

# Australian Property Law Journal (APLJ)

## Volume 29 Part 2

(articles, essay and case note included in this part are linked to the LexisNexis platform)

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#### Articles

##### [Construction defects in apartment blocks: Whose problem?](#)

— *Philip Britton and Matthew Bell*

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This article contributes to comparative analysis in pursuit of effective reforms to the regulatory regimes directed at the minimisation of defective work, and its consequences, in respect of high-rise apartment buildings. Its subject jurisdictions are England and Wales and the Australian states of New South Wales and Victoria. The centrepiece of the article is a case study of an apartment development in northwest England which has occupied the courts for several years without residents yet being able to return to their defects-riddled homes. We conclude that tenure differences between long leasehold in England and Wales and strata title (or equivalent) in Australia are less significant in explaining this negative outcome than the greater rights of action made available by the NSW and Victorian regimes, against builders or other parties who contribute to defects.

##### [Application of the common law forfeiture rule to the unlawful killing of a joint tenant](#)

— *Liam O'Shaughnessy*

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In circumstances where one joint tenant wrongfully kills another joint tenant, the law has developed to prevent the killer from benefiting from their wrongdoing. The common law forfeiture rule, as it is ordinarily referred to, holds that a person responsible for killing another will not be entitled to any interest in property that, under normal circumstances, they would have received on the death of the victim. Although the rationale underpinning the rule is well established, its legal application is uncertain. Accordingly, this article endeavours to fill a gap in the literature by considering how the rule should apply to property jointly owned by a killer and victim, and to property jointly owned by a killer, victim and innocent third party. It ultimately contends that the rule should be applied so a victim's interest in jointly held property passes to their killer by right of survivorship. Then, because of the principle of public policy on which the rule is grounded, equity intervenes to deprive the killer of the beneficial interest through the use of a constructive trust. Further, to accord with the principle of public policy, the constructive trust must operate differently where there are two joint tenants and where there are three or more joint tenants.

##### [Digging down into property — The downward extent of property: A New Zealand Perspective](#)

— *Mick Strack and Julian Thom*

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Subsurface property rights come into focus when transport and infrastructure tunnels are required to service urban settlement. This article investigates the vertical extent of property in this context. It discusses common law property theory, examines relevant case law and shows how other

jurisdictions have legislated for subsurface uses. It explores what may legitimately be considered private and what public, and where an appropriate boundary may lie. It finds that, just as the upper airspace is considered open for public navigation, free of any rights claimed by a surface proprietor, subsurface space below the depth of reasonable use by a surface proprietor should also be considered public space. This would facilitate the Crown's ability to develop underground space for transport and infrastructure without the need to negotiate with and compensate surface property owners.

## Essay

### Torrens recollections of a retired Adelaide property lawyer

— *Philip H Page*

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A retired Adelaide property lawyer realises that during his 45 years of practice in the birthplace of the Torrens System he witnessed much of the evolution of that system from its earliest roots in carefully maintained and stored paper documentation and records to its modern, efficient electronic structure. Still, the essential principles of the system have remained the same.

## Case Note

### 'The best made plans ...' — Iowa rejects non-traditional deeds

— *John V Orth*

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