Index

abstract property transfer system 151, 152–153, 154–156, 159–162
abusus, owner’s right to transform or destroy object of property (waste liability) 79
acquisition of ownership 75, 181–183, 344–345, 380–382
see also expropriation
Adams, W. 440
Africa
land and forest tenure 437, 438, 465–473
see also individual countries
Agrawal, A. 460
agricultural land
‘cash crops’ 291–292
China, changing property law landscape 323–326, 328–329
large-scale agricultural enterprise 468–469 in prehistory 16, 17–18
see also community rights to forests in the tropics
Akkermans, B. 61, 72, 76, 77, 82, 93, 100–120, 133, 139, 186
Alden Wily, L. 435, 458–477
Alexander, G. 63–64, 67, 71, 140
Alforte, A. 435
alienability of lands 88–89, 237–238, 239, 323–324
Allen, A. 127
Allen, T. 194, 195, 298, 299
Allison, J. 233
Almeida, F. 452, 453
Aluffi, R. 355–373
Ames, J. 122
Amos, M. 124
Anand, P. 286
Anderson, J.L. 90
Anderson, J.S. 82
Anderson, R. 125, 282
Andresen, T. 282
animals and animal welfare 59–60
animus element of possession 172, 174–175, 177–179, 184
Ankersen, T. 337, 340
Anseeuw, W. 292, 293
anthropology of property 26–47
accumulation of property and clashes over rights 33–34
anthropology of law and anthropology of economy 35–37
anthropology of the state 36–37
‘bundle of rights’ concept 28, 32–34
capitalist labour theory of value 39
collective property claims 41
colonialism effects 28–30, 42
crime forms of property 34
cultural property 41
distributive justice and welfare benefits 44
four ‘layers’ of property representation 31–32, 34–35
global commons 40–41
and human rights 42–43
Hungarian compromise model 36
indigenous property rights 38, 41–43
intellectual property concept 26–27, 39, 41–42
Islamic law 43
kin relations and rules of inheritance 29, 31–32
legal regulation and property law 30–35, 37–38
natural resources as private property 40
‘negative property’ (debts and liabilities) 43–44
neoliberal property theory 36, 38, 40, 42, 43
new global property order 39–44
normative orders of property 34, 35, 40–41
ownership concept 33
privatization politics 36, 38, 40, 42
property as ‘boundary object’ 38
property concept 30–31, 38
property relations in postsocialist settings 35–37
Roman law and immovable and movable property distinction 29
Romanian model of total restitution 36
science and technology impacts 39–40
socialist property theory 28–29
sustainability concerns 40, 42
systemic property 34–35
Comparative property law

triangle scheme (actors, valuables, and rights and duties) 31
virtual property 40, 43
'anti-property' logic 226
Arai-Takahashi, Y. 299, 300
archaeological objects, unauthorized removal 382–383
Ariovich, L. 31, 34
Asia, forest tenure 437, 439, 441, 447–452
see also individual countries
Assfalg, D. 126
Aubry, C. 181
Australia
Clunies-Ross v Commonwealth 205, 208
Commonwealth v State of Tasmania 196, 211
constitutional protection for property rights 194, 197, 202, 204, 207, 208, 210–211, 212
Georgiadis v Australian and Overseas Telecommunications Corporation 197, 211
ICM Agriculture v Commonwealth 197, 211
indigenous peoples' rights 406, 413, 417, 421–422, 427, 429
Mabo v Queensland (No 2) 406, 417–418, 421–422, 427, 429
Millirrpa v Nabalco 38
Mutual Pools & Staff v Commonwealth 197, 207, 211
Peverill v Health Insurance Commission 197, 211
public ownership system 217, 238, 244
water rights 281
Western Australia v The Commonwealth 429
Western Australia v Ward 418, 421, 422, 427
Willis v Western Australia 421
Austria 91, 93, 106, 112, 151, 152, 206–207
causal tradition transfer system 151, 152
constitutionally protected property 206–207
numerus clausus rule 106, 112
property law 55, 59, 61, 91, 93
Azuela, A. 337, 338
Baker, J. 74, 86, 173
Bakken, G. 284
Bakker, K. 286
Ball, J. 54, 72, 233, 239
Banjade, M. 435–457
Bankes, N. 217
bankruptcy, and transfer of property 154, 155, 159
Banner, S. 238, 244
Barak-Erez, D. 223, 237, 238
Barca, S. 284
Barckhausen, H. 227, 229–230, 247
Barlow, M. 283
Barriounevo, A. 292
Barron, J. 83
Barr, D. 441
Barsh, R. 417
Bartlett, R. 429
Basedow, J. 133
Bates, E. 129, 298
Bates, S. 284
Battifol, H. 126
Bauer, C. 284
Baur, F. 103, 104, 107
Beaud, O. 233
Bech, J. 18
Beck, Robert 285
Beck, Robin 16
Belgrave, M. 418, 431
Bell, A. 30, 72, 90, 109, 226
Bell, J. 233, 243
beneficiary, right of, and trusts 123–124, 126, 127, 128, 134, 137, 139, 140
Benjamin, J. 91
Bento, L. 240
Bergel, J. 172, 174, 176, 177, 178, 186
Berloiz, P. 61
Berman, H. 364
Bernard, S. 238
Betwy, D. 291
Biedermann, K. 127
Biermann, M. 227, 229, 230, 231, 243
bilateral investment treaties 304–306, 307–308
Binswanger, H. 467
Birks, P. 58, 75
Blackstone, W. 31, 86, 122, 174–175, 259, 269
Blanton, R. 16, 20
Bloxham, S. 428
Blumm, M. 240, 241, 285
Bolgár, V. 126, 132, 133
Bonilla, D. 336, 337, 338, 341
Borgeat, N. 217, 235, 236, 239, 246
Borroes, J. 412, 416–417, 423, 426
Braun, A. 107, 117, 121–149
Brazil 339, 341, 351
Brems, E. 63
Brilmayer, L. 291
Bromley, D. 32, 33

Michele Graziadei and Lionel Smith - 9781785369162
Downloaded from Elgar Online at 03/13/2019 08:00:18AM
via free access
Brooks, R. 72
Bruce, J. 476
Brunner, M. 137
Buckland, W. 121
Buckle, S. 73
Buddhist religious laws 360–361
‘bundle of rights’ concept, anthropology of property 28, 32–34, 83–84
Burn, E. 76
Busse, M. 33, 39, 40
Câmara-Lapuente, S. 76
Cameron, C. 378
Canada

Authorson v Canada 194
Bird v Fort Frances 187
Campbell v British Columbia 420, 431
Ciment Saint-Laurent v Barrette 185
House of Sga’nisim v Canada 420
Keefer v Arrilota 178
law of possession 172, 173, 176, 180, 182, 187
Manitoba Fisheries Ltd v R 195, 199
public ownership system 217, 235–236, 238
Quebec law of possession 59, 74–75, 173, 174, 181, 182, 183, 184–185, 186
R v Gladstone 421
R v Marshall; R v Bernard 423, 425–426
R v Powley 416, 417, 421, 426
R v Sappier; R v Gray 416, 417, 421, 426
R v Sparrow 406, 421
R v Van der Peel 417, 421, 426, 430
Richard Lasalle Construction v Concepts 236
Roberts v Canada 416
Tsilhqot’in Nation v British Columbia 180, 188, 407, 416, 420–421, 425, 430
water rights 281
Cancian, F. 6
Candian, A. 217
Cantin Cumyn, M. 128, 133, 136
Caponera, D. 281, 285
Carbonnier, J. 173, 174, 175, 176, 177, 180, 186
Caribbean Court of Justice, Maya Leaders Alliance 398, 406
Carruthers, B. 31, 34
Cartwright, J. 76
Caruso, D. 76
Cascione, C. 217, 219, 232, 235
Caterina, R. 92, 185
causal tradition transfer system 151, 152–153, 154, 157–159, 160, 166–168
Chamard-Heim, C. 216, 225, 230, 239, 242
Chang, Y. 71, 76, 111, 217
Charters, C. 430
Chartrand, P. 417
Choe, A. 389
Cheng, C. 417
Chile, water rights 284
China, changing property law landscape 311–332
agricultural land 323–326, 328–329
alienation prohibition 323–324
commune system 314
compensation concerns 319, 320, 327
constitutional provisions 315–316
corruption concerns 318, 320, 322
expropriation of land 319–320, 326–327, 328
Household Responsibility System (HRS) 311, 315–316, 318, 323–324, 325
land ownership 296–297, 311–312, 315–316
reform prospects 323–329
registration system for proof of title 317
relational property theory 330–331
small-property rights, and illegal development of rural land 321–323, 328, 330–331
and social conflict 318–321
urban land use reform 316, 320–321
urban and rural land, different treatment of 312–313, 318–321
water rights 281, 285
Chingmak, P. 407
Chirif, A. 442, 443
Chomitz, K. 460
Chouinard, N. 235, 236
Chretien, P. 230, 239
Christian laws see religious laws, Christian
civil society involvement, community rights to forests 445, 446, 449, 451–452, 454
Clarke, A. 71, 81, 186, 218, 220
Clarke, T. 283
Clinton, R. 415, 429
Clive, E. 135
Coing, H. 127, 130
`Comparative property law`

Cole, D. 240

Colombia 339–340, 341–345, 349
colonization effects 243–249, 292, 463–464
community rights to forests in the tropics 435–457
civil society involvement 445, 446, 449, 451–452, 454
co-management arrangements 441, 446, 451
conservation issues 443–444
customary forest rights 442, 449, 450–451, 452, 453
exclusion rights 441
indigenous people’s rights 446
Indonesia reforms 441–446, 447–452, 453
logging and mining rights 440, 444, 446, 448, 449, 450
obstacles to reform 453–454
Peru reforms 441, 442–447, 453–454
poverty issues 449
public goods argument 440
public/private land 438, 439, 443–445, 448–449, 450
'scientific forestry' and reforestation 448, 449, 453–454
state role 439–441, 442–451
tenure rights 436–439, 442, 444
see also agricultural land; customary land tenure, contemporary view; indigenous territorial rights
compensation issues 299, 319, 320, 327
constitutional property law 195, 199, 200–201, 202, 204, 205, 206, 210–211, 212–213
consensual property transfer system 151–152, 154, 156–157, 158, 159, 160, 162–166
consitutional property law 193–215
China 315–316
and civil codes, Latin America 336–337
commercial licences and permits 199–200
compensation issues 195, 199, 200–201, 202, 204, 205, 206, 210–211, 212–213
constructive expropriation 209–212
contractual rights 197
exclusive control over a tangible object 196–197
in rem rights 196
interests with a money value 197–198, 200
land reform and urban redevelopment and third party transfers 208–209
non-property rights 197
numerus clausus of property rights 102–104
private law protection of property 196
proportionality assessment 202–204
regulatory limitation versus compulsory acquisition or expropriation of property 200–212
regulatory limitations on use and enjoyment of private property 201–204
right to sue 197
rights protected in commercial law 199
security rights 196, 197
social welfare legislation as constitutional property 198
state power and expropriatory interferences with private property 204–209
supranational constitutionalism, land law, land grabbing and globalization 298–301
tenants’ rights 196
third party transfers 207–209
Cook, T. 65
Cooke, E. 81, 164
Coombe, R. 39, 43
Cooter, R. 223
Corru, G. 182, 183
corporate groups in prehistory 7–8, 10, 13–15, 16, 17–19
corpus element of possession 172, 174–177, 180, 181, 184
corruption concerns
China 318, 320, 322
fraudulent acts and transfer of property 155–156, 162, 165
Corula, L. 293
Coughlin, J. 364, 366
Cousins, M. 63
Craig, R. 285
Cronkleton, P. 439, 441
Crow, S. 208
Cullet, P. 285
cultural property 31, 41, 297, 403–406
cultural property in international law 374–392
access to cultural property 379–380
acquisition of title over cultural property 380–382
archaeological objects, unauthorized removal 382–383
cultural heritage and intellectual property 390
cultural property definition 375–378
flag state right and underwater finds 387–389
‘good faith’ purchasers of stolen cultural objects 384
Hague Convention definition 376
‘importance’ factor 376–377
intentional destruction of cultural property 378–379
loss of title 383–385
passage of time effects on title 384–385
private property rights and public interest 378–380
Rome Convention, contractual obligations and removal of cultural objects 383
underwater cultural property 385–390
UNESCO Convention definition 376–377, 386, 388, 389, 390
UNIDROIT Convention definition 377, 382–383, 384
World Heritage Convention definition 377–378
Cummings, S. 72
Cumyn, M. 281
Cunha, A. 336, 339, 341
customary land tenure, contemporary view 458–477
Africa 465–473
colonization effects 463–464
community participation 460–463
customary land rights indicators 469–470
customary rights as property in state law 463–467
customary tenure definition 460
decentralization initiatives 469
decision-making involvement 473
formalization and registration 470
integrated nature of customary regimes 459
land use norm changes 462
large-scale agricultural enterprise 468–469
legal status 468–473, 475
natural resource legislation 469
‘ownership’ and ‘property’ definitions 462–463, 464–465
protection levels 470–473
public interest concerns 459–460
Terrestrial Protected Areas (TPA) 467–468
traditional ties 462–463
undeveloped resources 463
see also community rights to forests in the tropics; indigenous territorial rights
Dagan, H. 71, 79
Dahal, G. 435, 436
Daly, E. 286
Danos, F. 179
Dardot, P. 216, 220, 221
Dari-Mattiacci, G. 183, 297
Davies, M. 223
Davis, D. 358, 359
Davis, P. 281
D’Avout, B. 101, 106
De Montgolfier, J. 60
De Schutter, O. 63, 292, 293, 294
De Waal, M. 103, 116, 128, 134
De Wulf, C. 126, 127, 130, 131
debts and liabilities (‘negative property’) 43–44
decision-making involvement, indigenous peoples 400–401, 405–406, 473
defeasible estate 74
Deiningker, K. 467
Della Cananea, G. 219, 224, 243
Dellapenna, J. 281
Deloria, V. 414, 428
Demsetz, H. 3, 282, 283
Derrett, J. 358, 359, 361
Deveney, P. 233, 234, 235
Di Porto, A. 218, 226, 227, 237, 243
Di Robilant, A. 90, 114, 117, 118, 224, 337, 346, 350
Dicy, A. 429
Dirix, E. 121
doctrines of continuity and discovery, indigenous territorial rights 413–414, 417, 419, 421–422
Doe, N. 363, 366
domanial duality, public ownership systems 225–230, 235–236, 238–239, 242, 246–248
dominium, and Roman law 51, 52, 76, 84, 86
Donahue, C. 83, 85
Dow, G. 3, 8
Doyle, D. 17
Dromgoole, S. 220
Drucker, A. 126
Du Plessis, W. 244
Du Toit, F. 128, 139
Dukeminier, J. 88
Dunbar, R. 284
Dussault, R. 217, 235, 236, 239, 246
Dyal-Chand, R. 114
Earle, T. 3–25
economic factors China 325–326
Latin America 345–346
market economics see market economics
Comparative property law

numerus clausus of property rights 108–111, 114
public ownership systems 222–224
trusts 130, 131
Edelman, J. 138
Edelman, M. 42
Ellickson, R. 78, 83, 315, 320
eminent domain see expropriation
Emerich, Y. 60, 79, 91, 171–190
emphyteusis 75, 82, 112, 336–337
England and Wales
alienability of lands, preservation of 88
Alliance Spring v The First Secretary of State 208
Armory v Delamirie 183, 185
Attorney General of New Zealand v Ortiz 380
Buckinghamshire County Council v Moran 178–179
causal consensual transfer system 151–152, 157, 159, 160, 163–166
Re Chowood’s Registered Land 165
compulsory purchases’ protection 208
Costello v Chief Constable of Derbyshire 186
Edwards v Jenkins 270
Indian Oil Corp Ltd v Greenstone Shipping (The Ypatianna) 75
Iran v Barakat 383, 389
J.A. Pye (Oxford) Ltd v Graham 179
Keppel v Bailey 101, 111
land law 81–82, 159, 163–166, 295, 300
Littledale v Liverpool College 178
National Westminster Bank v Ainsworth 53
numerus clausus rule 101, 108, 107, 112
Powell v McFarlane 176
property law 53–56, 58–59, 60, 61, 66, 79, 88, 89, 91, 94
public law protection for private property rights 194
public ownership system 222, 232–234, 245–246
right to roam 269–271, 272, 273–274, 275
Sainsbury’s Supermarkets Ltd v Wolverhampton City Council 195, 206, 208
third party protection 157, 160, 164, 166
Trelor v Nute 181
trusts 88, 122, 123, 124
The Tubantia 187, 188
Tulk v Moxhay 101
water rights 281
The Winkfield 187–188
Winkworth v Christie 383–384
Engle, K. 336
environmental issues 40, 42, 64, 292, 402, 443–444
Epstein, R. 220, 223, 225, 237, 240, 242
Erlank, W. 118
Erueti, A. 430
Esquirol, J. 333–354
estate, defeasible 74
estate in reversion 74
Europe
Commission v Belgium 302–303
Konle v Austria 302
land law harmonization 301–304
property law 53–56, 59
Reisch v Mayor of Salzburg 302
see also individual countries
European Convention on Human Rights
56–57, 204–205, 298
European Court of Human Rights
administrative licenses 64
Chassagnou v France 276
claim for damages 62
entitlements to social security benefits 62–63
Gudmundsson v Iceland 64
J.A. Pye (Oxford) Ltd v United Kingdom 300
James v United Kingdom 298–299, 301
land law and fair balance and proportionality 298–301
Lindheim v Norway 300, 301
Pine Valley Development v Ireland 57, 64, 196, 199
possessions and values linked to the rule of law 67–68
Sprunng and Lännroth v Sweden 298–299
Tre Traktörer v Sweden 64
expropriation
avoidance 299–300
China 319–320, 326–327, 328
constitutional property law 200–212
Ferrajoli, L. 224
Ferreri, S. 72, 92
feudalism effects 84–86, 87
Firth, R. 28
Fitzgerald, P. 174, 188
Fitzmaurice, A. 73, 90
Fitzpatrick, D. 293, 330
Flannery, K. 3, 11
Foëx, B. 107, 109
food production see agricultural land
forests, community rights see community
rights to forests in the tropics
formalization 293, 470
Latin America see Latin America,
formalizing property in
Fortmann, L. 439
Foster, S. 337, 338, 341
Fox, D. 94
fragmentation approach 81–84, 87–90, 109
Francavilla, D. 355–373
France
causal consensual transfer system 151–152,
154, 156, 158, 160, 162–163
land registration protection 162–163
classification of possession 172, 173, 175, 176, 177, 180–181, 182–183, 185, 187
Napoleonic Code 82, 173, 225–226, 231, 334
numerus clausus rule 101, 102, 103, 107, 112
ownership definition 52, 77, 78, 79, 82, 91
property law 54, 56, 58, 59, 60–61, 64, 66, 78–79, 82, 86, 93, 102, 103, 106
public ownership system 224, 225–230, 235–236, 238–239, 242, 246–248
ground rights to roam 261–263, 264, 272–273, 275–276
third party protection 158, 160, 163
Franceschelli, R. 124, 125, 131, 137
Francioni, P. 374–392
Frank, R. 240, 241
Fratcher, W. 132, 140
Freyfogle, E. 79, 271–272, 275
Friedmann, A. 124, 137
Fromont, M. 174, 175, 178
Füller, J. 108, 115
Gaffney, M. 283
Gambaro, A. 54, 55, 72, 77, 81, 121, 137, 141, 217, 218, 219, 225, 227, 228, 229, 232, 239
Gardner, R. 283
Garnsey, P. 73, 86
Garrigues, J. 121, 126, 131
Garro, A. 76
Gaudemet, Y. 221, 223, 229, 237
Geisler, C. 219, 235
Germany
abstract transfer system 151, 152–153, 154–156, 159–162
constitutionally protected property 196–197, 199, 201, 202–203, 205, 206–208, 211, 212entechniques to social security benefits 63–64
land register protection 104, 159–162
law of possession 172–173, 175, 177–178
numerus clausus rule 101, 103–104, 105, 106
property law 52–53, 54, 58, 59–60, 61, 66, 67, 77, 86, 93, 103–104, 106, 172
public ownership system 230–232, 246
ground rights to roam 269, 274–275
third party protection 156, 159–160, 161–162
Treuhand 122, 124, 127, 129
Getzler, J. 76, 87, 132, 140, 281, 284
Giannini, M. 218, 222
Giglio, F. 58, 91
Ginossar, S. 60, 115
Gleick, P. 285
Glenn, P. 135, 138
globalization, and land law see land law, and
land grabbing and globalization
Gluckman, M. 28–29
Godin, R. 232, 234, 235, 236, 239
Godt, C. 71, 81
Gomez Heredero, A. 63
Goodeve, L. 125
Goody, J. 29, 35
Goold, I. 58
Gordley, J. 53, 72, 79
Gordon, R. 90
Goymour, A. 164
Gray, K. 195, 207
Greece 55, 112
Gretton, G. 58, 91, 125, 128, 133, 138, 141
Grossi, P. 86, 90, 243
Grundmann, S. 129
Guadagni, M. 245, 246, 248–249
Gubler, F. 126, 131, 137
Guerriero, C. 183, 297
Guthrie, R. 240, 241, 285
486  Comparative property law

Habdas, M. 217, 224, 231, 232
Haemmerle, H. 124, 137
Hague Convention 127–128, 130, 134, 136, 137, 376
Håkansson, T. 6
Hamill, S. 222, 241
Han, S. 296
Hanbury, H. 124
Hann, C. 26, 29, 30, 31, 33, 36, 40, 42, 43, 44
Hansmann, H. 108, 109–110, 135
Hardin, G. 108–109, 277, 282
Harpwood, V. 269
Harris, L. 286
Harrison, R. 435
Harvey, D. 220
Hayton, D. 128, 133, 134, 136, 140
Hazardite, H. 122
Heck, P. 101, 107
Heller, M. 108, 223
Helmholz, R. 122, 135, 364
Henderson, J. 417, 428
Heymann, E. 122, 129, 137
Hickey, R. 75, 92, 183
Hill, P. 282
Hindu laws see under religious laws
Hirsch, E. 39, 42
Ho, L. 128, 130, 133, 134, 136
Hoebel, E. 3
Hofri-Winogradow, A. 128
Hogan, G. 194, 197, 203
Holdsworth, W. 122
Holmes, O. 122, 172, 178
Honoré, A. 32, 33
Honoré, T. 78, 128, 132, 133, 134, 138
Horwitz, M. 79, 284
Household Responsibility System (HRS), China 311, 315–316, 318, 323–324, 325
Huber, E. 126
Hudson, M. 21
Huffman, J. 285
human body and body parts 58–59
human rights 42–43, 224, 306–308, 403–406
see also European Convention on Human Rights
Humphrey, C. 39
Hungarian compromise model 36
hunting and fishing rights 275–277
see also logging and mining rights
Hvalkof, S. 442
Hyams, P. 85
ICSID, Metalclad Corp. v United Mexican States 305–306

ILO Convention, land rights of indigenous peoples 395–396, 398–399, 400–401
in rem rights 55, 83, 196, 294, 303, 304
indemnity right, transfer of property inter vivos 161, 164–166, 167
India 194, 240, 241–242
Fomento Resorts & Hotels v Minguel Martins 241–242
Hindu laws 357–360, 361
Mehta v Kamal Nath 241
indigenous peoples
anthropology of property 38, 41–43
land rights see land rights of indigenous peoples
Latin America 336, 349
public ownership systems 238
indigenous territorial rights 412–434
authority to manage the land 420
collective character 419–420
doctrine of continuity 417, 419, 421–422
doctrine of discovery 413–414
natural law 415
practices, customs and traditions 416–417, 420, 427
preservation of land for benefit of future generations 420–421
proof of 422–427
protection of 428–430
resource use rights 421–422, 423–424, 425, 426
sui generis property right 416, 420, 421
see also community rights to forests in the tropics; customary land tenure, contemporary view; land rights of indigenous peoples
Indonesia, community rights to forests 441–446, 447–452, 453
informal property protections, Latin America in 341–345, 346–347
information costs 110–111, 303–304
inheritance rules 7–8, 29, 31–32
intangible objects 40–41, 55, 57–58, 60, 66, 67, 80, 91, 390
intellectual property 26–27, 39, 41–42, 65–67, 336, 390
Inter-American Court
Mayagna (Sumo) Awas Tingui Community v Nicaragua 395, 399, 404, 408, 440

Michele Graziadei and Lionel Smith - 9781785369162
Downloaded from Elgar Online at 03/13/2019 08:00:18AM
via free access
**Saramaka People v Suriname** 399, 404, 405

**Sawhoyamaxa Indigenous Community v Paraguay** 307–308

**Yakye Axa Indigenous Community v Paraguay** 404, 409

interest, vested 74

international investors, and trusts 129–130

international law

- cultural property see cultural property in international law
- *numerus clausus* of property rights 106–107
- and public ownership systems 220

inventio (finding) 75, 380

Ireland

**Central Dublin Development Association v Attorney General** 202, 209, 211, 212

**Clinton v An Bord Pleanala** 202, 205, 206, 209

constitutional protection for property rights 194, 196, 197, 198, 199–200, 201–202, 203, 204, 205, 208–209, 211, 212

**Cox v Ireland** 197, 198, 203

**Crosbie v Custom House Development Authority** 202, 204, 207, 209

**Dreher v Irish Land Commission** 209, 212

**Employment Equality Bill** 198, 202, 206, 211

**Haire v Minister for Health** 197, 203

**Health Amendment Bill** 197, 202, 206, 211

**Irish Life and Permanent v Duff** 193, 196

**Maher v Minister for Agriculture** 197, 199

**Planning Bill** 203, 211, 212

**Shirley v AO Gorman Ltd** 202, 206, 209

**Iskrow, K.** 216, 229, 230, 232

Islamic laws 43, 367–370

- *waqf* 125, 135, 137, 369–370
- water law 281, 285

Italy

**Melqart statue** 385

- *numerus clausus* rule 112
- property law 54, 55, 60
- public ownership system 218, 248–249
- right to exclude from private land 263–265
- right to roam 273, 276
- ‘Victorious Youth’ statue dispute 389–390

**Jaeger, P.** 126, 127, 131

Japan, agricultural policy 325

**Jauernig, H.** 58

**Jayne, T.** 468

Jewish laws see religious laws, Jewish

**Jhering, R. von** 171, 172–173, 184

**Johnson, A.** 11

**Jones, C.** 412

**Josserand, L.** 337

judicial scrutiny, public ownership systems 239–243

**Kantorowicz, E.** 233, 234, 237

**Kanzleiter, R.** 160, 161

**Kaplan, I.** 242

**Kaplan, M.** 423, 424, 429

**Karsten, P.** 90

**Kasirer, N.** 75

**Katyal, S.** 90

**Kay, C.** 468

**Kearney, J.** 234, 235

**Kelly, A.** 451

**Kennedy, David** 73

**Kennedy, Duncan** 338, 347

**Kenya, public trust doctrine** 240, 241, 245–246

**Keon-Cohen, B.** 417

**Kieninger, E.** 112, 113, 303

**kin relations** 7–8, 10, 13–15, 16–17, 29, 31–32, 44

**Kinnard, J.** 360

**Koessler, J.** 137

**Kohler, J.** 160

**Kohler, P.** 186, 218, 220

**Kortmann, S.** 133, 135, 136

**Kötz, H.** 122, 125, 127, 131, 132, 133, 139

**Kotzé, L.** 243, 286

**Kraakman, R.** 108, 109–110

**Krier, J.** 3

labor theory of property in prehistory 5–7, 15, 31

**Lafond, P.** 173, 174, 181, 185, 186

**Lalive, P.** 383

**Lamoreaux, N.** 73

land law

- China 296–297, 311–312, 315–317
- customary land tenure see customary land tenure, contemporary view
- land as inalienable good 237, 238
- land registration see registration reform and urban redevelopment 208–209
trespass, law of 186

land law, land grabbing and globalization 290–310

- bilateral investment treaties and foreign investment 304–306, 307–308
- biofuel as driving force 291–292
- ‘cash crops’ 291–292
Compensation for deprivation of property

Cross-border mega-deals

Cultural concepts

Displacement of tribal or rural communities

Expropriation avoidance

Food supply as driver

Formalization costs

Gas emissions and climate change effects

Human rights and traditional land tenures

Information costs

Land law harmonization in EU

Land law as national construct

‘Market-plus’ approach

Neo-colonialism concerns

Restrictions on the acquisition of land by aliens

Rights-based approach

Supranational constitutionalism

Land rights of indigenous peoples

Adverse possession claims

Ancestral lands, connection with

Collective character

Conflicts of property rights

Customary international law

Decision-making and consultation rights

Environmental conservation and protection rights

Equal opportunities rights

Human rights and cultural protection

ILO Convention

Indigenous peoples definition

Legal title of property rights

Official recognition in domestic regulation

Private property rights

Racial discrimination avoidance

Recognition in international and domestic practice

Right not to be dispossessed of lands, territories and resources

Right to manage and govern traditional lands through customary law

Right to redress

Self-determination right

Spiritual and religious traditions, right to practise

Sui generis legal title

Traditional medicines, right to preserve and develop

Traditional occupation or use

United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)

See also indigenous territorial rights

Langbein, J.

Latin America, forest tenure

Latin America, formalizing property in

Acquisition mode

Adverse possession of private land

Civil code ownership

Collective or alternative forms of property entitlements

Collective property rights of indigenous peoples

Constitutions and civil codes

Economic development assistance

Emphyteusis as common property form

Extinguishment of title

Formalization definitions

Informal property protections

Informality as cognizable property relations

Informality as illegality

Intellectual property protection

Jural relations in informal settlements

Legal effects of recognizing a property claim

Legal lobbying effects

Market-driven dispossession

and Napoleonic code

Private ownership based on productive use

Proof of title burdens

Property taxes

Public ownership system

Rural collective property

Selective enforcement

‘Social function’ of property

Titrng programs of squatter settlements

Lau, M.
Laukemann, B. 101
Laurent, J. 91
Laval, C. 216, 220, 221
law of property and law of obligations, distinction between 115, 137–138
Lawson, F. 60, 131, 132, 133, 137
Lazarus, R. 285
Le Roy, E. 29, 35, 244
Lee, R. 128, 130, 136
legal practice
constitutional property law see constitutional property law
customary land tenure 468–473, 475
formalization see formalization
and globalization see land law, land grabbing and globalization
harmonisation and unification attempts, trusts 134–135
law’s role in policy reforms, China, changing property law landscape 311
titles see titles
Legeais, D. 107
LeGrand, C. 343
Lehavi, A. 73, 290–310
Lenzerini, F. 378, 379, 393–411
Lepaulle, P. 121, 123–125, 129, 130, 133, 137, 139
Levi-Strauss, C. 461
Levine, B. 21
Levmore, S. 92, 240
lex rei sitae rule 107, 294, 303, 304
liability for harm, and access to nature 271
Licht, A. 297, 304
Ling, Z. 318–319
living people, transfer of property see transfer of property inter vivos
Lixinski, L. 42, 390
Locke, J. 3, 5, 31, 39
logging and mining rights 440, 444, 446, 448, 449, 450
see also hunting and fishing rights
Lomawaima, K. 415, 429
López Medina, D. 336
loss of title, cultural property 383–385
lost or forgotten moveables 182–183
Lovett, J. 220, 221, 222
Lupoi, M. 125, 130, 133, 134, 135, 136, 138, 139, 140, 141
Maas, A. 282
Macnair, M. 140
McAuslan, P. 220, 223, 244, 245, 246, 463, 467, 474–475
Macdonald, R. 79
McFarlane, B. 53, 81, 94, 133, 138, 187
McKean, M. 438
McLean, J. 217, 250
McNair, A. 121
McNeil, K. 238, 412–434
McSweeney, T. 74, 84
Mahaningtyas, A. 449
Maitland, F. 84, 85–86, 121, 122, 130, 132–133, 137, 172, 173, 233, 295
Malafosse, J. de 173, 174, 184
Malaysia, constitutional protection 201, 207
Malinowski, B. 28
Malleux, R. 446
Malumián, N. 124, 130, 137
Marauhn, T. 243
Marcus, J. 3, 11
Marella, M. 221, 341
Marfo, E. 438
market economy
market-driven dispossession 349–350
‘market-plus’ approach 292–293
and numerus clausus of property rights 108 in prehistory 10–11, 15, 21
see also economic factors
Martineau, P. 181
mass invasions 268–269
see also nature, access to
Massey, C. 181
Mattei, U. 72, 76, 90, 135, 216, 217, 220, 237, 244, 248, 265, 341
Matthews, P. 128, 138, 139, 140
Maurer, B. 39, 41
Mauss, M. 10–11, 28
May, J. 286
Maybe, J. 121, 131, 132, 133
Mazeaud, H. 173, 174, 184
Meijers, E. 55, 123
Mendoza Perez, D. 336
Mendoza-Lewis, J. 440
Merriman, J. 74, 76, 378
Mexico, rural collective property 336
Meyer, H. 126
Meyer, M. 221, 282
Meyers, C. 282
Michelman, F. 338, 347
Migot-Adholla, S. 465
Míguez Núñez, R. 90, 221
Miller, B. 423
490  Comparative property law

Milleville, S. 60
Milliman, J. 282
Milo, J. 128, 140
Mirosa, O. 286
Mirow, M. 336
mirror principle, and transfer of property 159, 164
Monterroso, I. 435–457
Moon, W. 291
Moore, S. 26, 33
Moreda, T. 459
Mossoff, A. 83
Mostert, H. 111, 114, 116
Muller, S. 220, 222
Munzer, S. 58
Mwangi, E. 435–457
Myers, R. 454
Nader, L. 216, 244
Napoleonic Code 82, 173, 225–226, 231, 334
Napoli, P. 225
Napolitano, G. 217, 219
Narula, S. 291, 292, 294
natural law, indigenous territorial rights 415
natural resources see resources
nature, access to 258–279
and commercial purposes 271, 274
exclusion right 258–259, 261–265
hunting and fishing rights 275–277
ideological and political dimension 259
liability for harm 271
mass invasions 268–269
outdoor sports 263, 264
‘point of tolerance’ and property protection 267, 268
public rights of way 270, 273
public’s access to the shores 262, 266–267, 271
right to gather resources on private land 272–275
right to roam as general rule 265–269
right to roam on private land 261–272
rural pathways 262–263
streams and rivers that cross private land 263
town and village greens 270–271
trespass to land 269–270, 274, 275
Neef, A. 459
‘negative property’ (debts and liabilities) 43–44
Nehl, H. 217
Nelson, A. 460
neoliberal property theory 36, 38, 40, 42, 43
Neolithization and local corporate groups 7–8, 10, 13–15, 16, 17–19
Netherlands
causal tradition transfer system 151, 152, 154, 157–159, 160, 166–168
intellectual property 66
land register protection 166–168
numerus clausus rule 106, 112
property law 54, 55, 58, 60, 61, 89, 106
third party protection 158, 159, 160, 161, 166, 167, 168
new global property order 39–44
New Zealand
Attorney-General v Ngati Apa 407, 419, 422, 427
indigenous peoples’ rights 413, 418–419, 422, 427, 429–430
Nireaha Tamaki v Baker 418
public ownership system 217, 238
The Queen v Symonds 418
Wi Parata v Bishop of Wellington 418
Yorta Yorta Community v Victoria 418, 419, 421, 427
Newton, N. 415, 419, 428
Nicholas, B. 93, 174
Nigeria, public trust doctrine 240
Nivarra, L. 341
Nolan, R. 138
Nolte, C. 460
non-economic values, objects of property rights 67–68
non-possessory security rights 106, 107
non-property rights 197
Normand, S. 172, 186
normative orders of property 34, 35, 40–41
nuisance claims, and possession, law of 186
numerus clausus of property rights 100–120
antiscomons issues 108–109
authority to create new types of property rights 103
citizens’ initiatives for innovation in property law 114
as constitutional law principle 102–104
division between contract law and property law 102, 115
economic reasons for 108–111, 114
existence, legal proof 111–112
flexible approach, call for 115–116
fragmentation approach 109
free circulation of goods 104
freedom of ownership 104
hierarchical property law systems 113
information costs 110–111
land law and personal property law systems 113
law of property and the law of obligations, distinction between 115
lex rei sitae rule (law of the place where the object is situated) 107
and market economy 108
new property forms 114
non-possessory security rights 106, 107
private international law settings 106–107
property rights differing between legal systems, reasons for 114
property rights, limited number 112–113
right of ownership 113
security rights 113
servitudes 115–116
standardisation argument 110
structure of property ownership 78, 82–83, 87
subtraction method for creation of property rights 116
transfer of ownership for security purposes 106
transparency principle 104
and trusts 107, 110, 115, 132, 139, 140
verification rules for third parties 109–111, 115–116
Nussbaum, A. 124, 131, 133
objects of property rights 51–70
animals and animal welfare 59–60
civil law tradition 51, 53, 55, 57–58
common law tradition 51, 53–54, 56
controversial objects of property 57–67
entitlements to social security benefits 62–64
European Civil Code, property definition 53
greenhouse gas emission quotas 64
human body and body parts 58–59
intellectual property 65–67
non-economic values extending and restricting domain of appropriable things 67–68
ownership (propriété) concept 52
pecuniary claims 60–62
possessio civilis 55
‘possessions’ as economic interests 57
‘possessions’ under European Convention on Human Rights 56–57
possessions and values linked to the rule of law 67–68
public law licences and authorizations 64
Roman law category of res incorporales and intangible objects 57–58
structure of property law 52–53
‘things’ in European Civil Code and English law 53–56
obligations, law of, and law of property, distinction between 115, 137–138
O’Connell, D. 417
O’Connor, P. 202, 207, 211
Ojha, H. 439
Okoth-Ogendo, H. 245, 467
Örtmann, P. 101
Ostrom, E. 32, 223, 277, 282, 283, 437
Ourliac, P. 173, 174, 184
ownership concept 33, 52
conceptual independence from 180–181
definition 462–463, 464–465
freedom of 104
original modes of acquisition 75, 181–183, 344–345, 380–382
public see public ownership systems
right of 113
structure 73, 76–81, 91
Page, J. 216, 217, 218, 219, 240, 243
Pakistan, public trust doctrine 240
Panico, P. 136
Papandréou-Deterville, M. 172, 185, 186, 187
Papier, H. 196, 197, 198, 200, 201, 203, 208
Parchomovsky, G. 30, 90, 109, 226
Parry, B. 39
Parry, G. 85
patrimoine d’affectation theory, trusts 123–124, 137
Paudel, N. 441
Paulsen, A. 240
pecuniary claims 60–62
Pels, D. 28
Peluso, N. 435, 448, 449, 451
Peñalver, E. 71, 90
Penner, J. 71, 83, 91, 138
Percy, D. 281, 284
Peru, community rights to forests 441, 442–447, 453–454
Peters, P. 28, 244
Philippines constitutional protection for property rights 207
public ownership system 238
public trust doctrine 240
Pils, E. 318, 319
Pinedo, D. 442, 443, 444, 445, 446
492 Comparative property law

Planiol, M. 65, 337
Ploeger, H. 304
Plucknett, T. 295
Pocock, J. 85
'point of tolerance' and property protection 267, 268
Polanyi, K. 11, 21, 222, 464
political economy origins 15–21
political factors
privatization politics 36, 38, 40, 42
and trusts 130, 131
Pollock, F. 172, 173, 177, 295
Popovic, A. 123, 125, 130, 141
population growth and surplus production effects in prehistory 6, 11–12
Portes, A. 345
Portugal, numeros clausus rule 112
Posner, R. 282
possession, law of 171–190
acquisitive prescription 181–183
adverse possession 181–183, 187–188
animus element 172, 174–175, 177–179, 184
conceptual independence from ownership (no right to possess) 180–181
corpus element 172, 174–177, 180, 181, 184
definitions 174–175
disagreements over 171–174
land trespass 186
lost or forgotten movables 182–183
nuisance claims 186
possession as communication 179–180
possession as fact or right 173–174
possessor protection 183–188
property torts 186
protection against dispossession and disruptions of their possession 186
renters and possessor protection 185
Roman law definition 174, 184
Savigny–Jhering debate 172–173, 184
seisin as a predominant right in property 173, 174, 178
possessions and boundaries of property 91
and objects of property rights see objects of property rights
postsocialist settings, property relations in 35–37
Potter, H. 125
poverty issues, community rights to forests 449
Pozzo, B. 141
Pradouroux, S. 51–70
Pravilova, E. 218, 220, 222, 228
prehistory see property in prehistory
preservation of land for benefit of future generations 420–421
Pretto-Sackmann, A. 57
private ownership based on productive use, Latin America 344–345
private property
expropriation and state power 204–209
regulatory limitations on use and enjoyment of 201–204
rights, land rights of indigenous peoples 408, 409
rights and public interest 378–380
risk of treating natural resources as 40
privatization politics 36, 38, 40, 42
proof of title burdens, Latin America 343–344
see also titles
property concept, anthropology of property 30–31, 38
property definition, customary land tenure, contemporary view 462–463, 464–465
property law or law of obligations debate 115, 137–138
property in prehistory 3–25
barring (vs. sharing) rights 22–23
burial barrows 18
capital improvements for food production 17
cemeteries in traditional societies 8, 14, 18
ceremonial facilities 6–7
co-axial field systems 18
corporate communities with strong war chiefs 19
documentation with archaeology 11–21
fortified villages 9
habitats and living with things 4–5
house societies 16
houses and agricultural facilities in traditional societies 6
identity, gifting, and trade 10–11, 15
inheritance in traditional societies from ancestors 7–8
intensified agriculture and family-based capital improvements 16, 17–18
Iron Age and corporate communities with strong war chiefs 19
kin organizations in traditional societies (corporate groups) 7–8, 10, 13–15, 16–17
labor theory of property, and making things 5–7, 15, 31
landesque capital

low-density foragers
market growth and privatizing of property
Neolithization and local corporate groups
physical landscape marking
political economy origins
population growth and surplus production effects
productive lands
property definition
religious locations
religious monuments and defenses
Roman economic expansion effects
ruling elites and property rights
status and wealth objects and weaponry
traditional societies, ethnographic record
transferring (alienating) rights
warrior defense and seizure
proportionality assessment, constitutional property law
protection
customary land tenure, contemporary view
indigenous territorial rights
possessory
structure of property ownership
Pryor, F.
public buildings
public goods argument, community rights to forests
public interest
cultural property and private property rights
customary land tenure, contemporary view
expropriation of land in, China
public law licences and authorizations
public ownership systems
aboriginal land rights
‘anti-property’ logic
colonial law and land management
common law model
ecclesiastical property as inalienable good
economic reasons
ex ante administrative control
ex post judicial scrutiny
French model (domaniaal duality)
German model
and human rights
inalienability model
international law and common property resources
land as inalienable good
Latin America, formalizing property in
natural resource protection
public buildings
public trust doctrine
public/private models
regulation of the use of certain resources
Roman category of res communes omnium
transfer problem from public to private
public rights of way
access to shores
right to roam as general rule
public trust doctrine
public/private land, community rights to forests
Pugliatti, S.
Pugliese, G.
Pulhin, J.
Purdy, J.
Qiao, S.
Rabel, E.
Rachman, N.
racial discrimination avoidance, land rights of indigenous peoples
Radin, M.
Radley-Gardner, O.
Ramaekers, E.
Rau, C.
recovery of asset substituted for original property (revendication)
Redgwell, C.
redress right, land rights of indigenous peoples
Reed, C.
Reeve, A.
reform prospects, China

Index 493
registration
deeds registration 158–159
land register protection 159–168
system for proof of title, China 317
‘title by registration’ systems 158, 161, 164–165
regulation of use of certain resources 231, 232
regulatory limitation versus compulsory acquisition 200–212
rei vindicatio (right of property protected by a specific action) 92–93, 152
Reich, C. 62
Reid, K. 125, 128
Reimann, M. 137
Reisner, M. 284
relational property theory, China 330–331
relations, kin relations 7–8, 10, 13–15, 16–17, 29, 31–32, 44
religion, spiritual and religious traditions, right to practise 400
religious laws 355–373
Buddhist laws 360–361
conflicts and competing claims on sacred places 371
criminal protection of religious property 371
Hindu laws 357–360, 361
Hindu laws, property concept and classifications 358–359, 360
Hindu laws, spiritual development focus 360
Islamic laws see Islamic laws
religious laws, Christian 363–366
canon law 364, 365
Orthodox law 365–366
and private property 365
regulation of ecclesiastical goods 366
social dimension of property 365
stewardship doctrine 363–364
wealth of Roman Catholic church 364
religious laws, Jewish 361–363
consecrated property 363
land as central element 361–362
law of succession 362
prohibition on interest 362
religious property
as inalienable good 237
in prehistory 5, 6–7, 18–19
Rengifo, M. 337
Rénéque, G. 446
Renoux-Zagamé, M. 73
renters’ rights 185, 196
res communes omnium category, Roman law 221, 226–227
res incorporales category, Roman law 57–58
resources
collective land and resource possession by social communities 459
customary land tenure, contemporary view 469
natural resource protection 222–223, 247–248
regulation of the use of certain 231, 232
right to gather resources on private land 272–275
risk of treating as private property 40
undeveloped, customary land tenure, contemporary view 463
use, indigenous territorial rights 421–422, 423–424, 425, 426
Resta, G. 216–257
revendication (recovery of asset substituted for original property) 93–94
Revet, T. 60, 64, 80, 82, 101, 106, 180, 181, 187
Reymond, C. 126, 131, 137
Reynolds, S. 86
Ribot, J. 436, 440, 441
Rigaud, L. 337
right of the beneficiary, and trusts 123–124, 126, 127, 128, 134, 137, 139, 140
right of property protected by a specific action (rei vindicatio) 92–93, 152
right to indemnity, transfer of property inter vivos 161, 164–166, 167
right to redress, land rights of indigenous peoples 397–398, 401
right to roam as general rule 265–269
see also public rights of way
rights, human see human rights
rights-based approach, land law, land grabbing and globalization 293–294, 298
Rigby, B. 34
Riles, A. 33, 37
Rivera, J. 282
Robertson, L. 413
Rodotà, S. 219, 220
Roessler, M. 378
Roman law
and dominium 51, 52, 76, 84, 86
economic expansion effects in prehistory 20
immovable and movable property distinction 29
inventio (finding) 75, 380
law of possession definition 174, 184

Michele Graziadei and Lionel Smith - 9781785369162
Downloaded from Elgar Online at 03/13/2019 08:00:18AM
via free access
Index 495

law of property and law of possession

distinction 52–53

res communes omnium category 221, 226–227

res incorporales category 57–58

Romania

incorporal things as possible objects of property rights 55

model of total restitution, anthropology of property 36

Rome Convention, contractual obligations and removal of cultural objects 383

Rome, C. 40, 72, 73, 179, 188, 218, 223, 224, 234, 237, 243, 244, 249, 259, 280, 283, 294

Rosser, E. 349

Roth, H. 123

Rotman, L. 426

Roux, T. 196

Rudden, B. 60, 78, 80, 107, 108, 132, 139

Rudolph, D. 79

Rüfner, T. 91

Ruppert, T. 337, 340

rural land

collective property, Latin America 336

pathways see public rights of way

small-property rights, and illegal development, China 321–323, 328, 330–331

urban and rural land, different treatment of, China 312–313, 318–321

Ruru, J. 418, 422, 427

Russell, P. 417

Russia, property law in pre-revolutionary 222

Ryan, K. 121, 125–126, 131, 132, 133

Sacco, R. 76, 237, 243, 245, 264, 273

Sageart, V. 105, 111, 115–116, 121

Salmond, J. 125, 140, 174, 188

Sand, P. 230, 240, 241

Sandel, M. 224

Santisteban, S. 92

Savigny, F. von 151, 171, 172–173, 177, 184

Sax, J. 225, 235, 241, 284, 378

Schauffler, R. 345

Schenkel, K. 140

Schlager, E. 32, 437

Schlesinger, R. 92

Schmidt, C. 81

Schorr, D. 280–289

Schott, R. 29

Schroeder, J. 83

Schwab, G. 39, 41

'scientific forestry' and reforestation 448, 449, 453–454

see also technology

Scotland, abstract transfer system 151

Scovazzi, T. 378

Secher, U. 414, 417, 418, 429

security rights 106, 113, 114, 196, 197

Seipp, D. 84

seisin as predominant right 173, 174, 178

selective enforcement, Latin America 350–351

self-determination right, land rights of indigenous peoples 394

Selvin, M. 284

Serbia, law of property and physical objects 55

Shiva, V. 283

shores, public’s access to 262, 266–267, 271

see also public rights of way

Siebert, W. 124, 131, 137

Simler, P. 82

Simon, H. 448

Singer, J. 72, 83, 102, 104, 114, 118, 346, 347

Siscawati, M. 448, 449

Sitkoff, R. 88, 135

Slattery, B. 412, 414, 425

small-property rights, and illegal development of rural land, China 321–323, 328, 330–331

Smit, A. 43


Smith, L. x–xii, 74, 89, 121, 123, 125, 130, 138, 139, 140

Smits, J. 115, 128, 140, 150

social conflict, China 318–321

social dimension, anthropology of property 31–32, 33

'social function’ of property, Latin America 336, 338–341

social welfare 44, 198

social security entitlements 62–64

South Africa

abstract transfer system 151

Agri South Africa v Minister for Minerals and Energy 198, 207, 211

constitutional protection for property rights 201, 202, 203, 205–206, 207, 208, 211–212

First National Bank of SA t/a Wesbank v Minister of Finance 196, 203

Harvey v Umhlatuze Municipality 206, 207

land law reform 295–296

Mazibuko v City of Johannesburg 286

Michele Graziadei and Lionel Smith - 9781785369162
Downloaded from Elgar Online at 03/13/2019 08:00:18AM
via free access
Comparative property law

numerus clausus of property rights 102, 103, 105, 116

Phumelela Gaming and Leisure v Gründlingh 198, 199
property law 102, 103, 105, 116
public trust doctrine 240
water rights 286
Soviet bloc countries, land law reform 295
Spain, numerus clausus of property rights 102, 103
Sparkes, P. 76, 92, 101, 105, 306
Spelman, H. 85
Spivack, C. 89
sports, outdoor sports and access to nature 263, 264
Sprankling, J. 73, 79, 294, 298, 307
Spriggs, M. 16
squatter settlements, Latin America 335, 345–346, 347–348, 349–350
Staddon, C. 286
state role
community rights to forests in the tropics 439–441, 442–454
and expropriatory interferences with private property 204–209
see also individual countries
status and wealth objects in prehistory 19–20
Steinauer, P. 172, 174, 175, 177, 180
Steinberg, T. 284
Stevens, C. 459
Stevens, R. 138
Strang, V. 33, 39, 40
Strathern, M. 3, 29, 35, 37
Strelein, L. 418, 421
structure of property ownership 71–99
abusus, owner’s right to transform or destroy object of property (waste liability) 79
alienability of lands, preservation of 88–89
bundle of rights metaphor 83–84
codification of property law 82, 86–87
cross-border validity of some parts of law of property 75–76, 78
feudalism effects 84–86, 87
fragmentation of ownership and language differences 81–84
fragmentation of ownership and structure of modern wealth 87–90
historical paths leading to the formation of modern property law 84–87, 90
individual’s powers and prerogatives over an object of property 77, 78
intangibles, ownership of 80, 91
integrated treatment of property law, moves towards 78
land can be recovered in specie 92
land registration 82
law of property rights in personam 91
limits on land resulting from property interests of another 79
new terminology in property law 74–75
numerus clausus principle of property rights 78, 82–83, 87
ontogeny of ownership and estate 76–81
ownership of claims 91
ownership as positive right 73
‘ownership’ terminology 72
possession, and boundaries of property 91
property held as investments 89
property held in trust 88
protection of property rights 92–94
recovery of asset substituted for original property (revendication) 93–94
right of property is protected by a specific action (rei vindicatio) 92–93
Roman law and notion of dominium 76, 84, 86
technical language of property law 83
temporal dimensions of property relationships 77–78, 79, 80
transfer of movables 76
translation of linguistic expressions, problems with 74
Struycken, T. 101, 102, 107, 108, 111, 114
subtraction method for creation of property rights 116
sui generis rights, indigenous peoples 398, 416, 420, 421
Sun, X. 281
Sunderlin, W. 435, 436
supranational constitutionalism 298–301
sustainability concerns 40, 42
see also environmental issues
Swadling, W. 105, 107, 113, 115, 117, 133, 136, 138
Sweden, right to roam 265–269, 272, 274, 276–277
Sweeney, J. 299
Switzerland
causal tradition transfer system 151, 152
constitutional protection for property rights 201, 209, 212
law of possession 172–173, 175, 177, 178, 180
property law 55, 59, 60
right to roam 269
systemic property 34–35
Tanzania, land tenure 465–466, 469
technology
science and technology impacts 39–40
'scientific forestry' and reforestation 448, 449, 453–454
technical language of property law 83
tenants' rights 185, 196
tenure rights, community rights to forests 436–439, 442, 444
Terré, F. 82
Terrestrial Protected Areas (TPA), customary land tenure, contemporary view 467–468
Thielbörger, P. 286
tings
living with, in prehistory 4–5
objects of property rights 53–56
third parties
limits on land resulting from property interests of another 79
possession on behalf of another 176–177
transfer of property inter vivos 156, 157, 158, 159–160, 161–162, 163, 164, 166, 167, 168
transfers, constitutional property law 207–209
verification rules for 109–111, 115–116
Thomas, Y. 221, 226
time factors
passage of time effects on cultural property title 384–385
temporal dimensions of property relationships 77–78, 79, 80
Timm, L. 339, 341
title
acquisition over cultural property title 380–382
extinguishment of, Latin America 339–340
legal title and land rights of indigenous peoples 395–399
loss of title, cultural property in international law 383–385
proof of title burdens, Latin America 343–344
registration system, China 317
'title by registration' systems 158, 161, 164–165

titling programs of squatter settlements, Latin America 335, 345–346, 347–348, 349–350
Toman, J. 376
trade in prehistory 10–11, 15, 21
traditional medicines, right to preserve and develop 401, 402, 403–404
traditional ties, customary land tenure, contemporary view 462–463
transfer of property
agricultural land, China 325
land reform and urban redevelopment and third party transfers, constitutional property law 208–209
movables, and structure of property ownership 76
ownership for security purposes 106
in prehistory 23
problem from public to private 237–243
third parties, transfers, constitutional property law 207–209
transfer of property inter vivos 150–170
abstract transfer system 151, 152–153, 154–156, 159–162
bank money transfer 153
and bankruptcy 154, 155, 159
causal tradition transfer system 151, 152–153, 154, 157–159, 160, 166–168
consensual transfer system 151–152, 154, 156–157, 158, 159, 160, 162–166
deeds registration 158–159
and fraudulent acts 155–156, 162, 165
immovable property 158–168
land register protection 159–168
mirror principle 159, 164
right to indemnity 161, 164–166, 167
third party protection 156, 157, 158, 159–160, 161–162, 163, 164, 166, 167, 168
title by registration' systems 158, 161, 164–165
validity of the transfer 152–153
transparency principle, numeros clausus of property rights 104
Trawick, P. 283
Treggiari, F. 135
Trelease, F. 281, 284, 285
triangle scheme (actors, valuables, and rights and duties) 31
trust, public trust doctrine 232, 240–243
trusts 121–149
asset protection 133, 134
charitable trusts 136
commercial express trusts, focus on 135–136, 139
economic and political factors 130, 131
European-centred focus, reasons for 136–137, 139–140
functional approach 125–126, 132–133
Hague Trusts Convention, impact of 127–128, 130, 134, 136, 137
history of comparative studies 122–129, 135
and international investors 129–130
legal harmonisation and unification attempts 134–135
methodological approaches 131–135
and numeros clausus principle 107, 110, 115, 132, 139, 140
patrimoine d’affectation theory 123–124, 137
post-Second World war studies 125–127
property law or law of obligations debate 137–138
right of the beneficiary 123–124, 126, 127, 128, 134, 137, 139, 140
shortcomings of comparative research 139–140
structure of property ownership 88
terminology concerns 140
themes of comparative studies 137–138
triggers for comparative study 129–130
and trust-like devices 107, 110, 115
Tuori, K. 27, 245
Turner, B. 26–47, 40
Uganda
land tenure 466
public trust doctrine 240, 241, 246
UK see England and Wales; Scotland
underwater cultural property 385–390
undeveloped resources, customary land tenure 463
see also resources
UNDRIP (United Nations Declaration on the Rights of Indigenous Peoples) 393, 397, 399, 400, 401–402
UNESCO Convention, cultural property definition 376–377, 386, 388, 389, 390
UNIDROIT Convention, cultural property definition 377, 382–383, 384
Upham, F. 311–342
urban land
and rural land, different treatment of, China 312–313, 318–321
urban redevelopment and third party transfers 208–209
US
Abandoned Shipwreck Act 387
Armstrong v United States 210, 211
Berman v Parker 202, 205, 208
Borough of Harvey Cedars v Karan 212–213
Cherokee Nation v Georgia 415, 419
Cobb v Unidentified Wrecked and Abandoned Sailing Vessel 387
Common Interest Communities (CICs) 102
Confederated Tribes of the Warm Springs Reservation of Oregon v United States 424
constitutional protection for property rights 198, 201, 202, 203–204, 205, 207, 208, 209–210, 212–213
digital servitudes 102
entitlements to social security benefits 62
Goldberg v Kelly 62, 198
Illinois Central Railroad v Illinois 240–241
intellectual property 65–66
Islamic Republic of Iran v Barakat 381, 382
Johnson v M’Intosh 413–414, 415, 420, 428
Kaiser Aetna v United States 258, 272
Kelo v City of New London 202, 205, 208, 319
Koontz v St John’s River Water Management District 204
law of possession 173, 179, 182, 183
legal life estate in land 179, 182
Lingle v Chevron 202, 203, 204, 210
Lone Wolf v Hitchcock 415, 429
Louisiana, common law discourse 75
Lucas v South Carolina Coastal Council 210
National Stolen Property Act (NSPA) 381
Nuestra Senora de las Mercedes 387–388
numerus clausus rule 101–102
Palazzolo v Rhode Island 202, 210
Penn Central Transportation Co v New York City 209–210
Pennsylvania Coal v Mahon 201, 202, 209
Pierson v Post 75, 76, 179, 182
property held as investments 89
protection of property 93
public ownership system 217, 218
right to exclude 258
right to roam 271–272, 275
Stop the Beach Renourishment v Florida
Department of Environmental Protection 207

Tee-Hit-Ton Indians v United States 423, 428–429
trusts 129–130
US v Kagama 415, 423
US v Lara 406, 415, 429
US v McClain 381, 383
US v Miller 212, 213
US v Santa Fe Pacific Railroad 423, 424
US v Schultz 381
US v Seminole Indians of Florida 424
US v Wheeler 415, 429
water rights 281, 282, 284–285
waste, law of 79

Worcester v Georgia 414, 415, 419
usufruct 26, 42, 57, 75, 80, 82, 89, 113, 114, 172, 176, 177, 181, 231, 312, 314, 330, 334, 368, 369, 442, 444, 450

Valencia Zea, A. 346
Valguarnera, F. 258–279
Vallender, K. 193–215, 295
Van der Merwe, C. 76, 89, 113
Van der Schyff, E. 240
Van der Walt, A. 193–215, 295
Van Erp, S. 61, 72, 76, 77, 84, 93, 100, 104, 105, 111, 112–113, 115, 118, 133, 186
Van Loenen, B. 302
Van Vliet, L. 58, 60, 76, 102, 150–170
Vanderlinden, J. 245, 460–461
Vandevelde, K. 304
Vegting, W. 216
Verbeke, A. 76, 89, 113
Verdery, K. 30, 32, 36, 39
verification rules for third parties 109–111, 115–116
Verstappen, L. 111, 114, 116
vested interest 74
village greens, access to 270–271
virtual property 40, 43
Von Bar, C. 71, 76, 111, 112, 135
Von Benda-Beckmann, K. 26, 28, 29, 30, 31, 32, 34, 35, 37, 38, 219
Von Gierke, O. 101, 121

Waggoner, L. 89
Waldron, J. 71
Walsch, R. 193–215
Walters, M. 412, 417
Wang, C. 321
Wang, F. 296

Wang, H. 315
Wang, L. 329
waste liability, abusus, owner’s right to transform or destroy object of property 79
water rights 280–289
China, changing property law landscape 281, 285
economic analysis 282, 283–284
empirical and historical evidence 283–284
human rights 285–286
organic doctrinal development 284
prior appropriation doctrine 282, 284
privatization effects 284
property rights systems 281–282
public and private waters, distinction between 281, 283
public trust doctrine 284–285
‘reasonable use’ riparian regime 281, 282, 283, 284
teachy 282–283
tragedy of the commons 282
Waters, D. 134, 139, 140, 180
waterways, streams and rivers that cross private land 263
Watson Hamilton, J. 217
wealth, fragmentation of ownership and structure of modern wealth 87–90
Weaver, J. 218, 238, 244, 245
Wei, T. 140
Weiner, A. 10
Weiser, F. 124, 129, 132, 133, 137, 139, 140
Weisman, J. 306
Wen, J. 326
Wen, T. 319
Wendt, R. 196, 197, 200, 201, 203, 208
Wesson, M. 286
Whitman, J. 84, 86
Whyte, G. 194, 197
Wiber, M. 6
Wiegand, W. 105, 155
Wiessner, S. 393, 409
Wigginton, J. 291, 292, 293
Wiktorsson, G. 266, 274
Wilkins, D. 415, 429, 430
Williams, D. 422
Williams, G. 174
Wilson, W. 127, 139
Wily, L. 349, 350
Wittfogel, K. 16, 17, 284
Witz, C. 127

Michele Graziaidei and Lionel Smith - 9781785369162
Downloaded from Elgar Online at 03/13/2019 08:00:18AM
via free access
500  *Comparative property law*

World Heritage Convention, cultural property definition 377–378
Wouters, P. 281, 285
Würdinger, H. 126
Xifaras, M. 71
Yiannopoulos, A. 82, 220, 221, 227
Yolka, P. 216, 226, 227, 228
Young, R. 244
Young, S. 37, 38, 418, 419, 421, 422, 427
Zenati-Castaing, F. 52, 80, 82, 180, 181, 187
Zhu, K. 315, 319
Ziegler, T. 160
Ziff, B. 79, 177, 182, 218
Zimmerman, B. 460
Zimmerman, J. 296
Zimmermann, R. 122, 135
Zwalve, W. 173