

# Book Reviews

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## Commercial Leases - W.D. Duncan

The Law Book Company, 1989  
Recommended Retail Price \$39.50

"A lease is not intended to be either a mental exercise or an essay in literature; it is a practical document dealing with practical situations". Danckwerts L.J. in *Levermore v Jobey* (1956) 1 WLR 697 at 708.

Despite three years spent as a registration clerk at the Land Titles Office my first real introduction to commercial leases occurred in a new job as a legal officer in the late '60s. Because the existing texts did not help I had to return to my old haunts at the Land Titles Office and search the Register for all the important leases entered into by the major property developers in the C.B.D. of Sydney.

This searching was designed to overcome a practical situation caused by new legislation which enabled my employer to enter into purchase lease transactions as a new means of investment. I never did discover whether my instructions were intended to overcome a lack of knowledge so we could imitate our competitors or to find out what the market in Sydney could bear. Many of those then secrets are now contained within the covers of Duncan's book. Had this book been published when I was a newcomer struggling with commercial leases I would have been saved a lot of sweat and tears, if not blood!

The theme for the text is its practical application for lease specialists. As the author maintains in the preface, there were previously few Australian texts dealing exclusively with commercial leases.

The book has 17 chapters, all headed in a realistic way. There is also a full index, table of cases and statutes together with a very useful comparative table of State statutes.

The initial chapter, "Negotiations", covers a very important aspect of commercial leasing. Often it is not until a solicitor produces a first draft of a lease that the prospective tenant realises the full extent of the financial obligations already agreed or undertaken in the lease. In addition, as is pointed out in this chapter: "Whilst there are 'usual' or expected conditions of any commercial lease there is no standard form and thus a solicitor's duty in perusing a lease is higher than that of perusing a standard contract: *Walker v Boyle* (1982) WLR 495 at 507-508 per Dillon J."

It should also be remembered that in a commercial lease the parties are more likely to be of equal bargaining power. In this context the "Rent and Review" chapter provides a detailed treatment as to what rent is and how it is to be distinguished from other payments. This is an important section. It details the obligations on the parties to act in a proper commercial manner to ensure the rent review proceeds according to the lease.

With the current move to outside chambers and more barristers renting chambers, the Bar has a keen interest in being better informed about commercial leases. Because of the informal way in which the business of chambers tends to be conducted barristers need to have a personal involvement in rent review clauses contained in the lease of chambers. This section of the book is essential reading for barristers.

The coverage in this chapter of other issues: "Expert or

Arbitrator - who to appoint?" or: "Commonly used expressions to define Rent Review" will be a valuable aid in resolving disputes, or in finding the leading case on the issue as a starting point in litigation.

The detailed treatment of the covenant to "Repair" is welcome. Moreover the contrast between "Repair" and "Renewal and Improvement" is of value to the busy practitioner who may have to advise on the run. The succinct treatment of the common exclusion from liability in the repair covenant of "Fair Wear and Tear Expected" is also helpful.

Other specific chapters include: "Outgoings", "Quiet Enjoyment", "Assignment", "User", "Insurance", "Options", "Default", "Determination of Lease other than by Forfeiture", "Recovery of Possession upon Forfeiture", "Guarantee of Lease". Finally, a chapter of miscellaneous matters rounds off the book.

This book contains, from a N.S.W. practitioner's point of view, much material that is specific to Queensland particularly its many references to the *Retail Shop Leases Act 1984* (Qld). The author admits to it having a "distinctly Queensland flavour", nevertheless as the Brisbane Line slowly recedes into the past it will become an increasingly more valuable asset to the chambers library. □

Garry McIlwaine

## Trusts and Powers - D. Maclean

Law Book Company 1989  
Recommended Retail Price \$37.50

In any jurisdiction other than N.S.W. this book would sell itself entirely on its merits. It has merit enough. In three chapters, over approximately 125 pages, it deals concisely with a number of problems which arise principally (but not only) in the realm of discretionary trusts. As the title suggests, the book focuses on trusts and powers of appointment. The first chapter deals with the kinds of powers that trustees of discretionary trusts are permitted to hold, and the nature and extent of rights of beneficiaries. The second chapter deals with tests applied to determine whether powers and discretions have been validly exercised. The third chapter deals with the equitable doctrine of fraud on a power. Throughout are detailed references to English and Australian authorities, old and new.

The book opens with a worthy, polite Foreword from Sir Zelman Cowen, and an equally appropriate and polite Preface from the author, in which the Victorian Bar is acknowledged as having contributed to the scholarly environment necessary for such a work to be written. Anywhere but in N.S.W. such an introduction would be enough to pave the way for the solid, technical stuff that follows. Not in N.S.W. We have been spoilt. We expect to be entertained as well as enlightened.

What this book lacks is an introduction in the style of Meagher JA's Foreword to the recent reprint of Pollock & Wright's nineteenth century classic, *Possession in the Common Law* (reprinted by Law Press in 1990). A few colourful historical references to Sugden or Farwell *On Powers* (books written by Conservatives), culminating in a broad sideswipe at