

# Australian Property Law Journal (APLJ)

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(articles, note and case note included in this part are linked to the LexisNexis platform)

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#### Articles

##### [Fractionalised land interests: More questions than answers](#)

— *Francina Cantatore, Kate Galloway and Louise Parsons*

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The South Australian Government recently announced the launch of a new system of fractionalised land title, to be rolled out as a trial in two of Adelaide's new residential towers. The system involves dividing the estate in each lot into 20 equal interests, using both blockchain technology and the Torrens register to record and trade them. This article outlines a possible design that would support such a proposal to analyse how a fractionalised land title challenges traditional categories of property, including the possibility of bifurcating land title into both real and personal property. It explores the likely range of rights and responsibilities and the tensions arising as a consequence, to conclude that there are a number of unresolved questions inherent in an otherwise elegant idea.

##### [Revisiting the presumptions of resulting trust and advancement in the context of joint tenanted matrimonial property:](#)

##### [Two innovations by the Singapore Court of Appeal](#)

— *Ian Mah Hao Ran*

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In Singapore, the Court of Appeal's decision in *Lau Siew Kim v Yeo Guan Chye Terence* remains the most authoritative pronouncement on the operation of the presumptions of resulting trust and advancement, particularly in the context of joint tenanted matrimonial property. One notable, albeit often overlooked, aspect of the decision is the modification of the presumption of advancement to operate like a rule of survivorship. On one view, the effect of this is to retransform the equitable tenancy in common into an equitable joint tenancy. This article identifies the doctrinal difficulties with this approach but ultimately recommends that the same result, which is merited, can be more directly achieved by employing the maxim 'equity follows the law'. Jurisdictions seeking to formulate a coherent approach to the ever-confusing area of joint tenancy can draw from the approach taken by Singapore's apex court.

##### [The mysterious s 74\(5\)](#)

— *Lisa Spagnolo, Ann Monotti, Christopher Lane and Sharon Rodrick*

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Section 74(5) of the Transfer of Land Act 1958 (Vic) was inserted into the Act in 2014. It provides that '[a] registered mortgage does not operate as a mortgage or charge on the land if for any reason the mortgage is, or is found to be, void or not enforceable at law or in equity and the mortgagee must discharge the mortgage as soon as practicable.' This article identifies three possible purposes and effects of this enigmatic provision and critically discusses the implications of each one. It ultimately concludes that legislative reform is necessary to avoid the dangerous level of ambiguity inherent in the provision, but offers a view as to which interpretation should be preferred in the event that the courts are called upon to interpret the provision in the meantime.

## Note

When is a road not a 'public road' in South Australia?

— *Paul T Babie*

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## Case Note

Cryptocurrency as property: *Ruscoe v Cryptopia Ltd (in liq)*

[2020] NZHC 728

— *Paul Babie, David Brown, Ryan Catterwell  
and Mark Giancaspro*

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On 8 April 2020, Gendall J, sitting in the High Court of New Zealand, decided *Ruscoe v Cryptopia Ltd (in liq)*, providing the most recent and authoritative common law statement in the world on whether a cryptocurrency is property. The case provides significant guidance for any jurisdiction, common or civil, faced with determining whether cryptocurrencies are property. This note outlines the approach taken to 'the property question' by Gendall J, in four parts. Part I introduces the property question. Part II provides a brief overview of blockchain and the nature of cryptocurrencies. Part III briefly recounts Gendall J's reasons for the judgment concluding that cryptocurrencies are property. Part IV offers some brief reflections on the implications of the decision for property and for the relationship of property to contract.