

REVIEW ARTICLE*

Land Law by PETER BUTT (Law Book Company, 1996), pp i-cxxxiv + 1-970. Softcover recommended retail price \$90.00 (ISBN 0455 213593).

Butt's *Land Law*, began as an introductory text, the title *Introduction to Land Law* having been dropped in the second edition (1988).¹ It has now clearly dispensed with any notions of being an introduction, spanning approximately 900 pages.

The text provides an expansive picture of land law, by contextualizing its present state and relating that state to its genesis in feudalism.

Although there has been a trend in some universities to delete or reduce focus on the historico-legal framework including old system title and the history of equity components of land law courses, Butt's text has not followed this trend. Instead it retains a detailed account of the sources of land law in New South Wales, the reception of English law into Australia, feudalism and tenure, and the development of the use, presumably on the basis that not to do so would deprive readers of a comprehensive and well-rounded understanding of the law. Such a decision is wise. Without an appreciation of the historical roots of land law, modern lawyers would be left, using terminology, the richness and complexity of which was lost on them. For example, the meaning of the term 'estate in fee simple' (although commonly used today) is somewhat depleted without an understanding of the feudal influence on the law and restrictions on alienability.

Although Cicero's words, "not to know what happened before you were born is to remain forever a child", would seem sufficient justification for the inclusion of chapters on feudalism, tenure, the doctrine of estates, uses, fee simples, fee tails, remainders and executory uses, further justification is available on the basis that the present land law is so inextricably linked to its past that in Butt's words land

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1 P Butt, *Land Law*, Law Book Company (3rd ed, 1996) referred to as third edition.

law “can *only* (my emphasis) properly be understood in the light of the feudal structures which gave it birth”.²

To applaud retention of the inclusion of the historico-legal framework, is not however, to suggest that a successful and useful land law text avails focussing on present day legislation and present day common law. Of course, the latter is necessary and Butt is not only mindful of this, but embraces it. Indeed, he even includes a whole Chapter on Native Title. This Chapter delicately teases out the law from the somewhat disparate judgments of the majority of *Mabo (No 2)*.³ It is done with precision, clarity and incisiveness. The same Chapter also gives a comprehensive account of the highly criticised and much contentious *Native Title Act 1993* (Cth). The Chapter examines the key sections of the Act discussing their meaning and commenting where relevant on the presumed intention of sections. Further, the text also considers omissions in the legislation and the likely result of these. For example, it discusses the alternatives available in the light of the Act not specifying whether indigenous people need to retain a physical connection with the land to claim a native title interest.

This new edition also usefully expands the Chapters covering leases, mortgages, covenants and Torrens Title. In each of these Chapters as indeed, throughout the text Butt provides clear explanations for why the law has developed as it did. For example, he raises the form and substance issue in regard to sham provisions in leases, pointing out that historically, agreements were carefully drafted so as to appear as licences, rather than leases, in order to avoid protected tenancy legislation. It is both refreshing and reassuring (particularly to undergraduate students) to have inchoate questions addressed before they have even been properly formulated. Butt’s extensive experience and long time immersion in land law have equipped him well to recognise key issues, state the law concisely and enter the discourse with confidence and ease of style.

His comfort with the material at hand has allowed him to share it readily with the reader. In this edition, Butt has relied on a clearer and more prevalent use of headings and sub-headings which result in the reader gaining better access to the material. Although in many sections the material is similar to that in the previous edition, it has been broken up into more manageable sections in the third edition.⁴ Again this has been a wise move.

Accessibility generally is enhanced by the use of a ‘plain English’ approach wherever possible. This approach is sometimes scorned by those practitioners and academics who claim the richness, texture, flavour and specificity of the law is lost by such an approach. Butt demonstrates that it can be otherwise - probably because he does not substitute unique terminology with inadequate modern replacements. Where established ‘legalese’ enhances meaning as alluded to earlier and is therefore necessary, he retains it but where it is not, Butt writes in succinct and focussed modern language which assists comprehension. To achieve this end without sacrificing intellectual rigour is no mean feat.

² *Ibid*, p 50.

³ *Mabo v Queensland (No 2)* (1992) 175 CLR 1.

⁴ See for example, Chapter 20, Torrens Title, note 1 *supra*.

Returning to the content of the text ... one might well ask, is it useful? Is it properly ordered? Is it up to date? Are the tables of cases and statutes comprehensive enough? The answer to these questions is overwhelmingly 'yes'. Indeed the book is a delight to read. It has the capacity to make land law come 'alive' and at the same time it provides the reader with a well developed set of principles, a clear understanding of the sometimes complex legal issues and a useful collection of cases and statutes to aid further research. This book is a must for any property student and probably even a must for any aspiring property lawyer!