



## Articles

### Teaching property law in a changing world: A longitudinal study 2011–19

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*In the past 10 years we have witnessed a seismic shift in the practice of law. This shift is largely the result of the growing impact of digital technology on both the substantive content of law and the delivery of legal services. Legal education has been somewhat slow to respond. While there may have been considerable focus on integrating technology in how we teach, including an increase in the online delivery of content most commonly in the form of blended learning models, the review and revision of the substantive content of what we are teaching has lagged behind. Indeed, the first substantial review of the Priestley 11 commenced late in 2018, 26 years after their initial articulation. This article reports on a longitudinal study of property law teaching in Australia. In doing so, it explores the changes to both the substance and mode of delivery of this prescribed area of knowledge in the past 10 years, and provides some commentary on further changes that are needed to ensure Australian law graduates are adequately equipped with relevant knowledge and skills in this important area.*

#### I Introduction

Towards the end of 2011, the authors invited property law teachers from all Australian law schools to participate in a study ('the 2011 study') regarding the teaching of the compulsory property law unit.<sup>1</sup> The 2011 study dealt with various aspects of teaching property law including unit content; teaching format; assessment methods; learning outcomes; and the extent to which skills were developed in the unit. The 2011 study also sought answers to open-ended questions dealing with the developing areas of property law and the challenges faced by property law teachers in the 21<sup>st</sup> century. The motivation for conducting the 2011 study was based on the changing nature of the contemporary law degree and the fact that law schools were facing 'the twin challenges of: the introduction of standards-based quality assurance, and the

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<sup>1</sup> The term 'compulsory property law unit' is used as a generic term covering all those aspects of property law that are prescribed by the Law Council of Australia including property concepts, land law and personal property. Property law is one of the 11 subject areas, formerly known as the 'Priestley 11', which the Law Council has identified as a prescribed area of legal knowledge that a student must cover within their law degree in order to be admitted to legal practice. See Law Admissions Consultative Committee, *Uniform Admission Rules* (2008) sch 1. For further discussion regarding the recent changes to the prescribed areas of knowledge see Law Admissions Consultative Committee, 'Redrafting the Academic Requirements for Admission' <[www.legalservicescouncil.org.au/Documents/redrafting-the-academic-requirements-for-admission.pdf](http://www.legalservicescouncil.org.au/Documents/redrafting-the-academic-requirements-for-admission.pdf)>.

sustained critique of the content-heavy focus of the traditional law degree'.<sup>2</sup> As noted at the time:

The profession, academia and the judiciary are calling for graduates who are proficient in a range of professional skills as well as being well versed in the law and its context. In terms of property law, new frontiers for the property law teacher to grapple with include the relatively recent creation of new property rights involving land; more sophisticated forms of community title; the increasing importance of environmental considerations; the concept of sustainability in what has otherwise been a market-based field as well as recent significant developments in personal property law.<sup>3</sup>

In light of the 'central' role of property in law school curricula,<sup>4</sup> the authors considered a comprehensive survey was warranted to enable us, as property teachers, to 'take stock and reflect not only on the current and proposed future content of property law units but also on how this unit is taught and assessed'.<sup>5</sup> The survey responses provided 'rich empirical data'<sup>6</sup> of the practices of property law teachers and the analysis of the data was published in three articles dealing broadly with unit content,<sup>7</sup> assessment methods<sup>8</sup> and teaching methods, outcomes and skills.<sup>9</sup>

Needless to say, time has moved on. Since 2011, there have been further developments in legal education and significant changes and advances in property law. In 2019, the authors felt the time was ripe for a follow-up study ('the 2019 study') of Australian property law teachers. By using substantially the same questions as in the 2011 study, the authors conducted a further survey that, together with the original data, provides a longitudinal study that not only considers our current property law teaching practices, but also examines the extent to which our current practices differ from those in 2011.

The 2019 study reveals that not much has changed in terms of the content of what we teach; however, there are subtle changes with regards our teaching practices and our satisfaction levels with the teaching format. What then is it that we teach in property law now compared to 2011? What are the current

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2 Penny Carruthers, Natalie Skead and Kate Galloway, 'Teaching Property Law in Australia in the Twenty-First Century: What We Do Now, What Should We Do in the Future?' (2012) 21(1) *Australian Property Law Journal* 57.

3 Ibid.

4 Kevin Gray, 'The Teaching of Property Law' in Peter Birks (ed), *Examining the Law Syllabus: The Core* (Oxford University Press, 1992) 15.

5 Carruthers, Skead and Galloway, 'Teaching Property Law in Australia in the Twenty-First Century' (n 2) 57.

6 Cathy Sherry, 'Teaching Land Law: An Essay' (2016) 25(2) *Australian Property Law Journal* 129.

7 Carruthers, Skead and Galloway, 'Teaching Property Law in Australia in the Twenty-First Century' (n 2).

8 Kate Galloway, Penny Carruthers and Natalie Skead, 'Assessment in the Law School: Contemporary Approaches of Australian Property Law Teachers' (2012) 5 (1-2) *Journal of Australasian Law Teachers Association* 231.

9 Penny Carruthers, Natalie Skead and Kate Galloway, 'Teaching, Skills and Outcomes in Australian Property Law Units: A Survey of Current Approaches' (2012) 12(2) *Queensland University of Technology Law and Justice Journal* 66 ('Teaching Skills and Outcomes').

teaching practices in property law and why are property law teachers apparently more satisfied with their teaching now than evidenced by the 2011 survey?

Part II provides the necessary backdrop to this article by exploring developments in the legal education and property law landscapes since 2011. Part III seeks answers to the questions posed above by analysing the responses to the 2019 study. Part IV then considers developing areas in property law and the potential challenges faced by property teachers in implementing changes both to the curriculum and in teaching practices and methods.

At the time of writing this article, universities around the country were dealing with the COVID-19 pandemic and the shift to a fully online learning environment. The 2019 study predated the onset of the pandemic and consequently the survey responses do not capture the online teaching practices adopted by property law teachers during this time. Despite the lack of formal data, based on analysis of the 2019 survey results this article provides some observations about the potential future impact of the pandemic on the adoption of digital learning technologies by Australian property law teachers.

## II The legal education and property law landscape

The last decade has seen significant changes in society, in higher education, and in the law and its practice. Together, these changes present a different context for the teaching of law in general, and in the teaching of property law in particular. This part canvasses the changing landscape to provide the context for property law teachers' responses to the 2019 survey.

### A Legal education

Recent developments in legal education in Australia cannot be considered independently of either the context of higher education more broadly, or the regulatory environment of legal education as a prerequisite of admission to legal practice. While there has been some recent (albeit limited) movement in the latter, the last decade has seen significant shifts within higher education that have affected how Australian law schools teach — although not so much *what* they teach.

Most notably, universities have invested significantly in digital tools and many Australian universities have a digital strategy.<sup>10</sup> At a minimum, university policy commonly mandates the recording of lectures, which recordings are made available to students online, often in downloadable format. A 2011/2012 survey of Australian law schools, for example, revealed that just over half used some form of lecture capture system software<sup>11</sup> and in 2020 it is likely that many more Australian law schools record at least some classes — with consequences for learning and teaching. A 2018 study at an Australian law school involving over 900 law students ('the 2018 law student

10 See, eg. Griffith University, 'Griffith Digital Strategy 2020' (Web Page, 20 October 2016) <[www.griffith.edu.au/\\_\\_data/assets/pdf\\_file/0026/365561/griffithuniversity-digital-strategy.pdf](http://www.griffith.edu.au/__data/assets/pdf_file/0026/365561/griffithuniversity-digital-strategy.pdf)>.

11 Stephen Colbran and Anthony Gilding, 'E-Learning in Australian Law Schools' (2013) 23 (1–2) *Legal Education Review* 201, 206, 220.

attendance study'), suggests that this phenomenon is at least partly responsible for a significant decrease in student attendance at face-to-face classes.<sup>12</sup>

Hand-in-hand with the institutional imperative to record lectures has been the increased focus on the development of the digital classroom that demands the development of online materials and sometimes, an entirely online teaching environment. Consequently, academic staff across the board have been required to become more adept in designing courses that embrace digital pedagogies that offer courses as online and in 'blended' modes including as 'flipped' classrooms.<sup>13</sup> With the recent wholesale move to online teaching in many universities across the globe as a result of the COVID-19 pandemic, this may become increasingly prevalent as the default position in the higher education sector.

In a cross-over between university requirements and the LLB and JD accreditation requirements, universities are required to meet the standards established by the Tertiary Education Quality and Standards Agency ('TEQSA') for undergraduate and postgraduate courses. For law, this has generally been interpreted as meeting the Discipline Standards<sup>14</sup> but it extends more broadly to standards imposed at the university level that would also affect law programs.

In addition to university imperatives, nationally, the regulation of legal education has not eased. Indeed, if anything, it has increased. The Council of Australian Law Deans ('CALD') has added another layer of certification, albeit voluntary, pursuant to its Standards for Australian Law Schools.<sup>15</sup> The Standards 'are intended to be beneficial, not punitive. They are an articulation of the values and ideals that Australian law schools in the early 21<sup>st</sup> century believe are necessary and appropriate to achieving excellence and adding real value to society'.<sup>16</sup>

The CALD Standards add to the ongoing strict regulatory framework of the Priestley 11, based on an assumption of 'volume of learning' expressed in a minimum of 3 years of enrolment in a law degree.<sup>17</sup> Since the 2011 survey, this

12 Natalie Skead, Liam Elphick, Fiona McGaughey, Murray Wesson and Kate Offer, 'If You Record, They Will Not Come: But Does It Really Matter? Student Attendance and Lecture Recording at an Australian Law School' (2020) 54(3) *Law Teacher* 349 <<https://doi.org/10.1080/03069400.2019.1697578>>.

13 Kylie Burns et al, 'Active Learning in Law by Flipping the Classroom: An Enquiry into Effectiveness and Engagement' (2017) 27(1) *Legal Education Review* 1 (Article 14); Melissa Castan and Ross Hyams, 'Blended Learning in the Law Classroom: Design, Implementation and Evaluation of an Intervention in the First Year Curriculum Design' (2017) 27(1) *Legal Education Review* 1 (Article 13).

14 Sally Kift, Mark Israel and Rachael Field, 'Bachelor of Law Standards: Learning and Teaching Academic Standards Project' (Academic Standards Statement, Australian Learning and Teaching Council, December 2010).

15 Council of Australian Law Deans ('CALD'), 'The CALD Standards for Australian Law Schools' (Standards, 17 November 2009) <<https://cald.asn.au/wp-content/uploads/2017/11/CALD-Standards-final-adopted-17-November-20091.pdf>>.

16 CALD, 'Introduction and Context to the CALD Standards for Australian Law Schools' (Introductory Context Statement, March 2014) 3 <<https://cald.asn.au/wp-content/uploads/2017/11/CALD-Standards-Introductory-Context-Statement-March-2014-1.pdf>>.

17 Law Admissions Consultative Committee, 'Model Admission Rules 2015' (December 2016) s 2(1) <[www.lawcouncil.asn.au/files/web-pdf/LACC%20docs/212390818\\_9\\_LACC%20Model%20Admission%20Rules%202015.pdf](http://www.lawcouncil.asn.au/files/web-pdf/LACC%20docs/212390818_9_LACC%20Model%20Admission%20Rules%202015.pdf)>.

assumption is increasingly challenged by the accelerated LLB. In many programs students are now able to complete their degrees more quickly, primarily through enrolment in summer semesters and through academic years reorganised into trimesters.<sup>18</sup> This greatly increases the number of subjects a student is able to complete in a single year, raising questions, perhaps, about their capacity for depth of learning.<sup>19</sup>

Adding to these concerns, and to assist in accelerating the program to meet market demand, law schools have compressed many core (mandated) subject areas. Where traditionally the core subjects may have been taught over two semesters, they are now offered over one. In the case of property law, this has seen a reorganisation in some cases of three property-based subjects into two<sup>20</sup> or of two subjects into one.<sup>21</sup> Yet the regulator must still be satisfied that the curriculum overall covers the required content.

A recent material change to the law curriculum itself is the revision of the prescribed areas of knowledge. Following a review undertaken by the Law Admissions Consultative Committee during 2019,<sup>22</sup> the description of each of the Priestley 11<sup>23</sup> subjects was rewritten.<sup>24</sup> The intent of the review was that each subject description would ‘maintain present content and scope’, be ‘indicative not prescriptive’ and be ‘adaptable to change’.<sup>25</sup> The resulting requirements, due to come into force in January 2021, do not differ radically from those they replace. This is perhaps not surprising, given the limited scope of the review. Nonetheless, in the case of property law, the revised academic requirements might offer the chance for some innovation in the law curriculum.

## B Property law

While the recent developments in higher education in Australia have affected how the law degree is taught rather than what is taught, the last decade has seen significant advances in property law itself. As predicted in the 2011 study, the national personal property securities regime has since been bedded

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18 Bond University and Curtin University have always delivered their LLB and/or JD in trimesters. More recently, the University of New South Wales and Griffith Law School have moved to a trimester system.

19 Kift, Israel and Field (n 14).

20 Eg: James Cook University previously offered three property law subjects: Land Law 1, Land Law 2, and Commercial Law and Personal Property. It now offers two: Personal Property and Land Law 1, and Land Law 2. Similarly, Bond University moved from three to two property law subjects.

21 See, eg, Western Sydney University, ‘Bachelor of Laws (Non Graduate Entry)’ (Web Page) <<http://handbook.westernsydney.edu.au/hbook/course.aspx?course=2502.2>>.

22 Law Admissions Consultative Committee, ‘Redrafting the Academic Requirements for Admission’ (Web Page, 2019) <[www.lawcouncil.asn.au/files/web-pdf/LACC%20docs/253946289\\_9\\_LACC%20-%20Redrafting%20the%20Academic%20Requirements%20for%20Admission.pdf](http://www.lawcouncil.asn.au/files/web-pdf/LACC%20docs/253946289_9_LACC%20-%20Redrafting%20the%20Academic%20Requirements%20for%20Admission.pdf)>.

23 Law Admissions Consultative Committee, *Uniform Admission Rules* (n 1).

24 Law Admissions Consultative Committee, ‘Prescribed Areas of Knowledge’ (Web Page, 18 October 2019) <[www.lawcouncil.asn.au/files/web-pdf/LACC%20docs/Redrafting%20the%20Academic%20Requirements%20for%20Admission%20-%20Subs/657475579\\_1\\_657475579.01%20Prescribed%20Areas%20of%20Knowledge.pdf](http://www.lawcouncil.asn.au/files/web-pdf/LACC%20docs/Redrafting%20the%20Academic%20Requirements%20for%20Admission%20-%20Subs/657475579_1_657475579.01%20Prescribed%20Areas%20of%20Knowledge.pdf)>. Kate Galloway and John Page were involved in drafting the revised requirements for Property Law.

25 Ibid 3.

down with major implications for the structure of some property law units. As foreshadowed also, community titles have continued to represent a growing form of tenure<sup>26</sup> with attendant challenges. Retirement villages, too, have continued to attract the attention of regulators, with many jurisdictions undertaking reforms in the recent past.<sup>27</sup>

There are two additional issues that have become increasingly prominent in the last decade, in terms of their effect on society generally and property law in particular: developments in technology, and climate change.

The technology of e-conveyancing was on the radar of property law teachers for many years before it was finally legislated. The questions it raises for property law remain the same, but the answers may be different. For example, what fraud will look like in a Torrens context, where there is no duplicate certificate of title, but instead a secure online transaction is hacked. In such emerging areas, without case law as a reference point the way in which property law students engage with the law is likely to feed more into questions of fundamental principles and statutory interpretation than the direct application of authoritative case law.<sup>28</sup>

Similarly, blockchain applications in a Torrens context currently have no direct application within Australian titling systems. Despite this, the technology is emergent in other jurisdictions and has been mooted in the Australian context.<sup>29</sup> On the surface they provide a registration system equivalent to Torrens, raising multiple issues that warrant examination.<sup>30</sup> It is reasonable to expect that a law graduate is able to evaluate the efficacy of new technologies, and analyse their impact and the challenges they raise.

Alternative uses of property arising through the application of new technologies, such as Airbnb, access to wi-fi signals requiring line of sight, and the use of drones,<sup>31</sup> also offer case studies in analysing traditional property law principles — in this case, leasing,<sup>32</sup> easements, and the boundaries of land, respectively as well as, possibly, community title. The proliferation of these new applications itself demands attention in the property law curriculum.

Finally, on the implications of the ubiquity of technology for property law, while elsewhere there have been significant developments in data regulation, protection and ownership,<sup>33</sup> Australia has only recently started turning its

26 Fifty-eight per cent of strata schemes nationally were registered before 2000, while 42% have registered since 2000. Hazel Easthope, Caitlin Buckle and Vandana Mann, *Australian National Strata Data 2018* (City Futures Research Centre, May 2018).

27 See generally, Brittany Smeed, 'Retirement Villages in Australia: The Case for Commonwealth Intervention' (2017) 11 *Elder Law Review* (Article 3).

28 See, eg, Penny Carruthers and Natalie Skead, 'From Immediate to Deferred to No Indefeasibility for Some Registered Mortgages' (2020) 94(2) *Australian Law Journal* 93.

29 Francina Cantatore, Kate Galloway and Louise Parsons, 'Fractionalised Land Interests: More Questions than Answers' (2020) 28(2) *Australian Property Law Journal* 39.

30 Lynden Griggs et al, 'Blockchains, Trust and Land Administration: The Return of Historical Provenance' (2017) 6(3) *Property Law Review* 179.

31 Adam N Miller, 'Up in the Air: The Status & Future of Drone Regulation in Hawai'i' (2017) 40(1) *University of Hawai'i Law Review* 307.

32 Bill Swannie, 'Airbnb and Residential Tenancy Law: Do "Home Sharing" Arrangements Constitute a Licence or a Lease?' (2018) 39(2) *Adelaide Law Review* 231.

33 Eg, the European Parliament and European Council adopted the *General Data Protection Regulation (Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the Protection of Natural Persons with Regard to the Processing of*



mind to these issues. Given the pervasiveness of personal data collection, which has increased exponentially in 2020 with the whole world seemingly moving online in a matter of weeks in the face of COVID-19, questions relating to the ownership, use and appropriate regulation of personal data abound. In universities and law schools these questions are impacting in a very real way on both law students and law teachers, for example, with concerns about the recording of online classes and invigilated online examinations.<sup>34</sup>

Climate change has been slow to make its appearance in the core law curriculum, given the ongoing politicised context in Australia. Following the Australian bushfires in the summer of 2019–20 it is, however, likely to gain momentum as both public opinion changes and law academics start to accept its relevance to doctrine and to legal education.<sup>35</sup> Changes in the landscape attendant on climate change are already affecting the boundaries of property. Future changes, such as sea level rise are prompting state governments and local authorities alike to change planning requirements with consequences for landowners including questions over the nature and extent of their property interest.<sup>36</sup>

Whether such developments represent essential ‘content’ for the property law curriculum, or simply offer case studies in the application of foundation principles, remains to be seen. Regardless, ignoring such developments in a contemporary curriculum may render law graduates ill-equipped to engage with contemporary legal contexts.<sup>37</sup> They therefore represent a shift in how we understand the nature, content, and context of what and how we teach.

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*Personal Data and on the Free Movement of Such Data, and Repealing Directive 95/46/EC* [2016] OJ L 119/1) (‘GDPR’) on 4 May 2016. The GDPR, which applies as from 25 May 2018, is intended to enhance the protection of individual’s data and acknowledges in the Preamble at [11] that

[e]ffective protection of personal data throughout the Union requires the strengthening and setting out in detail of the rights of data subjects and the obligations of those who process and determine the processing of personal data, as well as equivalent powers for monitoring and ensuring compliance with the rules for the protection of personal data and equivalent sanctions for infringements in the Member States ...

34 See, eg, University of Western Australia, ‘Exams and Assessment FAQ’ (Web Page, 2 July 2020) <[www.web.uwa.edu.au/novel-coronavirus/online-exam-faq](http://www.web.uwa.edu.au/novel-coronavirus/online-exam-faq)>.

35 For earlier work on sustainability education in property law, see Nicole Graham, ‘This Is Not a Thing: Land, Sustainability and Legal Education’ (2014) 26(3) *Journal of Environmental Law* 395; and Kate Galloway, ‘Sustainability in the Real Property Law Curriculum: Why and How’ (2015) 8(2) *Journal of Learning Design* 31.

36 Kate Galloway, ‘One Tale of Property, In My Own Words’ (2018) 27(1) *Griffith Law Review* 157.

37 Kate Galloway, ‘A Rationale and Framework for Digital Literacies in Legal Education’ (2017) 27(1) *Legal Education Review* 1 (Article 9).

### III The 2019 study and longitudinal observations

#### A Method and response rate

The authors adopted the same method of data collection for the 2019 study as was adopted in the 2011 study.<sup>38</sup> Property law teachers from all Australian law schools were identified manually<sup>39</sup> and were invited by email to participate in an anonymous online survey. The survey dealt first with general information about the law degree structure at the respondent's university and followed with questions on: teaching methods; unit content; skills acquisition; and assessment and outcomes. The survey also included open-ended questions inviting respondents to comment further on what they wished to change in the content, teaching, and assessment in the unit and the challenges they faced in implementing these changes. In 2011, a total of 16 responses were received from 14 different universities. In 2019, the response rate increased with 23 respondents from 16 law schools.<sup>40</sup>

#### B General information, teaching format and teaching technologies

##### 1 General information

The general information regarding the property law unit varies considerably across the respondent universities. For example, the property unit may be taught within a Juris Doctor or a Bachelor of Laws degree structure<sup>41</sup> and it may be taught over one or two semesters. Interestingly, the number of respondent universities teaching the unit over two semesters in 2019 (30%) has reduced considerably since the 2011 survey when 67% of respondents reported teaching the unit over two semesters. This may reflect a general shift in Australian law schools to restrict the teaching of the compulsory property unit to just one semester, or it may be that aspects of property law are taught in other units like Equity, Trusts, Remedies, Commercial Law, or in other private law units and this information was not captured in the survey responses. Alternatively, it may simply be that in 2019 fewer of the respondents were from universities teaching the unit over two semesters than for the 2011 survey.

As in 2011, property law is still generally taught within the second or third year of the degree and typically runs for 12 weeks per semester. The number of students enrolled in a unit varies from 25 to 580 (compared to between

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38 The study survey complies with the National Health and Medical Research Council of Australia's National Statement on Ethical Conduct in Human Research. Both the University of Western Australia and Bond University have provided ethics approval for the survey.

39 Property law teachers were identified via law school websites, authorship in the property law field and from the authors' general knowledge of property teachers around Australia.

40 All Australian jurisdictions, except Tasmania and the Northern Territory, and 6 of the Go8 (Group of Eight) universities were represented in the responses. The number of respondents per jurisdiction is as follows: Queensland 6; New South Wales 6; South Australia 4; Western Australia 3; Australian Capital Territory 2; and Victoria 2.

41 The percentage of respondents teaching in the different courses is as follows: JD — 17.39%; LLB — 47.83%; both JD and LLB — 34.78%.



50–400 in 2011), though most enrolments fall within the 120–320 range (similar to 2011 when the range was 150–300).

## 2 Teaching format

The teaching format of property law has barely changed since 2011. As was the case then, for most of the respondent universities, 80% – 100% of the tuition in the unit is face-to-face and on-campus student attendance is expected. A lecture and tutorial model remains the dominant teaching format comprising together 65% of the teaching modes adopted in 2019, but other teaching formats including seminars and blended learning are still as common (35% in 2019 compared to 31% in 2011). There is still only one respondent law school that adopts a fully online learning format. The average tuition time is the same as in 2011, ranging from 2.5 to 5 hours contact per week with the majority of respondents reporting approximately 3 to 3.5 hours for lectures and tutorials or seminar-style teaching.

Although a majority of respondents was satisfied with the teaching format, a minority of respondents (35%) reported that they would prefer a different format. Interestingly, fewer respondents sought changes to the teaching format in 2019 than in 2011. It appears property teachers were more accepting of the teaching format in 2019 than was the case in 2011. Why is that?<sup>42</sup> One possibility, which is explored further below, is that over this 8-year period more varied and innovative teaching techniques have been adopted so freeing up class time for more desirable interactive learning experiences.

The reasons for seeking a different teaching format fell into two broad categories: most commonly, a desire for small group face-to-face discussion; and, a preference for the unit to be taught over two semesters. Typical of each of these are the following responses:

I would prefer small group teaching with no lectures. ... Better engagement and more blended approaches would be possible in small groups.

I would prefer to teach the unit over two semesters – as a single semester the unit is too content dense if the vital points are to be dealt with adequately.

Fifty-five per cent of respondents in the 2011 study also expressed a preference for small group teaching and for similar reasons. Although there remains a perception that small group teaching provides a more effective and interactive teaching environment, in 2011 far more respondents reported a preference for smaller group format. This preference may be understood in light of the significant reliance in 2011 on lectures (94%) and tutorials (75%) whereas these forms of teaching comprised only 65% of property law teaching formats in 2019.

For those respondents seeking a different format, the survey included a question listing four possible factors that may act as barriers to implementing changes: lack of time in the teaching calendar; lack of human resources; lack of funding; or lack of requisite expertise. The responses to this question are similar to the responses to the same question in the 2011 study, with lack of

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<sup>42</sup> The answer cannot be due to a more generous timeframe for teaching the unit in 2019 since, as discussed earlier, fewer of the 2019 respondents taught the unit over two semesters than was the case in the 2011 study.

time, people and money being the main barriers to change. Lack of requisite expertise was not identified as a significant barrier to implementing changes,<sup>43</sup> however, about 50% of respondents considered that a lack of time in the teaching calendar and a lack of human resources were moderately to extremely relevant barriers and about 30% of respondents reported a lack of funding as a moderately to extremely relevant barrier to change.

Respondents were asked a further open-ended question as to whether there were other barriers to changing the teaching format. While institutional factors such as curriculum design, faculty policy and University level constraints remain common barriers, one new theme emerged in the 2019 study — student resistance:

Increasingly students seek to have flexible learning which seems to include off-campus learning and online learning. So, to some extent, there may be push back from students if I require them to attend more on campus tuition.

This response accords with the results of the 2018 law student attendance study. It found that law students attend on average only 38% of lectures and 84% of tutorials, and it also reports strong student support for recorded lectures that give them the flexibility not to attend classes.<sup>44</sup>

### 3 Teaching technologies

Consistently with the 2011 results, 90% of the 2019 respondents record their classes, with 88% of those respondents noting that the recordings are downloadable and 100% indicating that there is no time limit placed on the accessibility of recorded classes.<sup>45</sup> The respondents who record classes were asked to estimate what proportion of their students listen online instead of physically attending classes. In relation to this question, there is quite an interesting divergence in the responses between the 2011 and 2019 surveys. The 2019 responses indicate a much greater proportion of students listening online instead of attending classes than was the case in 2011. In 2011, 31% of respondents believed that 60% of their students listened online instead of attending classes. As reflected in Figure 1, in 2019 72% of respondents reported that 60% or more of their students listen online instead of attending classes.<sup>46</sup>

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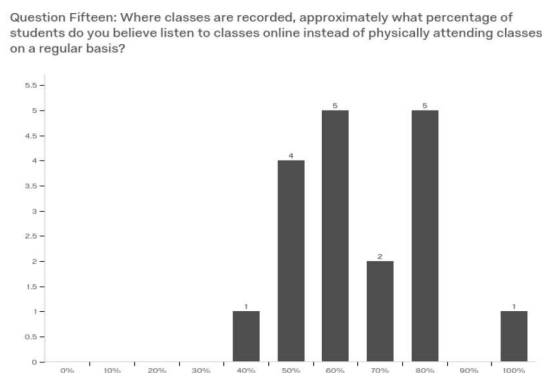
43 Eighty-five per cent of respondents considered this factor was either not at all relevant (55%) or only slightly relevant (30%).

44 Skead, Elphick, McGaughey, Wesson and Offer (n 12).

45 One respondent noted that lectures were recorded in the usual course and the recordings were only available in the semester in which the unit is taught.

46 There is one respondent in the 2019 survey who reports that 100% of students listen online instead of attending classes. As noted, one of the respondent universities adopts a fully online learning format for teaching the property unit.

Figure 1: 2019 survey — % of students who listen online instead of attending classes



These responses demonstrate that, over time, where classes are recorded, there has been an increasing trend for students to choose to listen online rather than attend classes. This result is consistent with other studies reporting that lecture recording is a significant factor in decreased student attendance at classes in law school.<sup>47</sup> There is no doubt that students enjoy the flexibility and revision benefits of recorded classes, however, the reduced physical attendance at classes can have a negative impact on student wellbeing and skills development while at the same time decreasing teacher morale.<sup>48</sup>

Another area where there appears to be a significant difference between the 2011 and 2019 survey responses is with regards the take-up of information technologies other than class recordings in teaching property law. In 2011, the use of technologies was quite limited and included: the standard provision of online materials, for example, unit readings and PowerPoint slides; online assignment submission; and some use of discussion boards. There was an ‘outlier’ respondent in 2011 who adopted a number of quite innovative approaches:

Record a lecture NOT from class, used this for my block mode offering this year. Brief 5 min overview podcasts of important points each week. Online quizzes for

47 Lillian Corbin, Kylie Burns and April Chrzanowski, ‘If You Teach It, Will They Come? Law Students, Class Attendance and Student Engagement’ (2010) 20(1–2) *Legal Education Review* 13, 14; Sharon Mascher and Natalie Skead, ‘On the Record: The Trials and Tribulations of Lecture Recording in Law’ (2011) 35(2) *University of Western Australia Law Review* 407, 414–15. In a 2015 study also at UWA and comprising a survey of 266 students, 90.6% of law students opposed the non-recording of lectures in order to induce student attendance. See Liam Elphick, ‘Adapting Law Lectures to Maximise Student Engagement: Is It Time to “Transform”?’ (2018) 28(1) *Legal Education Review* 1, 12 (Article 5); Skead et al (n 12).

48 Mascher and Skead (n 47); Shanton Chang, ‘Academic Perceptions of the Use of Lectopia: A University of Melbourne Example’ (Conference Paper, ASCILITE, 2007); Jocasta Williams and Michael Fardon, ‘Recording Lectures and the Impact on Student Attendance’ (Conference Paper, ALT-C Conference, 2007); Fiona McGaughey et al, ‘What Have We Here? The Relationship between Student Attendance and Wellbeing’ (2019) 45(3) *Monash University Law Review* 165; Kate Offer et al, “‘Why Bother If the Students Don’t?’ The Impact of Declining Student Attendance at Lectures on Law Teacher Wellbeing’ in Judith Marychurch and Adiva Sifris (eds), *Wellness for Law: Making Wellness Core Business* (LexisNexis Butterworths, 2020) 65.

self-testing. Online journals (this year only, and just me). Students video themselves learning & engaging in class to watch on subject site. Prezi. Youtube clips used frequently. Twitter feed on subject site.

In 2019, like the 2011 outlier, more respondents were adopting innovative approaches with 63% of respondents reporting the use of information technologies other than class recordings in their teaching. For example:

Padlets, Discussion Boards, 'Tree Format' Modules

Online self-paced learning modules Digital readings Video documentaries  
Formative assessment – quizzes

The digital platform 'Canvas' is used ... Formerly we used Moodle. These platforms facilitate use of multiple choice quizzes for interim assessment, distribution of materials, messaging students, etc

All of the reading material is provided online via a Moodle site. There is no set textbook for the course. The material has been written specifically to ensure that students understand the concepts when they do their reading ... the material is roughly 1/3 cases, 1/3 legislation and 1/3 real documents downloaded from the Torrens register, including DPs, SPs, leases, easements, mortgages etc. there are also online quizzes and activities which are explained online for pre-class preparation to be done in class eg an ordinary transaction for sale of land.

Other responses included the use of 'Tailored, brief, podcasts'; 'Blackboard collaborates'; and 'Links to resources on Learnonline site'.

The overall picture that emerges in 2019 is that a significantly higher proportion of respondents are adopting more varied and innovative online teaching and learning technologies than was the case in 2011. In 2011, a majority of respondents expressed a preference for a different teaching format that allowed for small group teaching with 'more interaction, student participation and problem solving'.<sup>49</sup> At that time, the authors commented that additional funding for small group teaching was unlikely and that accordingly, 'it might be time for property law teachers to explore more innovative ways of delivering content-based material online so as to free up face-to-face time for more interactive classroom activities'.<sup>50</sup> It would appear this online exploration by property law teachers has not only occurred but has been implemented. The adoption of innovative technologies allows for more interactive learning and teaching and, it would seem, this has led to higher levels of satisfaction by the 2019 respondents with their current teaching formats.

## C Property law — Unit content

In order to obtain a clear understanding of the content of the property law unit taught in Australian law schools, the surveys in both the 2011 study and the 2019 study included a number of questions regarding the hours of tuition spent on particular subject areas. The authors contemplated that the hours of tuition

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49 Carruthers, Skead and Galloway, 'Teaching Skills and Outcomes' (n 9) 71.

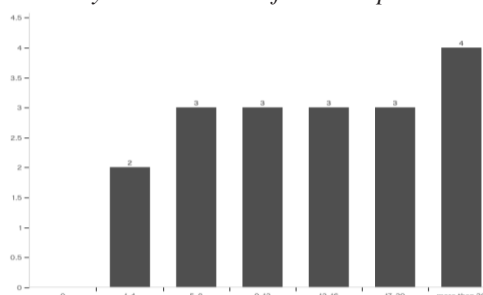
50 Ibid 73.

spent on the Torrens system would be greater than the hours spent on other areas and therefore the Torrens system question was asked separately from the other areas.

### 1 The Torrens system

As reflected in Figure 2, 72% of respondents indicated they spend over 9 hours, 39% spend 17–20 hours and 22% spend more than 20 hours teaching the Torrens system. The 2011 survey responses were similar in that they demonstrated a relatively high number of hours of tuition devoted to the Torrens system, though the precise percentages were different. In 2011, 93% of respondents spent 9 hours or longer yet the percentage of respondents reporting 17 hours or longer was only 21%. It would appear that less time is now spent teaching the Torrens system than 8 years ago. This may be because property law teachers have included new and emerging areas into the curriculum. Regardless, given the fundamental importance of the Torrens system to land law in Australia, this high number of hours spent teaching of the Torrens system in both the 2011 and 2019 surveys is not surprising.

Figure 2: 2019 survey — The hours of tuition spent on the Torrens system



### 2 Property law topics other than the Torrens system

Table 1 provides the details of the survey results for the hours of tuition on specified property law topics other than the Torrens system. The topics are arranged from the topic with the greatest mean tuition hours to the topic with the lowest mean tuition hours as reported by the 2019 respondents.

Table 1: Mean hours of tuition for specified topics in 2019 and 2011 ranked from greatest to least

Topic	Mean hours 2019	Mean hours (Rank) in 2011
1 Leases	5.89	6.07 (1)
2 Mortgages	5.33	4.64 (2)
3 Acquisition and transfer of real property	5.33	3.71 (4)
4 Co-ownership	5.00	3.21 (6)
5 Easements	4.89	3.42 (5)
6 Native title	4.61	2.93 (7)

7 Nature, concept and perspectives of property	4.39	3.92 (3)
8 Origins and nature of equitable interests	4.11	2 (13)
9 General law priority rules including Deeds registration system	4.06	2.57 (8)
10 Doctrine of tenure and doctrine of estates	3.83	2.38 (11)
11 Restrictive covenants	3.56	2.5 (9)
12 Physical dimensions of real property	3.56	2.5 (10)
13 Possession of real property including adverse possession	3.50	2.36 (12)
14 Possession of personal property including finders' rights	3.22	1.86 (15)
15 Strata title	2.44	0.86 (18)
16 Acquisition, transfer and priority of personal property	2.28	1.92 (14)
17 Conditional gifts and future interests	2.00	1.21 (16)
18 Profits a prendre	1.78	0.93 (17)
19 Rule against perpetuities	1.61	0.57 (19)

As a preliminary observation, on average, the mean hours of tuition per topic as reported by respondents in the 2019 survey is one to 1.5 hours greater than in 2011. There may be various reasons for this including a slight over-reporting of hours per topic or double reporting in the 2019 study.<sup>51</sup> Another, arguably more likely, reason relates to the fact that, as noted above, more property law teachers are adopting online and blended learning activities. In reckoning the hours of tuition, the 2019 respondents may have included both the formal class time and the estimated tuition hours students spend outside the classroom in preparing for their in-class tuition. Whatever the reasons, the data in Table 1 reflects the relative amount of time property law teachers spend on different areas in both 2011 and 2019.

A few further observations may be made regarding the data reported in Table 1. First, there is substantial similarity in the ranking of the topics between the 2011 and 2019 respondents. Sixteen of the 19 topics (84%) in 2019 were ranked in the same order or just one or two places different from the 2011 survey. This shows that despite the passage of 8 years, property law

<sup>51</sup> An example of double reporting, would be, eg, recording hours for the specific question regarding acquisition and transfer of real property and re-reporting those hours in the question regarding hours spent on the Torrens system.



teachers, by and large, continue to focus on the same topics in their teaching. One of the exceptions to this is the increased tuition hours spent on strata title in comparison to the 2011 survey.<sup>52</sup> Further comment regarding the tuition of strata title appears below.

Second, consistently with the 2011 results, the top five areas focus on real property, either land transactions like leases, mortgages and easements or more generally on the acquisition and transfer of real property and co-ownership. Third, conditional gifts and future interests, profits a prendre, and the rule against perpetuities remain the areas with the least hours of tuition. This is understandable. Current property law curricula are already overcrowded, and a brief overview may be all that is required for these older areas of property law. Indeed, Sherry has suggested that given the 'furious agreement' of property teachers with regards the irrelevance of 'random sections of succession law in land law courses', we should 'have the courage of our convictions and confidently excise them from our courses entirely'.<sup>53</sup>

### 3 Other property law topics

#### (a) *Personal property*

It is clear from Table 1 that the tuition hours devoted to personal property are far fewer than for real property topics. The authors contemplated this and sought to obtain more precise information regarding the areas of personal property included in the compulsory property law unit. Accordingly, two further specific questions were asked: 'Please indicate what aspects of personal property law are covered in this unit' and 'Are aspects of personal property law covered in an alternative compulsory unit?'. The responses to the first of these questions were wide-ranging. A number of respondents taught in a land law unit and therefore commented that no personal property law was covered in the unit. Other respondents identified that personal property is taught in another core property unit and provided a reasonably extensive list of the topics covered, for example:

Personal Property is taught as part of Introduction to Property and Commercial law in semester 1. It covers types of personal property; possession; finding; sale of goods; bailments; choses in action; gifts; assignments and dispositions; introduction to personal property securities.

For most respondents, however, areas of personal property were not quite so extensively covered though typically included: concept of possession; finders; bailment; and, in some cases, introduction to the personal property securities legislation. In answering the second question as to whether aspects of personal property were covered in another compulsory unit, respondents identified the compulsory units: Contract, Remedies, and Commercial law.

The 2019 responses were, once again, substantially similar to the 2011 responses and the same concluding comment may be offered:

It may tentatively be concluded, therefore, that for most respondents there is only a

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<sup>52</sup> The other two topics that were ranked quite differently in the 2019 survey were: 'Nature, concept and perspectives of property' which moved from 3<sup>rd</sup> in 2011 to 7<sup>th</sup> in 2019; and 'Origins and nature of equitable interests' which moved from 13<sup>th</sup> in 2011 to 8<sup>th</sup> in 2019.

<sup>53</sup> Sherry (n 6) 137.

limited coverage of personal property law in the compulsory property law unit/s or in other compulsory unit/s. Important aspects of personal property law including title to and transfer of personal property, and personal property securities legislation do not appear to be covered in detail in a compulsory property unit. This is not to say, however, that these important areas are not covered in an option unit, for example, Commercial Law, Consumer Law or Personal Property.<sup>54</sup>

*(b) Other topics*

In order to ensure that all areas covered in the compulsory property unit were captured in the survey, a further open-ended question was asked: ‘To what extent are other areas covered in the unit, including areas covered by statutes such as Commercial and Residential Tenancies, Native Title and Consumer Credit?’ The wording of this question was slightly different from how the question was phrased in the 2011 study which asked: ‘To what extent are other areas, not mentioned above, covered in the unit?’ In 2011, respondents listed a range of additional topics including: unjust enrichment; property torts and remedies; constructive trusts and estoppel. Further, as the authors noted at the time:

Of particular interest is the depth of theoretical material indicated by one respondent who offers a whole course on the critique of property by reference to the work of Locke, Marx, Neo-Marx, feminist theorists and Hegel; and the inclusion, by another respondent, of some aspects of planning and development law, heritage law, and Crown law/state leaseholds.<sup>55</sup>

In hindsight, the rephrasing of the question in 2019 has had an unfortunate and unintended consequence. The authors intended with this question to explore the breadth and depth of the different topics taught in the compulsory property unit and, in addition, sought information regarding the extent of teaching of the specified statutes. Perhaps not surprisingly, almost all of the 2019 responses focussed solely on the extent of coverage of the statutes rather than providing a more open and inclusive discussion of all other areas covered in the unit.<sup>56</sup> For this reason, it is not possible to provide an analysis of other areas covered in the unit in 2019 as compared with 2011.

Despite this, the rephrased 2019 question is useful for providing current data on areas covered by the specified statutes in the property law unit. Of the 15 responses to this question, 13 identified varying levels of coverage of native title: ‘native title is covered in great detail (about 10 hours)’; ‘native title is covered in approximately 4 hours’; ‘native title is touched on in property’. Three of the responses mentioned teaching native title in conjunction with the doctrine of tenures: ‘three hours on native title (we teach

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54 Carruthers, Skead and Galloway, ‘Teaching Property Law in Australia in the Twenty-First Century’ (n 2) 68.

55 Ibid.

56 One of the respondents provided a more detailed response covering both the statutes and also other areas:

Tenancies legislation is covered in the week spent on Leases (4 hours in total). Native title is covered in one week (4 hours instruction) Consumer Credit will be covered in CPL. CPL will also cover The Personal Property Securities Act, human tissue/DNA, rights to information, breach of confidence, IP rights, collective property rights, access to resources, big data and the internet of things, cryptocurrencies and the sharing economy.

the doctrine of tenure and estates through the *Mabo* case); 'native title is the main area of coverage in the doctrine of tenures'; 'native title is covered in tandem with tenure'. The gist of the majority of the responses is that native title is covered as a common law concept and that there is only limited discussion of the *Native Title Act 1993* (Cth): 'We mention the NT Act but do not do it in any detail'.

In relation to the specified statutes, Commercial Tenancies, Residential Tenancies and Consumer Credit, the general tenor of the responses is that these areas are 'flagged' but are not considered in detail. Two of the respondents cover retail and residential tenancy legislation by way of an assignment and without formal tuition:

Retail tenancies legislation, residential tenancies legislation and strata title legislation are covered on a rotating basis over the course of 3 years as an independent learning exercise for students in their Property assignment.

Other responses indicate that consumer credit legislation is mentioned in the discussion of mortgages, 'consumer credit is 1-2 slides in Mortgages', and that this area may also be 'picked up' in later elective units.

#### 4 The 10 most important property law cases

The survey also sought to identify those cases that were considered by respondents to be the most important property law cases. This question provides further insight into what property law teachers are currently teaching and what areas of property law are considered most important. The list of cases appears at Table 2.

Table 2: What do you consider to be the 10 most important cases that should be covered in the unit?

No of responses	Cited cases
17 responses	<i>Mabo v Queensland [No 2]</i> (1992) 175 CLR 1
12–13 responses	<i>Breskvar v Wall</i> (1971) 126 CLR 376; <i>Frazer v Walker</i> [1967] 1 AC 569; <i>Bahr v Nicolay [No 2]</i> (1988) 164 CLR 604
7–9 responses	<i>Radaich v Smith</i> (1959) 101 CLR 209; <i>Re Ellenborough Park</i> [1956] 1 Ch 131; <i>Wik Peoples v Queensland</i> (1996) 187 CLR 1
5–6 responses	<i>Tulk v Moxhay</i> (1848) 2 Ph 774, 41 ER 1143; <i>Walsh v Lonsdale</i> (1882) 21 Ch D 9; <i>Rice v Rice</i> (1853) 2 Drew 73, 61 ER 646
3–4 responses	<i>Abigail v Lapin</i> [1934] AC 491; <i>Lysaght v Edwards</i> (1876) 2 Ch D 499; <i>Corin v Patton</i> (1990) 169 CLR 540; <i>Victoria Park Racing and Recreation Grounds Co Ltd v Taylor</i> (1937) 58 CLR 479; <i>Westfield Management Ltd v Perpetual Trustee Co Ltd</i> (2007) 233 CLR 528; <i>Loke Yew v Port Swettenham</i>

	<i>Rubber Co Ltd</i> [1913] AC 491
2 responses	<p>Concept of property/Native Title — <i>Yanner v Eaton</i> (1999) 201 CLR 351; <i>Milirrpum v Nabalco Pty Ltd</i> (1971) 17 FLR 141</p> <p>Equitable interests in land/priorities — <i>Latec Investments Ltd v Hotel Terrigal Pty Ltd (in liq)</i> (1965) 113 CLR 265; <i>Tanwar Enterprises Pty Ltd v Cauchi</i> (2003) 217 CLR 315; <i>Barry v Heider</i> (1914) 19 CLR 197; <i>Waltons Stores (Interstate) Ltd v Maher</i> (1988) 164 CLR 387; <i>Baumgartner v Baumgartner</i> (1987) 164 CLR 137; <i>Farah Constructions Pty Ltd v Say-Dee Pty Ltd</i> (2007) 230 CLR 89</p> <p>Torrens/Indefeasibility/Exceptions — <i>Leros Pty Ltd v Terara Pty Ltd</i> (1992) 174 CLR 407; <i>Hillpalm Pty Ltd v Heaven's Door Pty Ltd</i> (2004) 220 CLR 472; <i>Heid v Reliance Finance Corporation Pty Ltd</i> (1983) 154 CLR 326</p> <p>Leases — <i>Gunland Property Holdings Pty Ltd v Duffy Bros Fruit Market (Campbelltown) Pty Ltd</i> (2008) 234 CLR 237</p> <p>Mortgages — <i>Forsyth v Blundell</i> (1973) 129 CLR 477</p> <p>Easements — <i>Clos Farming Estates Pty Ltd (recs and mgrs apptd) v Easton</i> (2002) 11 BPR 20,605</p> <p>Airspace — <i>Bernstein of Leigh v Skyviews &amp; General Ltd</i> [1978] QB 479</p> <p>Personal property (jus tertii) — <i>Jeffries v The Great Western Railway Co</i> (1856) 5 El &amp; Bl 802, 119 ER 680</p>
1 response	<p>Concept of property — <i>Dorman v Rodgers</i> (1982) 148 CLR 365; <i>Millar v Taylor</i> (1769) 4 Burr 2303, 98 ER 201</p> <p>Equitable interests in land/priorities — <i>Northern Counties Fire Insurance Co v Whipp</i> (1884) 26 Ch D 482; <i>Pipikos v Trayans</i> (2018) 265 CLR 522; <i>Calverley v Green</i> (1984) 155 CLR 242</p> <p>Torrens/Indefeasibility/Exceptions — <i>Mercantile Credits Ltd v The Shell Co of Australia Ltd</i> (1976) 136 CLR 326; <i>City of Canada Bay Council v Bonaccorso Pty Ltd</i> (2007) 71 NSWLR 424; <i>Cassegrain v Gerard Cassegrain &amp; Co Pty Ltd</i> (2015) 254 CLR 425</p> <p>Leases — <i>Aussie Traveller Pty Ltd v Marklea Pty Ltd</i> [1998] 1 Qd R 1; <i>Chan v Cresdon Pty Ltd</i> (1989)</p>

	<p>168 CLR 242; <i>Shevill v Builders Licensing Board</i> (1982) 149 CLR 620; <i>Jones v Bartlett</i> (2000) 205 CLR 166</p> <p>Mortgages — <i>Lift Capital Partners Pty Ltd (in liq) v Merrill Lynch International</i> (2009) 73 NSWLR 404; <i>Pendlebury v The Colonial Mutual Life Assurance Society Ltd</i> (1912) 13 CLR 676; <i>The Australian and New Zealand Banking Group Ltd v Bangadilly Pastoral Co Pty Ltd</i> (1978) 139 CLR 195</p> <p>Co-ownership — <i>Wright v Gibbons</i> (1949) 78 CLR 313; <i>Ryan v Dries</i> (2002) 10 BPR 19,497; <i>Delehunt v Carmody</i> (1986) 161 CLR 464; <i>Callow v Rupchev</i> (2009) 14 BPR 27,534</p> <p>Native Title/Doctrine of tenure — <i>Fejo v Northern Territory</i> (1998) 195 CLR 96; <i>Northern Territory v Arnhem Land Aboriginal Land Trust</i> (2008) 236 CLR 24 (<i>‘Blue Mud Bay Case’</i>); <i>Western Australia v Ward</i> (2002) 213 CLR 1; <i>Members of the Yorta Yorta Aboriginal Community v Victoria</i> (2002) 214 CLR 422; <i>Johnson &amp; Graham’s Lessee v McIntosh</i>, 21 US 543 (1823); <i>Attorney-General (NSW) v Brown</i> (1847) 1 Legge 312</p> <p>Possession of realty (adverse possession) and personalty (finders’ rights) — <i>Asher v Whitlock</i> (1865) LR 1 QB 1; <i>Parker v British Airways Board</i> [1982] 1 QB 1004; <i>Chairman, National Crime Authority v Flack</i> (1998) 86 FCR 16</p> <p>Alienability of land — <i>Hall v Busst</i> (1960) 104 CLR 206</p>
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There is a striking similarity between the 2011 and 2019 responses as to the important property law cases and inevitably the observations made about the 2011 responses are equally applicable to the 2019 results.<sup>57</sup> As with the 2011 survey, *Mabo v Queensland [No 2]* (*‘Mabo’*)<sup>58</sup> is identified as the most important property law case. This reflects the fundamental importance of *Mabo* not only for its rejection of terra nullius and recognition of native title rights at common law, but also for the High Court’s broader comments about Crown ownership of land, the doctrine of tenure and the concept of possessory interests in land. Table 2 also includes other cases that trace the development of native title law in Australia.<sup>59</sup>

<sup>57</sup> For a detailed discussion of the 2011 responses, see Carruthers, Skead and Galloway, ‘Teaching Property Law in Australia in the Twenty-First Century’ (n 2) 69–71.

<sup>58</sup> (1992) 175 CLR 1.

<sup>59</sup> See, eg, *Wik Peoples v Queensland* (1996) 187 CLR 1 and the native title cases identified as having one or two responses.

*Breskvar v Wall*,<sup>60</sup> *Frazer v Walker*<sup>61</sup> and *Bahr v Nicolay [No 2]*,<sup>62</sup> were also most frequently cited as among the most important cases in the 2011 survey. The identification of these cases, along with a number of other Torrens cases,<sup>63</sup> demonstrates the significance given to the Torrens system and the principle of indefeasibility in the Australian property law curriculum. A further group of important cases are those dealing with the creation of equitable interests in land and priorities.<sup>64</sup> The remaining cases are, by and large, well-recognised cases dealing with land transactions, co-ownership or the law regarding possession of realty or personalty.

As in the 2011 study, a standout feature of the 2019 list of important cases is their age — almost all cases are at least 20 years old with many cases significantly older. The reason for this focus on old cases is likely due to the fact that these are the seminal authorities that are considered to best illustrate the fundamental principles of property law.<sup>65</sup> However, there are six newer cases identified in the 2019 study that were not mentioned in the 2011 study: *Westfield Management Ltd v Perpetual Trustee Co Ltd*<sup>66</sup> (inadmissibility of extrinsic evidence in interpreting a registered easement); *Tanwar Enterprises Pty Ltd v Cauchi*<sup>67</sup> (nature of purchaser's interest under a contract for the sale of land); *Pipikos v Trayans*<sup>68</sup> (doctrine of part performance with regards an otherwise unenforceable oral contract over land); *Cassegrain v Gerard Cassegrain & Co Pty Ltd*<sup>69</sup> (indefeasibility of title, fraud, agency and co-ownership); *Lift Capital Partners Pty Ltd (in liq) v Merrill Lynch International*<sup>70</sup> (clogging the equity of redemption) and *Callow v Rupchev*<sup>71</sup> (liability for occupation rent by a co-owner where there is no 'ouster'). Each of these cases provides more contemporary authority clarifying various areas of property law.

## 5 The five most important statutes

In the 2019 study, an additional question was included in the survey that was not included in the 2011 survey: 'What do you consider to be the five most important statutes that should be covered in the unit?' Not surprisingly, all

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60 (1971) 126 CLR 376.

61 [1967] 1 AC 569.

62 (1988) 164 CLR 604.

63 See, eg, *Corin v Patton* (1990) 169 CLR 540; *Loke Yew v Port Swettenham Rubber Co Ltd* [1913] AC 491; *Westfield Management Ltd v Perpetual Trustee Co Ltd* (2007) 233 CLR 528; and the Torrens cases identified as having one or two responses.

64 *Tulk v Moxhay* (1848) 2 Ph 774, 41 ER 1143; *Walsh v Lonsdale* (1882) 21 Ch D 9; *Rice v Rice* (1853) 2 Drew 73, 61 ER 646; *Abigail v Lapin* [1934] AC 491; *Lysaght v Edwards* (1876) 2 Ch D 499; *Corin v Patton* (n 63); and the equitable interests in land/priorities cases identified as having one or two responses.

65 It may also relate to the phrasing of the question which asks for 'the 10 most important cases that should be covered in the unit'. Arguably this would tend to skew the responses towards the older seminal case law.

66 *Westfield Management Ltd v Perpetual Trustee Co Ltd* (n 63).

67 (2003) 217 CLR 315.

68 (2018) 265 CLR 522.

69 (2015) 254 CLR 425.

70 (2009) 73 NSWLR 404.

71 (2009) 14 BPR 27,534.



18 respondents included the Torrens legislation and the general property statute applicable in their jurisdiction. A summary of the responses to this question is included in Table 3.

*Table 3: What do you consider to be the 5 most important statutes that should be covered in the unit?*

<b>Legislation</b>	<b>Response Rate</b>
Torrens	18
General Property	18
Strata Title	9
Native Title	9
Residential Tenancy	5
Retail Tenancy	4
Environmental Planning and Assessment	2
Personal Property Securities	2
Limitation of Actions	2
Land Act	1
Forfeiture Act	1
Consumer Credit	1
Statute of Frauds	1
Electronic Conveyancing National Law	1

Perhaps what is of most interest about these results is that only one respondent identified the Electronic Conveyancing National Law ('ECNL') as one of the five most important statutes that should be covered in the compulsory property law unit. This is surprising given that not only is the ECNL fundamentally changing conveyancing practice in Australia, but consequential legislative amendments to the Torrens legislation in many jurisdictions are also affecting the underlying principle of indefeasibility that underpins the Torrens system, at least in relation to forged mortgages.<sup>72</sup> This is discussed further in Part IV below.

<sup>72</sup> Shannon Davies, 'When the Register Is Not Everything' (2015) 24(2) *Australian Property Law Journal* 327; Michelle Backstrom and Sharon Christensen, 'Qualified Indefeasibility and the Careless Mortgagee' (2011) 19(2) *Australian Property Law Journal* 109; Brett Harding, 'Verification of Identity: As Simple as It Seems?' (2017) 6(3) *Property Law Review* 195; Penny Carruthers and Natalie Skead, 'A Law for Modern Times: The Electronic Conveyancing National Law, Forged Mortgages and Immediate Indefeasibility' (2017) 7(1) *Property Law Review* 4; Carruthers and Skead, 'From Immediate to Deferred to No Indefeasibility for Some Registered Mortgages' (n 28).

## IV Developing areas and barriers to change

### A Developing areas and desired future teaching areas

In 2011, survey respondents identified three ‘new developing areas in property law’: personal property securities; natural resources and sustainability; and strata and community title. These were also the three areas the respondents indicated property law teachers ‘should be teaching’ but were not and that they would like to introduce into their units. As evidenced in Table 1 above, the respondents in the 2011 study were true to their word and in 2019 on average more hours were spent teaching both personal property (2.28 hours) and strata title (2.44 hours) than in 2011 (1.92 hours and 0.86 hours respectively). They do not, however, appear to be focussing more on natural resources and sustainability, but this may simply be a reporting anomaly resulting from the survey design flaw identified in Part III above.

Given increased urbanisation and population growth globally, the ravages of climate change on the places we live and work, and the relatively recent introduction of the personal properties securities legislation,<sup>73</sup> it is not surprising that in 2019 several respondents still considered strata title (six respondents); personal property securities (five respondents); and environmental law and sustainability (four respondents) to be new and developing areas of property law that they would like to introduce into their units.

The 2019 study respondents also identified a range of other new and developing areas of property law. Three were identified numerous times and warrant particular mention.

#### 1 E-conveyancing

The area most respondents (eight) identified as new and developing was e-conveyancing and its impact on property law practice. As foreshadowed in Parts II and III, the ECNL was introduced across Australia from 2012 and its implementation in each jurisdiction has been variable and staggered.<sup>74</sup> As a result of its recent introduction (relatively speaking), the implications of the ECNL for conveyancing practice and fundamental property law principles are only now being explored and experienced. Yet, it is likely that the impact of the ECNL, particularly in some jurisdictions, will be significant.<sup>75</sup> Property

<sup>73</sup> *Personal Property Securities Act 2009 (Cth)*.

<sup>74</sup> *Electronic Conveyancing National Law (ACT) Act 2020 (ACT)*; *Electronic Conveyancing (Adoption of National Law) Act 2012 (NSW)*; *Electronic Conveyancing (National Uniform Legislation) Act 2013 (NT)*; *Electronic Conveyancing National Law (Queensland) 2013 (Qld)*; *Electronic Conveyancing National Law (South Australia) Act 2013 (SA)*; *Electronic Conveyancing National Law (Tasmania) 2013 (Tas)*; *Electronic Conveyancing (Adoption of National Law) Act 2013 (Vic)*; *Electronic Conveyancing Act 2014 (WA)*.

<sup>75</sup> This is particularly relevant for Western Australia and Victoria that have introduced provisions into their Torrens legislation that appear to deny indefeasibility for registered void mortgages: *Transfer of Land Act 1893 (WA)* ss 105(3)–(5); *Transfer of Land Act 1958 (Vic)* s 74(5). Unlike the ‘careless mortgagee’ provisions of Queensland, New South Wales and Victoria, these provisions in Western Australia and Victoria render a registered mortgage unenforceable even though the mortgagee has not been ‘careless’ and has undertaken reasonable steps to verify the identity of the mortgagor. The careless mortgagee provisions are: *Real Property Act 1900 (NSW)* s 56C; *Land Title Act 1994 (Qld)*

law curricula will inevitably need to evolve to accommodate these changes. Despite this, no respondents reported teaching e-conveyancing in their property law unit<sup>76</sup> and only two respondents indicated they do not currently teach e-conveyancing but would like to do so.

## 2 New and emerging forms of property

Six respondents identified new forms of property resulting primarily from the emergence of new technologies such as blockchain and cryptocurrencies and the ubiquity of data collection, as developing areas of property law. Despite this, no respondents identified these new forms of property as areas they would like to be teaching but that they are not. However, four respondents indicated that they would like to incorporate more property theory and conceptions of property into their property law curricula. Both of these topic areas are fundamental to recognising new forms of property.

## 3 Native title and Indigenous perspectives

There has been a growing imperative in Australian legal education over the past 10 years to embed cultural competency and Indigenous perspectives and knowledges into the law curriculum. This imperative began in earnest with the Indigenous Cultural Competency for Legal Academics Program that has the stated aim:

to increase the inclusion of Indigenous cultural competency ... in legal education with a view to improving Aboriginal and Torres Strait Islander student outcomes in law, and developing Indigenous cultural competency in all students, leading to better legal service delivery for Indigenous communities.<sup>77</sup>

A number of Australian Law Schools have embarked on ambitious projects to Indigenise their curricula, including their property law curricula.<sup>78</sup> At the same time, there have been significant developments in native title in Australia, most notably as a result of a series of High Court cases handed down since the 2011 study.<sup>79</sup>

This increased focus on Indigenisation in the law curriculum and the recent developments in native title were reflected in the 2019 study with three respondents identifying the importance of Indigenous content and perspectives and native title as developing areas, and six wishing to increase the Indigenous content and native title in their teaching.

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ss 11A(1)–(3), 185(1A); *Transfer of Land Act 1958* (Vic) ss 87A–87E.

76 This could be because of the limitations in the survey question in this regard discussed in Part III(C) above.

77 Indigenous Cultural Competency for Legal Academics Program, Final Report 2019, 35 <[https://ltr.edu.au/resources/ID14-3906\\_Burns\\_FinalReport\\_2019.pdf](https://ltr.edu.au/resources/ID14-3906_Burns_FinalReport_2019.pdf)>.

78 See, eg, Annette Gainsford, 'Connection to Country: Place-Based Learning Initiatives Embedded in the Charles Sturt University Bachelor of Law' (2018) 28(2) *Legal Education Review* 1 <<https://ler.scholasticahq.com/article/7682-connection-to-country-place-based-learning-initiatives-embedded-in-the-charles-sturt-university-bachelor-of-law>>; Ambelin Kwaymullina, 'Teaching for the 21st Century: Indigenising the Law Curriculum at UWA' (2019) 29(1) *Legal Education Review* 1 <<https://ler.scholasticahq.com/article/12080-teaching-for-the-21st-century-indigenising-the-law-curriculum-at-uwa>>.

79 *Akiba v Commonwealth* (2013) 250 CLR 209; *Karpany v Dietman* (2013) 252 CLR 507; *Western Australia v Brown* (2014) 253 CLR 507; *Queensland v Congoo* (2015) 256 CLR 239; *Northern Territory v Griffiths [No 2]* (2019) 368 ALR 77.

#### 4 Other areas

In addition to these three specific areas, several respondents indicated that they would prefer to be taking a more practical approach to the teaching of the property law curriculum. Aside from e-conveyancing practice, this preferred practical focus included, for example: using Airbnb by way of illustration in teaching leases and licences; analysing the impact of the proliferation of drones on the law of trespass and the boundaries of property; and the implications of data collection and ownership.

Other developing areas mentioned only once in the 2019 study were space law; restrictive covenants; privacy; and consumer credit law.

### B Removal of content and barriers to change

As reflected in Table 4, and consistent with the results from the 2011 study, respondents in the 2019 study reported that the primary barrier to introducing desired new material into the property law curriculum is lack of time in the teaching calendar. Indeed, it would seem this was even more of a barrier in 2019, with 88% of respondents indicating that the lack of time influences the decision not to introduce new material ‘extremely’ (44%) or ‘very’ much (44%). This is compared with only 50% (25% each) in 2011.

*Table 4: To what extent do the following factors act as a barrier to teaching new material in the unit?*

Question	Lack of time in teaching calendar		Lack of human resources		Lack of funding		Lack of required expertise	
	#	%	#	%	#	%	#	%
Not at all	0	0%	5	27.78%	6	33.33%	10	55.56%
Slightly	1	5.56%	3	16.67%	3	16.67%	4	22.22%
Somewhat	1	5.56%	4	22.22%	4	22.22%	0	0%
Moderately	0	0%	5	27.78%	4	22.22%	3	16.67%
Very	8	44.44%	1	5.56%	1	5.56%	1	3.56%
Extremely	8	44.44%	0	0%	0	0%	0	0%
<b>Total</b>	18	100%	18	100%	18	100%	18	100%

A possible explanation as to why more property law teachers in 2019 consider lack of time to be a major barrier to introducing new material than was the case in 2011 is that, as noted in Part III, far few law schools report teaching the unit over two semesters in 2019 (30%) than in 2011 (67%).

More generally, as noted in relation to the 2011 study, the reality — or, perhaps, perception — that there is no time in the teaching calendar to introduce new material is likely the result of two distinct but related factors: ‘a reluctance by property law teachers to let go of existing content that has been taught for many, many years’ and ‘the significant breadth of topics

prescribed by the Priestley 11 requirement which leaves little room in a typical property law unit to introduce new material'.<sup>80</sup>

The first of these explanations is evidenced by the fact that over 60% of respondents spend 17 or more hours teaching the Torrens system. When this is added to the 71.39 mean hours reportedly spent teaching the other traditional topics listed in Table 1, there is, indeed, very little, if any, time left in the property law teaching calendar for new content. Relevantly, a 2019 survey respondent commented 'Property law suffers from adherence to traditional notions of what "ought" to be taught, instead of focussing on what modern legal practitioners need to know'.

As regards the breadth of content required by the prescribed areas of knowledge, or 'Priestley 11', another respondent in the 2019 study noted:

We should be released from the Priestley requirements to facilitate student engagement in the diverse aspects of property. This would greatly enliven the course, offer potential to integrate diverse statutes and transactions which form the foundation of property in practice.

A further respondent stated simply that the 'Priestley list should be updated'. As noted in Part II, the requirements for the prescribed areas of knowledge were revised in 2019 with the new requirements applying from January 2021. It is hoped that the introduction of these revised requirements which, at least for property law, are less prescriptive as to specific topics to be covered in the curriculum, will prompt property law teachers to review the traditional property law curriculum and begin to introduce new and developing areas of importance into their teaching.

## V Conclusion

Many of the themes that emerged in property law teachers' responses to the 2011 study have re-emerged in the 2019 study and it would be tempting to arrive at the same conclusions. But putting the responses to the 2019 study in the context of higher education both pre- and post-COVID-19, there are some key differences that are likely to result in a shift in both how property law is taught, and consequently, what it comprises.

While the 2019 data show increasing integration of digital resources, COVID-19 has witnessed the swift pivot, globally, to remote teaching. Academic staff, including property law teachers, will inevitably have rapidly developed a suite of digital skills that they will bring to their teaching in future. As the post-COVID world is likely to require an ongoing digital presence, at least for the shorter term, those skills will be refined — opening up possibilities to reorganise the curriculum.

While the flipped classroom relies on 'delivering' content in the student's own time to support more active learning while face-to-face, using digital resources in a blended mode may offer property law teachers the chance to provide core content for students to engage with in their own time. This may preserve class time for the additional topics that property law teachers would like to teach, but so far do not. Conversely, those emerging areas may be

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80 Carruthers, Skead and Galloway, 'Teaching Property Law in Australia in the Twenty-First Century' (n 2) 74.

taught using digital resources while the traditional core is reserved for class. Either way, a carefully designed course — online or blended — has scope for divergence from the canon without discarding it.

Adopting the non-linear capabilities of a blended curriculum may help address the barrier posed by a timetable. But in terms of the crowded curriculum, it is the amended Priestley requirements for property law that offer further opportunity. While the attitudes of regulators around Australia are not yet clear, the broader framing of the property law requirements are likely to give greater scope to embrace emerging topics.

Responses to the survey indicate that property law teachers have the vision to teach differently. If the barriers are lifted — through enhanced skills, new learning and teaching settings, and revised curriculum requirements — the hope is that academics will enjoy increased capacity for innovation, and that they will have the courage to implement it. With these thoughts in mind, we leave the final word to a 2019 study respondent, ‘If we don’t do the critique and contextualisation then the doctrine is meaningless other than for maintaining the wheels of the system’.