headgear (p. 13) recalled to mind the unbridled mirth with which a number of us, Alan included, hypothesised wildly on the ceremonial head-dress that might befit a Justice of the then nascent Supreme Court—whose building, Baroness Hale tells us (p. 51), did not initially inspire much enthusiasm in him either. But on two occasions contributors struck an especially vibrant chord for this reviewer (pp. 17 and 167). *En passant* they each recalled one of Alan Rodger's favoured debating ploys. Responding to any unappealing proposition, he would fix you with an expression of half disbelief, half reproof—perhaps what he once termed "respectful incredulity" (*Smith v. Smith* [2006] 1 W.L.R. 2024 at [14])—and exclaim: "So, Roderick, you actually believe that?" It is a melancholy fact that never again will the reviewer be able to look suitably sheepish and answer, "It would appear that I do."

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*The History of the Law of Landlord and Tenant in England and Wales*. by MARK WONNACOTT. [The Lawbook Exchange, 2011. lvi, 363 pp. Hardback $75. ISBN 978-1-61619-223-5.]

THE Law of Property Act 1925 is – perhaps regrettably – not a 'topic code' like the Sale of Goods Act 1893 or the Theft Act 1968, but merely a 'Conveyancing Act', adding new 'software patches' to those already added to property law in the 19th century. As a result, cases and other authoritative sources of considerable antiquity may be citable in court in modern property litigation.

In *Prudential Assurance v London Residuary Body* [1991] UKHL 10, [1992] 2 AC 386 the House of Lords relied *inter alia* on *dicta* in *Say v Smith* (1563) 1 Plowd 269, 75 ER 410 as supporting a dogma about leases, which was then used to invalidate a lease-back created by the London County Council in 1930 in order to save compulsory purchase costs, in the process overruling considerably more recent Court of Appeal authority. (I say *dicta* because the actual *ratio* in *Say v Smith* is that a condition precedent to the option for renewal of the lease in that case could not be performed until the lease, and with it the option itself, had determined, so that the option was logically incapable of exercise). In *Berrisford v Mexfield Housing Cooperative* [2011] UKSC 52, [2012] 1 AC 955, Mark Wonnacott, the author of this book, persuaded the Supreme Court to find a 'loophole' in the dogma in *Prudential Assurance* by digging up cases and authoritative treatise writing not much later than *Say v Smith* which, applying the duty of the court to construe private instruments *ut magis valeat quam pereat*, treated a lease which lacked a certain term as a lease for life. Then, the 'patch' provision of LPA 1925 s. 149 (6) which converts leases for life, etc, into leases for 90 years determinable on death (or other condition) could be applied to this 'construed' lease for life.

The lesson is that – however regrettable it may be – practitioners and academics working in the field of real property law need at least the ability to understand roughly what is going on in case-law, statute and treatise literature going back to the 16th century. (For the medieval sources, though Wonnacott cites some of them in this book, recourse to a specialist medieval legal historian is really indispensable.)

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*The History of the Law of Landlord and Tenant in England and Wales* addresses this practical problem. It is organised on the basis of the categories of modern landlord and tenant law, and traces the development of the modern law through authorities which can be taken to be more or less far distant antecedents of the modern rules. In contrast to the usual legal historical treatments of the topic, which begin with the development of the leaseholder's remedies beyond the contractual action of covenant, the substantive rules are treated first, starting with 'Grant and conveyance' (ch. 1) and ending with 'Death, insolvency and dissolution' (ch. 8) before treating actions in the final chapter. The effect is to present in a clear way a view of the long-term development of the modern law which manages to integrate a very large range of authority including a 30-page Table of Cases (going back to 1277), seven and a half pages of statutes ranging from 1266 to 2009, and a mass of treatise literature, abridgments, etc. The book is thus a considerable achievement and will be an extremely useful reference source for anyone confronted with reference to old authority in a modern dispute.

For legal historians working on aspects of the history of leasehold, the book will also be a useful first port of call for getting a sense of the long-run evolution of the particular branches of the modern doctrine and for finding relevant authorities.

For this purpose (and for social and economic historians working on leasehold issues who may consult it) it does, however, need to be handled with a degree of caution. It is very much a lawyer's book, and the substantial economic and social history literature on leasehold practices and their development has not been consulted to contextualise the account.

Equally, it is a *modern* lawyer's, or 'presentist history' book. It assumes the modern category organisation of the topic and modern concerns. Hence – for example – capacity to grant a lease receives a brief treatment of 26 pages, though it covers the ground as much as is needed for its purpose, where Jeffrey Gilbert's treatment of leases, written c. 1710 or shortly before (*Oxford Dictionary of National Biography*, *s.n.*) and later incorporated in Matthew Bacon's *New Abridgment* (1736) is dominated by capacity issues, especially in relation to church leases; and down to the 19th century reforms, capacity issues posed by leasing powers in family settlements, and by leases out of married women's real property, generated extensive litigation. The book is addressed to modern concepts and concerns and their genealogy, not to the concepts and concerns which animated lawyers in any particular past period.

There are also in places some minor technical weaknesses of legal history technique, which may affect the chronology. For a first example, in relation to the use of relevant secondary literature: Sir John Baker in volume VI of the *Oxford History of the Laws of England* (2003) dates the beginning of the treatment of running tenancies, which were formally and in medieval law tenancies at will, as what came to be called periodic tenancies, to the early 1500s (643–44). Mr Wonnacott cites this book, but dates the change to the 1700s (154–57). It is perfectly legitimate to disagree with recent academic literature, but the disagreement and its basis should be made explicit; here its basis *appears* from the footnotes to be the combination of Gilbert on leases struggling with a (then) recent case of 1708, with William Blackstone, who cannot be treated today as an accurate reporter of the dating of developments in practice.

Similar issues of chronology occasionally arise in relation to the use of primary sources. At p. 17 the author says that "In 1681, the husband's power

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to deal with his wife's leasehold property was absolute and extended to leases held in trust for her, too. [FN] But soon afterwards, courts of equity started protecting wives, by refusing to allow husbands to interfere where property had been settled on trustees to the wife's separate use. [FN]" The first footnote cites to *Sir Edward Turner's case* as reported by Vernon; use has not been made of Lord Nottingham's report of his decision below reversed by the House of Lords, *Turner v Turner* (1678) 79 Selden Society 711 pl. 893, which makes the context clearer than Vernon, showing that the House of Lords decision overthrew previously settled equitable doctrine relied on by conveyancers. The note has supplementary reference to *Wytham v Waterhouse* (1596) (wife's trust leases survive to wife if not disposed of by husband, a rule not affected by *Turner's Case*) and *Griffin v Stanhope* (1617) (husband's lease by way of security for jointure not a fraudulent conveyance, which is not really relevant). The second footnote cites to the long note on the issue in Francis Hargrave and Charles Butler's edition of *Coke upon Littleton* at fo. 351a, written in the late 18th or early 19th century (I have looked it up in the 1823 edition), though not specifying at what point in the note; to the *General Abridgment of Cases in Equity* (1732), which far from showing ways round the rule in *Turner's Case*, shows it continuing in operation down to the date of that book; to Holdsworth *History of English Law* vii, 379, a discussion of the precedents in West's *Symboleography*, written in the 1590s though reprinted for some time after; and to Orlando Bridgeman's *Conveyances* in the third edition of 1699, but again a book written before *Turner's Case* was decided. In reality *Turner's Case* concerned a second husband's power to dispose of a jointure trust of leasehold created by the first husband, and the alternative solutions available after the House of Lords decision were either to insist in the negotiations for the first marriage on jointure charged on freehold, or in the negotiations for the second marriage to make the second husband bind himself explicitly to comply with the jointure trusts of the first marriage. The issue is admittedly neither simple, nor at all relevant after Married Women's Property Act 1882: I give it as an example of chronological problems in Mr Wonnacott's handling of the primary sources, which are not a problem for a modern lawyer but could be a problem for a legal, social or economic historian using the book.

As I indicated above, these are *examples* of episodic problems in the book's handling legal-historical secondary literature and of primary sources, as possibly affecting the chronology of the narrative. They mean that legal, social or economic historians making use of the book will need to handle it with a degree of caution. But they do not significantly affect either the utility of the book, or its considerable achievement.

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*The Law of Private Nuisance*. by Allan Beever. [Hart Publishing, 2013. Hardback. £35. ISBN 978-1-849-46506-9.]

Can the law of nuisance, with all its apparent vagueness and inconsistency, be rendered coherent? In this stimulating and forcefully argued book, Allan Beever argues that most of the decisions, but emphatically not the reasoning, of this "under-theorised" (p. 1) tort can be explained in terms of a hierarchy of competing rights.

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