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***Property, Wealth, Land Allocation, Planning and Development*, by Myres Smith McDougal and David Haber (1948)**

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BOOK REVIEWS

PROPERTY, WEALTH, LAND ALLOCATION, PLANNING AND DEVELOPMENT, by Myres Smith McDougal and David Haber. Charlottesville. The Michie Casebook Corporation, 1948. Pp. viii + 1213.

Reviews and comments, direct and indirect, upon this new casebook, developed in furtherance of Professor McDougal's views on the proper functions of law schools, have appeared in print in several places.¹ From some comments a seriously distorted picture of the book and its possible use is almost unavoidable—a circumstance that has persuaded me that the experience of one professor in its use can be helpful.

First of all, judgment of the book's merit can fairly be based only on what it purports to offer concerning property law, or more broadly, law in relation to land. The first paragraph of the preface is revealing:

Intended as an introduction to the study of property law, this book is designed to complement any course on Personal Property and to serve as the first course in any sequence of courses, whatever the books or materials used, which includes Vendor and Purchaser or Conveyancing, Landlord and Tenant, and Future Interests. It can also be used to offer students who do not have opportunity to take all such advanced courses the major outlines of authoritative doctrines and practices. On problems of land planning, including both what has traditionally been known as Rights in the Land of Another and the public controls available to our various communities, the book purports to be more or less comprehensive.

In the University of Washington Law School the book is being used as the principal tool in a six-hour, first-year course (that is, three hours each week for two quarters). Except for four class hours spent on the cases in the 112-page introductory first chapter, the first half of the course has been devoted to basic property concepts and rules, developed in about 300 pages in chapters 2, 3, and 4.

The following are among the points and ideas presented in chapter 2: Under what circumstances can a claimant of an interest in land support his claim? What formalities are necessary to a conveyance? What protection is afforded a claimant by recording? What is delivery and escrow delivery? What amounts to acquisition by adverse possession? What is encompassed by the concept *estate*? What are the possibilities of restrictions on estates? What protection is given possession? What is the extent of possession (the air flight and hidden cave problems)? What are the rules concerning lateral support?

Chapter 3 is a seventy-nine-page introduction to problems of future interests, *i.e.*, remainders, executory limitations, possibilities of reverter, rights of entry, the Rule against Perpetuities, and the complementary present estates. Unfortunately, by reason of curricular and other complications this will be a major portion of some students' study in future interests since they will not take the separate course. Some first-year property books totally omit any of this technical field to the lasting disadvantage of the student who thereafter misses the separate course. The editors put in *Helvering v. Hallock* 309 U. S. 106 (1940), apparently to show that for federal tax purposes these technicalities may not be so important after all! In Washington it is desirable to supplement this chapter with some emphasis on the Rule in Shelley's case which either does or should haunt all Washington lawyers.²

¹ 1 JOURNAL OF LEGAL EDUCATION 36, 326 (1948), 34 VA. L. REV. 629 (1948), 2 WASH. STATE BAR NEWS 38, 42, 46 (1948).

² Cf. Cross, *The Rule in Shelley's Case in Washington*, 15 WASH. L. REV. 99 (1940).

Chapter 4 comprises seventy-five pages of principal points on landlord-tenant law. These questions arise: What kinds of tenancies are there? Is a landlord-tenant relationship created? Why does it matter?³ Is there an assignment or sublease; an eviction, either actual or constructive; covenant, independent or dependent? Is a lease a conveyance, or contract, or a mixture of both? What are the rules of waste? What is the effect on leaseholds of taking by eminent domain?

Chapter 5 includes twenty-six pages designed to present the principal features of concurrent ownership, *i.e.*, tenancy by the entirety, joint tenancy, tenancy in common, and a breath of community property.

Chapters 6 and 7 cover forty-nine pages, mostly textual, on zoning and planning.

Chapter 8 has 276 pages in which there is the best concentration of comparable material, in my knowledge, on covenants running with the land, easements, restrictions on use, and such technical means for private control of land use. Conversation with practicing lawyers and real estate brokers as well as perusal of appellate court opinions confirm my belief that these are matters of great importance in modern land law.

Chapter 10 contains 167 pages on water law, raising serious questions whether the established rules solve the practical problems with reference to use of water. Anyone who has tackled the water law cases and statutes in Washington must have had similar doubts.

All of the above material is essentially orthodox, basic property law, with editors' notes directing the reader's thought to the adequacy of the rules to meet the social or economic problems involved. The principal omission is the feudal and historical development material. There is no serious dispute concerning the advisability of some understanding of this omitted material. The editors contemplate that the student will acquire such knowledge by collateral reading. I have found it advantageous to sanction that acquisition by means of a special examination, devoted in part to coverage of assigned outside reading.

Thus far no particular mention has been made of the material in chapter 1. Discussion of cases, for the most part, consumed the four days allotted to this 112-page chapter. Mostly textual, the chapter suggests underlying questions such as the following: What is "property?" What is the origin of the concept? Does a comparable concept exist outside Anglo-American law? How far does local (*i.e.*, state) law control? How far does federal law control? An article on Soviet Property Law is somewhat of a shock: in many respects an individual's property rights are similar to those we in the U.S. know; Americans who might deal with Russians will be assisted by knowledge of some of the many variances and the similarities. A synopsis of federal-state law reveals that property rights are controlled at the federal level far more, I believe, than is normally realized, and the Atomic Energy Act has created "in the midst of our privately controlled economy a socialist island with undefined and possibly expanding frontiers."

Chapter 9 has been postponed in my use of the material until completion of Chapter 10. This contains 276 pages on planning and developing metropolitan communities. This is unquestionably one of Professor McDougal's pets. It is also a serious problem facing directly or indirectly many lawyers, both legislators and nonlegislators alike. Washington's legislature in 1947 allowed to die an urban redevelopment bill. Another bill has been prepared for submission in the 1949 legislature upon which the Chamber

³ *Cf. Najewitz v. City of Seattle*, 21 Wn. (2d) 656, 152 P.(2d) 722 (1944), in which counsel argued plaintiff was discharged improperly under civil service rules and the court said it was immaterial since he was a tenant at will.

of Commerce, Municipal League, Real Estate Board, and others have had lawyers and laymen working or in which they have been extremely interested. In the November, 1948 elections the Washington voters enacted constitutional amendments permitting county home rule and authorizing for Seattle (alone, at present) the creation of a consolidated county-city. Master planning and other land use control devices are also considered in this chapter.

Chapters 11 and 12 are largely textual—fifty-four pages on national and possible world planning.

The book as a whole then offers between 600 and 786 pages (depending on one's own classifications) of orthodox property law materials which do give a good base for knowledge of property law in the narrow sense. As the editors contemplate, complementary later courses will expand and supplement the basic information available in this book. The editors, within the area covered, then go farther and present many of the land use legal problems developing under modern conditions.

At the time of my adoption of the book I was aware of certain criticisms of it—particularly that it cannot be successfully used in a first-year law class because students are expected to get too much usable information by reading; and further, that one cannot form judgments as to desirable policy before having rather complete information of the circumstances which call for policy decisions, that is, basic concepts and ideas must be understood before they can be evaluated.

Inherent in these criticisms is the suggestion that the book is a difficult one with which to work. For myself, trained both as student and professor in the more orthodox approach, there have been some difficulties not traceable solely to changing case-books. Students *may* be a little more confused than is usually the case in first-year property, but I don't think so. They may be working harder—I hope so! But if, as I feel is the case, the net result of the harder work will be greater accomplishment it will be amply justified. One of the difficulties lies in acquiring a working familiarity with Professor McDougal's terminology, but this rather startling language or phraseology is frequently a stimulus to thought, which I have always believed to be desirable in students, at least, and perhaps even lawyers!

Property law is particularly susceptible to rigidity of approach and thinking. These materials will go a long way toward preserving for the student a flexibility of approach to land problems which can mean the difference between success and failure in counseling or advocacy in this field. I venture the observation that it is the rare property law professor who believes his field is fixed and settled with hard, cut-and-dried rules, but that it is the rare student who feels it is otherwise. This book may help some students see the light! Thinking in terms of values while learning basic concepts can give a broader perspective, and an understanding of the *real* significance of property rules can be sought at the same time technical rules are studied.

Viewpoints revealed in the material presented by the editors are probably far more widely held than many persons would like to think. Students can therefore properly pay attention to these viewpoints. This does not necessitate sponsorship or agreement, but awareness is important even if for no other reason than to marshal arguments against such viewpoints.

The more I work with the book, the better I like it.

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