

BOOK REVIEWS

AMERICAN LAW OF PROPERTY. (7 vols.) By A. James Casner, Editor-in-Chief, and twenty-four Co-authors. Little, Brown and Company, Boston, Massachusetts, 1952. Pp. cxxxii, 5832. \$115.00.

General Description

American Law of Property is a seven volume treatise dealing mostly with real property, though personal property and trust problems are of course also discussed. It is the work of 25 co-authors including its Editor-in-Chief, Professor A. James Casner of Harvard. Each co-author, sometimes in cooperation with one other, has contributed one or more of the 27 parts into which the treatise is divided. An additional volume or pocket part is to be added in 1953. It is hardly necessary to direct attention to the enormity of the labor which a single author would encounter in preparing a really exhaustive and scholarly discussion, such as this is, of the whole of the law of property. Accordingly, division of the subject matter into segments concerning which the respective authors are recognized authorities is one of the signal features of these volumes. In broad areas of the law this imaginative method of approach is very likely, I believe, to be employed in increasing measure despite the fact that it almost inevitably involves some sacrifice in uniformity of quality. But a consistent degree of excellence is usually lacking even in the work of a single author, and of *American Law of Property* it may surely be said that no part of it falls below the high standard set by the Editor-in-Chief and the publishers, and that they have achieved their objective of seeing "that the work was planned and executed as a unified whole" and that it is "not a series of monographs."¹

Mechanical Phases

Mechanically, this work has been beautifully prepared. The bindings are red fabrikoid with gold leaf lettering. The paper is of excellent quality and the print is highly legible. The volumes are each small enough to assure ease in handling. The several "Parts" are divided into "Chapters," some of which are divided into "Topics." A decimal system of numbering sections is employed as in other Little, Brown and Company publications. The section headings—which are set out in full in the Table of Contents, appearing in full in the first volume and consisting of a 72 page Volume, Part and Chapter Analysis—are sufficiently detailed to be of real assistance. The subsequent volumes repeat the Analysis so far as their own contents are

1. Preface, at viii.

concerned. Both official and unofficial citations and dates of cases are given, but in some instances references to the English Reprint are omitted. Footnotes also refer to the *Restatement* (perhaps too frequently) and to appropriate treatises and other helpful material, and, in spite of joint authorship, contain a good many cross-references. There is a 538 page Index in Volume VII in which the Table of Cases, and a Table of Statutes arranged by states and chronologically by years, also appear. The Table of Cases refers only to the section and note numbers in which the cases are cited and does not contain citations except in instances where there are two cases having the same name. This is the only mechanical defect to which I can point and it is not a serious one.

Scope and Authorship

The scope of the treatise can be adequately comprehended only by examining its Table of Contents which of course is too long even to be summarized here. However, an excellent notion of what is covered can be obtained by reference to the list of authors which is repeated at page v of each volume, and I know of no way to give the reader as quick and complete a bird's-eye view of the exhaustive treatment of the subject matter and the quality of the authorship as by setting forth the "list of authors" verbatim:

EDITOR-IN-CHIEF

A. James Casner

AUTHORS

- | | |
|---|---|
| THOMAS E. ATKINSON, New York University School of Law (Title After Probate Action) | VICTOR H. KULP, University of Oklahoma School of Law (Oil and Gas Rights) |
| OLIN L. BROWDER, JR., University of Oklahoma School of Law (Illegal Conditions and Limitations) | W. BARTON LEACH, Harvard Law School (Powers of Appointment; Common Law Rule Against Perpetuities) |
| CHARLES C. CALLAHAN, Ohio State University College of Law (Powers of Appointment) | HIRAM H. LESAR, University of Missouri School of Law (Landlord and Tenant) |
| A. JAMES CASNER, Harvard Law School (Construction Problems; Class Gifts) | JOHN P. MALONEY, late of St. John's University School of Law (Vendor and Purchaser) |
| GEORGE L. HASKINS, University of Pennsylvania Law School (Marital Estates) | CLYDE O. MARTZ, University of Colorado School of Law (Rights Incident to Possession) |

- JOHN HENRY MERRYMAN, University of Santa Clara College of Law (Fixtures; Waste)
- CORNELIUS J. MOYNIHAN, Boston College Law School (Community Property)
- RUSSELL D. NILES, New York University School of Law (Possessory Estates; Concurrent Estates; Fixtures)
- GEORGE E. OSBORNE, Stanford University Law School (Mortgages)
- CARROLL G. PATTON, Land Registration Department, Hennepin County, Minnesota (Examination of Titles)
- RUFFORD G. PATTON, Land Registration Department, Hennepin County, Minnesota (Vendor and Purchaser; Deeds; Transfers by Judicial or Statutory Process; Other Methods of Acquiring Title; Priorities, Recording, Registration; Examination of Title)
- RUSSELL R. RENO, University of Maryland School of Law (Covenants, Rents, and Public Rights)
- OLIVER S. RUNDELL, University of Wisconsin Law School (Easements and Licenses)
- MERRILL I. SCHNEBLY, University of Illinois College of Law (Restrictions on Alienation)
- LEWIS M. SIMES, University of Michigan Law School (Historical Background; Future Interests)
- SIDNEY P. SIMPSON, late of New York University School of Law (Vendor and Purchaser)
- OWEN TUDOR, Attorney, Boston, Massachusetts (Common Law Rule Against Perpetuities)
- WILLIAM F. WALSH, late of New York University School of Law (Possessory Estates; Concurrent Estates)
- DAVID WESTFALL, Attorney, Chicago, Illinois (Construction Problems)
- HORACE E. WHITESIDE, Cornell Law School (Statutory Rules: Perpetuities and Accumulations)

The foregoing list of itself shows that the aim stated by the Editor-in-Chief, "that the treatise should contain, so far as practicable within reasonable limits of size, those subjects which constitute the day-to-day practice of lawyers throughout the country,"² has largely been met. The Editor-in-Chief goes on to say that: "Decisions as to inclusion or exclusion had to be made, and it is a fair prediction that no two minds would come to exactly the same conclusion."³ While my admiration for *American Law of Property* and its distinguished authors prompts me to withhold any comment which could be regarded as at all unfavorable, the Preface also indicates that supplementary material is contemplated. Accordingly, in the hope of making constructive suggestions, I shall mention a few instances, at least concerning "exclusion," where I would not have come "to exactly the same conclusion." These comments will be confined to the area of future interests concerning which I believe I am best qualified to speak.

2. Preface, at vii.

3. *Ibid.*

Only about 20 pages are devoted to the rule in *Shelley's Case*.⁴ It is true that the rule has been abolished in a great many jurisdictions, but, even in those jurisdictions, titles may depend for years to come upon the application or non-application of the rule. It has been of such widespread importance and some of its aspects are so complicated by technicalities that more extensive discussion of it seems warranted. Likewise only about 23 pages deal with the alienability of future interests.⁵ Here again, complicated problems arise which cannot be fully analyzed in the space allotted. So also, gifts over on "death" and "death without issue" are accorded only 30 pages,⁶ gifts by implication only seven pages,⁷ and the effect of the failure of prior and subsequent interests only 17 pages.⁸ In my opinion, these difficult subjects also merit more attention, though of course it may be argued that an exhaustive coverage of everything mentioned in this paragraph would have turned *American Law of Property* into a treatise on future interests which it was not intended to be. To this, I believe the answer is that the extended and excellent Parts on "Vesting" (49 pages),⁹ "Class Gifts" (217 pages),¹⁰ "Powers of Appointment" (198 pages),¹¹ and "The Common Law Rule Against Perpetuities," "Statutory Rules," "Restraints Upon the Alienation of Property" and "Illegal Conditions and Limitations" (the latter four subjects constituting all of Volume VI) are all concerned with future interests' problems. Furthermore Part 1 (51 pages)¹² and Part 4 (206 pages),¹³ where the "Historical Background of the Law of Property" and "Types of Future Interests and Their Characteristics" are fully examined by Professor Simes in his usual incisive way, quite obviously deal both directly and indirectly with future interests. In short, although the scope of the treatise extends far beyond the subject of future interests, that subject forms a very substantial part of the work. It thus seems clear that the subject of future interests was regarded by the editors as being of major significance. If this is so, I think I am justified in suggesting that the materials relating to the particular future interests' problems, mentioned above as having been somewhat too scantily heeded, should be expanded when the treatise is supplemented. I hasten, however, to reiterate that this proposal is offered with the greatest deference because the general breadth of coverage is indeed overwhelming.

Some Particular Observations

As has already been intimated, one is hesitant, in reviewing a work so pretentious and so generally excellent as *American Law of Property*, to venture anything but favorable comment. The very magnitude of the effort which made its preparation possible should deter any reviewer from offering

4. Vol. I, at 476-496.

5. *Id.*, at 520-543.

6. Vol. V, at 207-236.

7. *Id.*, at 183-189.

8. *Id.*, at 190-206.

9. *Id.*, at 134-182.

10. *Id.*, at 239-455.

11. *Id.*, at 459-657.

12. Vol. I, at 4-54.

13. *Id.*, at 405-611.

criticisms which could in any way be regarded as picayune. I will, however, put forward a few observations which I hope may assist the reader in making an advance appraisal of the treatise, for a book review should do that if it is to serve any purpose at all. These will be of a rather particular nature since it is quite obviously impossible to discuss here all phases of all seven volumes.

Volume I deals with such orthodox matters as the Historical Background of the Law of Property, Types of Freehold Possessory Estates and Their Characteristics, Landlord and Tenant, Types of Future Interests and Their Characteristics, and Estates Arising from the Marriage Relationship and Their Characteristics. The treatment of all of these subjects by the respective authors is thorough and interesting. I was especially attracted by Professor Lesar's classifications, in the Part concerning Landlord and Tenant, of particular types of leases, such as Sign and Billboard "Leases," "Leases" of Departments in Stores, Owner-Occupancy of Cooperative Apartment,¹⁴ etc. This type of classification, pragmatically recognizing as it does the need for a functional approach even in a field so dogmatic as the law of property, is not untypical of the whole treatise.

In Volume II, Concurrent Estates and Their Characteristics, Community Property, Easements and Licenses, Covenants, Rents and Public Rights, and Oil and Gas Rights are discussed. The Parts on Community Property and Oil and Gas Rights, by Professor Moynihan and Professor Kulp respectively, seem to me to add much to the general value of this work. Although both of these Parts are concerned with property problems which arise in relatively few of the several states, their inclusion is emblematic of the progressive approach, permeating the whole treatise, which recognizes that the problems of the modern property lawyer are bound frequently to transgress state lines. Other aspects of Volume II which may be worthy of note are Dean Rundell's elimination, in the chapter on Easements, of any discussion of "Profits" as a separate topic, and Professor Reno's apparently submissive acceptance of the doctrine of privity in his chapter on Covenants Running with the Land. Of course, it can be argued that the differences between easements and profits are of no importance, and certainly the doctrine of privity is deeply imbedded in the law. But I am just orthodox enough to feel that profits are sufficiently distinguishable from easements to justify separate treatment, and just unorthodox enough to believe that the doctrine of privity should be "re-examined" out of existence.¹⁵

Vendor and Purchaser, Deeds, Transfer by Judicial or Statutory Process and Title After Probate Action constitute the subject matter of Volume III. Volume IV concerns itself with Mortgages, Priorities, Recording, Registration, and Examination of Title. Generally one does not think of Deeds as a very romantic subject, but it is impossible to avoid being greatly impressed by R. G. Patton's succinct but truly romantic discussion, in his chapter on Description and Boundaries, of the evolution of methods

14. Sections 3.4-3.10.

15. Schuyler, Book Review of CLARK, COVENANTS AND INTERESTS RUNNING WITH LAND, 42 ILL. L. REV. 833 (1948).

of describing land and of the great United States Government Survey. I was likewise impressed by the practicality of the treatment, by Carroll G. Patton and R. G. Patton, of the subject of Examination of Title, especially Mechanics of Title Examination, a chapter which, even to the point of containing diagrams, the uninitiated should find to be of special utility. The only phase of Volumes II and III with which one could take sharp issue is the omission of a part—which could well have preceded or followed Title After Probate Action—covering the intestate succession to property. The Preface indicates,¹⁶ as one would expect, that this was not an unintentional omission. I believe that, in the interests of completeness, this conclusion should be reconsidered when supplementary volumes are commenced.

Fixtures and Things Growing on the Land, Waste, Construction Problems, Class Gifts, and Powers of Appointment are the titles to the Parts contained in Volume V. To the comments already made concerning construction problems, I cannot resist adding that, in my opinion, the discussion of "Vesting," splendid and exhaustive though it is, might have been in some degree enhanced by a somewhat more critical approach. My own view is that the favoritism of courts for the early vesting of estates is in large degree an anachronism¹⁷ and an analytical recognition of this in so important a treatise could well produce a catalytic effect upon judicial acceptance of the fact that most of the rational bases for the rule of early vesting have vanished. Special mention should be made of Professor Casner's extraordinarily good Part on Class Gifts and attention should be drawn to his suggestions for drafting contained at the end of several chapters in this Part. Also, Professors Callahan's and Leach's analytical treatment of Powers of Appointment is a real addition to American literature on the law of powers.

In Volume VI appear Parts on The Common Law Rule Against Perpetuities, Statutory Rules: Perpetuities and Accumulations, Restraints on the Alienation of Property, and Illegal Conditions and Limitations. The clarity and forcefulness of expression for which Professor Leach is famed is apparent in the Part dealing with the Rule Against Perpetuities, of which he and Owen Tudor are the authors. Of course, I would like it better if they were a little more critical of the tenuous concept of vesting, and I do not altogether agree that their suggested substitute for the rule of *Leake v. Robinson*¹⁸ would simplify matters so far as the application of the Rule to class gifts is concerned. But these are matters of opinion and they do not detract in the least from the vigor of their discussion. The Part by Professor Whiteside on Statutory Rules, like those on Community Property and Oil and Gas Rights, broaden the scope of the treatise as a whole. This Part should prove invaluable to the lawyer called upon to draft instruments disposing of real estate located in a state where the common law Rule Against Perpetuities does not prevail.

16. Preface, at ix.

17. Schuyler, *Drafting, Tax and Other Consequences of the Rule of Early Vesting*, 46 ILL. L. REV. 407 (1951).

18. 2 Mer. 363, 35 Eng. Rep. 979 (1817).

Space does not permit further observations. It may not be necessary, but I think I should say that the failure to comment on any particular Part or on the work of any particular author is indicative of nothing. I have simply confined what I have said to matters upon which I felt best qualified to speak.

Conclusion

This is a wonderful set of books. It will be of value for years to come to practitioners, teachers and students. Not only is it a first-class research tool, but also it contains—not of course on every subject treated, but in a surprising number of places—philosophical analyses which go to the very roots of the law of property. I have said before, and a “second look” does not gainsay my earlier conclusion, that *American Law of Property* is a monument to its Editor-in-Chief, its other authors, and its publisher. Theirs is an achievement of first importance and in it they may take permanent pride.

Daniel M. Schuyler †

CORPORATE TAXATION AND PROCEDURE IN PENNSYLVANIA (Second Edition). By Leighton P. Stradley and I. H. Krekstein. Commerce Clearing House, Inc., New York, 1952. Pp. 544, \$7.50.

The fact that Pennsylvania taxes have had a minimum of textbook treatment is sufficient to label this book as a “must.” This volume provides an excellent coverage of those Pennsylvania corporate taxes which are most frequently met by tax practitioners and, except for two looseleaf services which can hardly cover all of the material, it stands alone as the most effective treatise covering Pennsylvania corporate taxation problems.

The first edition was issued in two volumes in 1940 and 1942. Since that time, there have been substantial changes not only in the statutory law but also in the judicial decisions pertaining to Pennsylvania taxation. All of these changes are reflected in this book in a manner which provides the end result of problem-solution, and also a complete historical basis for current taxation in Pennsylvania.

The research value of any such book is based in great part upon the authority with which it speaks. That authority depends, in turn, upon the abilities of the authors and upon the sources of their data. Reference to the authors' abilities is unnecessary in view of their many years experience in Pennsylvania tax matters. However, it seems important to indicate the creditable and intimate sources of information which give this book its particular value.

Being a second edition, this book has the advantage of a time-testing of the original edition issued in 1940. Moreover, during its preparation the manuscript was reviewed and checked by personnel of the Department of Revenue and of the Department of Auditor General of the Common-

† Member of the Chicago Bar; Professor of Law, Northwestern University.

wealth of Pennsylvania. In this connection, reference need only be made to James J. Murray, former taxing officer of the Department of Revenue, and to John McHale, Director of the Corporation Tax Bureau, Department of Auditor General, who rendered valuable assistance in preparation of the manuscript.

Great diligence and perspective are demonstrated in the reporting of available case law. Even cases stipulated for judgment, but not the subject of formal opinion, are reflected where their results are deemed to be helpful. However, while the job of reporting the statute and case law has been carefully done, the book seldom takes a position on debatable issues. Its dominant characteristic is good legal reporting rather than the offering of "tax ideas."

The book is divided logically into discussions of the domestic and foreign bonus fee, capital stock tax, foreign franchise tax, corporate net income taxes, corporate loans tax, and the procedures in the settlement and collection of taxes. In addition, the Appendix consists of a legislative history of all of the prior Pennsylvania corporate taxes beginning with the domestic bonus statute of April 7, 1849. The collation of all of these tax statutes provides an historical background which is invaluable from a research standpoint.

Tax practitioners generally have come to rely on so-called looseleaf services which, while they provide a good picture of current taxation principles, do not supply the historical study which is important for a full understanding of "how" and "why" those principles have come into existence. For example, what were the circumstances which brought about the Pennsylvania domestic bonus, which actually is not a tax at all but only a fee? How often have we computed this bonus fee for a corporate client and speculated on the basis or reason for its rather arbitrary amount. The answer is found in the opening "General Statement" which introduces the section on the domestic bonus fee and traces the procedure "to a practice that prevailed in England in the grant of Letters Patent by the King as Sovereign. . . . In like manner, the states of this country by the exercise of their sovereign power grant charters to corporations through Acts of Legislature, for which a fixed consideration or bonus arbitrarily and properly can be exacted. . . ." The significance of the historical introduction to each chapter is that the reader obtains a fully matured appreciation for, and approach to, the tax problem to be solved.

It is with such a background that the reader can begin to appreciate the development of the Pennsylvania taxation system and, therefore, to understand more clearly the state of the statutory and judicial law today. (Indeed, with the present patch-work tax system in Pennsylvania, this type of background study is essential.) It is not too much to say that this treatise gives the most complete picture of Pennsylvania corporate taxation.

Most of the readers will have already been familiar with the first edition of this book. Therefore, this review has its greatest significance in a discussion of the additions and eliminations made in the second edition.

That major eliminations have been made is evidenced by the fact that a single volume of 544 pages in the second edition replaces the two-volume first edition which aggregates 1129 pages. Fortunately, the eliminations were entirely at the expense of those specialized taxes which are only infrequently the problem of the general practitioner. Thus, there has been eliminated the first edition discussions of the gross receipts tax on public utility companies, the gross premiums tax on insurance companies, the shares and gross receipts taxes on financial institutions and the now extinct State personal property tax. If, in the interest of brevity, any eliminations were to be made, it would certainly appear that these subjects could best be dispensed with. Moreover, the second volume of the first edition (published in 1942) remains as a reference source for these subjects, although the passage of eleven years is sufficient indication that this source should be brought up to date.

The treatment of the remaining more important corporate taxes is better integrated in the one-volume second edition. The principal new addition is the treatment of the corporate income tax enacted in 1951 for the purpose of permitting Pennsylvania to tax (a) foreign corporations engaged exclusively in interstate and foreign commerce but not "doing business" in Pennsylvania in the technical sense, and (b) domestic corporations not technically "doing business" in this state. This *property* tax is correlative to the prior and continuing corporate net income and foreign franchise taxes which are imposed for the privilege of "doing business" in Pennsylvania. The nature of the net corporate property tax and its relationship to the older excise or privilege tax is fully discussed in a clear and brief manner in Chapter VII of Title IV.

Practitioners will also be interested in the new discussion (Section 258) of the payment of the tentative corporate net income tax which accelerates six months of tax collection over the three years ending May 31, 1953. Of further interest is the discussion (Section 304) of the procedure for obtaining tax clearance certificates in the case of dissolutions, mergers, etc., and also of the method of avoiding the expense of dissolution through the filing of out-of-existence affidavits and withdrawal affidavits.

The new edition is further improved by an excellent topical index in place of the general index which appeared in the first edition. All of these changes have resulted in a relatively complete treatise on Pennsylvania corporate taxes which will certainly compare favorably with similar treatises on the taxes imposed by other states.

The book's value would have been further enhanced by provision for cumulative supplements to reflect current changes in the law. The lack of such supplementation had gradually decreased the value of the first edition, and it is fair to assume that the second edition will suffer for the same reason. The authors should consider seriously the possibility of at least annual supplementation.

Stephen T. Dean †

† Member of the Pennsylvania and New York Bars.