

# PROPERTY LAW REVIEW

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## ARTICLES

**Developing the ultimate cadastre: Using indefeasibility to guarantee geodetic defined land boundaries** – *Lynden Griggs*

Boundary disputes between neighbours can often escalate beyond their objective economic worth. The law has provided many approaches to resolve these disputes. These measures have included the law of adverse possession, encroachment legislation, rectification of the title register, survey adjudication based upon the competing opinions of land surveyors, as well as reliance on the good sense of neighbours to resolve these matters amicably. However, one thing is clear in the law – the Australian States, through their title registers, do not guarantee the boundaries of a parcel of land as depicted on the plan attached to certificates of title. The argument presented here is that with the development and integration of a fully digital cadastre, and the role of the surveying profession in the development and implementation of Cadastre 2034, the time is appropriate to begin the legal steps to extend indefeasibility to the boundaries of land. This article seeks to begin the discussion that could see land law move hand-in-hand with Cadastre 2034 to establish, by that year, a legally coordinated cadastre, with indefeasibility extending to the granting of boundaries. The possibilities and advantages of linking the land administration records with a digital cadastral map are too significant to dismiss as either unnecessary, too expensive, or unneeded. ....

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**Towards women’s equal right to property: Recent judicial developments in India** – *Archana Mishra*

This article investigates judicial developments in the Indian law of succession whereby laws have recently been interpreted by the courts to grant more property rights to Indian women. Tribal women who had been denied inheritance rights under their customary laws have been judicially granted rights in their favour. Also, the applicability of coparcenary claims by Hindu daughters, granted under the *Hindu Succession (Amendment) Act, 2005* (IND), has now been finally settled by the Supreme Court of India. Applying legal maxims for recognising the right of a Hindu widow to claim partition of her deceased husband’s share in coparcenary property, in the absence of a definite statutory right, is another judicial development; while the interpretation of Hanafi law to grant inheritance rights to a sister in the presence of daughters of the deceased shows a judicial approach of uplifting the position of women even under uncodified Muslim personal law. At the same time, however, restricting the right of a Hindu daughter to claim her coparcenary right only after a certain date, when no such limitation has been fixed for a male coparcener; and the courts’ affirmation of granting preferential rights to agnates over cognates under Hindu inheritance law, appear to promote gender inequality without any justification. More than a decade after the passing of the Constitution, the courts continue to adopt a cautious approach when considering the constitutional validity of personal laws. With the increase in social integration, economic independence and reform movements, there needs to be a further call for the improvement of the woman’s position in Indian society with respect to equal property rights. ....

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**Succession and inheritance law in Nigeria: Resolving the discriminatory proprietary rights of widows and children – T Kehinde Adekunle**

The sudden death of a man calls into question the manner of distributing his properties as well as succeeding to his offices, dignities and honour after his death. The position of the wives and children of the deceased are even more critical. Which of the properties of the deceased should go to the wives or the children in the face of a strong claim for them by the deceased's siblings and relatives? Will the wives and children live in abject poverty after the demise of their husband and father? Will they suffer in silence for the rest of their lives? These and similar other problems should be unravelled. This study, therefore, examines the distribution of the wealth of a deceased person among his survivors with a view to maintaining equity and justice and in order to avoid unnecessary acrimony among the relatives. .... 176

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**Recent developments: Leases, interests of specific legatees, indefeasibility and collective sales**

This update on Singapore law addresses four developments. First, a case apparently enforcing a lease of uncertain duration. Second, a case clarifying the interests of specific legatees during the administration of a deceased's estate and the effect of an assent by an executor. Third, a case explaining how a claim in proprietary estoppel is compatible with the Singapore Torrens system. Finally, a case considering the concept of good faith in the context of a collective sale of a strata development. .... 191

SOUTH AUSTRALIA – *Editor: Paul Babie*

**Is native title a defence to a mortgagee's right to possession?**

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WESTERN AUSTRALIA – *Editor: Eileen Webb*

**Legislation and case law developments: Strata title; residential parks; rent review provisions and uncertainty**

This update on developments in Western Australian real property law outlines proposed reforms to strata title legislation, and the review of the law relating to residential parks. A recent case is also examined which provides an overview of the courts' approach to determining the appropriate construction of a commercial lease and whether a provision will be held to be void for uncertainty. .... 198

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