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**An Introduction to American Land Law: Cases and Materials, by
George Lefcoe**

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An Introduction to American Land Law: Cases and Materials

by

GEORGE LEFCOE

New York: Bobbs Merrill, 1974, Pp. 678, \$14.50

As we examine this casebook for a first year law school course in land law, let us accept the invitation of the author, George Lefcoe, to contrast the book with Casner and Leach, *Cases and Text on Property* (1969). An advantage of the Lefcoe casebook is its appeal to so many of today's law students, who do not want to become legal technicians, but, instead, study law to get to the heart of what is wrong with the environment, with cities, with foreign policy, with prisons. The practicing lawyer who learns Lefcoe's approach is conditioned to expect change in property concepts, while the practicing lawyer who learned from Casner and Leach has a vested interest in maintaining property doctrines as she or he learned them.

Casner and Leach treat property law as having its own, internal shape. Their first year property book begins with the elemental notion of possession, then moves on to simple personal property transaction, first as gifts, then as sales. The Casner and Leach book then introduces estates in land as an historical institution, which prepares the student for a sympathetic, insightful examination of the peculiarities of the landlord-tenant relationship, which is the next topic. After these preliminaries, toters of the Casner and Leach casebook are ready for the chapter on modern land transactions, which is followed by a chapter on land use planning, and a concluding chapter on rights incident to ownership. "... [W]e will consider that we have failed if you do not feel that you have a solid grasp of the main body of real estate law" after a course with the Casner and Leach book, its authors declare in an introductory note.

The George Lefcoe casebook looks outside of property law to the larger society to find a model to shape the bits and pieces of property law. He observes that feudal land law kept power in the sovereign and aristocracy and that subsequent changes in land law can, perhaps, be understood as a transfer of power to the middle class.

These ideas are from the first chapter, called the "Allocation of Landownership Rights," which contains readings to show that land law prevents land ownership by aliens where that is a problem (as in the Philippines), and places almost everyone in apartment buildings to prevent economic segregation by housing type where that is a

problem (as in Communist societies). Next are a pair of chapters the first of which goes through incentives to motivate land owners and claimants to the full use of land, such as the western water doctrine which favors the prior user, the law of finders, adverse possession, and acquisition by the public through prescription, dedication, and custom. Lefcoe's idea is that society will configure its land law to offer incentives to whatever styles of spatial behavior are ascendant at that time. Thus, in the western United States in the nineteenth century, the first appropriator of water was favored. That doctrine encouraged would-be subsequent users to move on and become prior users somewhere else in a then-empty region. Today, faced with a fixed surface of land area and increasing population, law enforcement officers and land owners themselves are acquiescing in public invasion of beaches and people's parks for recreation and (in developing nations) cemeteries for homesites, with new courtmade concepts coming down to support such popular land takings.

Set off against the chapter on incentives to claim and make use of property is a chapter on limits on the use and enjoyment of property. This chapter deals with emerging concepts of Trespass, Nuisance, and Zoning. Lefcoe suggests that a landowner's rights, which were once defined according to the concept of individualism, are being redefined according to the notion of communal functionalism. Thus, the volume includes a case where a farmer could not exclude as trespassers labor organizers who had come to visit migratory workers who by the landowners' invitation were staying at his place; a nuisance case supporting homeowners against a cement works; and a zoning case where a New Hampshire town stopped a land developer in his tracks by netting him in a Forest Conservation district.

Lefcoe's casebook treats both transmission of property by a deceased, and estates in land as expressions of dynamic social policy. He chooses cases which "depict the tension between inducing productivity by allowing donors to dispose of wealth as they choose, and restricting inequities in the distribution of wealth." Lefcoe includes speculations by others that the "trickle-down" method by which the poor become better off in a society which permits wealth accumulation by the few, will need replacement by other income redistribution methods in the society which seeks to stabilize its gross national product.

The final two chapters of the Lefcoe book deal with how society manages the interrelationships of various parties involved in housing. The idea is that a tenant's rights under a lease, rent control, subsidies,

and forms of group ownership (such as the cooperative and condominium) can be analyzed as different devices for protecting the housing consumer.

What, then, are the relative advantages of the Casner and Leach approach, where property law is presented as having its own intrinsic form, and the Lefcoe approach, where property law is presented as expression of dynamic social policy? The Casner and Leach approach would seem to be the more likely one for turning out technicians competent to draft a will, represent a client at a real estate closing, or participate in a real property lawsuit where the rights of grantors, grantees, creditors, lien holders, and mortgagors lie in a mind-boggling tangle before the bench. Casner and Leach find it economical to present property law as its own subject, and have no need to include materials from Engels, Reich, or Business Week. Casner and Leach casebook students will learn more property law per hour of reading than Lefcoe casebook students.

The law professor who adopts George Lefcoe's *An Introduction to American Land Law* (1974) has some teaching problems which apparently Mr. Lefcoe himself has not resolved. Is it skills, or information about the true nature of property law that the book is to convey? How is a practitioner who learns from the Lefcoe book to use whatever it imparts? Mr. Lefcoe declares in the introduction that the book seeks to convey "unifying hypotheses," with some sacrifice of the teaching of analytic skills. The idea of teaching analytic skills is that by presenting raw problems in the form of reported cases the student can learn to separate facts from law, and separate the claims of the various parties, just as the practitioner does after a raw problem stalks into the office. But how are "unifying hypotheses," dealing with property law as an expression of changing society, put to use?

I could tell you that George Lefcoe's book is really different from Casner and Leach; that he is really on to a new method of teaching real property, if not only the chapter titles were different in the Lefcoe book, but if the subtopics were also different, and if the subtopics showed that the new system is completely thought out. As it is, one could take the table of contents of a conventional property casebook, clip out most of Mr. Lefcoe's subtopics, and fit them into the conventional table of contents. In the meantime, while we wait for a casebook which presents a complete system for showing how a practitioner can participate in the creation of innovative property institutions for the dynamic society, I can suggest how new, valuable skills might be taught by chapters 2, 3, and 7 of the 1974 Lefcoe book.

These deal with incentives to users of property, limits on use of property, and alternatives to the landlord-tenant relationship. The title of each of these chapters is an objective that a practitioner might want to carry out for a client. The subtopics are familiar components of property law, such as adverse possession, dedication (chapter 2); nuisance, zoning (chapter 3); rent control, condominiums (chapter 7). To the practitioner, these subtopics might act as a checklist of possible institutions available to his or her client (or that might be used against the client who is threatened by what the greater society is becoming).

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