

for unions its usefulness to employers as an industrial relations weapon is likely to be more limited to the actual threat of penalties. Given the character of Australian industrial relations and the financial plight of the bulk of labour organisations, it is probable that most unions either could not or would not meet their liabilities. Even so, the Trade Practices legislation along with the whole range of other forms of penalties which provide sanctions against unions for collective action do serve to regulate and confine their operations. While trade unions infrequently incur the sanctions which may be imposed upon them they do not in general disregard their possible invocation.

Sykes' volume provides a thorough and detailed history of common law and legislative action on strikes. Perhaps more importantly his treatment of the subject provides little encouragement for those who believe that industrial conflict can be reduced by adding further legal controls. It is a message that should be conveyed a little more forcefully to those in power.

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The Torrens System in Australia by D. J. Whalan (Law Book Co. Ltd, Australia, 1982) ISBN 0 455 20357 1.

Since the inception of the Torrens system of land registration in the various Australian States a number of books concerning the operation of the system have been published. However, many of these books have been concerned with the Torrens legislation in a particular State and with the exception of *The Transfer of Land in Victoria* by S. Robinson, they were written a number of years ago.¹ The texts which deal with the operation of the Torrens system in all States are now outdated.² Furthermore, on the whole these texts do not discuss the relevant statutes in light of the Torrens system philosophy. Teachers of property law have for some time considered that an updated text on the philosophy and operation of the Torrens system would be an invaluable aid in the teaching of property law. It was therefore with some eagerness that the publishing of Professor Whalan's book, *The Torrens System in Australia*, was awaited.

In his preface, Professor Whalan states that the main purpose of the text is 'to discuss the Torrens statutes against a background of Torrens system philosophy'. Such a task is not a simple one: to provide a clear analysis of each of the systems and their intricacies is in itself difficult. Professor Whalan's book succeeds admirably in its stated purpose. *The Torrens System in Australia* is an exceptional book. It contains a clearly drawn account of the history and workings of the Torrens system in each Australian State. Differences in the operation of the systems are explained succinctly and set out in a manner which is easy to read and follow. Throughout, the meticulously referenced statements of principle are discussed in light of the Torrens system philosophy. There is no doubt that teachers, students and practitioners alike will benefit greatly from the book.

Professor Whalan emphasises that the book is one on the Torrens system specifically and not a general property law text. However, it is clear that even a book aimed primarily at an analysis of the Torrens statutes cannot ignore completely general principles of property law. In a number of instances, the principles of law applicable on the one hand to land under the Torrens system of land registration and on the other hand to land under the general law land system are the same. It would be difficult to divorce a consideration of the Torrens system from principles of law applicable to

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¹ E.g. Fox P. M., *Transfer of Land Act 1954* (Vic.).

² E.g. Kerr, *Australian Land Titles (Torrens) System* (1905); Francis E. A., *Torrens Title in Australasia* (1972).

general law land. Professor Whalan has dealt with this problem well. He refers to and discusses in a concise manner those general law principles which are relevant to the operation of the Torrens system. For example, in relation to a dispute between holders of equitable unregistered interests in Torrens system land, the general principle which is used to settle the priority dispute is the same as that used to settle a dispute between holders of equitable interests in general law land. Professor Whalan sets out the relevant rule but avoids a detailed discussion of the workings of the general rule as applicable to general law land and concentrates instead upon its application to disputes arising under the Torrens system of land registration.

In some respects, however, the author's adherence to his stated aim of a concentration upon the Torrens statutes alone is perhaps too rigid. Whilst the purpose is to discuss the statutes themselves against a background of Torrens system philosophy, it is suggested that in one area at least, a further discussion of principles applicable to both general law land and Torrens system land would not have detracted from this aim. One of the most changing and vital areas of property law today concerns the area of constructive and resulting trusts. Although a detailed analysis of developments in this area was unnecessary and outside the scope of the book, some discussion of the area and its effects on the operation of the Torrens system, and in particular the caveat provisions,³ would not have been amiss.

Part I of the book deals with the history of the Torrens system, its introduction into the Australian States and the general nature of the system. Although these matters have been considered before by various authors, Professor Whalan's analysis demonstrates more clearly than has been done before, just how many of the current weaknesses and problems of the system can be traced to its origins.

The following three parts deal with the administration of the Torrens system, the initial registration of land and the register itself. These sections are excellent. In particular the discussion in Chapter 13 on the topic of interests that may or may not be registered or noted on the register is enlightening. Over the years property lawyers have shown considerable uncertainty as to the position in the Torrens system of such interests as easements and restrictive covenants. Professor Whalan deals with these matters succinctly, clearly pointing out relevant differences between the States.

Part V of the book covers the area of dealings with Torrens system land and Part VI with the caveat provisions and other ways of protecting estates before title passes. These sections provide an outstanding analysis of some of the most controversial areas of the Torrens systems. One issue which is worth mentioning concerns the discussion⁴ of entries on the register while a caveat subsists. Professor Whalan points out that the prohibition on registration only applies to instruments which affect the particular interest protected by the caveat. In the case of a second unregistered mortgage he argues that a caveat by the second mortgagee should not prevent registration of a transfer from a registered first mortgagee who has exercised his power of sale. The argument is based upon the fact that the second mortgagee's interest can only be carved out of the interest remaining to the mortgagor (the 'equity of redemption') after the first mortgage and thus any sale by the first mortgagee does not affect the interest protected by the caveat. Professor Whalan's argument is clearly correct. Recent Victorian decisions,⁵ however, demonstrate that the Registrar and the courts have not acted upon the proposition and have taken the view that the mechanical operation of the caveat provisions prevents registration of a dealing while a caveat is on the title. Perhaps Professor Whalan's clear exposition may convince the Registrar to register a transfer from a registered first mortgagee even if a caveat by a second mortgagee remains on the title.

Parts VII and VIII deal with the crucial areas of the passing of title and the protection given to the registered proprietor. Over the years much has been written

³ Professor Whalan does make reference to these problems: Whalan D. J., *The Torrens System in Australia* 1982, 230-1.

⁴ *Ibid.* 236-7.

⁵ *Forster v. Finance Corporation of Australia Ltd* [1980] V.R. 63; *Lewenberg and Pryles v. Direct Acceptance Corporation Ltd* [1981] V.R. 344 and *C.B.A. Ltd v. Schierholter* [1981] V.R. 292.

on these areas, particularly on the issue of indefeasibility of the registered proprietor's title. Nevertheless these topics have remained ones which students find complex and troublesome. Professor Whalan's excellent discussion, which analyses and summarises the previous writings and expounds the law as it now stands, will be an invaluable aid to students grappling with the difficulties of indefeasibility of title.

One minor point may be made in relation to the author's discussion of exceptions to the indefeasibility of title. Professor Whalan states that the Western Australia Torrens statute is the only one in Australia which specifically provides that mining leases and licences issued under any statute are exceptions to the indefeasibility of the registered proprietor's title. He concludes however,⁶ that the mining leases and licences issued under statute in all other States are exceptions to the indefeasibility of the registered proprietor's title because they are overriding statutory rights. The enforceability of mining leases and licences against a registered proprietor of the fee simple is probably beyond doubt. Nevertheless, it is interesting to note that in the case of mining leases in Victoria this result is not achieved directly by the operation of the overriding statutory exception. Mining leases granted by the Crown in Victoria pursuant to the Mines Act 1958 are registered under the Torrens system. Pursuant to s. 8 of the Transfer of Land Act 1958 a Crown grant of the minerals for a term of years is issued to the lessee. The Crown grant, (the mining lease) itself attracts all the benefits, such as indefeasibility of title, of being registered under the Torrens system.

Professor Whalan is and has been for many years an eminent scholar in the law of the Torrens statutes. The *Torrens System in Australia* reflects this fact. As His Honour Blackburn C.J. states in his preface, it is an outstanding book. The book is highly recommended to all those interested in the law, philosophy and possible reform of the Torrens statutes.

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⁶ Whalan, *op. cit.* 331.

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