

The Francis Forbes Society

For Australian Legal History

The Francis Forbes Society is pleased to inform members of the Bar Association that on **Monday 18 March 2024 at 5:15 pm**, Dr Lucas Clover Alcolea of the University of Otago Faculty of Law will present our next legal history tutorial in Court 13A.

His topic is 'A brief history of licences over land: From contract to property and back again?' and he gives this outline:

It has been stated "There is almost no aspect of the law relating to licences over land which has not, at some time or another, given rise to problems." Although one might be tempted to lay much of the blame for this situation at the feet of Lord Denning's (in)famous creativity from the 1950s to the 1980s, this would be a little unfair as licences over land have always "occupie[d] the uncharted borderland between contract and real property and [have therefore been] caught by conflicting terminologies and different ways of thinking." This presentation will briefly outline the three stages of the law as regards contractual licences, orthodoxy which regarded licences as purely personal rights, Denning who transformed certain licences into proprietary or quasi-proprietary rights, and the 'return to orthodoxy', before noting that they have continued to experience significant remedial growth even in their new orthodox era. Thus, courts in England and Australasia have been willing to grant licensees relief from forfeiture, specific performance, injunctive relief, and the ability to bring trespass claims, despite the fact that these remedies were traditionally restricted to proprietary rights, specifically leases. After analysing these developments, the presentation will consider whether the post-*Ashburn Anstalt* distinction between granting proprietary relief for licences whilst insisting on their personal nature, and actually recognising them as proprietary, is a tenable one. Ultimately, it will be submitted that it is not 'heretical' to describe certain licences over land as, at least weakly, proprietary in certain circumstances and such a development is entirely in line with the 'arc of [equitable] history' given equity's 'reificatory' tendency.

Supreme Court Bicentenary events – Book and Gallery launch: An illustrated history of the Supreme Court "Constant Guardian: Changing Times – The Supreme Court of New South Wales 1824-2024" will be launched by the Hon. James Spigelman AC KC on **Wednesday 3 April** at 5.15pm in Banco Court, Level 13 Law Courts Building 184 Phillip Street Sydney. On the same occasion, Her Excellency the Honourable Margaret Beazley AC KC, Governor of New South Wales will officially open the **Supreme Court History Wall and Gallery**. The history will be available for purchase on the night and subsequently. With limits on seating, there will be a livestream in Court 13A: see [Bicentenary events \(InBrief\)](#). A link to the Court's Bicentenary page is here [Bicentenary of the Supreme Court](#)

Membership renewal and supporting the Francis Forbes Fund: A renewal / application form is available here: [2023-24 Francis Forbes Membership Application and Renewal](#). Memberships are renewed annually and will run to 30 June 2024. Please return a completed renewal / application form to the address on the form or email to membership@forbessociety.org.au.

The Society is dedicated to studying and documenting the history of Australian law. Its membership includes legal practitioners, academics, journalists and students. Benefits of membership include timely notification of legal history events *via* updates emailed to members from time to time and opportunities to obtain discounts on publications from time to time published or arranged by the Society. The Society encourages **donations** to the **Francis Forbes Fund** – members know that one of the Society's objects is to encourage and promote research into Australian legal history, and it maintains a fund for that purpose to which donations may be made.

Forbes dates to note for the diary:

- 18 March Lucas Clover Alcolea of the University of Otago – legal history tutorial on *‘A brief history of licences over land: From contract to property and back again?’*
- 3 April Launch of the illustrated history of the Supreme Court “Constant Guardian: Changing Times – The Supreme Court of New South Wales 1824-2024” by the Hon. James Spigelman AC KC in the Banco Court, and official opening of the Supreme Court History Wall and Gallery by Her Excellency the Honourable Margaret Beazley AC KC, Governor of New South Wales.
- 12 June Robert Turnbull, barrister (8th Floor Wentworth Chambers) and previous tipstaff to the Chief Judge in Equity the Hon P A Bergin – legal history tutorial on *‘The History of precedent’*