

as a guide for policy-making (see e.g. *OECD Employment Outlook 2013*; World Bank, *Doing Business 2006*). The data is often beset by serious methodological limitations and has historically been based on unarticulated assumptions that are liable to distort the conclusions drawn. Recent attempts to provide a broader narrative for labour law, grounding it in concepts such as dignity or capabilities, might therefore offer labour law more protection against its critics than the purposive approach advocated here (see e.g. B. Langille, “Labour Law’s Theory of Justice” in Davidov and Langille (eds.), *The Idea of Labour Law* (Oxford 2010), 101).

These minor points aside, Davidov’s approach is refreshing. He situates labour law within the conflict of labour and capital and provides a powerful justification for the selective scope of labour law (pp. 69–71). That is not to say that universal social policy does not have its place, as others have argued (e.g. A. Supiot, *Beyond Employment: Changes in Work and the Future of Labour Law in Europe* (Oxford 2001)). But Davidov makes a convincing case that social policy should only ever be used to complement, and not replace, the *specific* protections provided by labour law (p. 71). Davidov is making a case for labour law to be seen as a specific and distinct discipline with a unique rationale, much as it was in the mid-twentieth century. He argues convincingly that labour law’s goals cannot be adequately achieved by alternative forms of social regulation.

This book provides a welcome reappraisal of labour law as a discipline. Davidov’s approach reminds labour lawyers that “laws are meant for a reason” and that only by understanding the historic role that labour law has played can we understand its place and purpose today. *A Purposive Approach to Labour Law* is a book about what labour law should *and could be*. While one may be sceptical about some of Davidov’s suggestions, few will object to his aim or purpose.

ZOE ADAMS  
PEMBROKE COLLEGE

*Landmark Cases in Property Law*. By SIMON DOUGLAS, ROBIN HICKEY and EMMA WARING (eds.) [Oxford: Hart Publishing, 2015. xxvii + 309 pp. Hardback £70. ISBN 978-1-849-46608-0.]

*Landmark Cases in Property Law* is the seventh instalment in the *Landmark Cases* series by Hart Publishing. It follows books on *Restitution* (2006), *Contract* (2008), *Tort* (2010), *Family Law* (2011), *Equity* (2012) and *Land Law* (2013), and was published just before *Medical Law* (2015). As with long-running series of films or novels, later instalments occupy a difficult position. Are they worthy successors of the highly successful early instalments that made the series possible? *Landmark Cases in Property Law* suffers from comparison with earlier titles, but is still well worth the money.

Four of the first five books were edited by Professors Charles Mitchell and Paul Mitchell and followed a simple, winning formula. The landmark cases were presented in chronological order by legal historians who provided illuminating background information. Anyone interested in a case, from a student reading it for the first time to a teacher who knows it by heart, could learn from the chapter and develop a new appreciation of the case. Each chapter could be read on its own or the book could be read from front to back, thereby providing insights into the development of an area of law.

These books have the same attraction as “top 10” lists of movies or songs. We are pleased when they confirm our opinions. We may disagree with some selections, but usually understand why they deserve to be there. If we encounter an unexpected item,

its place on a list that otherwise meets with our approval provides a reason for exploring it. The cases chosen for the early books in the series truly are landmarks. For the most part, they are cases we know well and are pleased to learn more about.

*Landmark Cases in Property Law* departs from this winning formula. The cases are not presented in chronological order and, for the most part, they are not presented by legal historians and are not landmarks. The quality of scholarship is high and the subject matter will be of interest to property lawyers, but it is a different sort of book. Many chapters are extended case comments, revisiting and re-evaluating relatively recent cases. Of the 12 cases discussed in the book, seven were decided within the last 25 years and some are surprisingly obscure. Only one case is uncontroversially a landmark: *Armory v Delamirie* (1722).

Part of the problem is that many landmarks of property law have already been treated in previous volumes in the series. *Tulk v Moxhay* (1848), *Rochevoucauld v Boustead* (1897), *National Provincial Bank Ltd. v Ainsworth* (1965), *Pettitt v Pettitt* (1969) and *Gissing v Gissing* (1970) are in the volume on *Equity* (2012), while *Hill v Tupper* (1863), *Re Ellenborough Park* (1955), *Midland Bank Trust Co. Ltd. v Green* (1980), *Street v Mountford* (1985) and *City of London Building Society v Flegg* (1987) are found in *Land Law* (2013). The *Landmark Cases in Property Law* have been chosen from law reports that have been picked over twice.

Instead of presenting cases in chronological order, the book is divided into parts and subparts, each with a short introduction by the editors. Part A is called “The Boundaries of Property” and consists of two subparts: “Tangible Things” and “Intangible Things.” Part B is called “Doctrinal Issues” and divided into three subparts: “Acquisition of Property Rights”, “Content of Property Rights” and “Destruction of Property Rights.” This scheme does little to help guide the reader. The titles of the parts and subparts do not encapsulate what is significant about the two or three cases in each group, nor do they connect those cases in a meaningful way. Also, it is unclear what is meant by “doctrinal issues” or how they differ from the issues explored in Part A. Those wanting to read about the cases in chronological order will have to flip back and forth; so will those who wish to read about a particular branch of property law, such as intellectual property, land law or personal property.

The chapter titles in *Landmark Cases in Property Law* are also a departure from earlier books, in which each chapter title was simply the name of a case and its date in round brackets. Many chapter titles in this book have subtitles, such as “*Phillips v Mulcaire* [2012]: A Property Paradox?” and “*Millar v Taylor* (1769): Landmark and Beacon. Still”. Perhaps subtitles are helpful when presenting cases that have not reached landmark status, but they detract from the elegance of the presentation. So does the odd decision to place some dates in round brackets and others in square brackets.

These quibbles are far outweighed by the quality of scholarship found throughout the book. The chapters fall into two main groups, arguing either for or against landmark status for their chosen case. Of those in the “for” camp, two are about little-known old cases. *Banks v Whetston* (1596), by Dr. David Fox, concerns property rights to coins and their fungibility, while *Millar v Taylor* (1769), by the late Dr. Catherine Seville, is about copyright at common law. They continue the tradition of the earlier books in the series by providing historical backgrounds. The authors make convincing arguments for the recognition of the importance of these cases in the development of the law, but perhaps “milestone” would be a better metaphor than “landmark”.

In contrast are two chapters about well-known modern cases: *Phillips v Mulcaire* (2012) by Dr. Emily Hudson and *Kuwait Airways Corp v Iraqi Airways Co.* (2002) by Dr. Simon Douglas. Both authors had a difficult task arguing that their cases should be regarded as landmarks of property law. *Phillips v Mulcaire* is about common law privilege against self-incrimination in proceedings related to the phone-

hacking scandals. Hudson makes good use of the material to discuss the nature of confidential information as property. The important issues she raises certainly deserve their own landmark, but it is doubtful that *Phillips v Mulcaire* is up to the task, given Lord Walker's approach to the issue: "Whether or not confidential information can . . . be described as property is simply irrelevant."

*Kuwait Airways* concerned claims for conversion of commercial aircraft taken during Iraq's invasion of Kuwait in 1990. It is primarily about issues of private international law and how damages for conversion should be measured. Douglas returns to the trial judgment to see what was said about the defendant's actions. He concludes that the case is a landmark because it establishes "that a defendant must physically interfere with a claimant's chattel in order to be liable in conversion" (p. 222). That conclusion is surprising because it does not appear in the reasons for judgment given in the House of Lords nor does it account for the cases in which defendants committed conversion by dealing with rights to possession of goods without taking possession of them.

Two chapters are about cases that dealt with a specific branch or aspect of property law, but might have broader significance. *Belfast Corporation v OD Cars* (1959) is a landmark in planning law and the focus of Dr. Rachael Walsh's chapter is its importance in that field. She also shows that it deserves to be regarded more widely as a landmark of property law because of its rejection of the American conception of property as a bundle of rights. *Benn v Hardinge* (1993) illustrated the difficulty of proving the intention to abandon a right of way, even after 175 years of non-use. Dr. Emma Waring moves from easements to the abandonment of property rights more generally. While *Benn v Hardinge* provides the occasion for discussing those broader issues, it does not provide the necessary material.

The remaining two chapters in the "for" camp argue that their cases would have been landmarks if they had been decided differently. Ms Sarah Green believes that *OBG v Allan* (2007) was wrongly decided and would have been a landmark if the minority had prevailed in the House of Lords and the tort of conversion had been extended to include interference with debts. She presents a well-argued case for its extension, but slips between two different meanings of property. Rights to possession of goods are rights *in rem* enforceable generally against others, while rights to the payment of debts are rights *in personam* enforceable only against specific persons. While debts are treated as property for some purposes because they are assignable, that does not make them enforceable generally against others. If the reason for extending conversion is to impose strict liability in cases where knowledge or notice is currently required, then it would be better to confront that issue directly than to circumvent it with the tort of conversion.

Ms. Amy Goymour provides a wonderful account of the background to *Bruton v London & Quadrant Housing Trust* (1999), from the 1890s until 2013. She notes (at p. 151) that "many members of the property law community were outraged" when the House of Lords decided that a licence of a flat granted by the licensee of the building was really a short lease. How could someone without a right to possession grant possession to a tenant? Goymour argues that the reasons for judgment are wrong, but the judgment itself can be justified on a different basis such that "*Bruton* stands as a landmark which, although once condemned by its critics, now deserves listing as a Grade 1 national monument" (p. 153). Her contentions, based on relativity of title and tenancy by estoppel, are well argued, but they were made by counsel in the case and rejected by the House of Lords. Readers may wonder how much of the landmark would survive the proposed renovations.

Four chapters argue against landmark status for *Armory v Delamirie* (1722), *Star Industrial Co. Ltd. v Yap Kwee Kor* (1976), *Lloyd's Bank v Rosset* (1990) and

*Yearworth v North Bristol NHS Trust* (2009). Professor Lorna Fox O'Mahony introduces *Lloyd's Bank v Rosset* (1990) as a case that has been "extensively criticised and broadly acknowledged to be doctrinally poor" (p. 179) and describes its place in "the sorry history of the common intention constructive trust" (p. 197). The *Star Industrial* case is well established as a landmark in trademark law, but Mr. Jonathan Griffiths argues persuasively that "its status as a landmark may be more problematic than has hitherto been suggested" (p. 278).

*Yearworth v North Bristol NHS Trust* (2009) is the only case that features in two volumes in this series as landmarks of both property and medical law. The claimants were awarded damages for the destruction of sperm that they had entrusted to the defendant for safe storage. The Court of Appeal decided that this was not personal injury, but damage to property. Mr. James Lee argues that there was no "need for the property enquiry", because the court could have reached the desired result either "by revisiting what forms of damage are compensable" or "on the basis of assumption of responsibility" (p. 41). However, liability must depend on identifying a wrong done; if there was no wrongful interference with the claimants' persons or property, what rights were infringed? Would we want a different result if the sperm had been destroyed by someone who had not assumed responsibility for it, such as a vandal who broke into the hospital?

Dr. Robin Hickey does an excellent job situating *Armory v Delamirie* (1722) in its historical and legal context, but readers might be unhappy that he downgrades it from landmark to milestone (p. 143). He argues that our understanding of the case, as a simple illustration of relativity of title, was probably not how it was perceived at the time. Instead, it was more likely that a finder's right to sue for conversion was then based on a duty to account as a bailee for the true owner. However, the law has long since moved on and so it is surprising that Hickey argues for a return to the eighteenth century. What would be gained by making claimants prove that they are either owners or bailees? The wonderful legacy of *Armory v Delamirie* is that the simple plea of "I had it first" is good enough.

This is a fine collection of essays with much to offer property lawyers, teachers and students. The broad coverage of different aspects of property law is one of many attractive features. Notably absent are any chapters dealing with cases that we usually think of as part of commercial law. There are enough landmarks in that field to fill a volume on their own. Perhaps they will someday.

ROBERT CHAMBERS  
KING'S COLLEGE LONDON

*Lions under the Throne: Essays on the History of English Public Law.* By STEPHEN SEDLEY [Cambridge: Cambridge University Press, 2015. x + 295 pp. Paperback £25.99. ISBN 978-1-107-55976-9.]

Legal history is not simply an intellectual niche interest. It provides the framework upon which any true understanding of legal principle hangs. Students struggle to make sense of public law without the historical background that gives it context and meaning. Practitioners may be able to recite and apply legal principles in their raw form but without a knowledge of their genesis would find it difficult to perceive the full potential of a principle's application. History informs our present and lays down paths for the future. In a country without a formal written constitution, the constitution is its history.