

**THE
CANDIDATE'S
COMPANION**

Ian Harold Marshall FIS Aust.
23 Glen Cory Avenue,
BUTTABA. NSW. 2283
(02) 4975 1076
ima71693@bigpond.net.au

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The Candidate's Companion

Preface.

This paper is the vanguard of an anthology designed specifically to provide a contemporary focus for candidates preparing for the assessment procedures conducted by the Board of Surveying and Spatial Information (BOSSI) leading to the awarding of a Certificate of Competency and accompanying registration as a Land Surveyor under the provisions of the Surveying Act, 2002.

Introduction

The preparation required by a candidate for assessment by the Board of Surveying and Spatial Information (BOSSI) leading to the awarding of a Certificate of Competency and accompanying registration as a Land Surveyor under the provisions of the Surveying Act, 2002, has been long recognised as a daunting task.

The inception of the Kurri Kurri Workshop in the mid 1980's was designed by the Board of the day as a means of providing candidates with clarity of the detail as to the level of competency expected of candidates by the assessors representing the Board. The intention was to lead candidates to sources of appropriate information and encourage their professionalism, but not to instruct them *per se* in the principles of boundary surveying, town planning and engineering. Successive Boards since 1929 have opted to the view that the responsibility for the training of future surveyors is the sole domain of those who are professionally qualified and whose names appear on the Register maintained by the Board.

The late Mr. K.E. Hamer, Supervising Surveyor, Registrar General's Department, Sydney and a then member of the Board of Surveyors of New South Wales, introduced a paper entitled "Some Aspects of Title Boundary Location in New South Wales", presented to the 10th Australian Survey Congress, Sydney, 1967 by saying;

"Unlike some other branches of surveying, the problems encountered in cadastral work do not as a rule fall within certain well-defined limits nor are they governed by well-established formulae which, if correctly applied, will provide the required answers."

Mr. Hamer reflected on the widely held view, of that time, of the difficulty of discussing the subject of boundary re-instatement in wide or general terms and suggested this as the main reason for the lamentable shortage of textbooks dealing with boundary surveying.

The only publications in book form available to students in 1967 were firstly, that referred to by Mr. Hamer as "Notes on Survey Investigation" by a former Registrar General, Mr. R. W. Willis and another entitled "Handbook For Practising Land and Engineering Surveyors" by H. G. Foxall, published by the New South Wales Division of the Institution of Surveyors Australia Inc.

According to its preface "Notes on Survey Investigation", first published in 1945, the publication was intended for the use of Draftsmen in the Registrar General's Department. Despite its intended purpose, because it contained so much useful information it was widely referred to by surveyors and for many years it was exclusively relied upon by practising surveyors and student alike. This publication has been subject to periodic reviews (last revision in 1982) and although now officially out of print because of the dominant Hallman text, it contains some useful working examples and remains a valuable reference document.

Most would agree that the publication of Hallman's "Legal Aspects of Boundary Surveying as apply in New South Wales" by the New South Wales Division of the Institution of Surveyors Australia Inc. in 1973, was a contribution of immense value. This publication in a wholly revamped style and solidly supported by the Legal Department of Land and Property Information NSW continues as the primary reference tool for land surveyors.

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In recent years, and much to the credit of a former Board member, Mr. Surveyor Colin Weatherby, a major paradigm shift in attitude has seen the adoption of Professional Training Agreements (PTAs) as an alternative option to the time honoured professional assessment procedures. There is a high expectation within the profession that PTAs will significantly reduce the average time being taken by candidates to successfully achieve the awarding of a certificate of competency and the ultimate goal of registration as a land surveyor in New South Wales. The two systems are now being run concurrently; however completion rates are not yet sufficiently high in numbers to be able to accurately compare the two systems and form a conclusion. The measure of success of this alternative approach to training is yet to be determined.

One thing is certain --- the profession is suffering immeasurably from the legacy of the past wherein those responsible for training professional land surveyors have failed to develop any form of structured training programmes.

The words used by our great and revered Surveyor-General, Major Sir Thomas Livingston Mitchell (1828-1855) in Circular No. 36/22, the first known regulation issued to Surveyors in New South Wales in 1836 can be well applied in our modern age,

I instance this for the purpose of making evident to you the serious responsibility with which you are charged, and the penalties you may subject yourself to, by any neglect – besides the mischief and embarrassment that could result from the discovery of discrepancies of the nature alluded to - ...

Your skill and professional dedication, in co-operation with the Board of Surveying and Spatial Information, Land and Property NSW and in particular your fellow professionals, will ensure the protection and maintenance of New South Wales' greatest asset – the cadastre.

PROFESSIONALISM

The power, rights and duties of a professional land surveyor are divided between two main areas --- legal and ethical. Legal implies those things, which are enshrined in law --- or in other words, those defined by specific statutes (e.g. the Surveying Act, 2002 and the Surveying Regulations, 2006 associated with it); case law (i.e. the legal precedents established by particular Judges' interpretation of the law in specific cases); and English Common Law.

It is the implicit duty of a professional land surveyor to be familiar with all the Acts, Regulations and case law affecting both the execution of surveys and responsibilities to clients, employers, members of the public and to society in general. This knowledge is most readily obtained by an active participation in continuing professional development programmes.

Continuing Professional Development (CPD) is implicit in the life of a professional land surveyor. Annual registration by BOSSI, as a land surveyor, requires a demonstration that an appropriate level of continuing professional development has been achieved during the previous year of registration. This learning can be most beneficially obtained by being a member of an appropriate professional organisation i.e. the Institution of Surveyors Australia Inc. CPD should never be viewed simply as a prerequisite to registration, but rather it should be actively and enthusiastically embraced as a vehicle for extending one's knowledge. CPD is a road map to be used in the pursuit of excellence.

In general, the professional land surveyor should constantly adhere to what is often called the "Golden Rule", a rule, which underpins all the great religions of the world and indeed, most philosophies of life. Loosely paraphrased, in the context of professional ethics, it can be stated:

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In your business and professional life, do not deal with your clients, employers, employees or members of the public in any manner in which you would not like to be dealt with if the roles were reversed.

Any professional land surveyor who lets this rule be the guide for professional behaviour, who is familiar with legal duty and responsibility and who is wise enough to insure for legal liability to a client or other persons to whom inadvertent or unintentional damage may be caused, should have no difficulty in engendering the kind of confidence and trust which is essential to carrying on a successful professional practice in either the private or public sector.

There is one thing that must be impressed upon you; the necessity for the maintenance of a high standard in the profession is of far greater importance, than individual well - being. You must maintain high ideals of service for which the profession stands.

In the activities you are called upon to discharge you have to translate the facts and express them in concrete terms. Now there are certain signposts, which point the road to truth; but only those properly trained can read them. It is the gospel faithfully to observe, fully to record and properly translate those factors and build them up.

THE SURVEYING ACT 2002

The Surveying Act 2002 is an Act, which makes provision with respect to the functions of the Surveyor-General, **the registration of surveyors, the control of surveys** and the constitution and function of the Board of Surveying and Spatial Information

It is the pre-eminent Act in the professional life of a registered land surveyor or in the professional life of a person who aspires to such a position. An intimate knowledge of both the Act and its corresponding Regulation is essential.

It is registration under the provisions the Surveying Act 2002 that provides a land surveyor with a special status as an expert in the field of land measurement, and the identification and interpretation of physical evidence on the ground to facilitate the re-instatement of land title boundaries.

The powers, rights and duties of land surveyors, together with the attendant legal responsibilities are contained in this Act and the Surveying Regulation 2006. In the Act, **“survey”**, when used as a noun, means an activity that includes any of the following:

- (a) the taking of measurements of distance, height, depth, level or direction in relation to land, including the air space above land and the subsurface below land and including land covered by water,*
- (b) the insertion of survey marks in or on any land,*
- (c) the recording of any measurements so taken and the location of any survey marks so inserted,*
- (d) the collating of any measurements and locations so recorded,*
- (e) the preparation of plans or other documents (whether in writing or in electronic form) to illustrate the results of any such measurements or the location of any such marks,*

but does not include any activity involved in mapping or the preparation of navigational charts or any other activity declared by the regulations not to be a survey.

Part 6 of the Act contains provision for the **constitution and functions of the Board**. Contrary to a popularly held view within the profession, as a statutory body representing the Crown, the primary responsibility of the Board is to protect the community from the unscrupulous actions of incompetent surveyors or persons improperly holding themselves out as surveyors qualified to carry out boundary surveys.

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ESSENTIAL READING.

The Surveying Act 2002 and the Surveying Regulation, 2006.

Legislation can be viewed and downloaded at <http://www.legislation.nsw.gov.au/>, a service provided by the NSW Parliamentary Counsel's Office. Legislation can also be downloaded at <http://www.austlii.edu.au/> the site of the Australasian Legal Information Institute (AustLII), which provides free access to Australian legal materials.

ACCRETION AND EROSION.

There are two types of waterfront boundaries in New South Wales:

- Right line; or
- Ambulatory.

A right line boundary is a definitive position, constructed of linear measurements, referenced to an established survey control and related to adjoining boundaries. On the other hand, ambulatory boundaries are referenced to mean high water mark or the bank of a non-tidal stream.

Ambulatory boundaries are subject to the common law **doctrine of accretion and erosion**. Accretion is the acquisition of extra land from the sea or its inlets, or from a stream, by natural, gradual and imperceptible means. In the same manner as land may be extended by accretion, it may be diminished by erosion.

The principles of accretion and erosion apply to both tidal and non-tidal waters but do not apply to non-tidal lakes (refer s172 Crown Lands Act, 1989).

An amendment to the Coastal Protection Act, 1979 which came into force on February 2003, established the "Modified Doctrine of Accretion", which requires that where a re-definition of a landward boundary increases the area of land because of accretion, it is incumbent upon the surveyor to demonstrate that the area, the subject of the accretion claim will;

- (a) have a perceived trend of accretion that is likely to be sustained by natural means; and
- (b) is unlikely to deny public access to a beach, headland or waterway.

Water boundaries represent the most common natural feature boundaries that surveyors are called upon to deal with and consequently the assessors will expect a candidate to demonstrate a sound knowledge and a clear understanding of this particular area of study.

ESSENTIAL READING.

"Land by the Water" by J.E Moore - *The Australian Law Journal* - April 30, 1968 Vol. 41 Page 532.

"Surveyor General's Directions for Survey Practice"- No.6 – "Water as a Boundary Procedures"- available on Internet from Land Information Centre- <http://www.lands.nsw.gov.au/>

AD MEDIUM FILUM.

Where land is described by reference to non-tidal water, or is bounded by a road, the presumption at common law is that the title to the land so described extends "to the middle line"

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(*ad medium filum*) "of the water" (*aquae*) or "of the road" (*viae*). *Ad medium filum aquae* is a presumption which is rebuttable and a candidate should be familiar with the circumstances of when, how and why this occurs. A practical hint - carefully read the "NOTES" in the heading of a Parish map.

ESSENTIAL READING.

Hallman's "Legal Aspects of Boundary Surveying as apply in New South Wales".
Chapter 13 – "Survey Investigation" [13.71] to [13.83]

"Land by the Water" by J.E.Moore - *The Australian Law Journal* - April 30, 1968 Vol. 41 Pages 532 to 542.

ADVERSE POSSESSION.

Unlike indefeasibility afforded to registered proprietors of Torrens title land under the provisions of the Real Property Act, 1900, documentary title conferred by common law is good only if a better one cannot be established. Possession is regarded by common law to be *prima facie* evidence of ownership and the Limitations Act, 1969 provides that a claim for adverse possession may be made against a Common Law owner after a period of 12 years.

A claim for adverse possession against the Crown can be made, subject to certain exclusions. Occupation must be shown to be for at least 30 years as from January 2000 or 60 years from January 1970.

Since June 1, 1979, it has been possible for a person to make a possessory title claim to a "whole parcel" of Torrens title land under the provisions of the Real Property Act, 1900.

ESSENTIAL READING.

"Registrar-General's Directions for Plans"- Chapter 11 – "Conversion of Old System Land"
Available on the Internet from Land and Property Information NSW- <http://www.lands.nsw.gov.au/>

Real Property Act, 1900 – Part 6A – Possessory Titles to Land under the Act.

Hallman's "Legal Aspects of Boundary Surveying as apply in New South Wales".
Possessory Title to Land under the Real Property Act, 1900. [9.111 to 9.117]

BOUNDARY DETERMINATIONS.

It may be the case that surveyors, attempting to redefine a lost or confused boundary, cannot agree on the position of the boundary. Should this give rise to a dispute between adjoining owners then recourse might be had to the provisions of Part 14A of the Real Property Act, 1900. These provisions were introduced in 1990 to provide a simple and inexpensive alternative to litigation and the court system for resolving boundary disputes.

ESSENTIAL READING.

Real Property Act, 1900 – Part 14A – Boundary Determinations.

Hallman's "Legal Aspects of Boundary Surveying as apply in New South Wales".
Boundary Determinations [13.104 to 13.108]

"Registrar-General's Directions for Plans"- Application for Boundary Determination – [6.7] -
Available on the Internet from Land and Property Information NSW- <http://www.lands.nsw.gov.au/>

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COMMUNITY SCHEMES. – (See also Strata Schemes)

The community title legislation was designed to fill the vacuum between conventional methods of subdivision and strata subdivision, previously the only methods of subdividing land in New South Wales.

- Community Land Development Act, 1989 and Regulations.
- Community Land Management Act, 1989.

ESSENTIAL READING.

“Registrar General’s Directions for Community Schemes.”

Available on the Internet from Land and Property Information NSW, Queens Square Building, Sydney. <http://www.lands.nsw.gov.au/>

Legislation can be viewed and downloaded at <http://www.legislation.nsw.gov.au/>, a service provided by the NSW Parliamentary Counsel’s Office. Legislation can also be downloaded at <http://www.austlii.edu.au/> the site of the Australasian Legal Information Institute (AustLII), which provides free access to Australian legal materials.

COMPILED PLANS.

The Real Property Act, 1900 clearly envisages accurate survey plans as the basis of reliable title to land and in fact real property title relies wholly upon this premise. Section 195F (1) & (2) of the Conveyancing Act, 1919 sets out the Registrar-General’s duty in ensuring the correctness of parcel boundaries.

Acceptance of a compiled plan or a partial survey is a concession by the Registrar-General, who is authorised to require lodgment of a full plan of survey.

ESSENTIAL READING.

“Registrar-General’s Directions for Plans”- “When is Plan required” [1.1] and [1.2] Available on the Internet from Land and Property Information NSW- <http://www.lands.nsw.gov.au/>

The Conveyancing Act, 1919 and the Conveyancing (General) Regulation, 1998.

Legislation can be viewed and downloaded at <http://www.legislation.nsw.gov.au/>, a service provided by the NSW Parliamentary Counsel’s Office. Legislation can also be downloaded at <http://www.austlii.edu.au/> the site of the Australasian Legal Information Institute (AustLII), which provides free access to Australian legal materials.

CONSENTS.

MEAN HIGH WATER MARK.

Sub-clause 50(1) of the Surveying Regulation 2006 provides

If, since the date of a previous survey, there has been a change in the position of the mean high-water mark of tidal waters forming a boundary of land to be surveyed, being a change arising from natural, gradual and imperceptible accretion or erosion, approval of the determination of the new position must be obtained from:

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- (a) *the Minister administering the Crown Lands Act 1989, if the adjoining land below the mean-high mark is Crown land, or*
- (b) *the owner of the adjoining land, if the adjoining land below the mean high-water mark is not Crown land..*

Title to the beds of all tidal waters, unless specifically vested in another authority or the subject of a Crown Grant are under common law deemed to be vested in the Crown.

NSW Maritime is responsible for administering all land below mean high water mark in Sydney Harbour, Botany Bay, Port Hunter and Port Kembla Harbour and consequently NSW Maritime is the consent authority in those four locations. The consent authority in all other cases is the Minister administering the Crown Lands Act 1989 (or a person authorised by that Minister).

ESSENTIAL READING.

"Surveyor General's Directions for Survey Practice"- No.6 – "Water as a Boundary Procedures"- available on Internet from Land Information Centre-
<http://www.lands.nsw.gov.au/>

"Registrar-General's Directions for Plans"- Boundary Consents and Approvals [6.8] Available on the Internet from Land and Property Information NSW-
<http://www.lands.nsw.gov.au/>

NON- TIDAL WATERS.

(a) RIVERS AND STREAMS.

The doctrine of accretion and erosion applies to all non-tidal streams (refer s172 Crown Lands Act, 1989) and consequently where a survey discloses other than a minor variation to the original position, the consent of the Minister administering the Crown Lands Act, 1989 will be required.

(b) LAKES AND LAGOONS.

The boundary of a non-tidal lake is re-instated in accordance with the location as shown in the plan of survey on which the grant for alienation purposes is based, **not as at the date of grant**, as with non-tidal streams. The doctrine of accretion does not apply to non-tidal lakes and is deemed never to have applied (refer s172 Crown Lands Act, 1989).

ESSENTIAL READING.

Surveying Regulation 2006- Division 5 – Boundaries formed by tidal and non-tidal waters and other natural features.

Crown Lands Act, 1989 – s172.

Legislation can be viewed and downloaded at <http://www.legislation.nsw.gov.au/>, a service provided by the NSW Parliamentary Counsel's Office. Legislation can also be downloaded at <http://www.austlii.edu.au/> the site of the Australasian Legal Information Institute (AustLII), which provides free access to Australian legal materials.

"Land by the Water" by J.E.Moore - *The Australian Law Journal* - April 30, 1968 Vol. 41 Page 532 to 542.

"Notes on Survey Investigation" by R.W. Willis. (Although out of print this publication should be available in most survey offices)

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"Surveyor General's Directions for Survey Practice"- No.6 – "Water as a Boundary Procedures"- available on Internet from Land Information Centre- <http://www.lands.nsw.gov.au/>

"Registrar-General's Directions for Plans"- Boundary Consents and Approvals [6.8] Available on the Internet from Land and Property Information NSW- <http://www.lands.nsw.gov.au/>

RAILWAY BOUNDARIES.

Where land is bounded by railway land, the consent of the State Rail Authority is not required where the boundary is:

- defined by existing registered deposited plans, portion plans or section plans;
- the surveyor's definition of the railway boundary maintains that definition without excess in side boundaries to the railway boundary;
- except in the case of a compiled plan, the definition is supported by evidence of railway occupations.

In all other cases consent will be required, preferably prior to the lodgment of the plan at the Land Titles Office.

ESSENTIAL READING.

"Registrar-General's Directions for Plans"- Consents to Railway Boundaries [6.8.5] Available on the Internet from Land and Property Information NSW- <http://www.lands.nsw.gov.au/>

"Definition of Railway Boundaries in N.S.W." by John T. Webber
Available from the New South Wales Division of the Institution of Surveyors Inc.

Hallman's "Legal Aspects of Boundary Surveying as apply in New South Wales".
Chapter 13 – "Survey Investigation" – [13.33]

ALIGNMENTS IN THE CITY OF SYDNEY.

Since April 1975, consent has been required by the Land Titles Office to the definition of road boundaries (alignments) shown in deposited plans of survey of land within the City of Sydney as constituted immediately before January 1, 1949. Part of this area is now included in the City of South Sydney and consequently, where appropriate, the consent of either the Council of the City of Sydney or the Council of the City of South Sydney is required to the definition of streets.

ESSENTIAL READING

"Registrar-General's Directions for Plans"- Consent to Roads within Sydney City Council [6.8.4.4] Available on the Internet from Land and Property Information NSW- <http://www.lands.nsw.gov.au/>

Hallman's "Legal Aspects of Boundary Surveying as apply in New South Wales".
Chapter 13 – "Survey Investigation" – [13.32]

DESCRIPTION.

A conveyance or dealing, under Common Law title, whereby title to land passes from a vendor to a purchaser has traditionally relied upon a description of the property forming the basis of the deed. It is the duty of the vendor to supply a description to the purchaser sufficient to identify the land being transferred or conveyed. Because Common Law or Old System title falls outside the

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provisions of the Real Property Act, 1900, the content of a deed description has always been regarded by the Registrar- General to be a matter of acceptance by the purchaser of that which is offered by the vendor or *caveat emptor* - Buyer beware. Although the Real Property Act, 1900 does not make provision for the registration of old system dealings, the Registrar- General has long recognised that land under Common Law title in New South Wales cannot be ignored and consequently although documents are not examined in the manner of Torrens title dealings, provision has been made for these dealings to become a matter of public record by being registered in the Land Titles Office.

There has been a continuing programme in New South Wales to phase out Old System title and consequently the requirement for land surveyors to prepare metes and bounds descriptions for inclusion in conveyancing documents is rapidly diminishing. It is the ability of a candidate to interpret existing deed descriptions, which is of interest to the assessors and the demonstration of a skill in preparing such a document in the most reasonable manner available to a candidate to show an understanding of the philosophy behind a description.

A golden rule – **A description by abutments will, as a rule, over-ride measurements expressed in figures if there is a conflict between description and measurement** – *Small v. Glen*, (1880) 6VLR (L) 154.

A candidate should also be familiar with the principles of the procedural rule *falsa demonstratio non nocet* and the rule of construction against the grantor - details of both of these items can be found in Hallman – Chapter 13 –Survey Investigation.

ESSENTIAL READING.

“Handbook for Practising Land and Engineering Surveyors” By H.G. Foxall.
Chapter 16 – The Definition of Boundaries.

Hallman’s “Legal Aspects of Boundary Surveying as apply in New South Wales”.
Chapter 4 – Boundary Control [4.6]
Chapter 13 – Survey Investigation [13.12, 13.94 to13.99] and [13.100 to 13.102]

EASEMENTS.

An easement is a right granted for a specific purpose over a parcel of land for the benefit of an authority or another parcel of land. The land subject of the easement is the servient tenement and the land or the authority enjoying the right is known as the dominant tenement.

ESSENTIAL READING.

“Registrar-General’s Directions for Plans”- Chapter 12 – Easements and Covenants Available on the Internet from Land and Property Information NSW- <http://www.lands.nsw.gov.au/>

Conveyancing Act, 1919 and Conveyancing (General) Regulation, 1998.

Legislation can be viewed and downloaded at <http://www.legislation.nsw.gov.au/>, a service provided by the NSW Parliamentary Counsel’s Office. Legislation can also be downloaded at <http://www.austlii.edu.au/> the site of the Australasian Legal Information Institute (AustLII), which provides free access to Australian legal materials.

FIELD NOTES.

As a question of law, evidence of survey is not the plan but the surveyor’s field notes and consequently, regardless of the plan and regardless of whether or not it is registered in the public

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domain, field notes will inevitably and consistently take precedence over the plan which has been produced using those field notes. The field notes are the basic record of any survey and as evidence rank only second in importance to the actual layout of the survey on the ground. In some jurisdictions in Australia, there is a requirement that the field notes of the survey must be lodged with the deposited plan. This is not the case in New South Wales however this does not detract from their importance or legal significance.

Division 6 of the Surveying Regulation 2006 prescribes in detail the responsibility of a land surveyor regarding field notes. At Clause 54, **Surveyor to make field notes**, the regulations provide in part as follows,

- (1) *A surveyor's field notes must be neat, precise, complete and readily intelligible in accordance with the usage of surveyors.*
- (2) *Facts, readings and observations must be recorded immediately after they are ascertained,*
- (3) *A surveyor must keep an archive of:*
 - (a) *all field notes made by the surveyor with indices and cross references set out in a manner that facilitates the preparation of a complete and accurate survey plan, and*
 - (b) *all other information and documentation relevant to those field notes.*

ESSENTIAL READING.

Surveying Regulation 2006 – Clauses 7, 9, 12, 34(1), 35, 54 to 60 inclusive and 71.

Legislation can be viewed and downloaded at <http://www.legislation.nsw.gov.au/>, a service provided by the NSW Parliamentary Counsel's Office. Legislation can also be downloaded at <http://www.austlii.edu.au/> the site of the Australasian Legal Information Institute (AustLII), which provides free access to Australian legal materials.

RECOMMENDED READING.

"Handbook for Practising Land and Engineering Surveyors" By H.G. Foxall.
Chapter 8 – "Field Notes and Plans" Pages 70 to 78.

HIERACHY OF EVIDENCE.

The courts have established precedents granting priorities of weight where any two or more of the following boundary features present conflicting evidence in the hearing of a dispute.

These are in order of priority:

1. natural feature boundaries;
2. monumented lines;
3. old occupations, long undisputed;
4. abuttals;
5. statements of length, bearing or direction.

This ranking order, known as the hierarchy of evidence, although not always rigidly applied (special circumstances may lead the Court at times to give greater weight than normal to a feature of lower rank), provides the basic principles associated with re-instatement of title boundaries

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ESSENTIAL READING

Hallman's "Legal Aspects of Boundary Surveying as apply in New South Wales".
Chapter 13 – "Survey Investigation"

"Notes on Survey Investigation" by R.W. Willis. (Although out of print this publication should be available in most survey offices)

"Registrar-General's Directions for Plans"- Chapter 6 - Boundary Definition - Available on the Internet from Land and Property Information NSW- <http://www.lands.nsw.gov.au/>

"Handbook for Practising Land and Engineering Surveyors" By H.G. Foxall
Available from the New South Wales Division of the Institution of Surveyors Australia Inc. – 3rd Floor, 365 Pitt St., Sydney. 2000

HISTORICAL REGULATIONS.

A candidate must have an intimate knowledge of the Surveying Regulation 2006, which prescribe the conduct of and the marking of modern day surveys, but the importance of land surveyors possessing knowledge of historical marks and developing skills in searching for, locating and identifying monuments of earlier boundary surveys to enable a proper re-instatement of those boundaries, cannot be overstated.

ESSENTIAL READING.

"Marking the Landscape" by I. H. Marshall – Land Information Centre, Bathurst 1999.
Available from Board of Surveying and Spatial Information, PO Box 143, Bathurst. 2795

Hallman's "Legal Aspects of Boundary Surveying as apply in New South Wales".
Chapter 4 – Boundary Control [4.8]

IDENTIFICATION AND RE-MARKING SURVEYS.

Clause 10 of the Surveying Regulation defines an **identification survey** and a **re-marking survey** and in particular prescribes the clauses of the regulations, which apply in the execution of such surveys.

ESSENTIAL READING

"Guidelines on the preparation of Identification Reports"- Prepared by and available from the New South Wales Division of the Institution of Surveyors Australia Inc.

"Identification Surveys: Freehold Title and Torrens Title" by John Weingarh
The Surveyor- March 31, 1913.

"Identification Surveys" by C.J.L. West – *The Australian Surveyor* - March 1974,
Vol. 26, No. 1. Pages 51 to 61.

LAND TITLING.

COMMON LAW OR OLD SYSTEM TITLE

Land alienated from the Crown in fee prior to 1863 and not subject to the provisions of the Real Property Act, 1900 or any estate or interest therein.

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TORRENS TITLE.

The system of title (or land) registration devised in South Australia by Robert Torrens, expressed in New South Wales in the Real Property Act, 1900.

QUALIFIED TITLE.

A folio in the Register in which is recorded a "caution" that has not been cancelled. A caution warns persons dealing with the registered proprietor that the land is held subject to any "subsisting interests" that may exist under Common Law or Old System.

LIMITED TITLE.

A certificate of title issued for land converted from Old System title whereby the boundaries have not been adequately defined in a survey and/or have not been investigated in Land and Property Information, Department of Lands. A limitation is recorded in the second schedule.

POSSESSORY TITLE.

See Adverse Possession.

"Registrar-General's Directions for Plans"- Chapter 11 – Conversion of Old System Land - Available on the Internet from Land and Property Information NSW- <http://www.lands.nsw.gov.au/>

MONUMENTS.

In surveying terms **monument** means ---- *An artificial or natural object, a building or other structures related to a boundary and shown on a plan of survey on public record.* Unless it is shown on a registered plan of survey, an object as described above cannot claim monument status. As an example – a fence post relied upon as evidence for the first time must be shown on a surveyor's plan as "Fence Post Adopted" but in any future plan in which that fence post is used as evidence, the notation must be "Fence Post Found". Being shown in the initial plan creates the fence post as a monument for all time.

"Monuments govern" – has been the catch cry of boundary surveyors since time immemorial. Boundaries, which are not defined by natural features, must rely on the hand of man to fix their positions.

In order to practice competently and efficiently the cadastral surveyor must work within a set of guidelines established by statute law, case law and common law; many such laws having originated in the last century or earlier. These guidelines have established a practice for cadastral surveys which has not changed except for the precision of surveys, for nearly one hundred years." (Williamson & Holstein, 1978).

From the humble wooden peg to the *established permanent mark* (defined in the Surveying Act, 2002), the types of marks used in New South Wales have been many and varied.

ESSENTIAL READING.

"Marking the Landscape" by I.H. Marshall – Land Information Centre, Bathurst 1999. Available on request from Board of Surveying and Spatial Information, PO Box 143, Bathurst, 2795 – Book or CD format.

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PLAN PREPARATION.

The statutory requirements for deposited plan preparation are contained in:

- Conveyancing Act 1919 and Conveyancing (Practice) Regulation 1996.
- Surveying Act 2002 and Surveying Regulation 2001
- Environmental Planning Assessment Act 1979
- Pipelines Act 1967 and Pipelines Regulation 1993
- Community Land Development Regulation 1995

ESSENTIAL READING

“Registrar-General’s Directions for Plans” – available from Land and Property Information NSW on Internet - <http://www.lands.nsw.gov.au/>

PUBLIC ROADS IN NEW SOUTH WALES.

An excellent and comprehensive treatise on this subject by Mr. V. Le Gay Brereton, Barrister-at Law, was published in December 1933, in the “Australian Surveyor”, Vol. 4, and No. 8. The following is a brief outline.

The first Public Roads in N.S.W. were probably those, which automatically became so under English Common Law, i.e. where there was an intention – not necessarily expressed by legal instrument – by a competent owner to dedicate, and an acceptance by the public. Some of the first streets in the convict settlement at Port Jackson would no doubt come within this category. Then would follow the case no doubt where the intention to dedicate for roadway would be expressed by definite provision in the Crown Grant. Act 4, William IV, No. 11, which became law in 1833, was the first statute to provide *inter alia* for the opening of roads within the colony. Further legislation followed which had the effect of providing that any lands “left open” and used as a foot or carriage way were deemed to be dedicated to the public. The Crown Lands Act of 1861 contained provisions for reserving and dedicating Crown Lands for roads. Subsequent Crown Lands Acts provided for resumption from incomplete purchases and withdrawal from leases of lands for roads, to which the provisions of Act 4, William IV, No. 11, were generally made to apply. Public Roads under this Act are generally known as “confirmed roads”. Act 4, William IV, No. 11, was superseded by the Public Roads Act 1897, which in turn was superseded by the Public Roads Act 1902. Section 24 of the Crown Lands Consolidation Act 1913, provided for the Minister by notification in the Gazette to dedicate Crown Land for Public Road. The Public Works Act, Local Government Act, Conveyancing Act and the Main Roads Act also contained provisions either for the resumption or dedication of lands for Public Roads.

ESSENTIAL READING.

Hallman’s “Legal Aspects of Boundary Surveying as apply in New South Wales”. Chapter 6 – “The Provision of Roads” and Chapter 7 – “The Status of Roads”.

Available from the New South Wales Division of the Institution of Surveyors, Australia Inc. - 3rd Floor, 363 Pitt St. Sydney. 2000.

Registrar General’s Directions for Plans – Section 15 – “Roads”

Available on the Internet from Land and Property Information NSW, Queens Square Building, Sydney. <http://www.lands.nsw.gov.au/>

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RECOMMENDED READING.

Baalman & Wells on the Practice of the Land Titles Office.
Available in Solicitor's and Conveyancer's libraries.

ALIGNMENT OF PUBLIC ROADS.

The enactment of the Roads Act 1993 imposed upon "alignments" a degree of historical significance and as a consequence all study on this aspect of survey must be viewed for its contribution to the re-determination of boundaries. Mind you, the importance of this element of survey must not be underestimated and the assessors, although not requiring you to recite historical legislation, will expect you to have an understanding and a working knowledge of the significant parts of those statutes.

A brief summary of the salient points is as follows,

- Irrespective of the kerb-to-kerb measurement as compared to the proclaimed carriageway width, the alignment should be fixed by measuring from the kerb defining the footways. (Act 6 William IV No.6)
- Where roads and streets have been the subject of alignment or re- alignment, the marks placed in those surveys must be used in any redefinition of street boundaries unless it can be shown that they have been disturbed.
- The circumstances pertaining to the case *Turner v. Hubner* (24 S.R.3) were similar to those in *Turner v. Myerson* except that the side streets had been aligned after the original subdivision. The decision given was the same in effect with the addition that the alignment plan did not afford any help in fixing the positions of boundaries shown in the old subdivision and could not be accepted as providing a satisfactory starting point for that purpose.
- The object of an alignment survey is to fix the alignment and kerb lines of streets and therefore it is logical to assume that when the marks were placed, more care would be exercised over their relationship to the kerb line than as to their lateral position. The same remarks apply to the use of permanent and reference marks to fix streets other than those in which they are placed.
- It is very often found that old sandstone kerbs in the Metropolitan area have been laid on or close to the kerb line. This is not universally true however, and neither this type of kerb nor any other should be adopted as defining a kerb line without supporting evidence, such as connections.
- From 1879 onwards, the various Sydney Corporation Acts, including the last, namely the Sydney Corporation Act 1932, declared that *in any proceeding at law or in equity touching any actual building line in Sydney, it shall be held conclusively that every kerbstone laid down before (1879) was lawfully laid down*, and the production of the Gazette alignment notice and the relevant plan plans makes the contents of the same binding on the parties.

Schedule of Legislation.

Sydney Police Act	4 William IV No 7	August 6, 1833
Public Roads	4 William IV No 11	August 28, 1833
	5 William IV No 20	October 28, 1834

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6 William IV No 9 October 9, 1835
8 William IV No 1 June 28, 1837

Police Towns Act 2 Victoria No 2 August 10, 1838
19 Victoria No 10 September 7, 1855

The latter two Acts were repealed by the Police Offences Act 1901.

Sydney Corporation Act 1879 repealed 5 William IV No 20 and 6 William IV No 9.

Public Roads Act, 1897.

Sydney Corporation Act 1902.

Alignment of streets outside Sydney – Sec. 95 Local Government Act 1906 and under Sec 27 and 28 of the Public Roads Act 1902.

Section 27. On written application by the Council of any municipality the minister for Lands may cause the carriage way and footways in any street or public place in such municipality to be surveyed, set out and defined, and a plan thereof to be prepared, which plan may be submitted by the Minister to the Governor for approval.

Section 28. On written application by the Council of any municipality the Minister may cause the width and the position of the carriage way, and footways in any street or public place that has been previously aligned under this or any other Act to be remarked or altered and a plan may be submitted by the Minister to the Governor for approval.

Local Government Act 1919

Sydney Corporation Act 1932

Crown and Other Roads Act 1990

Roads Act 1993

RE - ALIGNMENT

Public Roads Act 1902

Local Government Act 1919

Main Roads Act 1924

State Roads Act 1986

Crown and Other Roads Act 1990 repealed the Public Roads Act 1902.

Roads Act 1993 repealed the State Roads Act 1986 and the Crown and Other Roads Act 1990.

ESSENTIAL READING.

“Public Roads in New South Wales.” by V. Le Gay Brereton.
Published in *The Australian Surveyor* Vol. 4 No. 8 in December 1933.

“Some Aspects of Title Boundary Location in New South Wales” by K. E. Hamer.
Published in *The Australian Surveyor* Vol. 21 No. 9 in June 1967.

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Dalley v Municipal Council of Sydney (1901) 1SR (NSW) 221- See Hallman.
A detailed account of this case will be found in *The Surveyor* Vol. XXIX No.5 Page127 as part of Weingarh's paper mentioned below.

Turner v Hubner (1923) 24 SR 3 –See Hallman & “Notes on Survey Investigation” by R.W. Willis

RECOMMENDED READING.

“Alignments” by John Weingarh (See *Dalley v Municipal Council of Sydney* above)
Published in *The Surveyor* Vol. XXIX No.5 in October 1916. Pages 119 to 132.

“The Survey System of New South Wales.” By A.F. Hall.
Published in *The Surveyor* Vol. III No. 9 in July 1895.

Kelly v Girdler, Vol. 12, Page 851, Victoria Law Reports

A.A. Jones & Son Pty Ltd v Weeden (1964) NSW 1780

Lucas v Borough of Drummoyne
The Surveyor Vol. VII No.7, July 1894. Pages 155 &156

QUALITY ASSURANCE.

Like continuing professional development (CPD), quality assurance (QA) is implicit in the life of a professional land surveyor – so much so that it is a subject matter that falls more properly under the general heading of “professionalism”.

Candidates will be expected to be familiar with all aspects of the Continuous Improvement Programme for Plans (CIPP) devised and implemented by Land and Property Information NSW (LPI) and of particular interest to the assessors will be an exhibition of a candidate's disciplined application and use of the Deposited Plan and Strata Plan checklists, which have been developed by LPI in consultation with industry.

ESSENTIAL READING.

“Registrar General's Directions for Plans” – Chapter 20 – Quality Assurance.

Available on the Internet from Land and Property Information NSW, Queens Square Building, Sydney. <http://www.lands.nsw.gov.au/>

STRATA PLANS - (See also Community Schemes)

A strata scheme is the development of land to allow multiple occupancy and ownership of individual units, or other parts of a parcel, by separate individuals or companies. Creation of a strata scheme results in the issue of titles under strata scheme legislation.

Candidates need to demonstrate an understanding of the basic concepts, encroachments, limit of lots, parking areas, easements, plan drawing standards and unit entitlement.

- Strata Schemes (Freehold Development) Act, 1973 and Regulations.
- Strata Schemes (Leasehold Development) Act, 1986 and Regulations.
- Strata Schemes Management Act, 1999 and Regulations.

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ESSENTIAL READING.

"Registrar General's Directions for Strata Schemes."

Hallman's "Legal Aspects of Boundary Surveying as apply in New South Wales".
Chapter 13 – "Survey Investigation" – [13.34]

Legislation can be viewed and downloaded at <http://www.legislation.nsw.gov.au/>, a service provided by the NSW Parliamentary Counsel's Office. Legislation can also be downloaded at <http://www.austlii.edu.au/> the site of the Australasian Legal Information Institute (AustLII), which provides free access to Australian legal materials.

WATER BOUNDARIES.

MEAN HIGH WATER MARK.

Sub-clause 47(1) of the Surveying Regulation 2006 provides that:

A boundary formed by tidal or non-tidal waters or by any other natural feature must be surveyed so that each change of course or direction of the boundary is determined with appropriate accuracy.

Mean High Water is the average of all high tides, sometimes described as the line of the average height of the high of spring and neap tides. Mean High Water is by Common Law, the boundary of all land having frontage to tidal water.

ESSENTIAL READING.

The Surveying Regulation 2006 – Division 5 – Boundaries formed by tidal and non-tidal waters and other natural features.

"Manual of the New South Wales Integrated Survey Grid", Sydney, New South Wales, Department of Lands, 1976. Part 6 - Pages 131 to 139.

This manual is currently out of print but a copy should be found in the library of most professional land surveyors.

Note: *The Surveyor* was the original journal of the New South Wales Division of the Institution of Surveyors Australia Inc. and was published from July 1888 until the end of 1927. It assumed a national identity as *The Australian Surveyor* in 1928 and the New South Wales Division continued as publisher until that responsibility transferred to the Institution of Surveyors Australia Inc. in 1952.

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