

# Real Property and Real People

PRINCIPLES OF LAND LAW

K. J. Gray P. D. Symes



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## Principles of Land Law

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## Preface

The ultimate objective of a university education in law is not the learning of rules but the critical perception of value. This means not only that the student should be taught to distinguish between a good argument and a bad one. It means also that he should be taught that law does not exist in a moral or social vacuum but is profoundly affected by the predominant values of the society in which he lives. The task of the teacher is in part to indicate the points at which the legal solutions are not predetermined by some logical system but are instead explicable only in terms of more fundamental value judgments. None of this is to argue that the learning of rules is irrelevant. On the contrary it provides the essential basis for any further inquiry into the function of law in society. As Otto Kahn-Freund said,

legal education is at its best if the student learns to look at each concrete situation from two different angles . . . He should learn to look at it in a strictly and rigidly dogmatic way and he should also learn to look at it as a social situation requiring the solution of a social problem . . . A law student must go through the process of rigid deductive argument from the premiss set by statute or precedent. He must not be allowed to go around it by escaping into talk about policies, he must go through it. But he must go *through* it and not get stuck in it. Some of our American colleagues are inclined to allow the students to escape into 'policy' discussions before the dogmatic mechanism, the purported deductive reasoning from statute or precedent is fully displayed. In this country there is no such danger: the danger is that the discussion gets stuck in the perhaps intellectually very fascinating game of legal argument without ever condescending to the realities of the situation and to what for example a court wanted to achieve (probably without saying so) or in fact did achieve with its decision . . .

This book attempts to apply Kahn-Freund's approach to the learning of land law. It is absolutely essential that the student should go through what Kahn-Freund called 'the mill of rigorous argument of the traditional kind'. Hence the emphasis in this book upon the 'principles of land law' and upon the careful deduction of results from first principles. However, the land lawyer must reach beyond the technical mastery of his subject towards some vision of the social and economic dimension of the law of property. Land law is a reflection of one kind of distributive justice. The land lawyer's area of concern should extend to a curiosity about the criteria which govern the allocation of the rights and benefits to which we attach the label 'property'. The aim of this book is therefore to combine a technical understanding of complex legal phenomena with some critical awareness of the broader values and preferences which inform the law.

Throughout this book we shall examine the principles of real property law which apply to all forms of land, whether used for residential, commercial or

investment purposes. However, it is often the case that the operation of land law principles is seen with greatest clarity in the context of residential property. We shall therefore relate land law, at least initially, to the setting which will be most familiar to the student—that which involves the domestic living arrangements of the ordinary citizen. All too often in the past land law has been taught as if it had no reference to real everyday life. Land law is in fact very much concerned with the way in which ‘real people’ live their lives. All of us—even the truly homeless—live somewhere, and each therefore stands in some relation to land as owner-occupier, tenant, licensee or squatter. Land law thus has something to say about each one of us. If the student can grasp the principles of land law in this more immediate and realistic context, he can easily apply these principles to land which is used for other than residential purposes. This primary focus upon residential property is made even more important for the land lawyer because it is in this area that the land law of the 1980s may diverge most significantly from the conventional rules of real property law. Changing times produce new needs, and one of the foremost claims of the present age is the demand for residential security. Recent developments have witnessed the recognition of what is virtually a modern concept of seisin—the idea that the possession of the actual occupier of land must be protected. This concept is being increasingly engrafted upon the existing structure of the law of real property, and much of this book is devoted to tracing this aspect of the evolving law.

This book seeks to deal with the law of real property in force in England and Wales as of June 1981. The material covered is essentially the material contained in the syllabus of the Land Law I course taught in the University of Cambridge. This explains the inclusion of the (now largely archaic) law of strict settlements and the virtual exclusion of such matters as the law relating to conveyancing, planning, compulsory purchase and priorities of mortgages. The teaching technique employed stems from two ideas. First, English land law is rooted in a limited number of axioms from which almost all other propositions may be derived by logical deduction. Second, most of the principles of land law are richly exemplified in a relatively small group of important cases. It is much more profitable for the student to have an excellent understanding of perhaps a dozen cases than that he should have a superficial acquaintance with the hundreds of cases which are normally served up before him in the traditional land law course. It is with these beliefs in mind that in this book we highlight certain significant decisions and work through them in close detail. The object of each extended analysis is to illuminate not only the actual decision under scrutiny but also the underlying thought processes which make our land law a coherent and systematic body of principles.

Cambridge  
3rd June 1981

K.J.G.  
P.D.S.

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