

SALE AND PURCHASE OF REAL PROPERTY IN MALAYSIA. By PROFESSOR
Visu SINNADURAI. [Singapore: Butterworths, 1984. xlviii+511 pp.
Hardcover S\$90.00]

THIS beautifully produced book is a major contribution to the literature on real property in the region. Based on Professor Sinnadurai's doctoral dissertation, it has the depth of discussion and comprehensiveness of scope that that origin implies, but avoids the heaviness and obsession with minutiae that often accompany such a thesis which can put off even an academic critic. The book will be of special, not to say indispensable value to the Malaysian practitioner and academic, dealing as it does with the Malaysian law of contract and conveyance, and the relevant details of the Contracts Act and the National Land Code. These are in many ways different from the equivalent Singapore provisions and the English common law or statutory rules which continue to apply in Singapore. Nevertheless, that hardly lessens the value of the book for a Singapore reader—such is the strong grasp and clear exposition of basic principles; and, of course, many of the rules are in fact the same.

The title of the book accurately reflects its scope. It does not purport to describe “land law” in Malaysia as such. It concerns itself strictly with the sale and purchase of real property in Malaysia (West Malaysia, predominantly). The book begins with a useful introductory chapter, outlining the major themes (not unlike, it has to be admitted, an abstract for a thesis). There follow three chapters on contracts, dealing with formation, parties and fraud, misrepresentation and illegality. Chapter Five covers the various types of title available under the National Land Code. Chapters Six and Seven discuss, respectively,

the status, and the rights of parties pending registration. At first sight, it is not easy to discern the significance of this distinction. In fact Chapter Six contains a useful analysis of the effect of a contract for sale with respect to the creation of a beneficial interest vested in the purchaser and to the status of the vendor as a trustee. This in turn involves discussion of the applicability of English equitable principles to the Malaysian Torrens system. Chapter Seven deals with the consequences of this relationship between the parties brought about by the specifically enforceable contract, in such contexts as the death of either party, subsequent sale by the vendor, and the passing of risk. Chapter Eight deals with caveats, with a very helpful discussion of the leading (Australian) cases of *Butler v. Fairclough* and *Abigail v. Lapin*. Chapter Nine deals with the vital topic of indefeasibility of title under the Torrens system, a far more contentious issue in Malaysia than it is in Singapore. The next three chapters deal with remedies for breach of contract, namely rescission (and recovery of advance payment), damages (involving a discussion of the Contracts Act) and specific performance (dealt with by the Specific Relief Act). There is a final, very useful chapter on housing developers, who are governed (as in Singapore though the rules are different) by a separate code.

One point that immediately strikes one, simply by looking at such a list of contents, is that the "contract" aspects of the book have been divided into two parts, interrupted by the "conveyance" aspects (if one can legitimately regard the details of the caveat system and registration as the equivalents, for this purpose, of "conveyance"). This is a minor point but it might perhaps have been preferable had the chapters on remedies come directly after the earlier chapters on contracts for sale.

One might also question the treatment of that perennial sixty four thousand dollar question—the applicability of English doctrines of equity to the Malaysian Torrens system. It is pointed out in the author's preface that it was found necessary to make references to this vexatious issue throughout the book. This is understandable, but under those circumstances it should have been possible to include a heading in the index enabling such references to be speedily located. The major discussion on equity, in the chapters already referred to dealing with the effect of a specifically enforceable contract for sale, does not, in this reviewer's opinion, seem to frame the issues quite as clearly as Wong does in *Tenure and Land Dealings in the Malay States*.

That book, like this one, was based on a doctoral thesis. They both, as it happens, avoid the classic pitfall of the learned dissertation, namely absolute unreadability. They are, in fact remarkably readable, particularly for an academic, part of whose vocation it is to read such books whether one wants to or not. Whether, in the case of Professor Sinnadurai's book one could say the same for the anxious practitioner, desperately seeking authority to back up a point, is more debatable; and it is for him (or her) that the book is primarily intended. The great practitioners' books are specifically designed so that particular points can be speedily addressed, and authorities are referred to so that the reader can dig as deep as he chooses. Here the reader has little choice; once he has conquered the index he has to "drink deep, or taste not the Pierian spring". For the lawyer in a hurry, a little learning is just the ticket. Here, however, a discussion of a single case may tantalize the reader for two whole pages before he is given the

result. The depth and scope of this book make its production a great achievement. The chapters on contracts, caveats and indefeasibility are particularly strong. It is not, however, a book for dipping into.

It is, as was pointed out at the start, beautifully produced. It is almost (but not quite) devoid of misprints, though Denning L.J.'s elevation to the House of Lords in the course of giving judgment in *Stockloser v. Johnson* [1954] 1 Q.B. 476 (see pp. 369-370), appears to have escaped general notice. Basically the book is greatly to be welcomed by academics, students and practising lawyers.

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