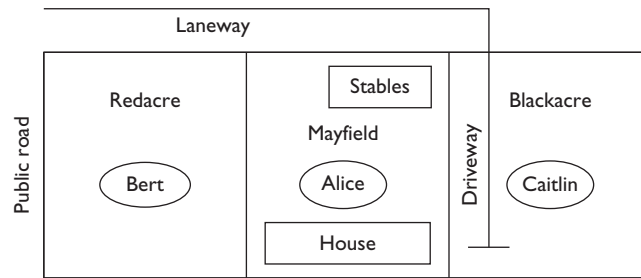
Property, whether real or personal, has a special meaning in law, which, if understood at the outset, makes the study of land law much easier. It has often been pointed out that in everyday language the word 'property' is used to describe the object itself. One can point to a painting and validly state 'that is my property', or stand on a block of land and say the same thing. The painting or the land is a piece of property, the actual object in question. In a legal sense, however, this is an incorrect way to view property. Legally, property is not the object, but rather describes the *relationship* between a person and the object. Thus, for a lawyer, the object is one thing, the person another, and property is the relationship between the two: 'I have a property interest in that painting (or land)' more correctly describes this legal notion of property.

It follows from this that more than one person may have a property interest in the very same object, and these interests can exist *at the same time*. They may or may not conflict with each other, but if they do, then the law of property provides rules for the resolution of such conflicts, and one interest may have to give way to another. In respect of land, a simple example will show this special meaning of property.

Say that Alice is the owner of an estate (for the time being we will call this a fee simple estate, as this is the largest estate a person may own) in a piece of land called Mayfield. Built upon Mayfield is a substantial residence, with some old stables at the back, converted into a flat. Mayfield is bordered on one side by another property, Redacre. The fee simple estate in Redacre is owned by Bert. On the other side is Blackacre, owned in fee simple by Caitlin (see Figure 1.1).

Alice purchased Mayfield with the assistance of a loan from Dunbar Bank and she still has some fifteen years of repayments on her mortgage. To help her with these repayments, she has let out the stables to Eve for a year. After she purchased Mayfield she was approached by Bert, and entered into an agreement with him that neither Mayfield nor Bert's property, Redacre, would be used for commercial purposes, and, in particular, no units were to be built on either property. She was also approached by Caitlin, who explained to Alice that, as she (Caitlin) had no direct access to the public road, she had always used the laneway alongside Redacre and Mayfield to drive her car into her property. However,

¹ Historically, a dispossessed leaseholder only had a personal action, so could only obtain damages. Leases were thus technically personal property, called chattels real. In effect, however, this is no longer the case, and leases are for all intents and purposes now rightly categorised as interests in land, and the proper subject of land law. See further [3.3.3].

Figure 1.1 Diagram of Mayfield and surrounding estates

as that laneway terminated at the end of Mayfield, she had also used the driveway along the side of Mayfield to get into Blackacre. Alice continues to allow Caitlin to use this driveway.

Let us now return to look at the piece of land, Mayfield. It is immediately apparent that a number of people have interests in it, and those interests exist at the same time. It may be said that each has ‘property’ in Mayfield. This is commonly called a *proprietary* interest. First, Alice herself ‘owns’ Mayfield, or rather an estate in it. Second, the Dunbar Bank has a mortgage over Mayfield. The tenant, Eve, also has an interest, under her lease with Alice. Bert has an interest, called a restrictive covenant, which prevents Mayfield from being used in a particular manner (Mayfield also has the benefit of a similar covenant affecting Redacre), and Caitlin’s interest—her right to drive across Mayfield to access Blackacre—is a proprietary interest called an easement. All of these different types of interest will be explored in subsequent chapters.

Matters can become even more complex than this. Alice might marry and want her husband also to own Mayfield, so that they become co-owners of the estate in that land. Different types of co-ownership may serve this purpose. Or she might enter into a marriage-like relationship, and that could result in her partner acquiring an interest in Mayfield through the medium of a trust in equity (see [1.3] below). More money might be needed for upkeep and renovation of the property, forcing Alice to take out another mortgage. Or she might simply decide to sell her estate in Mayfield and move on. What effect would such a sale have on those holding the other interests in Mayfield? And would the new owner be bound by the mortgage, the lease, the restrictive covenant or the easement? This is a fundamental issue in land law (see Chapter 6).

1.2 Title

[1.2.1] Meaning of title

Butt² has pointed out that there are two meanings of ‘title’ in land law. The first and most common is that title means ownership. Returning to the example in [1.1.3] above, when Alice purchased Mayfield, she may be said to have title to that property. The other meaning relates to the chain of events which *prove* Alice has ownership. At one time, title to land was derivative (derived from the title of one’s predecessor). It still is, in respect of land held under the ‘old system’ or ‘general law’ system of title (see [1.2.2]).

² Butt at [19.05].

To illustrate this second meaning of title let us say that the block of land called Mayfield was granted by the Crown to A in 1830. A dies in 1870, leaving Mayfield to his son B in his will. In 1890, B sells ('conveys') the land to C (using a procedure, and document, both called a conveyance). In 1910 C mortgages the land to D Co and in 1920 fails to make any further payments under the mortgage. In consequence of this, D Co exercises its power of sale under the mortgage, and sells Mayfield to E. E lives on the land until 1950, when she dies intestate (that is, without leaving a will). Under the rules of intestacy, E's children D and F are entitled to Mayfield, and they sell it, by conveyance, to Alice, the present owner. All of these events (and the actual instruments which record them) constitute 'title' to a lawyer, and show the proof that Alice now has ownership.

[1.2.2] The two main systems of title

At common law, the only way to verify title was to trace the chain of title back to the original Crown grant of land, and to make sure that each link in the chain, as it were, was sufficiently proved. Thus, all conveyances, mortgages, wills, intestacies and other interests affecting the land would need to be examined to make sure that the vendor (the person selling the land) had the estate which was contracted to be sold to the purchaser, and that there were no other outstanding interests which could affect the quality of the title obtained by the purchaser. This was a time-consuming and expensive process, especially where land had originally been granted by the Crown in large lots and subsequently divided and subdivided over the years.

Nonetheless, this was the conveyancing system originally adopted in Australia. It continued until the advent of the other system of title, the Torrens system, in all Australian states between the 1850s and the 1870s. In contrast with the Torrens system, the original system was called the 'general law system' or 'old system' or 'common law system', depending upon the terminology in the particular state. Under that system the purchaser's solicitor traced the title, with the aid of an abstract (summary) of title provided by the vendor, inspecting bundles of documents making up the chain to ensure that the purchaser would actually receive ownership. Initially, the search had to go back to the Crown grant—eventually, following English practice, the period was lessened to 60 years, provided a 'good root of title' could be found at least that long ago. A good root of title was generally a conveyance or a legal mortgage of the land in question. Subsequent statutory intervention in each state has reduced the period of search even further, usually to 30 years. Further, a deeds registration system was established to record these transactions (deeds are described in [1.2.3] below). Under legislation, certain advantages were accorded if the deed recording the transaction was registered. Most notably, priority was generally given to the deed first registered, regardless of the dates of execution (signing) of the various deeds dealing with the property.

Despite these reforms, the system was cumbersome, for reasons which will be discussed in detail later. The main one was the dependent nature of title, meaning that each link in the chain had to be sufficiently proved by looking, as far as possible, at past acts and instruments. Torrens title, on the other hand, did away with this notion of derivative title. It introduced a concept of 'indefeasibility' in that the state took the responsibility of authoritatively certifying that a person named in the certificate of title had the title so certified. Upon registration of that person as owner of the estate in the land, that person was bound only by the interests notified on the title. (However, there are some specific exceptions to indefeasibility, the most obvious being the case where the person registered became registered through fraud.) What this meant in practical terms was that a purchaser, instead of having to search back beyond the vendor, would only need to search the certificate of the title and that would reveal that the vendor was authoritatively certified as having the estate in the land which had been contracted to be sold to the purchaser, and would also reveal any other interests on the land, such as easements, mortgages, leases and covenants. One simple search by the purchaser of the original certificate of title held on the register would normally be sufficient to ascertain that the vendor had what he or she had agreed to sell, and find any other outstanding interests that might bind the purchaser after purchase.

The advantages of the Torrens title over the general law system are immediately obvious, and it is not surprising that in most states a concerted effort has been made to convert all the old general law titles

to Torrens titles. All new titles issued since the Torrens system commenced in the mid-1800s have been Torrens system titles, so any land granted before that date is general law land. Most of this has been since converted to Torrens title, by various statutory means.³

[1.2.3] Formalities relating to title

Land law is also concerned with the requirement of certain formalities in relation to transactions involving land. In feudal times (see Chapter 3) the conveyance of land was achieved by a ceremony called ‘feoffment with livery of seisin’, a ceremony eloquently described by Young J in *Manton v Parabolic Pty Ltd* (1985) 2 NSWLR 361 at 367 in the following terms:

In early land law, the only effective method of conveyancing was by tradition or as it is usually put, by livery of seisin. It would seem, see Pollock and Maitland, 2nd ed at 82 and following, that originally the two parties to a conveyance attended on the land. The vendor removed his battle glove with which he had defended the land and vested the purchaser with it. It is, of course, from this ceremony that we get the words ‘vesting in possession’ and the like. The vendor then took his knife and dug up a sod and lifted it and handed it to the purchaser. This lifting up and handing over is the livery. The vendor then hands the purchaser the knife which was usually broken or twisted into a unique shape as a memorial of the transaction. The vendor then publicly quit the land and usually threw to the purchaser a wand or a rod or festuca. No one really knows exactly what the festuca was, but as Pollock and Maitland say (at 85) there is no doubt it had a great contractual efficacy. The parties then repaired to the Church where the knife was usually laid up on the altar. As time went on, a parchment memorial of what had happened was substituted for the knife or the festuca, though for a while, the knives were often incorporated in the wax of the seal that was placed on the deed. By 1600 the parchment which was called ‘the Charter’ or ‘the Factum’ or ‘the Deed’ had entirely replaced the ancient symbols of livery.

A deed, which must be signed, sealed and delivered, is still required to pass a legal interest in general law (old system) land in Australia. However (see [1.2.2]) most of the freehold land in Australia is now held under the Torrens system of title. Under that system an instrument is required to be completed by the parties—in the case of a sale of land, this is called an instrument of transfer—and the legal interest will not pass until the *actual registration* of that instrument. Once registered, the instrument has the effect of a deed, but until that time has no effect in law. (In equity, however, rights may exist prior to registration: see [1.3].) These matters are explored in chapters 6, 7 and 8.

[1.2.4] Crown leases

So far, the discussion has been concerned with the law relating to urban Australia. Indeed, this text concentrates on urban legal problems in relation to land. That is because although Australia is a large country geographically, it has a relatively small population, mainly concentrated in urban areas on the seaboard.

Nonetheless, vast areas of Australia are covered by another sort of title, often called a Crown lease or pastoral lease. In the High Court decision in *Wik Peoples v State of Queensland* (1997) 141 ALR 129, a case concerned with the issue of possible extinguishment of native title by such pastoral leases, Kirby J (at 260) commented:

No one doubted the significance of the issue tendered to the court. Various estimates were given of the area of land in Australia covered by pastoral leases. For the Commonwealth it was put at 42% in aggregate. In various States, estimates of 70–80% of the land were mentioned.

³ See Bradbrook, MacCallum, Moore and Grattan at [4.490]–[4.540]. They state that there is no general law land in Queensland, the ACT and the Northern Territory. Almost total conversion has been achieved in South Australia and Tasmania, and in Western Australia less than 1 per cent of freehold land is still under general law. More parcels of general law land still exist in New South Wales and Victoria, although the process of conversion continues in those states.

Thus, while most of the urban land in Australia is held under what is known as *freehold* title (see Chapter 3), much of the rural land in Australia is held under a *leasehold* system, and a complicated one at that. These leases are peculiar to Australian law, and do not equate with the normal residential or commercial lease commonly found in urban Australia. After all, the problems of a pastoralist running cattle over thousands of hectares of semi-arid land are hardly the same as those encountered by a residential tenant in, say, Fitzroy in Melbourne. Specific legislation in each state deals with these leases,⁴ and in general imposes conditions requiring the development of the land. There are many different types of leases, subject to different terms and conditions, and a consideration of them is beyond the scope of this text.⁵

[1.2.5] Native title

In other common law countries a doctrine of native title was recognised at common law, but for various reasons it was once thought that such a doctrine had no application in Australia. Indeed, in 1971 Blackburn J of the Supreme Court of the Northern Territory, in *Milirrpum v Nabalco Pty Ltd* (1971) 17 FLR 141, denied that native title was part of the common law of Australia. In 1992, however, in the celebrated case of *Mabo v State of Queensland (No 2)* (1992) 175 CLR 1, the High Court held that *Milirrpum* had been wrongly decided, and that native title has always been a part of Australian law. Commonwealth legislation was enacted in response to this decision in the *Native Title Act 1993* (Cth). Native title is discussed in detail in Chapter 4.

1.3 Law and Equity

[1.3.1] General

Throughout this text reference will be made not only to the common law, but also to equity. Indeed, it is impossible to understand the complex web of proprietary rights in land without also understanding the way equity developed alongside the common law. As will be seen, interests which are *legal* (recognised by the common law) may also exist in *equity*. For example it is possible to have a legal mortgage and an equitable mortgage over the same land. It is also commonplace for these interests to conflict, and the law has developed special rules to resolve these conflicts. Equity has also developed interests in land which do not have their equivalent at law—the most important of these being the *trust*. While equitable interests are explored in detail in chapters 3 and 6, it is necessary here to give an outline of the development of this system of law.

[1.3.2] Development of equity

In medieval England three common law courts were initially developed (the King's Bench, Exchequer and Common Pleas). A legal action in these courts had to be started with the granting of a writ issued by an important royal official called the Chancellor. Land issues decided by these common law courts were *legal* issues, and the interests were recognised as legal interests. Eventually, and certainly by the end of the thirteenth century, the form of writs became fixed, and unless a person could bring their action within the structure of an existing writ it was not possible to gain a remedy. The Chancellor could not develop any new writs, and often those with genuine grievances were left without a remedy.

4 *Crown Lands Act 1989* (NSW); *Western Lands Act 1901* (NSW); *Land Act 1999* (Qld); *Pastoral Land Management and Conservation Act 1989* (SA); *Crown Lands Act 1976* (Tas); *Land Act 1958* (Vic); *Land Act 1933* (WA); *Crown Lands Act* (NT).

5 For an Australia-wide discussion see Bradbrook, MacCallum, Moore and Grattan at [6.05]–[6.205], and for the New South Wales position, see Butt, Chapter 23. There are interesting accounts of the history of pastoral leases in each of the judgments in the High Court case of *Wik Peoples v State of Queensland* (1997) 141 ALR 129.

As a consequence, a practice began by which those unable to obtain redress in the common law courts directly petitioned the King. These petitions were referred to the Chancellor, and did not require the formality of the common law writ system. Nevertheless, the hearing of the petitions began to resemble a court procedure. Parties to a dispute and other witnesses were called and examined, and relief was either given or refused. By the end of the fifteenth century, decrees were issued in the name of the Chancellor, and the Court of Chancery was recognised as a court separate from the common law courts, dispensing a law not called the common law, but rather ‘equity’.

This Court of Chancery developed its own rules, procedures, and, particularly, remedies, which were quite distinct from those developed in the common law courts. In particular, the Court of Chancery was always regarded as a court of conscience, concerned not so much with the form of the proceedings as with justice. At first, equitable principles were suited to each individual case, and consequently unpredictable, but over the years, there developed a coherent and fairly settled set of equitable rules similar to those at common law. This is not to say, of course, that equity has stood still—in recent years, as will be seen, equity has been particularly active in the areas of unconscionability, estoppel and trusts. In the case of land law equity permeated all areas, so that it is not possible to coherently explain any aspect of this subject without some reference to equitable principles. As an example, under the Torrens system of title a legal interest cannot pass until registration of the instrument creating or transferring that interest (see [1.2.2] above). However, equity has said that it will recognise an interest arising prior to registration, so that while title is not yet legal, equitable protection will be given to the purchaser. This is just one of the ways in which equity intervenes to supplement the common law.

[1.3.3] Subsequent formal adoption of equitable jurisdiction

Obviously two systems of law, the common law and equity, were bound to conflict. It was eventually established that, in such cases, the rules of equity were to prevail. However, at least in England, the two systems were administered by separate courts. This was changed by the *Judicature Acts 1873–1875* (UK), the effect of which was to merge the common law and equitable courts, so that a litigant could bring an action in the one court, and obtain either legal or equitable remedies. In Australia, the rules of common law and equity were received into this country on settlement. However, there were never two separate courts administering each system. It appears that the Supreme Courts in each state separated the different jurisdictions by different forms of proceedings.⁶ Eventually, however, legislation was passed by all states (although not until 1970 in New South Wales) by which the systems of common law and equity were merged in the same fashion as that in England, so that there is now concurrent administration of each system in the Supreme Court of each state. This might appear initially confusing, but to properly understand land law it is always necessary to bear in mind both the legal position dealing with legal interests created and recognised by the common law, and the equitable position dealing with interests in equity. (See further the examination of the development of equitable interests and their relationship with legal interests in chapters 3 and 6.)

1.4 Private Law and Public Law

[1.4.1] General

This text is basically concerned with what may be termed private law. That is, it deals with relationships between private persons or entities, and considers their ownership of interests in land, the transferability of such interests, their protection, and the resolution of possible conflicts between them. However, it

6 For a full discussion of the Australian developments, see G Dal Pont and D Chalmers, *Equity and Trusts in Australia*, Law Book Co, Sydney, 2007, Chapter 1.

does not deal with the public law aspect of land law. Not to mention this aspect would give an incomplete and misleading picture of land law, but in a text of this nature, the object is to give a clear analysis of the private law aspects. This text does deal with some aspects of public law in a wide sense (one is the examination of modern statutory regimes imposing controls in relation to residential and retail tenancies in Chapter 11). Another important area, legislation in relation to the environment and planning, is mentioned briefly below.

[1.4.2] Environmental law

Environmental law is concerned with many things—the control of emission of ‘greenhouse’ gases, the protection of the natural environment such as forests, the conservation of the built environment of heritage value, and the pollution of air, rivers and sea. The limitations of the common law, or private law, here are obvious. Let us say that one person uses his or her land in a manner which causes considerable pollution. Now it is possible for another adjoining landowner to bring an action in the law of tort—here called an action in nuisance—which will enable the neighbour to obtain a remedy to stop the pollution. This is all very well, but stopping the problem depends on the adjoining owner bringing the action in the first place, and it is more likely than not that the pollution affects not only the neighbour but the public generally. In other words, it may be in the public interest that the pollution be stopped, or prevented in the first place. This is a matter for state regulation—the public law aspect—rather than a balancing of rights between individual landowners. A landowner may cut down all the trees on the land, causing severe soil degradation and destruction of wildlife, but private law offers no remedy here, unless in cutting down the trees a nuisance is caused. For these reasons, in the last fifty years federal as well as state governments have enacted comprehensive legislation dealing with all aspects of the environment, and naturally this legislation impinges on the otherwise unrestricted right of landowners to do what they want with their land.⁷

[1.4.3] Planning law

In private law, the major planning devices are the interests called *easements* and *restrictive covenants*. Easements generally allow one landowner to use another’s land for a particular purpose, such as access. Restrictive covenants are arrangements between private landowners which prevent one or more of them from doing something on their own land (e.g. converting a residential house to commercial uses). As in the case of environmental law, however, these private planning devices are inadequate to promote proper planning in the public interest. As a consequence, all Australian state and local governments have passed comprehensive legislation dealing with controls relating to the development of land, its subdivision, and the use to which that land may be put. Individual landowners are thus subject to these public controls just as they are to the private ones outlined in this text.⁸

1.5 Historical Perspectives

[1.5.1] General

To grasp the fundamentals of land law it is necessary to understand a little of the historical background of the subject—not for history’s sake, but because some of the modern law is still based on concepts founded and developed in medieval times. After all, the term ‘estate in fee simple’ is hardly in everyday

⁷ For a detailed examination of these issues, see G Bates, *Environmental Law in Australia*, 7th edn, Butterworths, Sydney, 2010.

⁸ For a detailed discussion of planning law, see R Lyster et al., *Environmental and Planning Law in New South Wales*, 2nd edn, Federation Press, Sydney, 2009.

use, yet it legally describes the interest which approximately 70 per cent of Australians have in their land. The doctrine of tenure and the doctrine of estates form the foundation of land law, and it is necessary to understand the way those doctrines emanated from a feudal system of land-holding. This task is undertaken in Chapter 3. Likewise, to understand the interrelationship between the common law and equity, some historical conception of the development of equity is required (see [1.3]).

[1.5.2] English and Australian law

Australia was settled by the English, albeit as a penal colony. Under English law the colonists carried with them so much of the law of England as was applicable to their own situation and the actual condition of the colony. In this way the land law of Australia was imported from English law, as that was held applicable to Australia as a matter of common law principle. The principle was also given force by a statute of the British Parliament, the *Australian Courts Act 1828*, s 24 of which provided that all laws and statutes in force in England on 25 July 1828 were to be applied in the colonies of New South Wales and Van Dieman's Land, so far as the same could be applied within these colonies.⁹ So English law became the source of Australian land law, most of it based upon the English history of feudalism, which had no direct connection with Australian society. Nevertheless, as will be seen immediately below, there has since been a considerable divergence between English and Australian law in relation to land.

[1.5.3] Australian land law

Since the earliest days of settlement, Australian land law has shown a uniqueness that is surprising when compared with other parts of the law, many of which still closely follow English models. Much of this has had to do with the geography of the country. Thus, the system of rural leaseholding (see [1.2.4]) resulted largely from pressure by squatters to gain some security in their landholding—and, after gaining that security, resisting attempts by free selectors to obtain freehold title to rural land. More recently, recognition of native title has imposed enormous political pressure on governments to accommodate that title within existing land-holding structures.

For freehold land, and thus in particular urban land, the most striking development was the creation of the Torrens system of title registration. As will be seen in Chapter 7 and throughout this text, the Torrens system is not a mere conveyancing system. In many respects it fundamentally alters important concepts in traditional land law. Australian land law has also incorporated initiatives, mainly through statutory intervention but sometimes through judicial decisions, that reflect uniquely Australian problems. Bradbrook, MacCallum, Moore and Grattan,¹⁰ for example, point to the following as illustrating some of these developments: legislation relating to boundary fences; encroachment legislation; development of strata titles in respect of unit construction; residential and retail landlord and tenant law reform; and regulation of retirement village accommodation. There has also been judicial and statutory intervention in relation to the doctrines of estoppel and unconscionability, which are of particular importance to the formalities of land transactions and to the law in respect of mortgages. Some of these issues are dealt with in detail in subsequent chapters. For an excellent examination of many of these issues, the reader is referred to A R Buck, *The Making of Australian Property Law* (Federation Press, 2006).

⁹ However, the date at which the law is taken to have been imported varies between jurisdictions. The dates are listed in T Mann (ed), *Oxford Australian Law Dictionary*, Oxford University Press, South Melbourne, 2010 (see headword 'reception').

¹⁰ Bradbrook, MacCallum, Moore and Grattan, Chapter 1.