

Book Review

Peter Bland, *Easements*, 2nd edn (Dublin: Round Hall, 2009), ISBN: 978-1-85800-554-6 (Hardback, lxxvii + 536pp.), €275.00

Property ownership is a peculiar thing when you look at it legally. In fact, nobody really owns anything in the sense that the layman would understand; rather you own rights over the property—not the property itself. At law then, ownership is something far more esoteric than one might have first imagined. You cannot truthfully point at a piece of property and say: that is mine. Instead, one might truthfully say, for example, “I possess that”; and another might say “Only until you die, then I will possess it”, and another “Only if you survive until then, if not I will possess it”, and so on, until we end with a myriad of claims, both present and future, to rights over the property. This goes some way to describing the complexity and intricacy of Irish property law: the fact that property can have no one “owner” but a seemingly endless number of rights are capable of being exercised over it, by a seemingly endless number of people.

Nowhere are these aspects of the law more clearly illuminated than in what are sometimes referred to as incorporeal hereditaments. “Incorporeal” in the sense of having no tangible, corporeal form; “hereditaments” in that they are property rights, and like all property rights can pass by succession. Therein lies the doublethink required of the lawyer when approaching these strange interests: how can you own a piece of property which has no physical form? Peter Bland has made an admirable attempt to answer the question in the second edition of his book on the subject. It is a considerable and impressive piece of scholarship satisfying the practitioner’s desire for a detailed and lucid exposition of the law’s substance, as well as the academic’s and law reformer’s desire for a deeper exploration of the law’s development and future direction. To the fore, of course, is a consideration of the provisions of the Land and Conveyancing Law Reform Act 2009. Two features of this Act are of note: the new rules relating to party structures and the acquisition of easements by prescription. The former is, for the most part, a

most welcome innovation, introducing a sensible system of adjudicating on what were formerly referred to as “party walls” disputes. No longer does the practitioner need to struggle with the mental gymnastics that were previously associated with these cases. Matters such as split ownership of the party wall, the party wall not being located on its owner’s land, the absence of proper land registry maps which define the border, etc. will no longer bedevil practitioners. They may now utilise a simple statutory procedure to enter onto neighbouring land and repair the wall without getting into such convoluted and often inconclusive arguments about ownership (and without the sanction of the court in some instances). However, as the author notes, this represents a substantial curtailment of the neighbour’s property and privacy rights and he questions as to whether the extent of this infringement had been considered, observing that, “[e]ven if the policy of the provisions is to assist development, the provisions are weighted in favour of the developer against his neighbour to an extent that may be questioned”.

A clearer failing of the Act is the transitional provisions relating to the acquisition of easements. The author engages in a masterful discussion of the potential operation and interpretation of these provisions. The interpretation he favours (although he considers others) means that persons who are only a few years (between three and 12 years) from acquiring rights under the old Prescription Acts will have to wait a number of additional years to acquire those rights: an injustice which has no seeming purpose. It is this discussion that is the highlight of the book, unravelling the many Gordian knots of the new provisions in a lucid manner that belies the huge difficulty of the task.

The rigours of the critical analyses employed by the author are also impressive: encompassing legal history as well as comparative law to evaluate the utility of many of these rules and the grasp of the subject is masterful. This is a fine work, and I have little hesitation in opining it to be the finest academic textbook on Irish property law since Wylie’s *Land Law* first appeared.

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