

Australian Property Law Journal (APLJ)

Volume 31 Part 1

(articles and book review included in this part are linked to the LexisNexis platform)

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Articles

Protecting 'possessory licences' over land against interference by third parties

— *Adam Baker*

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A new type of claim is emerging in the common law world. It allows some contractual licensees to sue third parties — other than the licensor and their successors in title — who interfere with the exercise of the licence. These actions are developing haphazardly. They are often said to be unjustified. This article contends that these difficulties can be overcome by a close analysis of the principles-based reasoning behind the claims. Contrary to the mistakenly wide readings of them that have prevailed to date, they should only apply to licences insofar as they entitle the licensee to be in possession. They should merely cover the interval between when possession can be, and is, taken. Only conduct that is a tort to the land and that materially impedes the claimant from taking possession should be actionable. Thus understood, these actions amount to a small and justified incursion into the traditional lease-licence distinction.

Torrens and trusts: Weight of policy versus protecting the beneficiary

— *P T Babie*

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Torrens title represents a policy decision favoring certainty of legal title over the remedial flexibility, and so somewhat less certain status, of equitable title. Confusion about this policy often arises in calls for 'noting of trusts on title' so as to allow the 'true owner' to be ascertained. This article considers whether sufficient protection currently exists within Torrens systems for equitable interests — especially the express trust of a fee simple — through exceptions to indefeasibility, caveats, or other means of notation. Part II recounts the nature of equity as it affects real property law generally. Part III examines the policy of Torrens with respect to equitable interests. Part IV considers the arguments that might be advanced on both sides of the debate over the place of trusts within Torrens systems. Part V concludes: while there are sound reasons for possible reform through allowing for the notation of trusts in the Register, that change would not come without cost, legal, pragmatic, and material.

Understanding syndicated loans and multi-tiered financings

— *Gary A Goodman, Gregory Fennell and Jon E Linder*

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Syndication continues to grow in popularity among lenders. This article will explain the significant legal issues surrounding such transactions. Due to the rapid growth in volume and the escalating size and complexity of mortgage loans and the projects securing such loans, lenders have been forced to further develop methods to adequately diversify their risk. While most mortgage loans are sold into the commercial mortgage backed securitization (CMBS) market, mortgage loans held for syndication still

represent a significant share of the loans made by many real estate lenders. The syndication market provides mortgage originators with an opportunity to create a customized lending product which extends beyond the standard requirements of the rating agencies. The syndication market has recently gained significant momentum for 'value-added' lenders who are willing to: (i) incur above-average risk by placing loans in higher-leveraged loan positions in the capital stack; or (ii) provide financing outside a conduit structure for construction projects, land acquisitions, and/or lease-up projects.

Book Review

Common Law, Equity and Statute: A Complex Entangled System, Mark Leeming

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— *P T Babie*