

BOOK REVIEW

by

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The Law of Securities, 5th ed., The Law Book Company Ltd,
1993 by Edward I. Sykes and Sally Walker,
i - cxxii, pp.1070

In a sense, the task of a reviewer of this well established and distinguished work on securities, now over thirty years old in several editions, is made more difficult by that fact alone. The book is widely known throughout Australia and for many years the only proper account of this subject. As a student of the law of securities at the University of Queensland in the late 1960s, I was introduced to the first edition which obviously resembled to a greater extent the original thesis of Professor Sykes through which he earned his LLD from the Melbourne University in 1954.

The work has now undergone four more editions, this edition being the first with Professor Sykes and a co-author, Professor Sally Walker of Melbourne University. Professor Sykes must be congratulated for his continuing participation in the production of the work and one can, perhaps, understand why there has not been a move to reorganise the contents of the book and make it more generally accessible to its wide variety of users.

I have not read the original thesis nor do I any longer have a copy of the first edition which I used as a student. I do suspect however, that the method of presentation of the fifth edition is not very much different from that of the first edition. One must question, given the vast amount of add-ons and upgrading over the past thirty years, whether the present format is an appropriate manner in which to present this type of material in a modern context.

The work has enjoyed remarkable success, and deservedly so, over the past thirty years. It is widely used as a student text, wrongly so in my opinion because of its complexity and cost, and it enjoys a distinguished place amongst the purely Australian home-grown texts used in professional legal practice. It has been cited in many courts, including the High Court, on numerous occasions. That alone, must be a great tribute to its original author and one which is difficult to diminish.

However, it is my view that the vicissitudes of securities law have not made this work any more comprehensible to readers. Whilst the division of the general Parts I-IV being respectively Introduction, Securities Over Land, Securities Over Personal Property and Common Considerations are probably still satisfactory, there is the continuing problem of presentation of the material. For example, dealing with the history of aspects of old title securities separately from the modern Torrens land securities creates unnecessary problems. The right to redeem¹ is firstly considered in the context of freehold old title land and then later² in relation to the statutory mortgage. One would have thought that the discussion of the old title right to redeem should be immediately followed by the right to redeem under the statutory mortgage as the concepts from the former have affected the operation of the latter. Likewise, foreclosure under old title land³ is generally considered and one has to wait until p. 288 to see how the concepts under the old title are dealt with under the statutory mortgage. These are but two examples of separate but highly relevant and

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1 EI Sykes and S Walker *The Law of Securities* 5th edn. The Law Book Company Ltd, 1993 at 67.

2 *Ibid* at 237.

3 *Ibid* at 130.

interlocking discussions which should logically follow each other. There are many other examples of this type of fragmentation of subject matter.

What is suggested is that whilst the material, in substance, is excellent and, particularly the examination of the history of securities, there has to be a closer linkage in the text between the old and the modern. What is required essentially is a complete reordering of the material. This would be a massive undertaking but one which would make the book far more friendly to its readership.

My second criticism of the work generally (this is not only of this edition), is that in purporting to be Australia wide and comprehensive, depth of treatment of some jurisdictions is totally out of kilter with the depth of treatment of others. This might be so, because particular legislation in one State has given rise to particular problems or, perhaps, to a number of cases worthy of mention. However, in a book such as this, it is singularly irritating for a reader to travel through the maze of several jurisdictions within the compass of two paragraphs. One wonders about the value of some of the more abstruse information.

It is becoming well nigh impossible and, indeed, this work illustrates the point, to undertake a general Australian work on eight separate jurisdictions. Given the fact that, in securities, as in many other aspects of commercial law, we should be, and are in some respects, moving to national laws (eg, the *Credit Act*), the idiosyncratic application of the laws to particular States is, to my mind, of less and less overall significance.

There is little doubt that the majority of cases emanate from the most populous jurisdictions on the eastern seaboard. Whilst this may be a selfish thing to say, one should draw out the commonality of principles in these jurisdictions and merely highlight in footnote form any sharp differences in other jurisdictions which may be of relevance. The continual reference to each jurisdiction in certain aspects of the text, to my mind, interrupts the flow of ideas and detracts from the overall thesis that the work embodies. In my experience, books written for one or two major jurisdictions with reasonably common legislation, are best done by merely referring to one jurisdiction and presenting a comparative table of statutes for the others. In that way, the textual flow is not continually interrupted with information that is not relevant to one's inquiry and which only serves to dilute the essential subject matter. The criticisms of this work are not meant to suggest that to write any book on securities in Australia, let alone a book of this encyclopaedic proportions, would be an easy task. The book is a culmination of thirty years work. I would consider that Chapter twenty one entitled "Securities Associated with Credit Control" is a very reasonable account of the fluid consumer credit legislation in Australia. Because much of the state law is similar and, unfortunately for the authors, probably about to change, the general principles can be stated and referenced to each State. This is the type of treatment which should pervade the entire book.

One of the most important areas of securities now concerns unconscionable transactions, and particularly the influence of the *Trade Practices Act 1974* (Cth). No doubt there was a conscious decision not to include general material on the setting aside of unconscionable securities or giving of relief in some way in such security transactions. Again, it could hardly be said the book was deficient in substance, but this fact does show that it is almost impossible to cover such a vast field as securities law in Australia without some significant omissions.

All in all, I would recommend the book as an excellent source of reference to libraries, legal practitioners and students. I would deprecate its prescription for students as students nowadays simply cannot afford to purchase books at the current market price of a book such as this (\$110). Some discussions are also too detailed for undergraduate students. Its value lies in its source material and examination of areas which no other Australian legal author has touched. Likewise, explanation of the early history of securities in relation to particularly old title land, are invaluable in endeavouring to comprehend the present systems both of real and personal securities.

Having said that, I would like to see a sixth edition which completely re-organises the material

and endeavours to accommodate the multi-jurisdictional problems in a completely different way from this and previous editions. There is no doubt that much of the material is there but accessing parts of the book can resemble the undertaking of an archaeological dig rather than the clean, computer-age, quick referencing of a subject.

