

Land Development Law, Cases and Materials. By *George Lefcoe*. New York: Bobbs-Merrill Company, 1966. Pp. 1681. \$14.50.

The vast bulk of books intended for use in law schools focus on a cluster of problems related by supposed conceptual ties. Very few are function-oriented; that is, very few abandon the conceptual congeries and examine instead the legal problems which arise in a particular sort of human activity. *Land Development Law* is a representative of the latter small class, and a very good one indeed.

Professor Lefcoe has put together a fascinating and insightful collection of notes, questions, hypotheticals, excerpts, and cases on the process of land development. His major focus is on the development of raw land, primarily for housing, in American suburbs.

Lefcoe's book is enormous—1681 pages. Yet it omits many of the topics included in the usual real property course offered in American law schools. There is little of relevance to the transmission of wealth—no estates in land, no trust and life estates, no statute of uses and rule against perpetuities; little on joint ownership (except partition as a potential means for avoiding subdivision regulation); nothing on matrimonial property. Nor does the book seek to develop an inclusive political, doctrinal, or philosophical theory of property¹ by examining, for instance, the control, exploitation and transfer of "non-real" forms of wealth such as copyrights, governmental franchises, or land-related substances such as water and oil.

The book fastens, rather, on the legal structure facing the private housing developer; it investigates with skill and zest his activities and problems (and those as well of his lawyer and of the community in which he operates). The housing developer's complex activities, of course, relate to many of the doctrinal problems of "property" often taught to first-year students. Professor Lefcoe's approach, therefore, requires a reorganization of at least the property curriculum. The course offered by his book is not an advanced subject to be added to today's introductory treatment. It is a substitute, at least in part, therefor.

A note on the book's scope and structure is appropriate before undertaking an evaluation. After a long chapter on the government as vendor and purchaser (of which more below), Lefcoe systematically takes the student through nine chapters of materials about private development

1. See, e.g., Reich, *The New Property*, 73 YALE L.J. 733 (1964).

ranging from acquisition of land to the imposition of real property taxes. Chapter 2 investigates attitudes towards land speculation (deflating some current generalizations), then uses the doctrine of specific performance as the focal point for an evaluation of the remedies for breach of land acquisition agreements, and ends with materials on marketable titles. Chapter 3 examines the legislative and administrative side of public regulation at the early stages of development—subdivision regulation, building codes, supervision of real estate sales and brokers, racial discrimination—as well as more judicially-oriented remedies—warranties of fitness and court-defined responsibilities of local utilities. Chapter 4 covers “conveyancing”: the land sale contract, statute of frauds, escrow, delivery, and deeds. Chapter 5 is a long (240 pages) and free-ranging treatment of land finance, including everything from how the loan market works through usury principles, to a Dunham-like analysis² comparing the installment contract, lease, and mortgage as land security devices, to even an inquiry into the effect of the Soldiers’ and Sailors’ Relief Act upon land-secured creditors’ remedies. Chapter 6 briefly covers traditional recording, with some stress on mechanics’ liens, and Chapter 7 evaluates title assurance with four cases and three statutes on suits to quiet title. Chapter 8 investigates the enforceability of agreements concerning use and occupancy made by purchasers of units in housing projects. Homeowners’ associations, condominiums, cooperatives and leasing arrangements are compared, as are the legal devices used to enforce such arrangements. Thus there is some slight coverage of easements and considerably more material on covenants and servitudes. Chapter 9 contains a long, well-organized and solid treatment of zoning, including topics rarely taught in an introductory course such as state-local and intermunicipal conflicts. Chapter 10 devotes over 100 pages to property taxation, beginning with interesting excerpts from both Henry George and critics of property tax systems.

Recent years have witnessed a trend in the organization of law school materials away from a doctrinal or conceptual orientation to a functional or activity-oriented approach. A chunk of human activity is isolated and the laws bearing on it are then studied and evaluated. Professor Lefcoe’s book is a style-setter within the new trend. I propose to explore some of the advantages and disadvantages of this type of organization, to discuss the extent to which the Lefcoe book exploits the advantages and minimizes the disadvantages, and to state some conclusions concerning the

2. A. DUNHAM, *MODERN REAL ESTATE TRANSACTIONS, CASES AND MATERIALS* (2d ed. 1958).

appropriateness of the chunk chosen by Professor Lefcoe as the focus of his course.

The advantages of focusing upon an activity are striking. Lefcoe speaks about many of them in his lengthy preface. First, the student's interest is undoubtedly better engaged. He is looking at a slice of the world cut in the same shape as a lay participant sees it. He does not study an easement as an "incorporeal hereditament," which fits into a hierarchical structure of interests in land; rather he sees the easement either as a device recommended to secure shared use of facilities in a housing development, or as a label affixed by a court (in the case of easement by implication) to carry out the assumed but unexpressed intention of a developer and buyer. And, even more broadly, by understanding the goals and operations of the housing developer, the preferences and problems of his consumers, and some of the expressed interests of the community, the student senses the relevance of the rules surrounding easements, covenants and other property pigeonholes in a way impossible when the activities in which such legal constructs function are left unexplored.

Second, a functional organization requires an integrated exploration of the various public and private laws which interact upon the activity under study. Such integration permits a more contextual evaluation of the related rules which are presently crammed into conceptual slots and often seen in isolation. An excellent example of the utility of this approach is provided by the way in which Lefcoe compares the property doctrine of merger of contract and deed, the emerging contract doctrine of implied warranties of fitness in the sale of new housing, the tort doctrines of misrepresentation and fraud, and the federal contract requirements for VA and FHA housing.³

In a similar vein the approach permits meaningful integration of materials from the social sciences and other non-legal sources, because they too are increasingly organized around activities rather than conceptual warehouses. The inclusion of such non-legal materials, together with the functional view of the legal doctrines, allows the student to see in a more complete and systematic way whose interests are affected and how by a body of law.

Third, the functional orientation helps the teacher to isolate those doctrinal areas which should be stressed because of their relative importance in the field of regulated activities. Professor Lefcoe devotes considerable space to such problems as coping with subdivision regula-

3. G. LEFCOE, *LAND DEVELOPMENT LAW, CASES AND MATERIALS* 400-22, 607-10 (1966).

tions, compelling a utility to provide services, and obtaining financing and planning permission. He devotes less attention than is normal in property texts to recording, easements and licenses, and deed formalities and delivery. For the student viewing property law through the eyes of the land developer, this is a rational apportionment of space.

But there are also disadvantages to the activity orientation. One is serious, another can more easily be overcome. The substantial problem arises because so much law has evolved within closed doctrinal systems that it is difficult for the student to understand enough to manipulate the doctrines skillfully unless he learns them within the same systems. This weakness can be illustrated at three overlapping levels with examples drawn from Professor Lefcoe's materials. The first level concerns individual doctrines within a conventional field. In Chapter 8, for example, Lefcoe subdivides the materials on land-use controls by agreement into four categories. The first explores the rights of early purchasers *inter se*. After a brief description of the most common legal forms which can be used to obtain agreements (homeowners' associations, cooperatives, condominiums, and leases), the student is presented with a constructive eviction case involving tenants who use their leased premises as a brothel, to the immense displeasure of their landlord, who owns the adjoining property as well. This is one of the few cases in the book involving landlord and tenant relationships. It is the only case concerning constructive eviction. The student is presented with no materials involving the landlord's implied warranty of quiet possession, the origin of the doctrine of constructive eviction, or the directions in which it is moving (probably as a "property" substitute for the contract doctrine of material breach). In other words, the student has no conceptual framework within which to evaluate the result or the stated reasoning of the case. It will be hard for him to spot situations in which he could use the doctrine, for he does not see it in the framework used by lawyers and judges.

On the other hand, the book brilliantly avoids this problem in a number of instances. In 12 pages of questions, cases, and text⁴ on the problem of delivery, for example, Lefcoe poses the difficult distinctions artfully and provides enough background for intelligent understanding of the "legal" controversy as well as the function of the doctrine. Professor Lefcoe's treatment of covenants and servitudes is equally sophisticated. He explicitly acknowledges the complexity of the legal

4. *Id.* 550-61.

materials, and then skillfully blends cases, comments and questions well calculated to explore the conceptual difficulties.⁵ Moreover, he never loses sight of the functions of such agreements and constantly interweaves contemporary examples by way of text or question.

The second level of difficulty arises from interweaving doctrinal material from many "fields" to stimulate evaluation of different legal forms for accomplishing similar purposes. Chapter 5 illustrates this problem. Here Professor Lefcoe examines four land security devices—mortgages, trust deeds, land-sale contracts and leases. He knits together materials concerning the four in much the same manner as did Allison Dunham in his stimulating casebook.⁶ But, as in the case of individual doctrines, the student can have a very difficult time understanding the concepts of mortgages or land contracts well enough to know what the court is talking about. Unless the teacher is inclined to intersperse lectures "laying out" conventional fields, droves of students will be driven to the treatises.

Finally, and on a more general level, there is the difficulty of integrating snippets of what have been conceived to be entirely different subject matters. The Lefcoe book abounds with materials conventionally taught in other subject frameworks: equity, bankruptcy, utility law, administrative law, contracts, corporations, taxation, and state and local government. The problems are the same as noted before, though perhaps more attenuated.

The more easily surmountable problem with the Lefcoe approach concerns training in specific skills. Law teaching has many ends. One of the more prosaic but important ones is developing in students an ability to read carefully, reason logically from step to step, perceive all the alternatives, and set forth conclusions methodically and persuasively. The traditional casebook has been a useful tool for these purposes. The arrangement of a number of cases concerned with relatively narrow areas of subject matter has demanded close textual attention with a premium on ferreting out distinctions and stating them persuasively. This training could be lost in a function-oriented textbook where the temptation is to range broadly and superficially.

Professor Lefcoe's materials, however, allow the instructor to avoid this danger.⁷ First, while he rarely gives us two or more cases which

5. See, for example, the excellent note on covenants running with the land. *Id.* 1170-78.

6. A. DUNHAM, *supra* note 2.

7. Professor Prosterman reviewing the Lefcoe book in 52 CORNELL L.Q. 479 (1967) disagrees violently with this estimation. He believes that the book covers too much too

demand synthesizing, his hypotheticals are probing and his frequent cross-references demand searching thought. Secondly, he constantly brings his reader up short by asking what segment of the industry is helped, and how, by a particular decision, statute, or regulation. Teachers trying to cover the whole book will be tempted to skip over the questions and hypotheticals. It would be better, however, to skip some chapters and to cover the others fully.

On the whole, Professor Lefcoe has maximized the advantages and minimized the disadvantages of the book's organization. In the second edition, which is sure to follow, he should give thought to including more notes on doctrine—patterned on his discussion of covenants running with the land—and more references to articles and sections of treatises which would permit students to comprehend the legal-conceptual framework underlying issues raised by the materials.

Much of the Lefcoe book deals with land development on raw land outside central city locations. Is this an optimal focus for a beginning course in land law? A judgment on this question entails recognizing the major topics which have been excluded and evaluating the appropriateness of this setting for dealing with the material included. There are two major exclusions. One is the set of traditional materials on estates in land. This omission seems unobjectionable given intelligent curriculum coordination. Estates are probably best seen in the context of transmission of wealth, especially at death. They should be understood in that context, and dealt with in the course covering future interests, trusts, and wills. Moreover, the absence of such traditional material poses no particular difficulty to teaching what is covered in the book.

The other major exclusion is a discussion of land problems peculiar to the central city. Thus, there is very little on landlord and tenant relationships, and practically nothing on public housing. The material on race relations deals mainly with sales of houses, and concentrates on regulation of such sales within suburban settings. Housing codes are largely ignored. There is, in the introductory chapter on eminent domain, a section on urban renewal which includes ten pages on reloca-

rapidly, rests too heavily on texts which "lay out" the legal analysis and questions which are either rhetorical or peripheral and thus fails to "develop [in law students] the ability to read, with shrewd and sensitive comprehension, every word on a page, and to appreciate the many things that are not said. . . ." 52 CORNELL L.Q. at 480. I share Prosterman's desires, but I reject his evaluation. A careful reading of Chapter 1, for instance, uncovers considerable materials eminently useful to develop the desired thought-processes. The Lefcoe book shifts levels constantly—from the broad to the detailed. Awareness of this gives the instructor numerous options to stress both methodology and policy coverage.

tion, and there is also episodic treatment of some central city problems such as parking, the preservation of historical buildings, and the termination of nonconforming uses. But these urban problems are not treated as are the suburban ones—with a wealth of related material exposing relationships between legal and economic, social and political analysis. The book thus emphasizes the residential land problems of the middle and upper classes and avoids many of those faced by the poor.

This exclusion is manageable so long as it is recognized. One can hardly cover everything in a single course. And it is quite arguable that the land and housing problems of the poor are better handled in a course which investigates a spectrum of governmental interventions related to human development: education, welfare, income redistribution, social pathologies. Nevertheless, the neglect of the law of the poor leaves me uncomfortable, especially in a first year course where perhaps we should be directing (or following?) the social consciences of our students.

With three possible exceptions the book's focus is ideal for what is included. The question is whether the materials in Chapter 9, dealing with planning and zoning, and in Chapters 1 and 10, covering eminent domain and real property taxation, would be better examined in another context.

The first two are dealt with, for instance, in the new case book by Professor Mandelker⁸ within the context of municipal and state government. (His book is also function-oriented, in that he centers his organization "on problems that arise out of the physical environment in which locally-centered governments must operate"⁹). The debate has long continued as to whether land-use controls should be taught in a property course, a local government course, or separately.¹⁰ My view is that either of the first two is satisfactory. (The third "alternative" is a bit of a delusion, for a separate course is usually taught as or in lieu of a property or local government course). Most of the policy conflicts can be brought to view under either approach. The property approach tends to emphasize the extent to which land can be regulated or "taken," although Lefcoe's treatment raises broader questions concerning the efficacy of zoning and subdivision regulation (at least in the suburbs) to fulfill intended purposes. The local government ap-

8. D. MANDELKER, *MANAGING OUR URBAN ENVIRONMENT, CASES, TEXTS AND PROBLEMS* (1966).

9. *Id.* viii.

10. *Id.*

proach, as practiced by Mandelker, tends to emphasize the adequacy of local government structures to address the problems of the physical environment through planning or proprietary and regulatory interventions. His materials include well over 100 pages devoted to conservation, clearance and renewal in the central city, but he too does little with the housing of the poor.

My tentative preference is to treat land-use controls and eminent domain in the property-oriented course, and to organize an urban environment course as much as possible around essentially human problems such as unemployment, segregation, under-education, juvenile delinquency, and unstable family relationships. Such a course could well use government structure as its unifying legal theme, and might well seek to evaluate the efficacy of physical planning to ameliorate human problems. I do not wish to detract from the usefulness of Professor Mandelker's book. Its problem orientation and its focus on political structures are a very useful contribution. I mean only to suggest that the problems of the urban environment are at base human, not physical, and too little law school effort is addressed to them except in terms of manipulating the physical environment.

The bulk of this review has dealt with the middle eight chapters of Professor Lefcoe's book, which present the law of the land developer. In parting, the first and final chapters deserve brief comment. Lefcoe opens his book with a very long chapter on eminent domain—the government as vendor and purchaser. This would be an unusual beginning for an orthodox property course, and is almost as surprising a choice with which to begin a contextual study of land development patterns. I presume that the material is placed here in order to raise fundamental questions about the nature of "property" and the role of courts and constitutions in protecting individual owners against governmental acquisitions. The topic is excellent for this purpose and for training in methodology.

Moreover, the themes which Lefcoe develops are fascinating. His decision, for instance, to commence the chapter with a case involving the constitutionality of Puerto Rican land reform, and then to compare this with state court reactions to condemnation for industrial development, raises challenging questions. His selection of four parking garage cases, coupled with questions inviting exploration of judicial reaction to the exercise of eminent domain for "private beneficiaries," pulls out many of the major problems quite successfully. But I wonder whether the material may be too difficult for first-year students. I suspect many will be quite lost unless a good deal of time is spent on

the chapter—more time, perhaps, than may be justified for what is in essence an introduction, and one not notably related to the principal subject matter of the course at that.

Professor Lefcoe closes with property taxation. Many users of the book will skip this last chapter for lack of time. Others will believe that the subject is better taught in another course. In my view the subject is appropriate here, for the property tax system is a powerful determinant of land-development patterns. It would also be appropriate in an urban environment course where the inquiry would be hinged on the adequacy of fiscal structure to pay for programs directed to human development problems and the desirability of perpetuating locally-based taxes and expenditures.

A final word. Professor Lefcoe's book is challenging. The activity focus is carried through with energy and skill. It constitutes a serious contribution, both pedagogically and substantively. The author's knowledge and sophistication are evident. I learned much from reading it. I intend to use it as a teaching book at the first opportunity.

IRA MICHAEL HEYMAN†

† B.A. Dartmouth College, 1951; LL.B. Yale University 1956. Professor of Law, School of Law, University of California, Berkeley.