

ELEMENTS OF LAND LAW. By KEVIN GRAY. [London: Butterworths. 1987. lxix + 1094 pp. Hardcover: £35, Softcover: £22.95]

THE Elements of Land Law in a mere eleven hundred pages ! One awaits Dr. Gray's full treatment of the subject with a mixture of interest and trepidation. More seriously, the arrival of this book represents a major event in the legal publishing world. While textbooks proliferate in the other core subjects, students of land law have had to be content for many years with the two hardy perennials, *Cheshire* and *Megarry and Wade*. Not since 1957 has anything that could legitimately purport to rival the standard texts (ignoring, as the author somewhat coyly does, *Real Property and Real People* by Gray and Symes, Butterworths, 1981), appeared on the scene. The publishers have clearly taken something of a gamble with this massive work, but it is a gamble that deserves to pay off.

The book is divided into two Parts: the General Part (the "elements") and Special Problems, where a rather eclectic collection of issues is discussed in some detail. In both Parts there are substantial departures from the approach of traditional texts. This is the result of Dr. Gray's wholehearted pursuit of his stated objective, namely, "to describe the elements of contemporary land law against the background of the social and political implications of the subject." So there is no room in the first Part for discourses on gavelkind and the Statute of Uses, nor even on the strict settlement and the rule against perpetuities: the latter two are barely referred to, and the former not at all. The "special problems" range from homelessness (whose inclusion is justified, whimsically and surely unnecessarily, given the author's general approach, on the basis that 1987 is the Year of the Homeless), through the Rent Acts and public housing (some interesting comparisons with Singapore here), to adverse possession - quite what this topic is doing in this highly "contextualised" part of the book is not altogether clear: on the face of it, its inclusion in a section called "A Property Owning Democracy" seems little short of bizarre. There is a particularly useful chapter on financial crisis and the owner - occupier, dealing with things like charging orders and bankruptcy, which are of great importance, but are hardly ever dealt with in books on property law.

Actually this chapter illustrates, in a small way, a major difficulty of Gray's approach. One section of the chapter is entitled "Recovery of possession by a mortgagee", and it deals in some detail with the

various ways in which English law protects a mortgagor against whom possession proceedings have been taken. This means that the detailed treatment of the law of mortgages is spread over two parts of the book separated by two hundred and fifty pages. In fact one might legitimately ask why the mortgagee's other remedies are not dealt with in this chapter.

The extent of the difficulty is more clearly revealed, though, when one examines other chapters in the second Part, and their relationship with the first. The final section of the book, "A charter of rights for residential tenants" deals with public housing and the Rent Acts, which one expects to find in a separate section of their own, but it also deals with what is called, rather exotically, "the environmental quality of tenanted accommodation", much of which one might expect to find in the chapter on leases. Again, while a chapter is devoted to trusts for sale in the first Part, section 30 of the Law of Property Act, perhaps the most important statutory provision on trusts for sale, has a chapter to itself in the second Part ("The decision to sell the family home"). Most significantly of all, there is a chapter on "family arrangements" in the second Part, which attempts to pull together various strands in the first, particularly in the chapters on trusts and on licences. This inevitably involves a certain amount of repetition - for instance, resulting and constructive trust principles in the context of jointly-owned property are discussed at some length in two separate parts of the book, often with particular points being made more than once (for instance, the discussions of "referability" in Chapters 10 and 23). Opinions are likely to differ strongly on the utility of this approach. In this reviewer's view, it actually works very well. It might be irritating to have to look in more than one place for Dr. Gray's views on, for instance, matrimonial property law, but there is no great harm in that: it is a complicated subject. The fact is that here we have the first fully rounded account of modern English land law. The treatment of trusts illustrates this well. In most land law books trusts are given fairly perfunctory treatment, often as a illustration of the impact of Equity, before being given a brief supporting role in an account of licences. Here they are put where they belong, in the centre of the stage, with resulting and constructive trusts being given detailed (and critical) treatment before co-ownership is even mentioned, setting the scene for the later "contextual" discussion of family arrangements.

I now note that I have used the word contextual twice in inverted commas, as though there were something vaguely laughable, or even sinful, about trying to relate the rules of land law to everyday life. This might well be the view of the "hard-nosed property lawyer" to whom passing reference is made by Dr. Gray. In fact, of course, land law has been crying out for this sort of treatment for some time, though it does make one wonder what sort of book Dr. Gray set out to write. Is it supposed to be a textbook on land law in the usual sense? Well, strict settlements and the rule against perpetuities continue to exist in English law, notwithstanding Dr. Gray's failure to deal with them. Traditionalists would certainly argue that that disqualifies the book from being a standard text. In this day and age, however, even in England, that argument surely no longer stands. The absence of an account (even in an appendix) of the history of land law might equally be viewed with suspicion. It is often said that the rules of land law are so obscure that students can only be expected to understand them after deep immersion in their history: after *Quia Emptores*, this argument seems to run, it will all be plain sailing. After teaching the subject for ten years, all I

can say on this is that detailed historical reference seems to make the subject more puzzling to students (even in England, though this is arguable) rather than less, so I can only applaud Dr. Gray's decision. History is given its due - obviously tenures and estates have to be discussed - but the emphasis is always on modern problems.

Alternatively, Dr. Gray could have been trying to write a more personalised, contextualised (whoops!) work, one that is not weighed down by the unavoidable *gravitas* of the standard text. It is certainly true that Dr. Gray's principal interest is land law in the context of the "family" (in the broadest sense of the term), its relevance in modern Western society, and its relationship with "the new property". It is also true that those portions of the law that do not readily lend themselves to discourses on these subjects - easements and covenants spring to mind - are given comparatively short shrift (though other "traditional" subjects, such as co-ownership, are dealt with more fully than in the standard texts). That having been said, few people (Joyce and Proust apart) write a thousand pages to exercise a hobbyhorse, and one can only assume that Dr. Gray was trying to combine these two objectives, and that he has succeeded pretty well.

Incidentally, the book is an extremely personal one. *Megarry and Wade* might criticize a case as being "hard to understand" (*Errington v Errington*)¹ but it is hard to imagine them saying of any case, as Dr. Gray says of *Thomas v National Union of Mineworkers (South Wales Area)*² (a case, incidentally, that is unlikely to make its way into many land law treatises, however lengthy) that it is a "monstrous decision" which "sets an extremely dangerous precedent for the censoring of lawful activities of entirely innocent persons", and that it "bodes ill for civil liberties in days to come". This makes comments about the precocious toddler and the fertile octogenarian seem pretty tame. In the same chapter (on easements) Dr. Gray, in a passage that could perhaps have been happily abandoned with the flotsam of *Real Property and Real People*, rails against the apparently inoffensive decision in *Re Ellenborough Park*,³ concluding that the court had "little difficulty in applying the terminology of easements to the civilised user by civilised people of a communal garden situated in an excessively bourgeois location". It is not certain whether the irony here is conscious or not (the court is being criticized for making value judgements): in any event, it would be nice to know when a bourgeois location (whatever that is) becomes excessively so, and what the legal significance of the transition is. There is a point to all this. Dr. Gray's book is highly readable - parts of it, anyway, but for any of it to be highly readable is an achievement, considering the dryness of much of the subject-matter. One of the factors that makes it readable is his trenchant comments on individual cases and on broad issues (for instance: "*Gissing v Gissing*"⁴ has exerted a stranglehold on the development of any rational law of family property in England". When it comes down to it, writers of standard texts are not really supposed to have opinions, at least not opinions that are aired as forcibly as Dr. Gray's. One cannot imagine this book being frequently cited in the Court of Appeal.

That is a pity in a way because the courts might then realise that the prevailing view (in British textbooks, if not in periodical literature)

¹ [1952] 1 K.B. 290.

² [1986] Ch. 220

³ [1956] Ch. 131

⁴ [1971] A.C. 886.

that in land law matters British is best, is ludicrously narrow. One of the greatest strengths of this book is the extensive citation and, indeed discussion of authorities from Singapore, Malaysia, Ireland, Australia, Canada and New Zealand, as well as decisions from the United Kingdom that are either unreported (the joy of Lexis!) or are only reported in the more obscure journals. Cases generally are discussed in detail, rather than disposed of in a sentence and a footnote. This, of course, partly accounts for the book's considerable size.

Enough should have been said already to make clear this reviewer's opinion that the book is an ideal teaching aide for a modern course on English land law. It goes without saying that our requirements in Singapore are rather different. We do not have the 1925 legislation, so there may be a case for preferring books that have something more to say about the position before then. Much of the material on landlord and tenant is not directly relevant. But much of the book is as relevant here as it is anywhere in the common law world, and it has a cosmopolitan feel about it that ought to appeal to the denizens of a land law regime that has looked for inspiration to Australia (he reports contemporary allegations of plagiarism by Robert Torrens), India and Ireland as well as the old colonial mistress. But there ought to be a health warning on the front cover for the benefit of hard-nosed property lawyers.

W. J. M. RICQUIER