

Cases on Land Law, edited by W. N. HARRISON, B.A., LL.M., Barrister-at-Law, Garrick Professor of Law in the University of Queensland. (The Law Book Company of Australasia Pty Ltd, Sydney, 1958), pp. i-xvi, 1-754. Price £4 15s.

This review represents the fourth attempt by the reviewer to make a fair assessment of this addition to the teaching texts in real property. If there were sufficient time this review might easily be replaced by a fifth version and that in turn replaced by a sixth.

The first obstacle to be overcome is an ingrained habit of thought which classifies real property as a logically organized 'principle' subject. While every teacher of property knows that the legal principles are neither so certain nor so logical as is commonly supposed there does exist a detailed, complex organization of rules which must be mastered before there can be any intelligent discussion of the doubtful points. These principles can be taught against the background of the cases or they can be taught without any reference to the authorities which support them. The danger in the first alternative is that students will be compelled to limp through a number of dull, difficult cases only to learn that this has been little more than an intellectual exercise, like a problem in mathematics, because the point is unlikely to arise in practice. Nothing is more certain to kill a student's interest in any subject. Some intellectual exercise is most desirable but there are ample opportunities to set this exercise in the practice of a twentieth century solicitor. The law derived from *Crouch v. Fastolfe*¹ and that family of cases hardly justifies their inclusion in this collection. It would have been far more profitable to set up the *Downie v. Turner*² problem. Again, *Denman v. Brise*³ is a more striking and instructive case than *Paradine v. Jane*.⁴ While *Allen v. Roughley*⁵ is a modern case it is very doubtful whether the effort involved in understanding the judgments of the High Court is suitably rewarded. Certainly other cases seem to have more pressing claims for inclusion.

The obvious danger of the second alternative is that the 'law' which the student learns will bear a metaphysical unreality when the student is confronted with a practical problem. In many areas a minimal reference to fact situations will meet the danger but there are some areas of real property which can only be taught by considering decided cases (e.g., what amounts to 'possession' for the purposes of the Statute of Limitations and what action is required of an owner who desires to break an existing adverse possession). The reviewer finds it almost incredible that there is no reference to cases such as *Clement v. Jones*,⁶ *Robertson v. Butler*⁷ and *Symes v. Pitt*.⁸

Already some qualifications need to be made to the law represented by the cases collected in this book. *Woodall v. Clifton*⁹ has been considered in *Griffith v. Pelton*.¹⁰ *Taylor v. Webb*¹¹ has been distinguished in *Brown v. Davies*.¹² The note¹³ by Professor Harrison on the operation of a qualified covenant not to assign may need revision in the light of

¹ (1680) Sir T. Raym. 418; 83 E.R. 219.

² [1949] 1 K.B. 22.

³ (1955) 94 C.L.R. 98.

⁴ [1915] V.L.R. 31.

⁵ [1905] 2 Ch. 257.

⁶ [1937] 2 K.B. 283.

⁷ [1951] 2 K.B. 112.

⁸ (1647) Aleyn 26; 82 E.R. 897.

⁹ (1909) 8 C.L.R. 133.

¹⁰ [1952] Argus L.R. 750.

¹¹ [1957] 3 W.L.R. 522.

¹² [1957] 3 W.L.R. 818.

¹³ At p. 296.

the difficult case of *Thomas Bookman Ltd v. Nathan*.¹⁴ Perhaps the question is too complex to be accurately summarized in two short paragraphs. Incidentally, one of the few typographical errors is that on page 289 where a reference is given to section 14 of the Victorian Property Law Act instead of to section 144.

Generally speaking, Professor Harrison's notes are both concise and accurate. However, the statement, "To be a lease the transaction must give exclusive possession . . ."¹⁵ may need to be qualified in the light of *Radio Theatres Pty Ltd v. City of Coburg*.¹⁶ Occasionally his comments raise points which the reviewer considers would be better omitted and reserved for seminar discussion because space limitations prevent an adequate discussion of the problem.

The order in which the material is arranged could be improved by the acceleration of the cases on future interests. Under the present classification the subject of adverse possession must be left half-baked until some knowledge of the law relating to future interests is acquired, and a teacher who hoped that his students would understand *Woodall v. Clifton* would be unduly optimistic if he were following the order adopted by Professor Harrison.

On many occasions the legislature has modified the common law rules. Although the preparation of a table of statutes indicating the comparable provisions in the different States would be a herculean task its value is so obvious that it should be considered before the publication of any new edition.

Despite these criticisms the reviewer must admit a grudging respect for what Professor Harrison has achieved. The desperate inadequacy of university law libraries forced him to collect leading cases rather than teaching materials. The test which he set himself was to select those cases which all students should read. One could not quibble with that test but there are some areas where one would quibble over its application. However, a pioneer has an unenviable task and it would be strange to find unanimity on either his selection or his comments on controversial points. This much is certain: this book represents a thoughtful and substantial addition to the materials available in this subject.

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¹⁴ [1955] 2 All E.R. 821.

¹⁵ At p. 148.

¹⁶ [1947] Argus L.R. 603.