

*The Standard Contract for Sale of Land in New South Wales*, by Peter J. Butt, Sydney, The Law Book Company Limited, 1985. lxxxiv + 948 pp. \$95 (cloth).

In his preface to this book, Professor Butt deferentially hopes that it will not draw the rebuke attracted by an English legal text, where the reviewer commenced with the words: "It is difficult to see the occasion, or a use, for this book". On the contrary, for the legal profession in New South Wales, the academic, and the student, this is a book which has been waiting to be written. It is a book true to its title, and it is both extensive and intensive in its coverage of the sale of the land in New South Wales, as that subject is governed by the form of contract approved by the Law Society of New South Wales and the Real Estate Institute of New South Wales under which most land in New South Wales is sold.

The book consists of 948 pages of text, including 50 pages of detailed indexing, and a further 80 pages of "preliminaries" in Prefatory Acknowledgments, Table of Cases (exceeding 3,000), Table of Statutes, and a copy of the form of Agreement for Sale of Land in New South Wales—1982 edition.

The contents follow the sequence of the contract itself, and cover a detailed analysis of "The Particulars", "The Conditions of Sale" and "The Schedules". Nothing so comprehensive or so specific has hitherto been attempted in the form of a direct and detailed examination of the form of contract from beginning to end. Since most of the law and practice regarding conveyancing in New South Wales is centred upon this form of contract or its predecessors, the work is both a practice book for the profession, and a treatise on the conveyancing of land in New South Wales of high academic quality.

After an introduction of such unstinted praise, it is perhaps appropriate and necessary that this reviewer should disclaim ties of blood, and establish his separate identity from the author. The more so is this necessary considering the substantial parallels which exist between us. We are both known as "Peter", and there is nothing much between us in surnames. We both hold degrees in Arts and Law from Sydney University—at which this reviewer preceded the author by some 20 years as Challis Lecturer in Conveyancing. Both are solicitors of the Supreme Court of New South Wales. Both have an interest in church music and both found ourselves appointed to the Legal Reference Committee of a particular church denomination in Australia. We both, for many years, have served on the Conveyancing Committee of the Law Society, and have been interested and involved in the work of that Committee, and the reviewing and recasting of the Contract for Sale of Land about which the book is written. We have both contributed for many years to the Australian Law Journal on matters "conveyancing", and for what it is worth, we are both married to wives who are redheaded. It is therefore not to be wondered, that with such identity, and despite the reviewer's more mature years, the author and the reviewer confess to parallel outlooks on most aspects of the subject.

It is accordingly with considerable sympathy from the reviewer (and regret from the author) that the first comment must be to say that the book has been overtaken by events in conveyancing-theory and practice. These have occasioned the production and publication of a 1986 edition of the Agreement for Sale of Land—albeit bearing a marked hereditary resemblance to its 1982 ancestor. What appears at a number of places in the book, needs to be read with caution—since it represents comment upon the state of the law and the form of the contract, as they stood on the 1st October, 1984. Specifically, since then we have seen the advent of Section 52A of the Conveyancing Act, the Conveyancing (Vendor Disclosure and Warranty) Regulation 1986, the Conveyancing (Passing of Risk) Amendment Act 1986 and the amendment to Section 149 of the Environmental Planning and Assessment Act, and Schedule 2 of the Regulation under that Act. By reason of those legislative changes, and to some extent independently of them, considerable alteration to the form of contract has emerged in the 1986 edition. It is, of course, part of the nature of the legal process, that changes will occur, but the author might reasonably have expected a longer period of stability than has eventuated.

What is written generally remains valid and effective in commentary; it simply requires up-dating and adapting to the changes which have occurred. To assist interested readers, the following is a brief resumé of the changes occasioning the necessity for revision.

**In the Particulars:**

- (i) F, has been simplified, largely because of the statutory requirement for annexing copies of title documents.
- (ii) A new paragraph J has been inserted to comprehend a deliberate consideration of whether Land Tax is to be adjusted.
- (iii) Provision for Limited Title has been included.
- (iv) A provision for the number of bids allowed at auction has been deleted. (Provision in the appropriate case for this is still required; but in practice, Clause 1 serves the purpose.)

**In the Conditions of Sale:**

- (i) Clause 4(a) has been recast, the better to reflect the law.
- (ii) Clause 5 has been significantly amended in respect of titles other than Old System, by making the giving of particulars an option of the purchaser.
- (iii) Clause 6 has been amended so that the time for requisitions and submission of the transfer in the case of Torrens Title, is reckoned from the making of the contract.
- (iv) Clause 7 has been amended to clarify the compensation for errors and mis-descriptions.
- (v) Clause 12 has been re-written and bears little resemblance to the clause of that number appearing in the 1982 edition, because it

replaces those provisions with the substance of the vendor-disclosure and warranty requirements of statutes and regulations. Most of the commentary that remains is relevant, but needs to be applied with caution.

- (vi) Clause 13 includes amended provisions relating to the adjustment of Land Tax, taking account of some statutory changes, and the non-statutory but practical requirement to disclose the Land Tax position.
- (vii) Clause 19 has undergone some change to relate it to the legislative changes which have occurred.
- (viii) The First Schedule has a minor alteration by addition of the word "unendorsed".
- (ix) The Fourth and Fifth Schedules have been re-written, since they now are the "creatures" of the statutory changes. The Fourth Schedule contains a listing of the documents required to be annexed to the form of contract before signature by the purchaser (on pain of rescission by the purchaser); while the Fifth Schedule contains a disclosure of those matters which do affect the property (such as town planning and sewerage pipes) amongst the long list in Clause 12(b) which do not.
- (x) Relatively minor change has been made in Clause 14A(c) relating to Strata Title.

The 1986 changes represent nothing more than an irritating challenge to Professor Butt which will greet his return from sabbatical leave in 1987.

Having thus dealt with those matters in which a change is necessary, let me now comment on those substantial aspects of the book which remain valid, despite "1986". These represent by far the major portion of the work, which moves in and out from the words of the contract to the general law, as each condition of the form of contract is dealt with.

Cross-referencing to other related clauses and subject-matters is comprehensively and extensively done, and footnotes abound—lending authority, amplification and reference points without obtruding too greatly into the flow of the text.

The author, drawing on his experience as a solicitor, and upon relevant imagination, deals with the "what-if's" at appropriate places through the text—so that there are few questions in relation to the use and abuse of the form which remain either unasked or unanswered. For example: "What if no agent's name is inserted in the blank?" (See pp. 13 and 54.) "What if the description of the land differs from the actuality?" (The subject of "approximation" is extensively dealt with, both in the text and in a special appendix—see pp. 38, 370, and 895-897.)

Comprehensive guidance is given for example, to Clause F(b) of the Particulars, dealing with furnishings and chattels and the related subjects of stamp duty and fixtures; and similarly, useful material is collected under the headings of "Benefit of Possession" and "Tenancies" (pp. 57-62 and 790-833).

The matter of insurance is dealt with at pp. 256 and 830; but the commentary needs some re-writing as a result of the 1986 amendment to the Conveyancing Act, dealing with the passing of risk.

The comments deriving from the "Title System of Land" (Particular K) present a comprehensive treatise on relevant aspects, for conveyancers, of the different systems of title—including matters of priority under the Torrens System, deducing the title under Old System, and the various forms of home unit title, to mention but a few of the topics to be found within that subject-matter.

In similar vein, the comment upon Clause 1 relating to auctions represents a comprehensive treatment of the matters relevant for auction sales—the statutory requirements, obligations and privileges (pp. 165-200).

The comment on Clause 2 and Clause 3 relative to deposit and price gives a significant review of the status and judicial treatment of deposits, and the provisions relating to deposit (pp. 201-252).

The advent of the 1982 edition of the contract was marked by considerable interest in the term "muniment" as it appears in Clause 4—relating to the passing of title. There is a five page coverage of the meaning and consequences (pp. 270-275).

It is not enough to mention requisitions and transfer without examining their nature and purpose, and such difficult questions as waiver and time.

It was not until page 627, on the subject of covenants, that this reviewer found any comment by the author which asserted, without putting in question, as the circumstances required. On the subject of "departure from the terms of any easement, covenant, or restriction as to user", the contract requires the purchaser to take subject thereto. It is this reviewer's belief that the contract provision is there only for more abundant caution—but that the law, in any event, requires the purchaser to take subject to any breach, without specific disclosure. The author, however, says, "In the absence of such a paragraph, the purchaser could object to taking the property subject to a breach of any easement or covenant affecting it".

There is a useful and comprehensive examination of such matters as town planning and "proposals" in relation to the existing Clause 12. Most of what is written is still relevant, but needs to be re-applied to the new form of contract. The comment on "adjustments" in Clause 13 presents all you ever wanted to know, but were afraid to ask (pp. 665-717).

The author travels with sure foot, identifying relevant matters and dismissing irrelevancies, in a way which could only be found helpful for those in difficulty or doubt over the meaning, intent or application of the various provisions of the N.S.W. Agreement for Sale of Land.

If you are a practitioner in conveyancing, you need this book. If you are not a practitioner in conveyancing, then your need for this book is greater still.

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