

BOOK REVIEWS

VIEW POINT: A POINT OF VIEW ON RIGHTS OF VIEW. By John Greed [University of the West of England 2000, x and (with index) 182pp, £8.00]

The publication of this book coincides with proposals in England for new legislation to deal with nuisance hedges. This is in recognition of the distress which is caused to thousands of people by overgrown hedges and the legislation aims to relieve the unnecessary suffering caused by nuisance hedges.

John Greed's book sets out how the common law has dealt with these issues up to the moment. Although dealing specifically with rights of view, it provides a thorough discussion and analysis of the general law on easements. His commentary on the case law starting in 1610, includes the House of Lords decision in 1997 in *Canary Wharf* and recent cases in late 1999. The case law covers facts as diverse as the right to have clothes blowing on a clothes line and the right to have timber dried by the flow of air. The case law would be of particular relevance not only for blocked views but also in relation to many problems arising in a neighbour dispute case.

Of particular benefit to a busy practitioner is the chapter setting out Greed's conclusion and summings-up. This effectively summarises the main legal issues and contains useful cross-references to the case law already discussed.

This book, although setting out why a right to view should exist, also provides the other more easily recognised tools by which a right of view may be enforced, such as nuisance, under the right to light and by express grants or restrictive covenants. How planning authorities deal with issues of amenity, including views, is also considered and the planning laws can also provide proactive assistance in avoiding a view being blocked.

It is a thought-provoking discourse which should be considered by anyone with the problem of a right of view being blocked and the associated difficulties.

I note that Mr Greed's personal problem with an overgrown tree was solved in a gale but this book should certainly help others who have not been so lucky.

Even if legislation is enacted (there is no guarantee as it is dependent in England on there being space in the parliamentary timetable and in Northern Ireland the matter will fall within the jurisdiction of the new legislative Assembly) it can only possibly address a very limited number of views which are blocked. It will be unable to protect, (to borrow Greed's examples), a view to the wicket at Lord's cricket ground and the view of the spire of Salisbury Cathedral will not be protected by any current proposal.

For such protection, it will be necessary to consider the various possibilities set out in this book and the case law will prove a useful complimentary line of attack.

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PARTNERSHIP LAW. By Michael Twomey [Butterworths: Dublin, 2000, xcii and (with index) 933 pages.]

Partnership law is the Cinderella of commercial law. The reason is that its principles are so simple and well-established. They had been settled in the late nineteenth century and codified in the 1890 Partnership Act, which applied to England, Wales, Scotland and Ireland, and which was echoed in jurisdictions throughout what was to become the Commonwealth. The lack of legal literature on partnership law reflects the success of Sir Frederick Pollock, the author of the 1890 Act, in codifying it with a simplicity and clarity which modern legislative draftsman would benefit from imitating. So Partnership law became a victim of its own success, surviving the twentieth century as a placid backwater. But it is wrong to underestimate the importance of the partnership as a business entity in Ireland as in the United Kingdom. Almost as many partnerships are trading as limited companies. Nor are the businesses small: 852,000 of the 2.77 million persons employed by partnerships in the United Kingdom are in firms with at least ten employees.¹

The simplicity, and prevalence, of partnership law does not mean that its principles are universally understood. The accountancy profession tenaciously refuses to understand the nature of partnership capital. Moreover partnership law has developed since 1890 in different ways in England, Scotland and Ireland, and also in the common law jurisdictions with similar statutes, notably Canada, Australia and New Zealand.

Michael Twomey's guide to Irish partnership law fills the need for a single comprehensive guide to the law as it has developed in Ireland. To put it another way, he has researched the pre-1890 Irish law as thoroughly as the post-1890 Irish law, so as to give a distinctively Irish slant to the 1890 Act. He is right to treat Irish partnership law as different from that of England and Wales, and to point out that those differences that arose between 1890 and 1922 are differences which should be followed in Northern Ireland.

But the focus of this book is not a local one. Twomey's time as a Harvard visiting researcher has given him an opportunity to view from a distance the development of partnership law in all the Commonwealth jurisdictions, and his overview is invaluable.

¹ Small and Medium Enterprise Statistics for the UK 1998 (August 1999).

It is rivalled by his historical research. He reminds us that the first limited partnership in the common law world was created by the Irish Parliament, when it enacted the splendidly-named Anonymous Partnerships Act 1781. Similarly he mentions the reason why the Companies Acts imposed an apparently pointless bar on partnerships of more than 20 members. It is because in those days a creditor of the firm had to join each partner in any action against the firm, an operation which was completely impractical if the partners were numerous.

To test this useful and comprehensive book on the law as it is today, I tried out Twomey on the two problems that I regard as the most difficult in partnership law.

First I sought Twomey's stance on the question of repudiation, as raised by Lord Millett in the English House of Lords in *Hurst v Bryk* [2000] 2 WLR 740. The problem is this. Can a partnership be repudiated, so that a partner who suffers a fundamental breach in the partnership agreement can walk out of the partnership and treat himself as freed from it? In principle, why not? This is no more than simple contract law. But where does that leave section 35(d) of the 1890 Act, which gives to the disgruntled partner a right to apply to the court for an order for dissolution, if another "so conducts himself in matters relating to the partnership business that it is not reasonably practicable for the other partner or partners to carry on the business in partnership with him"? Does this subsection not implicitly exclude his right to treat the partnership as repudiated without any court order? Moreover, how does the doctrine of repudiation work where one member is being wrongfully ejected from the firm by another or a wrongful clique, but other members know nothing about it? Do the latter find their partnership dissolved although they are not involved (either as victims or protagonists) in the repudiatory acts? Lord Millett answers that a partnership is more than a contract, it is a relationship, which is not susceptible to the common law remedy of repudiation. Opinions almost as weighty as Lord Millett differ from him.² It is a classic battle between the equity lawyers and the common law lawyers. I prefer to stand by Lord Millett. Twomey inclines to the common law position.

Twomey also address the difficult question whether a partner is liable for his own simple negligence towards another member of the firm. Can he be financially penalised, or is it of the nature of a partnership that the members accept the possibility of mistakes being made by the other members? To put it another way, is the duty between partners a duty of good faith and nothing more? Some of us say yes.³ There are authorities each way, and Twomey directs us (in particular) to the Irish authorities.

This is a book to be welcomed. It would be churlish to point out any slight weaknesses. For instance, Twomey expresses no view on the vexed question of whether the rules of natural justice apply where a partnership agreement empowers a majority to expel a partner without cause, a provision which is

² See the "Joint Consultation Paper of the Law Commission" and the "Scottish Law Commission on Partnership Law", (2000).

³ The unreported judgement of Carnwath J at first instance in *Hurst v Bryk* (HC 11/4/95) is instructive on this.

common in modern partnership agreements. But in general his coverage and achievement is magnificent, and his book is one which no law library in a common law jurisdiction should be without.

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