

Cribbet, Fritz, and Johnson: Cases and Materials on Property

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Cases and Materials on Property. By JOHN E. CRIBBET, WILLIAM F. FRITZ and CORWIN W. JOHNSON. Brooklyn: The Foundation Press, Inc., 1960. Pp. xxii+1187. \$13.00.

After World War II many law school curricula were subjected to re-examination and extensive revisions in order to make room for new courses. The old curricula were quite generally heavily weighted with property courses, sometimes having as many as fifteen hours devoted to them. In the modernizing of the curricula it became necessary to eliminate considerable amounts of the material in those courses and then to consolidate the rest.

The authors of the book which is being reviewed have produced a one volume casebook designed for a basic first year course of two semesters (probably six hours) in Property. They have incorporated in it what they conceived to be the essentials from such former courses as Personal Property, Estates in Land, Titles (or Conveyances), Vendor and Purchaser, Landlord and Tenant and Rights in Land (the incorporeal interests). They have excluded the subject matter which was generally found in the courses on Wills, Trusts, Future Interests and Mortgages. The foundation, however, has been established for those courses in this casebook.

Because the casebook is intended to replace several courses and must be fitted into the curricula in the various schools which may consider its adoption, the reviewer decided to devote considerable space to the contents so that a reader may be able to see how it might fit into his particular curriculum.

In the first chapter we have a collection of excerpts from writers on the philosophy of Property as an institution and its responsibility to society. These should serve as an inducement for students to approach the subject with a questioning mind. Today when the institution is being challenged around the world, the students should be made to realize that it is not a static thing. It never was static although it has been one of the most stable of our institutions.

Following the above excerpts there are three interesting pages on government land grants.

The first seventy pages of case material are on personal property. This part is not very different from what is generally found in casebooks on the subject. The authors have used the well known English and American cases with only a few old style type footnotes and citations. There are also a few notes in text size type by the authors.

The subject of gifts is postponed until after Estates in Land. In the Gifts chapter there are fifty-seven pages of materials on gifts of chattels. Included therein are joint tenancies as a gift device and the Totten Trusts. These are followed by several cases of gifts of land and an excellent note of five pages on gifts by testate and intestate succession. The note should prove helpful to students in understanding the different paths taken by real property and personal property in the administration of decedents' estates, a matter with which they have often fumbled much too long in some subsequent related courses.

The personal property materials mentioned above total one hundred and twenty-seven pages. Within those pages are found most of the topics which are usually found in casebooks on personal property except Liens, Pledges, and Fixtures. The authors given "scant" attention to liens and pledges in order to make way for other things. (See Preface.) Fixtures are treated in the chapter on landlord and tenant to the extent of one case and a note.

Following that part on personal property which deals with the various methods of acquiring rights and titles therein, but before the chapter on gifts, the authors interpose the segment on Freehold estates and the future interests in land, using a space of one hundred and forty pages to cover those subjects. The less than Freehold estates are postponed until the later chapters on landlord and tenant.

The Freehold estates are treated first. Following the Freehold estates, we have a chapter on future interests at common law and under the Statute of Uses. Within this chapter are also included the materials for a brief study of the Rule in *Shelley's Case*, the Doctrine of Worthier Title, and the Destructibility Rule. The Rule of Perpetuities is only incidentally introduced in connection with the study of the executory interests, (pp. 156-158) where we are informed that the judges foresaw the need of such a rule after holding that executory interests were not subject to the Destructibility Rule.

In presenting the segment on estates the authors traversed the historical centuries by a liberal use of text. There is a pretty even balance of text and modern American cases.

Following the segment on estates and future interests, as described above, there are sixty-six pages on concurrent ownership. This includes all the rights of husband and wife such as dower, curtesy and statutory shares, all of which were omitted under an earlier topic on life estates which are created by the voluntary acts of the landowner.

As was stated earlier, the material on less than freehold estates was postponed until the chapter on landlord and tenant. In this chapter of one hundred and fifty pages, the author brought together the historical text material and the modern cases. The reviewer has found that arrangement most satisfactory even though he has had to re-arrange the order of things in a casebook which he uses. Most of the cases have been decided within the last thirty years. There is a modern emphasis to this part of the course. In general, the selection of the materials for the limited space allocation is in line with other recent casebooks. The treatment of fixtures, however, seemed inadequate when measured against the importance which some of the writer's practicing colleagues attach to the subject. The one case, for the most part, involved the interpretation of the tenant's right of removal of things annexed by him and a discussion of the old common-law rule which barred removal upon the taking of a renewal lease without a reservation of such right in the second lease. The note did not add much to the general understanding of the subject, although it did warn that the problem of fixtures does arise in many diverse relations other than landlord and tenant. The author was critical of the established criteria which the courts apply in determining the rights of the parties. It seems that the students need something more specific than what was suggested to replace the old criteria. It would seem preferable to have one of the old cases which set out the criteria and apply them and then to criticize, if one wishes to do so.

The next segment of the book (pp. 467-818) has most of the topics which were found in the old courses on Titles (or Conveyances) and in Vendors and Purchasers.

The emphasis is strong upon real estate contracts and leases which may secure the attainment of a more functional approach than was possible with some of the old casebooks. There is more telling of what to do and how to

do and how to do it in order to avoid trouble. Students should learn to realize and not to forget that the contract and the lease are the measure of the purchaser's and the lessee's rights.

The Recording System receives less attention by about 40% than is generally given in other casebooks. There are only seventeen cases (65 pp.). The reviewer agrees heartily with this reduction in perhaps the least interesting subject matter. The fundamentals can be presented in less space and time than was often allotted to the subject in the past.

Following recording we have the various methods of title assurance. Here are the covenants for title, examination of title, the Torrens System, title insurance, statutes of limitations on adverse possession, marketability of title statutes, and the recent statutes limiting the duration of possibility of reverter and right of re-entry with their short periods for bringing actions to recover possession after the right has accrued to the grantor and his heirs. This segment of one hundred and fifteen pages appears to be an excellent integration of related materials under the one heading of Assurance of Title.

Part VII on the Use of Land (incorporeal interests) treats of easements, licenses, and covenants other than for title. The emphasis seems to be on the creation of the interests, the running and transfer thereof. The reviewer was pleased to see the chapter on the incorporeal interests open with a modern case involving easements by reservation. There has been a tendency in the casebooks to minimize the subject of rights created by reservation and exception. The author need not have been apologetic in the note for including the case. The Decennial Digest for the ten year period 1936-46 has twelve pages of digested cases involving various problems which came to the courts on the subject. Reservations and exceptions are good devices, if used intelligently, to create rights.

After the chapter on incorporeal interests there is a separate chapter of one case and a note on Nuisance. The reviewer has felt the need for such a topic somewhere in real property. That need for an understanding of the doctrine had been met by a lecture somewhere in the first year course. The placement of the subject immediately preceding the chapter on lateral support, drainage, water rights, and airport approaches seems most appropriate because it is not unusual to find nuisances in those fields. The knowledge acquired will also be useful in the study of the last section in the book (Part III) on Controlling Land Use in the Public Interest. The nuisance doctrine seems to have been the earliest device in controlling the use of land.¹ The other more modern controls which appear in this last part of this casebook are zoning, subdivision regulation, street and park control and public development of land.

Although the book contains a considerable amount of material other than cases, it is still a casebook which has the essentials for the casebook method of teaching. The cases on the whole are of rather recent date and constitute the bulk of the material. Prefaces are used quite liberally, but there are very few of the old style footnotes. There are, however, many author's notes printed in the same size type as the cases. The reviewer was at a loss as to how to characterize them. The first thought was to call them text-problem notes but that did not seem inclusive enough because they often also contain summarized cases, questions, comments and criticisms. By the use of that

¹ HAAR, LAND USE PLANNING 95-145 (1959).

type of notes the authors have attained considerable variety which may stimulate student thinking. They seem to have ventured forth rather boldly in compiling the notes in their own words.

The construction of this package for a one year course in property necessarily involved the making of choices and judgments on what to eliminate and what to retain from the old basic courses. Then too, there was the task of integrating the materials which were retained. It appears to the reviewer, who has used five different series of casebooks covering substantially the same fields over the years, that the authors have done an excellent job of selection and integration. In integrating the selected materials they adhered rather closely to the old standard terminology in the chapter and section headings which makes for easy identification of varied subject matter.

The three authors have good reasons to take pride in their joint product. The reviewer extends to them his best wishes for a successful entry into a field in which we have had many excellent casebooks in the past.

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