

history of the federal movement as a whole in the nineteenth century, and the history of the referenda campaigns in 1898, 1899 and, in Western Australia, 1900.

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*Property Law Cases and Materials*, by R. SACKVILLE, LL.B. (HONS) (MELB.), LL.M. (YALE) and M. A. NEAVE, LL.B. (HONS) (MELB.), (Butterworths, Australia, 1971), pp. 1-1187. Recommended Australian price \$25.00 (hard), \$18.00 (limp). ISBNs O 409 34012 X & O 409 34011 I.

The value of collections of cases and materials is always debatable. Much depends on a width of selection which will permit their use by those whose ideas do not entirely coincide, coupled with a sufficient depth to form the basis for discussion and analysis, both being accomplished within a book of less than encyclopaedic proportions. This collection wholly succeeds on all these points. The omission of mortgages will annoy some. While it seems entirely justifiable on practical grounds to exclude 'security' questions, perhaps a reference for 'alphabet' purposes is desirable. Trusts and perpetuities go together. Trusts make their bow but perpetuities remain off stage. One would have thought a brief mention in the context of the limitation on the ability to create future interests is called for. The only striking substantive omission appears to be remedies, specific references to which appear solely as part of a comparison between legal and equitable interests and in the context of leases. A surprising 'adjectival' omission is the lack of a table of statutes.

The materials include examples of documents of title of the general law and Torrens system—thereby meeting an often voiced criticism of property courses that the students cannot appreciate the details of transactions without examples of the documents used in them. Many of the 'notes' on the statutes and cases are in the form of testing questions. The value for teacher and student of these materials as a collection is indisputable. But it is perhaps questionable whether the book wholly attains its aim of providing 'a coherent set of materials for a property law course'.

First, the ordering of the materials seems at times to militate against the desired result. This is, perhaps, not so important in a collection such as this as in a text book or monograph. Teachers can always pick and choose. But there are some rather curious interruptions in what is mainly a steady progress from the concept of property to control of its use. The impact of the Federal Constitution with an excursion into the principles of compensation appears quite independently of the statutory regulation of proprietary interests. Concurrent ownership is not linked either with the notion of title or with fragmentation of proprietary interests. The doctrine of fixtures is included as part of the study of the concept of property—the translation of personal to real. But accession and accretion are treated as modes of acquisition. Wherein—in analysis rather than history—lies the distinction?

The last two chapters deal with planning. In chapter 11 the authors include covenants and easements and profits are briefly mentioned. Is it not difficult to fit some easements, profits and covenants into the concept of regulation of use—surely a right of way is no less and no more an interest in land than (for example) a lease or a licence? Even more could this be said of interests in gross or obligations on persons who have no interest in any land which is burdened.

The concluding chapter introduces an entirely new area—rights concerning water—and concludes with land development control. There is no doubt that

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the inclusion of water does not dilute the interest or relevance of the materials. But it does seem strange in the context of the collection to wait until p. 1037 before even referring to water problems. The postponement of 'water' until the student has neared the point of exhaustion will not, one fears, have of itself any reviving characteristics; and the question of whether proprietary interests exist in water and the policy reasons relevant to that consideration seems a matter for chapter 1 rather than chapter 12. The treatment of water rights as a whole and the inclusion of all matters concerning easements and covenants in the chapters on the regulation of use of land shows, it would seem, a tendency to place a traditional body of material together without inquiry as to whether in a 'property' study some of its content or a connecting link is needed elsewhere.

Secondly—a point not entirely independent of the first—there is at times a distinct lack of connection (and perhaps of balance) between land and other objects. Compare the treatment of leases and bailments—the latter appears as a sketchy postscript to a very detailed consideration of leases but is said to illustrate the similarities and differences between bailments and leases. But no reference is made to the creation of bailments, bailees' rights against the bailor's successors in title, the place of equity or assignability. If we are to have comparison then perhaps the two categories compared should be treated (if not in the same depth) at least according to the same framework.

Further, it is rather odd to read of the rejection of the classification of real and personal property only to see it used in a chapter heading. The treatment of fragmentation of interests marches straight into the land with no attempt at encouragement of comparison with other objects except by an extremely brief note appearing *after* discussion of tenure, estates and remainders. Trusts are examined almost wholly in a land context. A summary of future interests (at pp. 266-7) in fact (or rather in law) relates to land but there is no indication of this limitation. Registration is treated in chapter 6 ('Statutory Regulation of Proprietary Interests in Land') and as a result it is seen not as a focal point of property law but as an instrument of land law.

A final point goes rather to the challenge made by the collection; and while not unrelated to the coherence of the materials it focuses more on the method of treatment of 'property' questions. Is not a discussion of whether one can have 'property' (e.g. in news or marital confidences (which is discussed in chapter 1) only half the preliminary question? Should it not—particularly in the light of Cohen's dialogue with which the book opens—be connected with an inquiry into the characteristics (or criteria) of the property idea? What does it mean that I have a 'proprietary interest' in my house, car or a debt owed to me? In the introduction to chapter 2 (dealing with the linking of possession and title) the authors focus on the 'right to recover the object claimed'—but do not indicate that, so far as chattels are concerned, no such right exists. Yet, presumably proprietary interests exist in chattels.

Further, chapter 2 is based solely on materials dealing with possession as a root of title. But this surely over-emphasises that aspect. Is possession or the right to it not usually a consequence of a proprietary relationship?—and the entitlement (both as to content and sphere of enforceability) depends on the nature of that relationship.

The first part of chapter 5 concentrates on the use and trust. A reference to other equitable interests would not come amiss especially as they are used later in the chapter to illustrate the differences between legal and equitable interests. 'Equities' appear as Part VI of the chapter and are presented in the context of licences. Would it not be preferable to introduce the student to a study of the labels applied to interests in equity and at law (whatever the object) and to the label of 'equity' as part of the general fragmentation rather than attach it to the revocability of a licence? Is not this the very type of confining limitation that the book seeks to avoid? 'Priorities' forms the final section of this chapter—but questions of priority are not restricted to conflicts between legal and equitable interests. Are they not deserving of a distinct chapter?