

Book Review: Modern Law of Real Property, by G. C. Cheshire

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Book Review

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CHESHIRE, G. C. *Modern Law of Real Property* Eighth edition.
London: Butterworth and Co. (Publishers) Ltd., 1958.

The role of real property law as a training and discipline essential in the education of a lawyer much as Latin and Greek are essential background for the classical scholar has been fostered in the law schools by treating the subject as a history course, included in the curriculum more out of respect for the past and its institutions than for its relevance to contemporary conditions. Particularly in a Torrens system jurisdiction, the tendency has been to relegate real property law to obsolete status. Students have graduated from western law schools totally unaware of any relationship between their first year course on real property law and their second or third year course on the land titles acts, the dichotomy being so complete.

Professor Laskin's *Cases and Notes on Land Law* illustrates an approach to the study of real property which treats it as a vital subject. The development of real property law is brought forward to the present day, and the rules are re-examined in the light of modern conditions. Viewing real property law as a vital subject developing in a Canadian context, what place may be assigned an English text book?

In this reviewer's opinion, historical background cannot profitably be taught by the case method considering the demands of the subject of land law and the time limited to its study. Able text books are indispensable for this purpose. In the search for such a book, some deplore the reform legislation of 1925 which has burdened the modern English text book with material foreign to our system. However, this reviewer considers that the legislation of 1925 has enhanced rather than diminished the usefulness in a Canadian law school of a modern English text book on real property law. The writer of an English text is now required to treat pre-1925 law in reduced proportions. When the historical law is thus reduced, and when the author is as gifted as G. C. Cheshire in the art of concise and interesting exposition, the result is a valuable introduction to land law in Canada. Nor are the post-1925 chapters a complete loss, for they offer the student a

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basis for comparative study. For example, one remarks the similarity of results achieved in England under the trust for sale in cases of co-ownership and in Alberta under the combined effect of the Torrens title and the provisions of the Devolution of Real Property Act,¹ authorizing a personal representative to sell for purposes of distribution.

Turning to the latest edition of Cheshire's *Modern Law of Real Property*, the author's preface states the changes introduced. The law teacher may now ask his students to read the Introductory Note which opens the text feeling that the author is an ally at the critical moment when the student's interest will either be aroused or squelched. The Doctrine of the Estate is rewritten to further the student's appreciation of the estate concept by providing a basis for comparison in the Roman doctrine of *dominium* and in the absolute ownership concept of personal property, and by dealing more explicitly with the role of the forms of action for the recovery of land. With respect to licences, the author's new material reflects the reaction of recent years against the enlargement of equitable interests to include the contractual licence.

A reorganization of material places the descriptive treatment of the strict settlement and trust for sale at the beginning of Book II, which deals with particular estates and interests in land, and defers the conveyancing aspects of the strict settlement and trust for sale to a latter part of the work. This reorganization will help the student to visualize the traditional framework upon which the variety of estates and interests in land are erected without the encumbrance of technical matters based on the legislation of 1925.

In adapting an English text book on real property law to the Canadian scene, the reviewer makes no apology for ignoring the utility of the book to the practitioners. It is in the law school that the lawyer comes to grips with real property law as a whole. The text book which has been his staff through law school will remain his crutch in the practice of law. Cheshire's *Modern Law of Real Property* will serve the profession in both capacities.