

Modern Studies in

# Property Law

Volume 2

Edited by  
Elizabeth Cooke

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# Modern Studies in Property Law

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Edited by  
ELIZABETH COOKE

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MODERN STUDIES IN PROPERTY LAW

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## Preface

IN MARCH 2002 the fourth biennial conference of the Centre for Property Law was held at the Centre's home, the University of Reading. As ever, the proceedings were both enjoyable and instructive, and most of the papers given are published in this second volume of *Modern Studies in Property Law*. We should like to thank Hart Publishing Ltd for all their help and expertise, and for their sponsorship of the conference reception; and a great debt of gratitude is owed to the panel of anonymous referees who have given their time and attention. Their comments and advice have been immensely helpful and they have made a significant contribution to this volume.

The executive committee of the Centre has a difficult biennial choice: to suggest a theme, and risk deterring contributions, or to invite contributions across the whole range of property law, and to risk a very disparate collection of papers. Invariably we have chosen not to restrict papers to a theme, and have been rewarded by a wide range of papers which nevertheless have grouped themselves into several topics, and which link with each other in a number of different ways.

This collection begins with some of the international papers given at the conference; first, two papers from South Africa, where the law must meet the challenge of a whole society seeking justice and reconciliation. How can the law of property serve those who have been marginalised and excluded for generations? Hanri Mostert and Andre Van der Walt look at this problem from two different perspectives, the one a doctrinal analysis of legal developments and the other more theoretical. Both explore the possibilities of a way forward through fragmentation, moving away from the inherited hierarchical system where ownership is all, towards a framework which gives a greater value to other property rights. Both present an exciting picture, and we hope to hear more about developments in South Africa at future Reading conferences. From far overseas we move to Europe. Piotr Stec's paper is an introduction to the law of *fiducia* in Poland; it provoked intense discussion at the conference as participants examined the similarities and differences between *fiducia* and the trust. Tom Allen's paper on the meaning of "possessions" under the European Convention on Human Rights reminds us of the increasingly European flavour of the law of England and Wales.

Pamela O'Connor's paper could very properly be grouped with the South African papers, because both raised issues about land registration. One of the challenges for the law in South Africa is to find a way of adapting the deeds registration system to the new democracy, since its very success is a source of difficulty and even of oppression in a climate where change is essential.

O'Connor's paper on land registration, by contrast, examines and compares the registration systems in the much more stable context of England and Australia. Her global perspective is followed by the microcosm of Graham Ferris' examination of the meaning of one section of the Land Registration Act 2002.

Back home, then, in England and Wales, we focus on equity in the next group of papers. Mark Thompson looks at the law of undue influence in the context of mortgages, following the House of Lords' decision in *Royal Bank of Scotland v Etridge (No 2)* [2001] 4 All ER 449. Two papers follow on the law of estoppel, by Nicholas Hopkins and Martin Dixon; they belong together as papers on estoppel, but Martin Dixon's paper is closely concerned with the new Land Registration Act 2002, and so has close links with the two papers on land registration by O'Connor and Ferris. Paul Eden looks at the equitable ownership of shares, and provides us with a welcome reminder that the Centre for Property Law is not concerned solely with real property. Finally in this group is Heather Conway and Sheena Grattan's paper on aspects of the law in Northern Ireland, in many ways so close to and yet so far removed from the law of England and Wales and certainly a matter upon which many English lawyers are lamentably ignorant. Their topics link naturally with those that immediately precede them; yet they could equally have been grouped with Stuart Bridge's paper as their discussion of the ownership of the family home is relevant to the Law Commission's project on of the rights of those who are home-sharers.

There follows a group of papers on the law of landlord and tenant. Warren Barr addresses the vexed question of whether a change in the terms of a lease effects a variation or a new lease; and Jill Morgan looks at the rights and responsibilities of the child as tenant. Nicholas Roberts examines those groups of homeowners who have been left out by the leasehold reform legislation. David Clarke's conference paper on commonhold can be found at [2002] *The Conveyancer* 349.

The final group of papers is headed rather loosely 'Environment and neighbours'; the papers examine different aspects of the way that the use of land affects others. Christine Willmore considers the role of publicly owned land within National Parks, while Sarah Nield looks at the legal structure of one very famous National Park, the New Forest. Roger Gibbard examines an issue in planning law, the Crichel Down rules. Finally Scott Grattan considers legislation authorising access to neighbouring land.

Last of all comes Stuart Bridge's paper; his address was the keynote session of the conference, but his paper appears here in amended form following the very recently published Law Commission discussion paper, *Sharing Homes*.

It has been a joy to be involved in the planning and execution of this conference; the next biennial event in 2004 is anticipated with pleasure.

## *Notes on Contributors*

**Tom Allen** is a Professor in the Faculty of Law at the University of Leeds.

**Warren Barr** is a Lecturer in the Law School, and Director of the Charity Law Unit, at the University of Liverpool.

**Stuart Bridge** is a Law Commissioner for England and Wales.

**Heather Conway** is a Lecturer in the School of Law at the Queen's University of Belfast.

**Martin Dixon** is a University Lecturer at Cambridge University and a fellow of Robinson College, Cambridge.

**Paul Eden** is a Lecturer in International Commercial Law at the University of Sussex.

**Graham Ferris** is a Lecturer in the Department of Law at Nottingham Trent University.

**Roger Gibbard** is Director of Rural Studies in the Department of Land Management and Development at the University of Reading.

**Scott Grattan** is a Lecturer in the Faculty of Law, and a member of the Legal Intersections Research Centre, at the University of Wollongong in Australia.

**Sheena Grattan** is a Senior Lecturer in the School of Law at the Queen's University of Belfast.

**Nicholas Hopkins** is a Senior Lecturer at the University of Southampton.

**Jill Morgan** is a Senior Lecturer in the School of Law, University of East Anglia

**Hanri Mostert** is a Senior Lecturer in the Department of Private and Roman Law at the University of Stellenbosch.

**Sarah Nield** is a Lecturer in the Faculty of Law at the University of Southampton.

**Pamela O'Connor** is a Senior Lecturer in Law, Monash University, Victoria, Australia.

**Nicholas Roberts** is a Lecturer in law at Oxford Brookes University and is also Legal Adviser to the Federation of Private Residents' Associations Ltd.

**Piotr Stec** is a Lecturer in Law at the Silesian University of Technology, Poland.

**Mark Thompson** is a Professor in the Faculty of Law at the University of Leicester.

**Andre Van der Walt** is a Professor in the Department of Public Law at the University of Stellenbosch.

**Christine Willmore** is a Lecturer in the Department of Law at the University of Bristol.



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