

“Omnis definitio in jure civili periculosa rarum est enim, ut non subverti posset”
(‘all legal definitions are dangerous for a definition can rarely escape being discredited’),
Iavolenus Priscus, 2nd cent. (D. 50. 17. 202)

PREFACE

I started assembling material for this book over 30 years ago and its original purpose was primarily definitional, but with an eye to explaining the full significance of the many words and phrases used in real estate and to act as a source for further reference. It has now been expanded well beyond that point, but three aims remain: (i) to provide a clear and precise explanation of the meaning of a particular word or phrase (although legal and technical explanations proliferate, every effort has been made to avoid, as far as possible, the jargon or the cumbersome phraseology that has grown up in this subject since the Middle Ages); (ii) to help the user find an answer to many of the questions that occur in real estate today (if not directly, then by reference to a number of other sources); and (iii) to point out where a problem might occur upon which, when required, further advice and counsel should be sought.

The third edition (produced eight years after the second) continues to be definitional, but it goes much further. It chronicles that which has been said relating to a particular Term - or, to be more precise, over 10,000 Terms - with extensive cross-referencing. In that respect it is a dictionary, with an integral thesaurus. In addition, the text sets out many of the aspects of real estate that follow from the explanation (and full understanding) of the meaning and significance of a particular word or phrase; endeavoring to suggest answers to many of the questions that arise on a given subject. Thus, it is a comprehensive reference book on real estate – a dictionary, a thesaurus and an *Encyclopedia*, rolled into one. It provides a road map from the definition, through an explanation of many related issues, to a series of further sources of information (see “**User Guide**”). In total, there are more than ?? references (including over ?? cases, ?? statutory or code references and ?? bibliographical references), giving the user an ample supply of ready sources for further research.

Since writing the first edition, the world of real estate has changed dramatically. Although many investment and legal principles clearly remain the same, and much ancient terminology remains intact (‘reverter’, ‘conditional fee simple’, ‘entail’ and ‘profit à prendre’), there have been two major and interrelated changes. Firstly, real estate has become truly international and secondly new forms of financing have grown up. As investors move from country to country they have become familiar with ‘exclusive agency’, ‘gross external area’, and ‘IRR’, cannot escape ‘environmental assessments’, and those seeking finance will have become familiar with ‘collateralized mortgage obligations (CMOs)’, ‘REITs’, and more recently ‘derivatives’, ‘Islamic financing’ and ‘sub-prime mortgages’. As a result, the third edition has become even more international, drawing on material from the United Kingdom (including

Scotland), the United States, Canada, Australia, France and New Zealand. There is also material from Hong Kong and other parts of the Far East. Thus, the Encyclopedia brings together terminology that has merged and at the same time it highlights the many differences that are to be encountered in countries that may have had a common law foundation, but have absorbed a mixture of terms and practices from each other.

Nonetheless, real estate (or 'real property') remains a local business, affected by local laws and customs. Accordingly, the explanation of many entries are very specific to one country. English law is littered with terms that relate, for example, to tenant protection—a 'shorthold tenancy' and 'business tenancy', and English lawyers (if not other professionals) need to be familiar with 'overreachable interests', 'trusts of land' and 'registrable dispositions'.

Anyone practising in Scotland will need to know about 'missives', those working in France (as in much of Continental Europe) will encounter 'emphyteotic leases' and 'usufruct', and in the United States an investor may run across a 'quitclaim deed' or a 'warranty of habitability'. Similarly, as one moves from country to country, many different terms are encountered for the same or similar concepts. 'Condominium, 'commonhold, '*copropriété* or 'strata unit' are variations on a theme and 'compulsory purchase, 'condemnation' and 'eminent domain' are the same means for the State to acquire land, but the basis for the payment of compensation varies significantly from jurisdiction to jurisdiction. Finally, the world of 'town planning' or 'zoning' has a language all its own: 'floor area ratio', 'material change of use', 'incentive zoning', 'TDRs' and '*schéma directeur*'.

It is hoped that the contents will be of use at a local and international level. The aim is to appeal to a broad audience (from students to teachers and from lay people to professional practitioners), but at the same time it is intended that the extensive reference material will be of assistance to the specialist user in further research and debate, whether in the local details and across a much broader spectrum. Material is included to show the evolution of a word, phrase, or issue and such material is then supported by more references on the subject. The aim is to explain the significance of a word or phrase in the broadest possible way, rather than becoming too embroiled in the minutiae; although minutiae there is.

The need for an explanation of the feudal aspects of land law is painful, but essential. Painful in that, even though much of it has now been superseded or repealed, it takes up much valuable space. However, it is essential for, without it, much of the remaining material would be virtually inexplicable. A rock endures longer than the body. Much of the terminology used in real estate today comes down through a chain of Roman, Norman, civil, ecclesiastical, common, equitable, and administrative law, well laced with major statutory reforms (such as the English Law of Property Acts of 1922-1925, as amended), or the influence of the 'Restatements of the Law' as adopted and promulgated by The American Law Institute, which have sought to *simplify* and clarify the feudal vestiges of real property law. Nonetheless, many terms can only be fully understood by reference

to such sources, especially the common law as developed in England; a system of law that has evolved for nearly 1,000 years and has indelibly stamped its mark on the real property law of Great Britain, the United States and most Commonwealth countries.

Real estate is not just about law. It is about land and buildings, the buying and selling, debt and equity (in the monetary sense), development and planning, as well as surveying and measuring. It is concerned with state powers and private rights; rural and urban land use; mortgages and liens; that which is above, as well as below, the surface of the earth; the safety and well being of those who enter and use land (and everything that is a part thereof); the value of land (and the miscellany of ways of arriving at such value); the return on the investment in land; the financing of land and its improvements; the insurance of property; securitization of real estate; as well as taxation and other forms of state intervention that impinge on the use of real estate.

As far as possible (given the extent of the material), entries are current as at the end of October 2007. Every care has been taken to ensure accuracy. However, the author accepts full responsibility for any errors and omissions in the text. Any comments, corrections or suggestions are always welcome.

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