

*Property Law Cases and Materials* by R. SACKVILLE, LL.B. (Hons.) (Melb.), LL.M. (Yale); Professor of Law, University of New South Wales and M. A. NEAVE, LL.B. (Hons.) (Melb.); Lecturer in Law University of Melbourne. (Butterworths, 1975, 2nd Edition), pp. i-lxi, 1-981. Cloth, recommended retail price \$34.10 (ISBN: 0 409 43840 5); Paperback, recommended retail price \$24.90 (ISBN: 0 409 43841 3).

Seeing a new edition of an established text is like meeting an old friend whom you haven't seen for some years. From a distance he or she usually looks much the same, but, on closer inspection, changes become all too evident. But there is a difference between friends and books. Friends will have become older looking. The doctrine of erosion will have effected a gradual and imperceptible change over the years. On the other hand, in a new edition a book should be rejuvenated and, through a number of editions, the doctrine of accretion (and, if the editing is well done, the erosion principle too) will be applicable. The editing process can be much more effective than a face-lift could ever be.

Thus, it was good to see the rejuvenation of Sackville and Neave. Nearly every page of the book has a change of some kind, and, in most cases, I feel that the changes are an improvement. Perhaps some of these alterations have come about through the authors using the work as a teaching tool, and they have added further penetration to the book's detailed scholarship. Soon after I started teaching law I remember a then colleague of mine remarking, as he jotted down a note in one of his texts after coming from a lecture: "But for my students my books would never get any better". It was not true, as that colleague always strove mightily after scholarly excellence, but his jocular tribute is one that almost all of us could pay to our students.

I enjoyed reading the new edition of Sackville and Neave, although I admit that there are not many of us who sit down for a "good read" of a property law book for relaxation. But there are such interesting questions as, "When is a fish as good as fried?" All this, and much more, you will find on page 508 of the new edition.

Perhaps we can almost say that there are at least two basic kinds of casebooks: one in the American sense of being virtually the materials to be discussed in a particular course; and one in the English sense where the materials are used basically to supplement the lecture series in a course. I recognize that this characterization is too bald, and I would not like to be thought to be saying that in the one case the casebook is meant to be used instead of a law library, and, in the other, the casebook is to be used to lessen wear and tear on the law library, but I think that the basic proposition is valid. Of course, there are exceptions.

In Australia, we have casebooks of both kinds. Probably, two casebooks in the property field, Harrison and Sackville and Neave, illustrate both my distinction and the Australian position.

Sackville and Neave do set out the cases and do formulate their own opinions and ask their own questions in a very thoughtful manner. Almost always, their questions are hard to answer with certainty (at least, they are hard for me to answer!); this is a very strong plus for

the book. But, perhaps paradoxically, I tend to use Sackville and Neave as a casebook in the English sense. This is partly because I do not use the casebook method of teaching in the way that many U.S. teachers allege that they do, but perhaps, in fact, no longer do. But, more especially, I use it for this reason because Sackville and Neave in its present form does not quite catch the essence of the courses in Property that we are trying to develop in the Australian National University. Again, I recognize that a casebook reflects very personal choices, not only of cases, but of teaching methods and of course rationales and content. It is only course content and rationale on which I am reflecting at the moment. There are both pluses and minuses in the second edition in this respect; or, perhaps, it may be said that there is an "in", an "out", and a "line ball" decision.

The "in", so far as our course is concerned, would be the inclusion of the materials on the rule against perpetuities. As my students know, this is probably my least favourite teaching area. Nevertheless, some discussion of the rule is essential in a basic property course even if, as is done in some Universities although not at the Australian National University, detailed treatment is left to a later course such as Trusts.

The "line ball" decision would be the inclusion in this edition of the section on mortgages. In our primary course at the Australian National University, we deal only briefly with the mortgage concept and leave detailed treatment to a later course. The present section is a little too full for the introductory aspects, but not really full enough for our advanced course.

The "out", and undoubtedly my strongest criticism of the book, concerns the exclusion of Part 12 dealing with problems of planning and conservation of resources. I note from the Preface that these materials were excluded reluctantly, but I must say that I regard the inclusion and discussion of some material on these aspects as important in a basic property course. To this I would add my disappointment at the exclusion of some of the material on compensation in Chapter 3. Perhaps it is a particularly live issue in the A.C.T., but certainly the most popular topic chosen by Property 1 A.N.U. students this and last year for their completely self-chosen and nominated essay topics has been the general area of compensation. Perhaps some people will deem it a trifle odd to see me arguing for the inclusion in a property book of some constitutional and administrative law elements, but I regard it as vital to discuss the changing face of property law in a basic course. The impact of government and other generally public law elements must be considered if one is not to get a distorted view of what land law is today. Could we hope to have some re-worked materials in these areas included in the next edition?

Although Sackville and Neave is described as cases and materials on property law, it is basically a land law book with a nod in the direction of chattels from time to time. I mention a few of these nods: there are passages on acquisition of proprietary interests in chattels from pages 484-493 (incidentally, when I looked at the Table of Contents at page

xviii, I wondered what *Brunker's* case<sup>1</sup> was doing under chattels, but on looking at the text on page 493 I find the heading *Land* which gets missed in the Table of Contents), and again at pages 504 and 508. Bonds get a mention under Commercial Interests—Leases and Bailments at pages 715-718, and at pages 852-856 we have an excursus on restrictive covenants and chattels. There are other small references to chattels too.

This is not a criticism of the book because I would agree that probably the balance achieved in the book is a proper one for an introductory property course. But there is an associated criticism that I would make of this edition. In the previous edition, the chapter on fixtures appeared towards the beginning of the book and the passages could be used to demonstrate not only the difference between land and chattels but also demonstrate the difficulties that exist at the margin between them. In the second edition, fixtures are dealt with under the heading of Acquisition of Proprietary Interests. Although I accept that the subject logically fits where it is now placed, I feel that it is to the advantage of students to deal with these matters very early on in the property course. Of course, what I simply do is use the materials towards the beginning of the course in any event.

Some new or re-emerging matters are covered in this edition. For example, pages 87-95 deal with remedies for recovery of possession of land including the matters of law raised by occupation of land by "squatters". Of course, this is no new problem but it has new connotations in the context of a shortage of urban dwellings. The practice of "gazumping" is touched on at page 214 and it is perhaps surprising that the English Law Commission Paper on "subject to contract" agreements is not referred to.

Some old friends I was sad to see disappear. *Wood v. Leadbitter*<sup>2</sup> and the Doncaster races are gone. Instead of *Wood v. Leadbitter* we have *Hounslow London Borough Council v. Twickenham Garden Developments Ltd.*<sup>3</sup> I accept that it is a good case when in juxtaposition with *Cowell v. Rosehill Racecourse Co. Ltd.*<sup>4</sup> but I could have accepted the change to Twickenham more easily if it had given us a reference to rugby union. Instead, all that we have are drains, sewers, roads and car parks—I suppose the tyranny of the internal combustion engine was bound to intrude.

Another old friend that disappears is *Attorney-General v. Brown*,<sup>5</sup> but this loss does not make me grieve because in its place there appears the graceful scholarship of Blackburn J. in the landmark decision in *Milirrpum* [incorrectly spelt each time it appears except at page 137] and *Others v. Nabalco Pty Ltd and The Commonwealth of Australia*.<sup>6</sup>

<sup>1</sup> *Brunker v. Perpetual Trustee Co. (Ltd)* (1937) 57 C.L.R. 555.

<sup>2</sup> (1845) 13 M. & W. 838; 153 E.R. 351.

<sup>3</sup> [1971] Ch. 233.

<sup>4</sup> (1937) 56 C.L.R. 605.

<sup>5</sup> (1847) Legge 312.

<sup>6</sup> (1971) 17 F.L.R. 141.

One old "friend" that goes without evoking any expression of regret from me is *Gibbs v. Messer*<sup>7</sup> which has bedevilled and distorted indefeasibility for far too long in my view.

Inevitably, in such a work there are a few misprints, but they are not so intrusive as to merit complaint. Indeed, I mourn the passing in this edition of one of my favourites. The previous index contained the entry "Homes, Oliver Wendell" and it suggested to me a rather superior kind of "spec" building firm.

One matter not entirely solved in the book that is largely a problem peculiar to the Australian National University is the difficulty in winking out the A.C.T. law. The authors state in the Preface that an "attempt has been made in this edition to include references to the relevant legislation in force in the Australian Capital Territory". But they go on to say that it "is not possible to be altogether certain that the attempt has been successful because of the rather confused state of the law in the Territory in certain respects".

I am very grateful to the authors for putting in as many of the A.C.T. references as they have and it would be churlish of me to criticize them on this issue in any way. But in using Sackville and Neave, A.N.U. students must remember that the references are not exhaustive. Instead they are rather like those definitions in statutes which define something as "including" certain things rather than as "meaning" something: one is never quite sure what is *not* there.

Many, but no means all, of our A.C.T. property law deficiencies would be ameliorated if we had a proper Conveyancing or Property Law Ordinance and an updated Real Property Ordinance, although the latter is not quite as outmoded as some others in Australia. There are dozens of practical problems that practitioners encounter. I give one example: it may still be possible to argue that in some circumstances a tenancy from year to year with its peculiar "notice to quit" provisions can arise.

There are many other reforms necessary in the area of real and personal property in the A.C.T. Indeed, Professor Sackville and Mrs Neave mention in their Preface that the *Statute of Frauds* 1677 is still in force here. Perhaps, with a proper sense of history, the Statute should be abolished in its tercentennial year, 1977!

It is becoming *de rigueur* to complain about prices of basic textbooks these days. But, in the field of casebooks (as opposed to the straight textbook area), Law Schools must start to look at and see the balance between aesthetics and economics. It is aesthetically more pleasant to use a book than it is to use duplicated materials. I wonder if the economics are likely to swing away from the book back towards prepared materials; it would be a pity if this were so when one sees and applauds the value of giving wide currency to the ideas that abound in a book like Sackville and Neave.

DOUGLAS J. WHALAN\*

---

<sup>7</sup> [1891] A.C. 248.

\* LL.M. (N.Z.), Ph.D. (Otago); Professor of Law, Australian National University.