

Chapters 5 to 8 deal with the position prior to, and after the enactment of, s. 26(a) of the Act and were the chapters which I found most interesting and thought-provoking. This provision includes in the assessable income profits derived from the sale of property acquired by the taxpayer with the purpose of profit-making by sale or from the carrying on or carrying out of any profit-making undertaking or scheme. The section is notorious for the voluminous case law it has generated in respect of both questions of legal interpretation and of evidence. Rather than simply presenting a chronological examination of the authorities the author has sought to critically analyse the frequently conflicting judicial interpretations of the section. She has developed a valuable reconciliation and explanation of the authorities and has courageously dismissed certain judgments as plainly incorrect. She is, in my view, justifiably critical of the numerous limitations which the courts have read into the provision thereby cutting down its scope of operation and to some extent, distorting the ordinary concept of income.

After a brief chapter on losses from property realisations (Chapter 9), the author deals in Chapter 10 with some interesting points on tax accounting. Again, she explains that a number of important questions in this area have not yet been clearly resolved by the Courts.

The final chapter entitled 'Tax Avoidance and Property Transactions', after a short discussion of the old s. 260, outlines briefly various forms of tax avoidance schemes and the legislative measures which have been designed to combat them. Many of the schemes are highly complex and intricate and both the schemes themselves and the countering legislation require detailed study before they can be properly appreciated. However, most of these schemes are now largely only of historical interest and thus their cursory treatment is justified. Of course the impact of the countering legislation is of great and wider significance but to date there has been no judicial consideration of most of it. It is perhaps surprising that although two and a half pages are devoted to dividend stripping there is little more than a mention of trust stripping and no discussion of the difficult s. 100A designed to counter it. Moreover, as I mentioned earlier, the whole question of avoidance has now taken on a new dimension in view of the recently enacted Part IVA of the Act.

The book concludes with an Appendix containing summaries of all Court and Board decisions since 1970 dealing with the taxation of property realisations. This is no doubt a useful addition but readers must always be careful to resist relying on such concise summaries as more than a general guide.

Inevitably there are the usual odd typographical errors.¹⁴ The author's style is relaxed and easy to read though the excessive cross-referencing becomes somewhat distracting at times. The book is designed primarily for practitioners and my impression is that it will be best appreciated by those who already have some familiarity with the relevant case law. Although this book does not purport to deal directly with questions of tax policy, despite a number of telling asides from the author on various points, it does highlight the anomalies and inequities that may arise under a system which taxes income and not capital.

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Cases and Materials on Real Property by P. J. Butt, G. L. Certoma, C. M. Sappideen and R. J. Stein (Law Book Co. Ltd, Australia, 1980). ISBN 455 20044 0.

Property Law, Cases and Materials by Ronald Sackville and Marcia Neave (3rd edition, Butterworths, Australia, 1981), pp. lxxi, 1-913, Index

¹⁴ See e.g. paras. [404], [608], [1013].

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915-936. ISBN 0 409 30041 1; 0 409 30042 X (pbk). Price \$47.50 (hard); \$39.50 (pbk).

Cases and Materials on Real Property is a new casebook designed primarily as an aid for teaching in undergraduate Property courses. In style and organization it is a casebook of a type once traditional in Australian Law Schools but now increasingly supplanted by works designed to provide a wider challenge for the student and to identify important trends in a particular field for the general qualified reader. As a traditional casebook it will have little appeal to this audience of general readers, especially as it concerns itself only with materials on real property. The stated aim of the authors 'has been to cover the major substantive parts of the law of real property which form the basis of land law courses taught in law schools in this country'. The authors 'have not sought to include the whole range of areas which are often subsumed under the heading of Real Property but have concentrated on eight main topics each represented by a separate chapter in the book'.

The areas which have been selected are in the main dealt with comprehensively. Chapter 1 entitled 'Physical Limits of Land' is a valuable contribution to the study of real property in Australia. This chapter examines the contemporary application of the *maxims cuius est solum ejus est usque ad coelum ad inferos* and *qui quid plantatur solo, solo cedit*. Both the traditional and more recent decisions, English and Australian, regarding trespass to air-space are extracted. With the development of sophisticated remote sensing techniques for use in exploration of minerals these issues have assumed great contemporary significance. The question of whether the use of aircraft for the purposes of exploration (or 'over-flying' as it is described within the mining industry) is trespass has yet to be resolved. The inclusion of the law of fixtures under the heading of 'physical limits of land' is both novel and successful and the extraction of authorities upon the removability of tenants fixtures is welcome. The important and difficult materials in connection with the Torrens System are dealt with in a straightforward and business-like manner which characterizes the book. To the Victorian reader however the inclusion of traditional authorities on constructive notice (*Hunt v. Luck*¹ and *Wilkes v. Spooner*²) comes as a surprise and would be most confusing to a reader who did not realize that the protection given to the interest of the tenant in possession is, in New South Wales, restricted to those interests of which the registered proprietor has notice before registration. If this book is aimed at readers in other States this should be made clear. Other chapters on Leases, Easements, Mortgages and Covenants deal competently with their respective subject matter and the list of further materials at the end of each chapter should be most helpful to students using the book.

The omission of some important areas indicates that even the authors circumscribed goal of covering 'the substantive parts of Land Law' has not been completely reached. Particularly serious is the failure to include as a topic the role of Equity in the development of Anglo-Australian Land Law. Equitable principles are, of course, referred to in the section on Covenants. However, failure to examine equitable principles as an important aspect of land law detracts seriously from the value of the book for most Australian law students and teachers. None of the recent and important developments in the area of constructive trusts are mentioned. More serious is the omission of even the more traditional authorities upon the role of Equity. In Chapter 3 entitled 'Old System of Title' it is baldly stated that 'priority disputes may arise because our system distinguishes between legal and equitable interests'. No mention is made of the requirements for the creation of legal interests, nor of the creation of equitable interests by virtue of specifically enforceable agreements including the equitable doctrine of part performance. *Lysaght v. Edwards*,³ *Mason v. Clark*⁴ and the more recent authorities on part performance such as *Steadman v.*

¹ [1902] 1 Ch.

² [1911] 2 K.B. 473.

³ (1876) 2 Ch. D. 499.

⁴ [1955] A.C. 778.

*Stedman*⁵ and *Ogilvy v. Ryan*⁶ receive no attention. *Walsh v. Lonsdale*⁷ is extracted in the chapter concerning leases but its significance in the context of equitable interests generally is ignored. This basic material cannot be omitted from any casebook on Real Property without presenting an unbalanced picture of the law. Other important areas not dealt with include Possessory Interests, Adverse Possession and Limitation of Actions.

As a new entrant to the Australian field, *Cases and Materials on Property* must inevitably be compared with *Property Law Cases and Materials* by Sackville and Neave, the recent 3rd edition of which should maintain the position won for this text by the earlier edition. Sackville and Neave has been the only Australian textbook comprehensively to cover the Law of Property and has been used extensively by Australian law schools, in many cases as a prescribed text. In contrast to the *Cases and Materials on Property* by Butt *et al.*, Sackville and Neave is suitable for use in connection with any Property course whether of traditional Land Law variety or the more comprehensive variety offered by Law Schools such as the University of Melbourne and the University of New South Wales. To describe Sackville and Neave as a casebook is to give a false impression of its value; in all editions it is far more than a casebook as it contains a detailed text and wealth of critical analysis. Its approach is not to restrict the Law of Property to an examination of traditional principles regarding Land Law but rather to consider the broader horizons of the concept of property. In each previous edition actual changes and discernible trends towards change in the law of property have been outlined in a manner which is both easy to follow and challenging for those who feel they have acquired some mastery of the Law of Property. In the 3rd edition extensive coverage is given to developments to the law relating to the status of contractual licences and their enforceability and to the rapidly developing area of law surrounding the constructive trusts. Not only are the recent authorities extracted, they are organized and commented upon, which is helpful for those who endeavour to keep abreast of changes in these complex areas. The 3rd edition of Sackville and Neave continues to fill an area in Australian writing on the Law of Property left vacant by the absence of a comprehensive textbook such as the Australian Edition of Cheshire and Fifoot on the Law of Contract. It does not appear that the new casebook from Sydney will readily supplant it.

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⁵ [1976] A.C. 536.

⁶ [1976] 2 N.S.W.L.R. 504.

⁷ (1882) 21 Ch. D. 9.

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