

TABLE OF CONTENTS

Preface
Table of Cases

CHAPTER 1: THE NATURE OF PROPERTY

- 1 Introduction
- 2 The 'Properties' of Property
 - (a) an introductory foray
 - (b) public and common property
- 3 The Case for Private Property
 - (a) introduction
 - (b) claim #1: private property promotes human happiness
 - (c) claim #2: private property promotes human flourishing
 - (i) flourishing at the individual level
 - (ii) flourishing at the societal level
 - (iii) critique
 - (iv) juristic traction
 - (d) claim #3: private property facilitates freedom
 - (i) freedom from . . .
 - (ii) property and power
 - (e) claim #4: private property enhances material wealth
 - (i) the basic law and economics stand
 - (ii) the tragedy of the commons
 - (iii) the tragedy of the anticommons
 - (iv) other critiques of the economic efficiency argument
 - (f) claim #5: private property is just, or at least legitimate
 - (i) rewarding labour
 - (ii) consent
 - (iii) labour and desert applied?
 - (iv) first occupancy as labour
 - (g) claim #6: these arguments, taken together, support private property
- 4 The Functions of Modern Property Law
 - (a) generally
 - (b) resolving novel claims
 - (i) the university degree example
 - (ii) the challenge of cultural appropriation
 - (iii) the *numerus clausus* principle
 - (c) rights held by property

CHAPTER 2: PROPERTY IN PERSPECTIVE

- 1 Introduction
- 2 Sources of Canadian Property Law

viii TABLE OF CONTENTS

- (a) feudal structures: tenures and estates
- (b) the reception of English law
- 3 Other Historical Features
 - (a) the doctrine of marital unity
 - (b) the overlay of English law on Aboriginal cultures and customs
- 4 Basic Divisions in the Law of Property
 - (a) real and personal property
 - (b) other categorizations
- 5 The Social Context: Issues of Wealth, Class, and Poverty
- 6 The Constitutional Context
 - (a) introduction
 - (b) constitutional and other property protections
 - (i) the array
 - (ii) regulatory takings

CHAPTER 3: BOUNDARIES

- 1 Introduction
- 2 The Traditional Starting Point: *Cujus est Solum ejus est Usque ad Coelum et ad Inferos*
 - (a) introduction
 - (b) airspace
 - (c) below the surface
 - (d) an economic perspective
 - (e) mines and minerals
- 3 Lateral Boundaries
 - (a) land bounded by land
 - (b) land bounded by water
 - (c) riparian rights
 - (d) accretion
- 4 Some Implications of Ownership: The Permeability of Boundaries
 - (a) generally
 - (b) support of land
- 5 On the Cusp of Land and Chattels: Fixtures and Conversion
 - (a) fixtures
 - (b) tenant's fixtures
 - (c) the clash of security interests
 - (d) conceptual metamorphosis: the equitable doctrine of conversion
- 6 The Transformation of Chattel Ownership
 - (a) introduction

- (b) confusion (also known as commingling, intermixture, admixture)
- (c) accession
- (d) alteration (or *specificatio*)

CHAPTER 4: POSSESSION

- 1 Introduction
- 2 Some Basic Definitions
 - (a) the many faces of possession
 - (b) abandonment
- 3 Acquisition of Title by Possession: Squatters
 - (a) introduction
 - (b) claims as to the function(s) of adverse possession
 - (c) the basic doctrinal elements
 - (d) chattels
- 4 The Relative Nature of Title: Finders
 - (a) generally
 - (b) public lands and historical resources
 - (c) the *jus tertii* defence
- 5 Transfer of Title Through Delivery: Gifts
 - (a) general rules
 - (b) doctrinal exceptions
 - (c) factual concessions
 - (d) *donationes mortis causa*: gifts made in contemplation of death

CHAPTER 5: ESTATES AND ABORIGINAL LAND RIGHTS

- 1 Introduction
- 2 The Estate in Fee Simple: Core Elements
- 3 The Fee Tail: Its Life and Times
- 4 The Life Estate
 - (a) introduction
 - (b) the language of creation
 - (c) rights, powers, and obligations of the life tenant
 - (i) generally
 - (ii) waste
 - (iii) other management issues
 - (iv) settled estates legislation
 - (d) valuation
- 5 Life Estates Arising by Operation of Law
 - (a) dower
 - (b) curtesy

- (c) homestead protections
- 6 Aboriginal Title and Other Rights in Aboriginal and Métis Lands
 - (a) introduction
 - (b) four overarching concepts: the honour of the Crown, the goal of reconciliation, *sui generis* rights, and the Crown's fiduciary obligations
 - (c) rules of recognition for Aboriginal title
 - (i) sufficiency of occupation
 - (ii) continuity of occupation
 - (iii) exclusivity of occupation
 - (d) the nature of Aboriginal title
 - (e) the recognition of other Aboriginal rights
 - (f) modes of extinguishment and infringement
 - (i) generally
 - (ii) constitutional constraints
 - (g) additional impact
 - (h) reserves
 - (i) Métis title
- 7. Personalty and the Doctrine of Estates

CHAPTER 6: EQUITABLE INTERESTS

- 1 Introduction
- 2 The Origins of Equity
- 3 The Emergence of the 'Use' and the 'Trust'
 - (a) the development and functions of the use
 - (b) the Statute of Uses
 - (c) avoidance
 - (d) exhausting the operation of the Statute
 - (e) a reprise
 - (f) some incidental effects of the *Statute of Uses*
- 4 The Essence of Modern Equity and the Trust
 - (a) introduction
 - (b) modern deployment of the trust
 - (c) resulting trusts
 - (d) constructive trusts
 - (i) conventional forms
 - (ii) remedial

CHAPTER 7: QUALIFIED DISPOSITIONS

- 1 Introduction
- 2 Basic Concepts
 - (a) reversions and remainders
 - (b) defeasible and determinable interests

- (c) vested interests, contingent interests, and conditions precedent
- (d) precatory words and *in terrorem* conditions
- (e) transferability
- 3 State Limitations on Private Power
 - (a) introduction
 - (b) the effects of invalidity
 - (c) public policy
 - (i) generally
 - (ii) sources of public policy
 - (iii) a case in point: the Leonard Foundation Trust litigation
 - (d) uncertainty
 - (e) restraints on alienation
 - (i) the rationale of the rules
 - (ii) the testing of restraints
- 4 The Rule Against Perpetuities
 - (a) introduction
 - (b) ‘an interest’
 - (c) ‘must vest’
 - (d) ‘if at all’
 - (e) ‘within the perpetuity period’
 - (f) further examples
 - (g) reform measures

CHAPTER 8: LEASES, LICENCES, AND BAILMENTS

- 1 Introduction
- 2 The Nature of a Lease
 - (a) five types of leases
 - (b) essential and formal elements
 - (c) the centrality of exclusive possession
- 3 Assignments and Subleases
 - (a) the effect at law and in equity
 - (b) limits on a tenant’s right to alienate
 - (i) generally
 - (ii) when reasonableness is germane
- 4 Obligations of Landlords and Tenants
 - (a) sources of obligations
 - (b) quiet enjoyment (and non-derogation)
 - (c) repair
- 5 Termination and Remedies
- 6 Reform of Residential Tenancy Law
- 7 The Proprietary Status of Licences

xii TABLE OF CONTENTS

- 8 Bailment
 - (a) the nature of a bailment
 - (b) obligations of the bailee
 - (c) the onus of proof in bailment claims
 - (d) the bailor's obligations
 - (e) avoiding liability
 - (f) assignment and sub-bailment
 - (g) bringing suit

CHAPTER 9: SHARED OWNERSHIP

- 1 Introduction
- 2 Conventional Forms of Concurrent Ownership
 - (a) joint tenancy and tenancy in common
 - (b) co-parcenary and tenancy by (the) entirety
- 3 Methods of Creation
- 4 Severance of Joint Tenancies
 - (a) the policy mix
 - (b) severance through unilateral action
 - (c) by agreement or a course of dealing
 - (d) severance by other means
 - (e) agreeing not to sever
- 5 Resolving Concurrent Ownership Disputes
 - (a) termination
 - (b) financial issues
- 6 Shared Ownership of Personality
 - (a) generally
 - (b) joint bank accounts
- 7 Shared Ownership Through Marital Property Law
- 8 The Nature of Condominiums and Co-operatives
 - (a) the limitations of the common law
 - (b) styles of condominium regulation
 - (c) co-operatives
- 9 Other Renditions of Communal, Plural, or Shared Ownership

CHAPTER 10: SERVITUDES OVER PROPERTY

- 1 Introduction
- 2 The Elements of an Easement
- 3 Creation and Transfer of Easements
 - (a) express grant
 - (b) implied grant
 - (c) reservations

- (d) estoppel
- (e) prescription
- (f) statute
- 4 Scope, Location, and Termination
 - (a) scope and location
 - (b) termination
- 5 Other Servitudes and Servitude-like Rights
- 6 Covenants Running With Property
 - (a) introduction: covenants in context
 - (b) outline of the analysis
- 7 The Running of Burdens and Benefits in Equity
 - (a) burdens in equity
 - (b) benefits in equity
 - (i) annexation
 - (ii) assignment
 - (iii) development schemes (or building schemes, or, more generally, common plans)
- 8 The Running of Benefits and Burdens at Law
- 9 Positive Covenants
 - (a) why this limitation?
 - (b) by-pass options
- 10 Covenants and Conservation
- 11 Modification and Termination of Covenants
- 12 Covenants Over Personalty

CHAPTER 11: MORTGAGES AND OTHER SECURITY INTERESTS

- 1 Introduction
- 2 Origins of the Mortgage
- 3 The Contributions of Law and Equity
 - (a) generally
 - (b) disguised and other equitable mortgages
 - (c) clogs and fetters on the equity of redemption
 - (d) alienation of the mortgagor's and mortgagee's interests
- 4 An Outline of Remedies and Related Matters
 - (a) introduction
 - (b) the personal covenant
 - (c) taking possession or appointing a receiver
 - (d) foreclosure (and redemption)
 - (e) sale

xiv TABLE OF CONTENTS

- (f) the interrelationship of remedies
- (g) relief from acceleration
- 5 To the Aid of the Consumer
 - (a) generally
 - (b) the Interest Act
- 6 Other Types of Security Arrangements
 - (a) pledges, charges, liens
 - (b) other forms of personal property security
 - (c) modern personal property security law

CHAPTER 12: PRIORITIES AND REGISTRATION

- 1 Introduction
- 2 An Overview of Priorities at Common Law and in Equity
 - (a) introduction
 - (b) priorities
 - (c) proving good title
- 3 The Advent of Registration
 - (a) introduction
 - (b) deeds registration
 - (c) title registration
- 4 The Cardinal Elements of Torrens Title
 - (a) the reasoning
 - (b) core structures
- 5 Indefeasibility and Its Qualifications
 - (a) the nature of indefeasibility
 - (b) fraud
 - (c) personal claims
 - (d) overriding interests
 - (e) caveats and comparable notices
 - (f) the place of Aboriginal land entitlements
 - (g) gratuitous transfers
 - (h) substantive validity
 - (i) misdescription and prior certificate of title
- 6 Title Insurance

Index