

LAND LAW, by Peter Butt, 2nd edition, The Law Book Company Ltd, 1988, liii and 625 and (Index) 41 pp. \$79.50 (hard cover), \$49.50 (soft cover).

Professor Butt's Introduction to Land Law was published in 1980. The present book is a second edition, in the writing of which "the temptation to expand the treatment of some areas of present-day land law, and to delve more deeply into some of the history behind land law, proved irresistible" (preface vii). Hence the shortened title. A brief outline of the contents will show its flavour and approach.

After a brief account of the sources of New South Wales law and of terminology (pp. 1-8) chapter 2 deals with land—its vertical and horizontal limits, fixtures other than removal by tenants and boundaries. The next nine chapters (pp. 34-134) are primarily historical viz:—Feudalism and Tenure; The Law of Free Tenures; The Machinery of the Law; Ownership and the Doctrine of Estates; Uses, Trusts and Equitable Interests; The Fee Simple; The Fee Tail; The Life Estate; Remainders and Executory Interests. Where appropriate the law is brought up to date, so as well as assimilating basic concepts the reader will learn, for example, about:—the repeal in 1971 of the Statute of Uses, leaving some loose ends (pp. 82, 133-4); the statutory relationship between law and equity (pp. 87-9); the relevance or otherwise of words of limitation in Old System and Torrens Titles (pp. 93-5); the abolition by the Conveyancing Act 1919 of both the Rule in Shelley's case and entails (pp. 96, 104); and which Australian trees may perhaps be "timber" in a contest between life-tenant and remainderman (pp. 111-13). Chapters 12 to 14 on Perpetuities (pp. 135-174), Settlements and Trusts for Sale (pp. 175-184) and Co-Ownership (pp. 185-217) conclude what may be termed the first section of the work. As an English academic lawyer, I am attracted by the compulsory 80 year period for perpetuity under the NSW Perpetuities Act 1984 s. 7 which compares favourably with our mixed economy—see the UK Perpetuities and Accumulations Act 1964, ss. 1, 3; similarly there seems much to be said for the absence of our compulsory trust for sale on co-ownership. Professor Butt then turns to the commercial aspects of land law in chapters 15 to 18 containing detailed accounts of Leases, Easements and other Incorporeal Hereditaments, Covenants affecting Freehold Land, and Mortgages (pp. 218-448). Next are three chapters 19-21 on Old System Title (pp. 449-488), Torrens Title (pp. 489-547) and Strata Title (pp. 547-570) and then three concluding chapters on Prescription and Limitation, Crown Lands and Rent Control and Security of Tenure (pp. 571-625). There are useful cross-headings within chapters and nearly every paragraph in the text is numbered in square brackets by reference to chapters e.g. [101], [201]. Cross-references and the Index cite these paragraph numbers and not pages. Any temptation to write footnotes rivalling the text has been resisted, but some 2000-2500 cases are cited from all Australian jurisdictions, New Zealand, England and occasionally elsewhere. One old friend I did miss—*White*

v. *City of London Brewery*, the exemplar English decision on the duties of a mortgagee in possession; presumably the difference between a free and a tied public-house does not excite Australian lawyers. Statutes cited are primarily from New South Wales (some 90) with 10 from the Commonwealth of Australia, 1 each from Queensland and South Australia, 3 from Victoria and 60, many historical, under the heading "England, United Kingdom and Imperial".

Three value judgments must be attempted, on the quality of writing and analysis, on the arrangement of topics and the amount of history, and on the usefulness of the book outside New South Wales.

On the first head Professor Butt is, in my view, entirely successful. His narrative is easy to read and is enlivened by the inclusion of the facts of a good many cases, and by a selection of pithy quotations from judgments. His analysis of problem areas of law is full and penetrating. I have been impressed by, inter alia, the explanation of the doctrine of estates (pp. 64 et seqq); chapters 11 and 12 on Remainders and Executory Interests and Perpetuities (especially the operation of class-closing and its relation to the Rule at pp. 154-160); the discussion of the annexation of the benefit of restrictive covenants to freeholds, where English and Australian case-law and the operation of the NSW Conveyancing Act 1919, and the need for schemes of development are clearly set out (pp. 345-363). Chapter 20 on Torrens Title is crucial because "By 1987, the number of parcels under Torrens title had risen to 2,700,000, the number under old system had fallen to 90,000 and conversion from old system to Torrens was taking place at the rate of 5000 per year." (p. 492). Professor Butt gives an interesting short history of Torrens Title and a full exposition of the substantive law, of which the heart is the discussion of indefeasibility and the limits and exceptions thereto, including the operation of caveats (pp. 495-533). He analyses fully and clearly the statutory provisions and cases, explaining the problems which exist, such as the relation between "fraud" and the doctrine of "rights in personam". Here one may submit that the courts are shown to be seeking justice, or equity, despite the fairly strict wording of the NSW Real Property Act 1900. Professor Butt's account reinforces my personal view that debate in Australia and New Zealand, and equally in England, has been distorted by excessive claims for registration of title, where the emotive word "indefeasibility" has played an important part. Chapter 21, on *Strata Titles*, explains clearly how company law has been summoned to make up deficiencies in the land law, and is thoroughly up-to-date by including a section on time-sharing (pp. 567-570).

There are probably as many views about the best arrangement of a book on land law as there are teachers of the subject! And students may be advised to read chapters in any order, though I believe most prefer to read straight through. In this book the early discussion of "Land" gives students something concrete (sorry!) to consider in the midst of apparently unnatural concepts, and the postponement to "Leases" of rights

of removal of fixtures by tenants should help to prevent confusion that has even infected the courts (see pp. 294-5). Similarly covenants affecting freeholds are usefully separated from tenants' covenants. The final chapter on Rent Control and Security of Tenure seems logically to belong to "Leases" but separation can be justified by its very limited application at date of publication. Prescription would in my view be better included with Easements and separated from Limitation. One major question is whether more should be said about Torrens Title at an early stage, since most students reading the book will be unlikely to meet an Old System title except as a strange and probably unwelcome exception—see the statistics cited above. Should not the first thought be "What, if anything, does the Real Property Act 1900 say about this?" Admittedly there are references to Torrens in each chapter where the law is brought up to date, but there does seem to me to be a strong case for either a short general introduction (less of course the problems of indefeasibility) perhaps in the chapter on Ownership and the doctrine of Estates, or for moving the chapter to just before or after Co-ownership. The second major question concerns the proper amount of history for a general textbook. Obviously there must be some history—the question of principle is whether to keep it to the minimum necessary to explain the present law or, with Professor Butt, to "delve more deeply". Obviously this is very much a matter of opinion. I have to declare my position as a minimalist who has been somewhat shaken by the very readable historical chapters in this work!

Lastly, how useful will this book be outside New South Wales? An English opinion can only be presented with much diffidence but it would seem that the only problem would normally be the different statute references, for many of the cases cited show that the substantive law is the same, as of course are the basic concepts and history.

This review has been written with students and their difficulties in mind. However, the book will be invaluable also to teachers of law and to practitioners concerned with points of land law; the book will, in my view be easy to use for reference and productive of answers. Butt on Land Law, then, is a major and worthy contribution to legal literature in the classical tradition and deserves a warm welcome.

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