

Chapter 9

Australian Land Law

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Introduction

This chapter examines the sources and development of land law in Australia.

Less than 30 years ago, students of real property in Australia began their studies at 1066 with the Norman conquest of England and feudal land law. They learnt about the deep mysteries of seisin, tenure and estates,¹ the medieval calculus of interests that ensured that at all times there was a person entitled to an estate granted under the Crown. They were instructed in basic elements of conveyancing under the feudal system that ensured the formal continuity of seisin, such as the proper use of correct words of limitation² and the rule in *Purefoy v Rogers*.³ They learnt about the development of rules to preserve the free alienation of land, such as the rule against perpetuities, which prevented perpetual postponement of vesting of estates.⁴

The Norman concepts linking sovereignty and ownership⁵ were brought to the colony of New South Wales in 1788, but it was difficult to conceive a society more inhospitable to their reception. The laws of the existing Indigenous population were invisible to the colonists and would remain unrecognised for two centuries. The Governors as representatives of the sovereign had strictly limited powers with respect to land, although in other respects their control was absolute. For the colony to survive, however, land had to produce wealth, and the feudal system could not supply the necessary legal structures to underpin local economic development. The story of land law in Australia is one of adaptation of the ideas of ownership and use of land to meet far different political,

1 See *Commonwealth v Anderson* (1960) 105 CLR 303, 322 (Windeyer J).

2 See Butt, *Land Law* (6th ed, Thomson Reuters, Sydney, 2009), Chs 5, 8.

3 (1671) 2 Wms Saund 380 (85 ER 1181). The rule applied to contingent remainders and required that a contingent remainder limited under grant or devise to uses was required to take effect according to the strict common law rules for vesting if it could possibly do so. See Butt, *Land Law*, [1125]-[1130].

4 The rule that dispositions limited to vest in the future had to take effect within the period limited by a life or lives in being and 21 years. See Butt, *Land Law*, Ch 12.

5 *Randwick Corporation v Rutledge* (1959) 102 CLR 54, 71 (Windeyer J).

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