

This book will appeal to students, academics and constitutional law practitioners. I recommend it to anyone with a serious interest in Australian constitutional law.

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## Land Law (6th edn)

Peter Butt, *Land Law (6th edn)*, 2010, Thomson Reuters (Professional), pb \$149.95.

This is an extensive work of scholarship (1037 pages plus tables) – what other book has a table of cases 100 pages long?

The preface states: “The law is stated as it applies chiefly to New South Wales. Nevertheless, case law from other States and Territories is cited extensively, and the similarity of the property legislation throughout Australia should make the book relevant in all jurisdictions”. This quotation is correct, in both a negative and positive sense for the Victorian reader. The negative aspect is there is little explicit reference to Victorian legislation and some portions of the book are solely or largely New South Wales based. Thus the chapters on co-ownership, strata title, Crown lands and leases regulated by statute do not take account of highly relevant Victorian legislation; while the chapter on Torrens title occasionally omits any reference to the Victorian position, for example, on compensation from the assurance fund.

These drawbacks are, however, minor compared with the great usefulness of other parts of the text, underpinned by copious reference to cases (including over 350 Victorian cases dating from the 1850s to 2009, slightly tarnished by occasional misspellings), e.g. on fixtures, the doctrine of estates, leases, easements, covenants, mortgages, adverse possession and native title. The author’s gift for simply stating arcane doctrine is conspicuous in the chapter on uses, trusts and equitable interests.

A minor drawback is that some legal or equitable doctrines, although more widely applicable, are located in the text or index under particular land transactions and so require some finding. For instance, *non est factum*, undue influence and unconscionable dealing appear under Clogs on the Equity of Redemption in the chapter on mortgages; and proprietary estoppel, unjust enrichment and the doctrine based on *Muschinski v Dodds* (which could advantageously have been supplemented by discussion of other trusts commonly arising on similar facts, that is, the common intention constructive trust and the resulting trust) is unexpectedly found in the chapter on fixtures and related matters.

An excellent book, of great assistance to the practising lawyer.

PHILIP BARTON  
BARRISTER

## Habeas Corpus

Paul D. Halliday, *Habeas Corpus: From England to empire*, 2010, Harvard University Press, hb \$64.95.

It is distressing to learn that the author of this book believes that legal history is a “dry-as-dust” pastime (p3), and that the point of history is to “discomfit us with the significance of the unfamiliar” (p6). Having read the latter view in the introduction, I prepared myself for an irritating, tendentious attempt to have all my cherished beliefs about the great institution of *habeas corpus* shattered.

It is pleasing to report that this is not what I found, and that the author avoids what historians call “presentism”, that is, the anachronistic judging of past events by present-day moral standards. In fact, this work is a ground-breaking study of *habeas corpus* which is based on work in the records of the King’s Bench from 1500 to 1800. The author has surveyed every fourth year over that period and on that basis traced out the lines of the writ’s development from late mediaeval to early modern times. In so doing he finds himself, despite the programmatic declarations referred to, unable to resist singing its praises at intervals – nor should he do so – although possibly the most famous *habeas corpus* case ever, *Somerset’s*, is approached from an odd angle and without any hint of rejoicing (pp208ff).

This work has greatly added to the traditional “top down” history of *habeas corpus*, concentrating on major cases and statutes, by providing a “bottom up” history concentrating on how it actually worked in day-to-day practice. The book is rounded off with an interesting statistical appendix.

Australia is mentioned only briefly (pp293–296). However, this cannot be considered a flaw in a book which surveys the period from 1500 to 1800, having regard to the paucity of detailed data on early Australian law; and given that all Australian colonies bar one were penal settlements on which *habeas corpus* was necessarily of limited use. ●

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