



Transaction Technologies and Property Law

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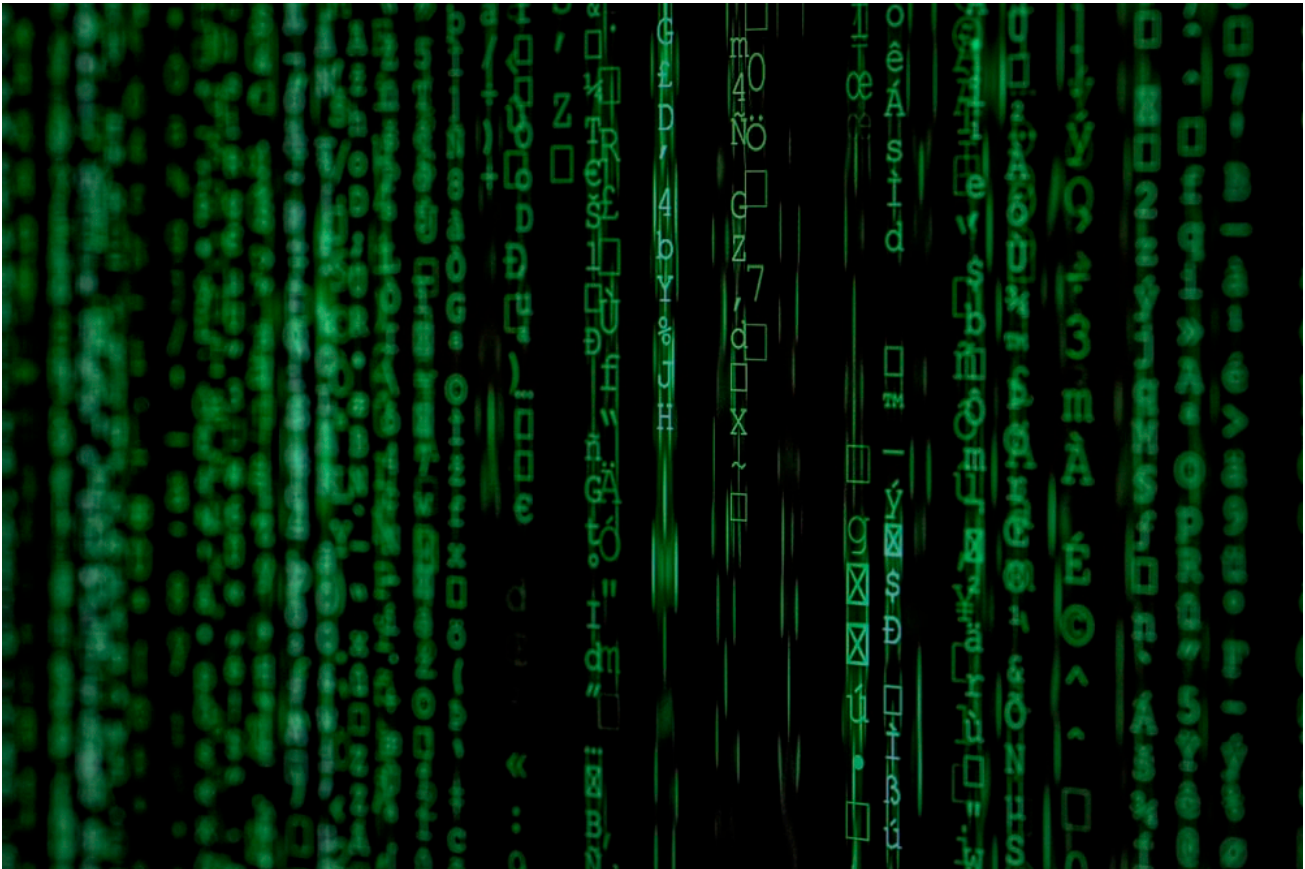
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ABOUT THE PROJECT



This Report was commissioned by the Bond University Centre for Professional Legal Education as part of the research project ‘The Impact of Emergent Technologies Upon the Teaching of Core Law Units in the Australian Law Curriculum’.

The structure of the accredited Australian law degree – both the Bachelor of Law (LLB) and the Juris Doctor (JD) – continues to be determined primarily by the need to demonstrate coverage of the ‘Priestley 11’ (P11) prescribed areas of knowledge: administrative law, civil dispute resolution, company law, constitutional law, contract law, criminal law and procedure, equity, evidence, professional conduct, property law and tort law. The P11 areas of knowledge are taught via a series of core law units within the law degree, the content of which is relatively consistent across Australian law schools.

Meanwhile, the practice of law is undergoing rapid change, largely because of the emergence of disruptive digital technologies. There is a clear need for law schools to adjust the way law is taught to ensure law graduates continue to be effectively prepared for contemporary legal practice. Many of the recent reports regarding the

future of legal education and of the legal profession call for an increased emphasis in the law curriculum upon teaching digital skills and knowledge of emergent technologies, equipping work-ready graduates for technology-enhanced or technology-centric practice, while at the same time emphasising the need to retain the existing emphasis upon more traditional legal knowledge and skills.

The challenge confronting Australian law schools is the fact that many of the legal academics responsible for teaching the core law units lack the time, resources and expertise to identify and evaluate the impact of emergent technologies upon the law curriculum. The objective of this Project is to assist Australian law schools to address this challenge.

The Project is investigating the impact of emergent technologies upon the teaching of the core law units in the Australian law curriculum. The Project Leadership Team has settled the overall research questions and method. Legal scholars from a variety of Australian law schools have been invited to identify the impact of each category of emergent technology upon each P11 area of knowledge, and to prepare a Report identifying the impact of particular emergent technologies upon a particular P11 area of knowledge and any consequent changes to the way the P11 area of knowledge should be taught.

The focus of this Report is upon the impact of transaction technology upon property law and the teaching of property law. As the literature review below illustrates, a range of emergent technologies impact or have the potential to impact property law. This study did not set out to limit itself to one particular form of technology but has instead been guided by the literature review and the practitioner responses. As a result, this study has focussed on (1) electronic conveyancing ('E-conveyancing') and (2) distributed ledger technology/blockchain technology.

PROJECT LEADERSHIP TEAM

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WHAT ARE TRANSACTION TECHNOLOGIES?

[A description of the relevant emergent technology.]

E-conveyancing

The 2011 *Intergovernmental Agreement for an Electronic Conveyancing National Law* is the basis for E-conveyancing in Australia.¹ The legal regime for a national E-conveyancing system in Australia, the Electronic Conveyancing National Law ('ECNL'), was first enacted in New South Wales,² and has since been enacted by corresponding legislation in other States and the Australian Capital Territory.³ The Australian Registrars' National Electronic Conveyancing Council ('ARNECC') is responsible for the development and ongoing maintenance of the regulatory framework for E-conveyancing in Australia.⁴ The ECNL is now mandatory in New South Wales, Queensland, South Australia, Victoria and Western Australia.

Under the ECNL, ARNECC has determined a range of operating requirements⁵ and rules⁶ with which electronic lodgement network operators and their subscribers must comply. Currently, Property Exchange Australia Ltd ('PEXA')⁷ is the only approved electronic lodgement network operator in Australia, however, Purcell Partners Pty Ltd ('LexTech')⁸ and Sympli Australia Pty Ltd ('Sympli')⁹ have passed a number of regulatory

hurdles in the process of becoming approved as additional electronic lodgement network operators.

Distributed ledger technology and Blockchain Technology

While distributed ledger technology and blockchain are perhaps most well known for their use in cryptocurrencies such as *Bitcoin*, distributed computing systems have been a feature of the internet and the world wide web since their inception.¹⁰ A distributed ledger is an electronic database that records the owners of an asset and, as such, can record the ownership of assets such as digital currency, shares or other securities, intellectual property, contractual rights, or physical assets.¹¹ The term 'blockchain' is used to refer to 'the history of transactions which reside on that ledger.'¹² As Rowntree explains, '(e)ach new transaction is added to the chain in a 'block' of transactions as it is

¹ *Intergovernmental Agreement for an Electronic Conveyancing National Law*, clause 2(1)

<https://www.arnecc.gov.au/wp-content/uploads/2021/08/IGA_for_an_Electronic_Conveyancing_National_Law.pdf>

² *Electronic Conveyancing (Adoption of National Law) Act 2012* (NSW).

³ *Electronic Conveyancing National Law (ACT) Act 2020 (ACT)*; *Electronic Conveyancing National Law (Queensland) Act 2013 (Qld)*; *Electronic Conveyancing (National Uniform Legislation) Act 2013 (NT)*; *Electronic Conveyancing National Law (South Australia) Act 2013 (SA)*; *Electronic Conveyancing of National Law Act 2013 (Tas)*; *Electronic Conveyancing (Adoption of National Law) Act 2013 (Vic)*; *Electronic Conveyancing Act 2014 (WA)*. See Rod Thomas, Rouhishi Low and Lynden Griggs 'Australian Torrens Automation: Its Integrity and the Three Proof Requirements' (2013) 2 *New Zealand Law Review* 227; Rod Thomas, Rouhishi Low and Lynden Griggs 'Designing an Automated Torrens System: Baseline Criteria, Risks and Possible Outcomes' (2015) 3 *New*

Zealand Law Review 425; Kye Tran-Tsai, Claire Martin, Benjamin Adams 'Property law: Essential concepts for electronic conveyancing (2019) 58 *Law Society of New South Wales Journal* 84.

⁴ <https://www.arnecc.gov.au/>

⁵ https://www.arnecc.gov.au/publications/model_operating_requirements/

⁶ https://www.arnecc.gov.au/resources/consultation/model_participation_rules/

⁷ <https://www.pexa.com.au/>

⁸ <https://www.lex-tech.com.au/>

⁹ <https://www.sympli.com.au/>

¹⁰ Francina Cantatore, Kate Galloway and Louise Parsons, 'Fractionalised Land Interests: More Questions than Answers' (2020) 28 (2) *Australian Law Journal* 39, 41; Zac Rogers 'Blockchain and the state: Vehicle or vice?' (2018) 89(1) *Australian Quarterly* 3, 7.

¹¹ David Rountree, 'Navigating the Blockchain and the Law' (2016) 26 *Law Society of New South Wales Journal* 72, 72.

¹² *Ibid.*

verified, creating a permanent transaction record which is open to all users.’¹³

The key feature that distinguishes a distributed ledger from traditional centrally-stored electronic records is that copies of the distributed ledger are available to every participant in the network.¹⁴ This means that ‘every transaction is confirmed by achieving consensus against all copies of the ledger.’¹⁵ This is a ‘fundamental security feature’ meaning that as there is ‘no single point

of failure,’ and parties can trust in the data recorded on the ledger.¹⁶

The potential application of distributed ledger technology extends far beyond the creation of cryptocurrencies and may include the creation of payment systems, smart contracts, secure databases and property registers.¹⁷ A variety of sectors in the economy are exploring the application of blockchain technology.¹⁸ Some have suggested a role for blockchain technology in land registration systems.¹⁹

LITERATURE REVIEW

[A summary of current and likely future impact of the technology upon the law in the P11 area of knowledge, and the way law in the area is administered, enforced, and practised, according to recent scholarship and media commentary.]

A number of Australian property law academics have published their research about the teaching of the property law curriculum in Australian law schools.²⁰ This

is in addition to the range of textbooks on Australian property and real property law.²¹ In particular, the research of Dr Penny Carruthers, Associate Professor

¹³ Ibid.

¹⁴ Ibid.

¹⁵ Ibid.

¹⁶ Ibid.

¹⁷ Francina Cantatore, Kate Galloway and Louise Parsons, ‘Fractionalised Land Interests: More Questions than Answers’ (2020) 28 (2) *Australian Law Journal* 39, 41.

¹⁸ Rowntree 72; UK Jurisdiction Taskforce, ‘Legal Statement on cryptoassets and smart contracts’ The Law Tech Delivery Panel https://35z8e83m1ih83drye280o9d1-wpengine.netdna-ssl.com/wp-content/uploads/2019/11/6.6056_JO_Cryptocurrencies_Statement_FINAL_WEB_111119-1.pdf, p9

¹⁹ See for example Misha Tsukerman. ‘The Block is Hot: A Survey of the State of Bitcoin Regulation and Suggestions for the Future’ (2013) 30 *Berkeley Technology Law Journal* 1127, 1128; Rod Thomas, ‘Blockchain’s incompatibility for use as a land registry: issues of definition, feasibility and risk’ (2017) 6(3) *European Property Law Journal* 361; Penny Carruthers, Kate Galloway and Natalie Skead ‘Teaching property law in a changing world: A longitudinal study 2011-19’ (2020) 28 *Australian Property Law Journal* 123, 128. Lynden Griggs, Rod Thomas, Rouhshi Low and James Scheibner, ‘Blockchains, Trust and Land Administration: The Return of Historical Provenance’ (2017) 6(3) *Property Law Review* 179; Elizabeth Mary Petsinis ‘A land transfer registration revolution? Exploring the opportunities and limitations for

implementing the blockchain in electronic land transfer transactions in Australia,’ (2018) 27 *Australian Property Law Journal* 65; Francina Cantatore, Kate Galloway and Louise Parsons, ‘Fractionalised Land Interests: More Questions than Answers’ (2020) 28 (2) *Australian Law Journal* 39; John Quinn and Barry Connolly, ‘Distributed ledger technology and property registers: displacement or status quo’ (2021) 13(2) *Law, Innovation and Technology* 377.

²⁰ See for example Cathy Sherry ‘Teaching Land Law’ (2016) 25 *Australian Property Law Journal* 129; Nicole Graham, ‘This Is Not a Thing: Land, Sustainability and Legal Education’ (2014) 26(3) *Journal of Environmental Law* 395; Kate Galloway, ‘Sustainability in the Real Property Law Curriculum: Why and How’ (2015) 8(2) *Journal of Learning Design* 31; Kate Galloway, ‘One Tale of Property, In My Own Words’ (2018) 27(1) *Griffith Law Review* 157; Francina Cantatore, Kate Galloway and Louise Parsons ‘Integrating Technology to Increase Graduate Employability Skills: A Blockchain Case Study in Property Law Teaching’ (2021) 31(1) *Legal Education Review* 1

²¹ For example, see: Glen Anderson *Property Law Concepts and Doctrine* (LexisNexis Butterworths 2022); Robert Chambers *Property Law in Australia* (Thomson Reuters Lawbook, 4ed, 2019); Brendan Edgeworth *Butts’ Land Law* (Lawbook, 7ed, 2017); Brendan Edgeworth, Chris Rossiter, Pamela O’Connor, Andrew Godwin and Leon Terrill *Sackville & Neave Australian Property Law*, (LexisNexis Butterworths, 11ed, 2020);

Kate Galloway and Professor Natalie Skead into the teaching of property law offers significant insights into the changes that have impacted teaching in property law over the course of the last decade and the impacts of a range of technologies on the teaching of property law in the future.

Carruthers, Galloway and Skead's research into the property law unit includes unit content, teaching format, assessment schemes, learning outcomes and the incorporation of legal skills, and was first published in 2012.²² This foundational research provided the basis for a longitudinal study (the '2019 follow up study').²³ The breadth of this work offers significant insights into the question of the impact of emerging technologies on the teaching of property law in Australian law schools and therefore on this study.

The results of the 2019 follow up study note the impact of technology both on the teaching of property law in the classroom and on the content of what is taught. In relation to the former, they note the institutional and regulatory pressures that have affected the way the Australian law degree is taught. These include the compression of the Priestley topics, often meaning a reduction in the number of units devoted to property law-based subjects and a reduction in class hours.²⁴ In addition they highlight the impact of lecture recording

technology and the ability for students to download lectures, and the range of digital technologies used to flip the classroom or at least to offer blended learning opportunities.²⁵ The COVID-19 pandemic has also increased the role that online learning has played and may continue to play.²⁶ These are considerations are not limited to the teaching of property law.

Carruthers, Galloway and Skead's observation that the last ten years or so have seen 'significant advances in property law itself' is particularly relevant to this study.²⁷ They include the impact of climate change and the significance of environmental sustainability,²⁸ the consolidation of the national personal property securities regime, and legal developments in community titles and retirement villages regulation.²⁹ They also note the following four significant developments of a technological nature, the first two of which are considered in detail in this study:³⁰

E-conveyancing technology

As Carruthers, Galloway and Skead observe, the relatively recent introduction of the ECNL means that its implications for conveyancing practice and fundamental property law principles are only now being examined.³¹ The ECNL has, however, brought about a fundamental change in conveyancing practice in Australia and, in varying respects, has affected the fundamentals of the

Hossein Esmaeili and Brendan Grigg (eds) *The Boundaries of Property Law* (Cambridge University Press, 2016); Samantha Hepburn *Australian Property Law: Cases, Materials and Analysis* (LexisNexis Butterworths, 5ed, 2020); Ken Mackie, Elise Histed, John Page *Australian Land Law in Context* (Oxford University Press, 2012); Anthony Moore, Lynden Griggs, Scott Grattan *Australian Real Property Law* (Thomson Reuters Lawbook, 7ed, 2020); Neil Foster, Janice Gray, Shaunnagh Dorsett and Heather Roberts, *Property Law in New South Wales*, (LexisNexis Butterworths, 4ed, 2017); Anne Wallace, Les McCrimmon and Michael Weir, *Real Property Law in Queensland* (Thomson Reuters Lawbook, 5ed, 2020).

²² 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 *Australian Property Law Journal* 57; Penny Carruthers, Natalie Skead, and Kate Galloway 'Teaching Skills and Outcomes in Australian Property Law Units: A Survey of Current Approaches' (2012) 12(2) *QUT Law and Justice Journal* 66.

²³ Penny Carruthers, Kate Galloway and Natalie Skead 'Teaching property law in a changing world: A

longitudinal study 2011-19' (2020) 28 *Australian Property Law Journal* 123; Penny Carruthers, Kate Galloway and Natalie Skead, 'Assessment, skills and outcomes: The changing approaches of Australian property law teachers' (2021) 29 *Australian Property Law Journal* 311.

²⁴ Penny Carruthers, Kate Galloway and Natalie Skead 'Teaching property law in a changing world: A longitudinal study 2011-19' (2020) 28 *Australian Property Law Journal* 123, 127.

²⁵ *Ibid*, 125.

²⁶ *Ibid*, 126.

²⁷ *Ibid*, 127.

²⁸ See for example Nicole Graham, 'This Is Not a Thing: Land, Sustainability and Legal Education' (2014) 26(3) *Journal of Environmental Law* 395; Kate Galloway, 'Sustainability in the Real Property Law Curriculum: Why and How' (2015) 8(2) *Journal of Learning Design* 31.

²⁹ Penny Carruthers, Kate Galloway and Natalie Skead 'Teaching property law in a changing world: A longitudinal study 2011-19' (2020) 28 *Australian Property Law Journal* 123, 128.

³⁰ *Ibid*, 128.

³¹ *Ibid*, 143.

principle of indefeasibility which is a foundation of the Torrens title system of land titling in all Australian jurisdictions.³² Nevertheless, in the 2019 follow up study, only one of the 18 property law teachers surveyed included the ECNL on a list of the five most important statutes that should be covered in a property law topic.³³ No respondent indicated that E-conveyancing was taught in their property law unit and only two respondents reported that they did not teach E-conveyancing but would like to.³⁴ Carruthers, Galloway and Skead have suggested that this low priority may be due to the fact that practical conveyancing skills might be taught in another professional practice unit within the law degree or dealt with in a PLT course.³⁵ Despite this, they favour incorporating practical conveyancing skills into the property law unit as it increases the authentic work-like nature and context of the task and thereby enhances student learning.³⁶

The applicability of distributed ledger and blockchain technologies

Blockchain technology has impacted property law in at least two ways. The first concerns a fundamental threshold question for property law while the second concerns specific elements of, principally, real property law.

The first impact is evident in the UK LawTech Delivery Panel's November 2019 *Legal Statement on*

*Cryptoassets and Smart Contracts*³⁷ and in a range of decided cases from a number of common law jurisdictions where courts have had to grapple with the question whether a cryptocurrency, based on blockchain technology, is a form of personal property.³⁸

To date, in its decision in *Ruscoe and Moore v Cryptopia Ltd* ('*Ruscoe*'),³⁹ the High Court of New Zealand has provided the most compelling answer to that question. In *Ruscoe*, the High Court applied widely accepted indicia of property⁴⁰ to cryptocurrency held by a company in liquidation and held that it was property,⁴¹ and was therefore capable of forming the subject of a trust.⁴²

The second impact can be seen in property development schemes based on the creation of fractionalised interests in real property using distributed ledger technology. These fractionalised interests are separate to, but are also registered in, the Torrens title land registry system. A scheme launched in 2019 by the South Australian government is an example of such a development.⁴³ The scheme involves the fractionalising the property into 'bricklets' and establishing a market for them using blockchain technology. The 'bricklet' scheme keeps the 'current land registration system intact but, provides for ownership rights in the bricklets to be recorded on a blockchain and to be traded via that mechanism.'⁴⁴ Interests so created are automatically

³² Ibid, 143.

³³ Ibid.

³⁴ Ibid, 145.

³⁵ Penny Carruthers, Kate Galloway and Natalie Skead, 'Assessment, skills and outcomes: The changing approaches of Australian property law teachers' (2021) 29 *Australian Property Law Journal* 311, 316.

³⁶ Ibid, 317.

³⁷ UK Jurisdiction Taskforce, 'Legal Statement on cryptoassets and smart contracts' The Law Tech Delivery Panel https://35z8e83m1ih83drye280o9d1-wpengine.netdna-ssl.com/wp-content/uploads/2019/11/6.6056_JO_Cryptocurrencies_Statement_FINAL_WEB_111119-1.pdf

³⁸ *B2C2 Ltd v Quoine Pte Ltd* [2019] SGHC(I) 3; [2019] 4 SLR 17 (SICC); *Vorotyntseva v Money-4 Limited t/a Nebeus.Com* [2018] EWHC 2596 (Ch); *AA v Persons Unknown* [2019] EWHC 3556 (Comm); *Robert Ong Thien Cheng v LUNO Pte Ltd and BitX Malaysia Sdn Bhd* [2021] 3 All Malaysia Rep 143

³⁹ *Ruscoe and Moore v Cryptopia Ltd* (in liq) [2020] NZHC 728.

⁴⁰ *National Provincial Bank Ltd v Ainsworth* [1965] AC 1175, 1247–1248.

⁴¹ *Ruscoe and Moore v Cryptopia Ltd* (in liq) [2020] NZHC 728, [69], [133].

⁴² Ibid, [133]. See Paul Babie, David Brown, Ryan Catterwell and Mark Giancaspro, 'Cryptocurrency as property: *Ruscoe v Cryptopia Ltd* (in liq) [2020] NZHC 728' (2020) 28 *Australian Property Law Journal* 106; Matteo Solinas 'Investors' Rights in (Crypto) Custodial Holdings: *Ruscoe v Cryptopia Ltd (in Liquidation)*' (2021) 84(1) *Modern Law Review* 155.

⁴³ Francina Cantatore, Kate Galloway and Louise Parsons, 'Fractionalised Land Interests: More Questions than Answers' (2020) 28 (2) *Australian Property Law Journal* 39; Francina Cantatore, Kate Galloway and Louise Parsons 'Integrating Technology to Increase Graduate Employability Skills: A Blockchain Case Study in Property Law Teaching' (2021) 31(1) *Legal Education Review* 1; <https://www.miragenews.com/sa-based-innovation-to-revolutionise-property-investment-bricklet-by-bricklet/>

⁴⁴ Francina Cantatore, Kate Galloway and Louise Parsons, 'Fractionalised Land Interests: More Questions

registered on the Torrens title register.⁴⁵ The scheme has reportedly been successfully implemented in relation to two new apartment towers completed recently in Adelaide,⁴⁶ and the services offered by Bricklet Pty Ltd have applied this model to other property developments across a number of Australian jurisdictions.⁴⁷ BrickX is a platform that offers a similar scheme.⁴⁸

Some scholars have suggested that distributed ledger technology could replace current land registration systems.⁴⁹ The bricklet scheme, however, keeps the 'current land registration system intact' and creates interests both in terms of the register and in terms of the blockchain.⁵⁰ Nevertheless, the bricklet model is a 'significant deviation from current practice in land titles.'⁵¹ Cantatore, Galloway and Parsons suggest that it provides an opportunity to integrate relevant technical awareness into the teaching of legal problem solving skills and offers numerous opportunities for analysing and teaching property law's doctrinal foundations.⁵² For example, it provides students with an opportunity to consider: whether the fractionalised

interest is characterised as real or personal property; the principle of *numerus clausus*; how ownership of personal property, should it be such, might be protected and how it might conflict with other property rights; how the law relating to co-ownership might apply to it; how the law of fixtures and strata developments might apply; and whether the fractionalised interest might constitute an unregistered equitable interest.⁵³

The impact on traditional property law principles of the technology behind the Airbnb phenomenon, wi-fi signalling requirements and drones

Access to wi-fi signalling and the use of drones offer further innovative ways in which to engage with property law doctrines. The proliferation of drones, for example, impacts the law of trespass and boundaries of property, whereas wi-fi signalling impacts on the law of easements.⁵⁴

Similarly, alternative uses of property facilitated by online platforms like Airbnb offer interesting insights into property law doctrine.⁵⁵ Airbnb uses online technology that facilitates peer-to-peer transactions

than Answers' (2020) 28 (2) *Australian Property Law Journal* 39, 41.

⁴⁵ Ibid, 39.

⁴⁶ Francina Cantatore, Kate Galloway and Louise Parsons 'Integrating Technology to Increase Graduate Employability Skills: A Blockchain Case Study in Property Law Teaching' (2021) 31(1) *Legal Education Review* 1, 17; See also <https://www.asiablockchainreview.com/australian-tech-firm-sells-apartment-buildings-using-blockchain/>.

⁴⁷ <<https://bricklet.com.au/>>

⁴⁸ <<https://www.brickx.com/>>

⁴⁹ Misha Tsukerman. 'The Block is Hot: A Survey of the State of Bitcoin Regulation and Suggestions for the Future' (2013) 30 *Berkeley Technology Law Journal* 1127, 1128; Rod Thomas, 'Blockchain's incompatibility for use as a land registry: issues of definition, feasibility and risk' (2017) 6(3) *European Property Law Journal* 361; Penny Carruthers, Kate Galloway and Natalie Skead 'Teaching property law in a changing world: A longitudinal study 2011-19' (2020) 28 *Australian Property Law Journal* 123, 128. Lynden Griggs, Rod Thomas, Rouhshi Low and James Scheibner, 'Blockchains, Trust and Land Administration: The Return of Historical Provenance' (2017) 6(3) *Property Law Review* 179; Elizabeth Mary Petsinis 'A land transfer registration revolution? Exploring the opportunities and limitations for implementing the blockchain in electronic land transfer transactions in Australia,' (2018) 27 *Australian Property Law Journal* 65; Francina Cantatore, Kate Galloway and Louise

Parsons, 'Fractionalised Land Interests: More Questions than Answers' (2020) 28 (2) *Australian Property Law Journal* 39; Goran Sladić, Branko Milosavljević, Siniša Nikolić et al 'A Blockchain Solution for Securing Real Property Transactions: A Case Study for Serbia' (2021) 10(1) *International Journal of Geo-Information* 35; Priyanka Singh 'Role of Blockchain Technology in Digitization of Land Records in Indian Scenario' (2020) *Earth and Environmental Science* 614 <<https://iopscience.iop.org/article/10.1088/1755-1315/614/1/012055/pdf>>.

⁵⁰ Francina Cantatore, Kate Galloway and Louise Parsons, 'Fractionalised Land Interests: More Questions than Answers' (2020) 28 (2) *Australian Property Law Journal* 39, 41.

⁵¹ Francina Cantatore, Kate Galloway and Louise Parsons 'Integrating Technology to Increase Graduate Employability Skills: A Blockchain Case Study in Property Law Teaching' (2021) 31(1) *Legal Education Review* 1, 19.

⁵² Ibid.

⁵³ Francina Cantatore, Kate Galloway and Louise Parsons 'Integrating Technology to Increase Graduate Employability Skills: A Blockchain Case Study in Property Law Teaching' (2021) 31(1) *Legal Education Review* 1, 21.

⁵⁴ Penny Carruthers, Kate Galloway and Natalie Skead 'Teaching property law in a changing world: A longitudinal study 2011-19' (2020) 28 *Australian Property Law Journal* 123, 128.

⁵⁵ Ibid.

rather than relying on traditional forms of transacting and has revolutionised the short stay accommodation sector.⁵⁶ As a number of authors have commented,⁵⁷ the impact of disruption on doctrinal property law concepts such as exclusive possession, residential tenancy law, land use planning and on consumer protection laws is evident in the decision of *Swan v Uecker*.⁵⁸ In that case the Victorian Court of Appeal held that an Airbnb agreement between the tenants of an apartment and a guest for a short stay in the whole of that apartment, during which time the tenants would be absent, constituted a sublease of the apartment by the tenants. This was so notwithstanding that the Airbnb agreement used the term licence to describe the stay. As the sublease was not authorised by the owner of the apartment, the Court of Appeal held that she was entitled to terminate the tenants' lease.

Several respondents in the 2019 follow up survey indicated that they would prefer a 'more practical approach' to property law teaching and an analysis of the implications of these technologies might support that.⁵⁹

Emerging property law issues in data regulation, protection and ownership

The exponential increase in personal data collection, particularly as a result of the COVID-19 pandemic has, as yet, largely unresolved implications about the ownership, use and appropriate regulation of that personal data.⁶⁰

Six of the 23 respondents in the 2019 follow up survey identified that the emergence of new technologies such as blockchain and cryptocurrencies and the ubiquity of data collection had created new forms of property and were developing areas of property law.⁶¹ However none of the respondents in the 2019 follow up survey 'identified these new forms of property as areas they would like to be teaching but that they are not.'⁶²

While Carruthers, Galloway and Skead do not argue that developments such as these should constitute essential content for the teaching of property law, they do suggest, however, that ignoring developments such as these in the contemporary curriculum may 'render law graduates ill-equipped to engage with contemporary legal contexts.'⁶³

⁵⁶ See for example Daniel Guttentag 'Airbnb: disruptive Innovation and the Rise of an Informal Tourism Accommodation Sector' (2015) 18 (12) *Current Issues in Tourism* 1192; Kellen Zale 'Sharing Property' (2016) 87(2) *University of Colorado Law Review* 501

⁵⁷ Cathy Sherry, 'Recent Developments in Strata Law: By-law making power and short-term letting' (2016) 90(12) *Australian Law Journal* 853; Bill Swannie, 'Airbnb and Residential Tenancy Law: Do Home Sharing Arrangements Constitute a Licence or a Lease' (2018) 39(2) *Adelaide Law Review* 231; Callum Ritchie and Brendan Grigg 'No Longer Unregulated, but Still

Controversial: Home Sharing and the Sharing Economy' (2019) 42(3) *University of New South Wales Law Journal* 981.

⁵⁸ (2016) 50 VR74

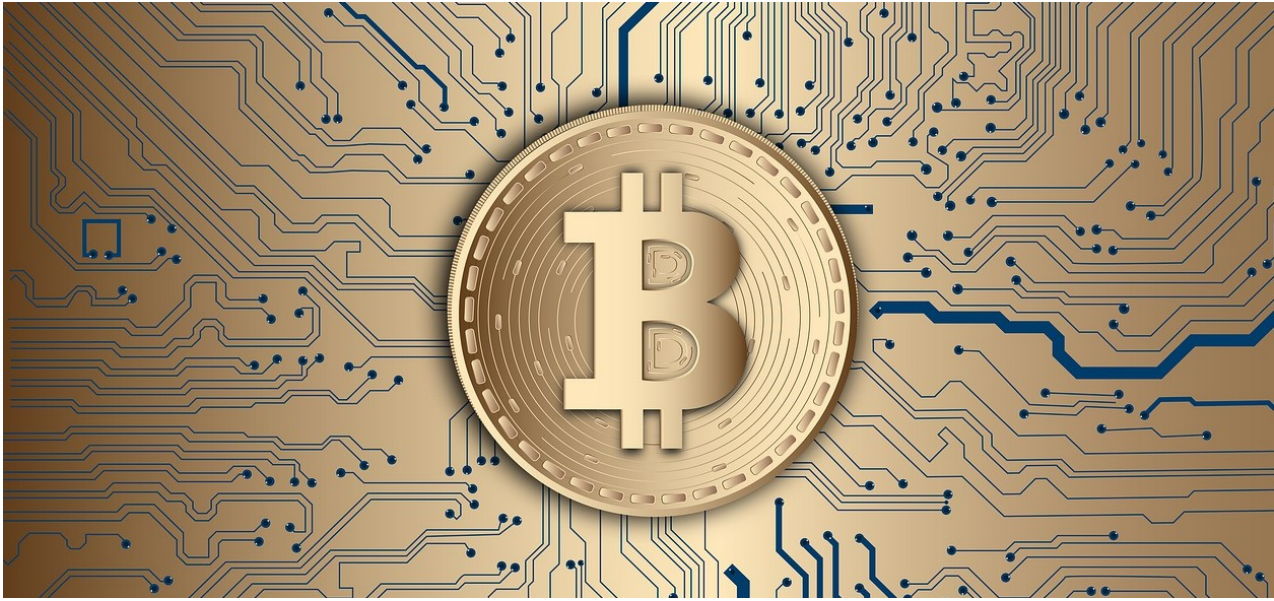
⁵⁹ Penny Carruthers, Kate Galloway and Natalie Skead 'Teaching property law in a changing world: A longitudinal study 2011-19' (2020) 28 *Australian Property Law Journal* 123, 146.

⁶⁰ *Ibid*, 128-9.

⁶¹ *Ibid*, 145.

⁶² *Ibid*

⁶³ *Ibid*, 129.



PRACTITIONER PERSPECTIVES

[A summary of the views of various law teachers and legal practitioners regarding the current and likely future impact of the technology upon the law in the P11 area of knowledge, and the way law in the area is administered, enforced and practised.]

This project surveyed three legal academics and three legal practitioners who teach, research and/or practise in the area of property law in August 2019 and April/May 2020. When asked their views on the current and likely impact of emergent technology on property law and about related questions concerning the way property law is administered, enforced and practised, one practitioner referred to mapping and GPS technology as relevant to property law while another academic referred to the potential for app-creating software such as Neota⁶⁴ to be used to create apps with property-related functions. None of the interviewees mentioned the roles played by the technology behind platforms such as Airbnb, the use of drones or the requirements for wi-fi signalling, or data collection regulation and ownership. There was a clear consensus among all academics and legal practitioners about the impact of electronic conveyancing: all six interviewees explicitly referred to E-conveyancing technology as something with evident present and future impacts on property law. Four of the six interviewees mentioned the impact of distributed ledger and blockchain technology.

Two interviewees praised the administrative efficiencies and ease of title searching brought about by E-conveyancing technology as well as its ability to provide increased and cheaper access to the settlements system for rural and regional clients. In terms of prospects over the next five years. One academic interviewee highlighted the potential for a national register of titles and harmonisation of national retail tenancy laws. At the same time, others noted that E-conveyancing depended on access to the internet and that this might reduce access to the settlements system for those who did not have ready access the internet. Other interviewees noted the complexities associated particularly with the verification of identity processes and the new ways in which E-conveyancing created the potential for fraud to take place. None of the interviewees suggested a need for a fuller understanding of E-Conveyancing's implications. This perhaps confirms the views of Carruthers, Galloway and Skead that given its recent introduction, the full extent of the implications of E-Conveyancing is yet to be understood.⁶⁵

⁶⁴ <https://www.neotalogic.com/>

⁶⁵ Penny Carruthers, Kate Galloway and Natalie Skead 'Teaching property law in a changing world: A

longitudinal study 2011-19' (2020) 28 *Australian Property Law Journal* 123, 143.

All three academic interviewees and one of the practitioner interviewees referred to blockchain technology. They did so predominantly as something with more potential to impact property law beyond, rather than within, the next 5 years. One academic interviewee suggested blockchain technology could be used to return bonds upon the conclusion of a residential tenancy. Another academic indicated that there appeared to be a lot of goodwill towards blockchain but that there was a lack of depth of understanding about it. Nevertheless, the academic indicated that this may change with a generational change in property academics and practitioners. This suggests more than a simple 5-year time frame. None of those who mentioned blockchain technology spoke of it

CONSEQUENCES 1

[An explanation of how this will change what current and future lawyers need to know and be able to do.]

All academic interviewees indicated that current and future lawyers will at least need to be aware of technological developments - even those that are rapid developments - and to be able to understand and explain them to clients. This does not mean that a lawyer necessarily needs to know, for example, how to code, but that a lawyer should know what coding is and how it can be used in the area in which the lawyer practices. This aligns with the view of Carruthers, Galloway and Skead who suggest that the need to equip graduates with the skills to function in 'contemporary

with the level of detail evident in the UK LawTech Delivery Panel's November 2019 *Legal statement on Cryptoassets and Smart Contracts*,⁶⁶ or in the cases, referred to above, where a court has dealt with the question whether a cryptocurrency, based on blockchain technology, is a form of personal property.⁶⁷ No interviewee mentioned the use of distributed ledger technology to create fractionalised interests in real property, such as that of the bricklet model described above. This reflects both the timing of the interviews and, most likely, the relative speed with which these areas of the law have developed.

legal contexts'⁶⁸ means that these developments at the least ought not to be ignored.

Most interviewees indicated that these technological developments are not likely to change the fundamental doctrinal elements of property law nor remove the need for a lawyer to understand these fundamentals or the need for critical thinking in their application. Further, many interviewees referred to the utility of the technology, but also to the need for an understanding of manual systems in the event that the technology does not work. One practitioner used the analogy of needing to be able to read a map in case the GPS system failed.

CONSEQUENCES 2

[An explanation of how this will change the way the core law unit should be taught to law students, including the scope of the unit, the learning outcomes for the unit, the learning activities undertaken by the students, and how students within the unit should be assessed.]

The scope of a property law unit

A significant majority of the interviewees indicated that the core business of a property law unit will remain the teaching of the doctrinal fundamentals of property law,

however, these ought to be supplemented with coverage of relevant technological developments to ensure that students have an awareness of relevant technology and of its commercial implications. E-

⁶⁶ UK Jurisdiction Taskforce, 'Legal Statement on cryptoassets and smart contracts' The Law Tech Delivery Panel https://35z8e83m1ih83drye280o9d1-wpengine.netdna-ssl.com/wp-content/uploads/2019/11/6.6056_JO_Cryptocurrencies_Statement_FINAL_WEB_111119-1.pdf

⁶⁷ *B2C2 Ltd v Quoine Pte Ltd* [2019] SGHC(I) 3; [2019] 4 SLR 17 (SICC); *Vorotyntseva v Money-4 Limited t/a*

Nebeus.Com [2018] EWHC 2596 (Ch); *AA v Persons Unknown* [2019] EWHC 3556 (Comm); *Ruscoe and Moore v Cryptopia Ltd* (in liq) [2020] NZHC 728.

⁶⁸ Penny Carruthers, Kate Galloway and Natalie Skead 'Teaching property law in a changing world: A longitudinal study 2011-19' (2020) 28 *Australian Property Law Journal* 123, 129.

conveyancing and distributed ledger/blockchain technology was mentioned explicitly in this regard. One academic interviewee indicated that notwithstanding the above, legal education also ought to focus on skills that computers are not capable of undertaking, such as critical thinking, communication, teamwork and project management skills.

The learning outcomes in a property law unit

Consistent with the responses above, most interviewees indicated that an understanding of the basics of E-conveyancing processes is needed in the law degree, though many were aware of the distinction between the academic and practical requirements for admission to legal practice. This distinction meant that E-conveyancing could be taught in PLT. Were this the case, one practitioner indicated that the academic property law unit would need to effectively set students up for that learning. Again, a minority of interviewees highlighted soft skills, designed to promote workforce readiness as a learning outcome.

The learning activities and assessments undertaken by a student in a property law unit

It is clear that no interviewee considers that the advent of technology such as E-conveyancing means a complete overhaul of the property law unit or its learning activities and assessment pieces. Rather, the thrust of responses was that there is a need to strike a balance between designing learning activities and assessments that reinforce ever-important doctrinal and theoretical elements of property law and incorporating ways to ensure students are at least aware of the importance of E-conveyancing processes. As an illustration of the difference between needing to know how to conduct a conveyance electronically and knowing what E-conveyancing is, one practitioner interviewee explained that in large firms it is likely that conveyancers, rather than legal practitioners, would be responsible for E-conveyancing matters. This meant that it would not be necessary for a lawyer to know how to

handle an E-conveyancing matter in fine granular detail. What was needed, instead, was an appreciation of what E-conveyancing is. Most interviewees identified an E-conveyancing exercise as one that was particularly well suited to a tutorial or workshop. Such an exercise could easily comprise a small component of the assessment scheme.

Interviewees' responses here were consistent with the views expressed in response to the above questions. Generally, interviewees indicated that they continued to see merit in traditional problem-solving exercises, designed to ensure students apply the theoretical and/or doctrinal elements of property to fact situations, though the assessment of skills, such as teamwork, communication skills was also considered important.

Only two academic interviewees explicitly identified an issue that may have been implicit in the responses of other interviewees, and which has budgetary implications for law schools; namely that property law teaching staff may lack the skills necessary to teach students about new technology and noted that there may be need to upskill teaching staff. One academic interviewee suggested that it might be possible to incorporate the training offered by organisations such as PEXA or to adapt or modify it to suit teaching in a property law module. There are likely cost implications of such an approach, but it would reduce the need for property law academics to upskill themselves.

Here, Cantatore, Galloway and Parsons's point that incorporating the bricklet model of fractionalised land interests into property law teaching may facilitate learning of legal problem-solving skills, doctrinal elements of property law and the development of an enhanced awareness of emerging technology is relevant.⁶⁹ This is because doing so may only require a modest level of updating for property law teaching staff, rather than wholesale upskilling about emerging technologies.

⁶⁹ Francina Cantatore, Kate Galloway and Louise Parsons 'Integrating Technology to Increase Graduate

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