

treats the efforts of courts and legislatures to give relief to the overburdened debtor by moratoria, abolition of deficiency judgments, and other means.

The bibliography of law review material which appears in the front of the casebook is one of the most complete the reviewer has ever noticed. Surely no teacher will feel the lack of any collateral reference material in the use of this book. Indeed, on the contrary, it would seem that at least three years would be required for an industrious teacher to examine and digest all the reference material.

The editor of this casebook continues the usual practice of treating somewhat extensively the application of the recording acts to mortgages. It would seem that this material might be greatly reduced or omitted, since the problems are largely the same as those arising with regard to deeds and are usually covered in a course in conveyancing which is given before the mortgage course is reached.

The book could be made somewhat more complete by using footnote material to touch upon minor types of property security relationships and to contrast them step by step with the incidents of mortgages and other major security relationships. For example, this could be done with mechanics' liens, common law possessory personal property liens, and statutory personal property liens.

Mr. Osborne uses not only the ordinary edited cases, but he also includes as leading material from time to time brief digests of important cases, extracts from law review notes discussing cases, extracts from leading textbooks, and notes of historical or informative nature prepared by the editor himself. There is a large number of statutory references and of brief comments on statutory material, although this material is not complete. The book is well indexed and has an excellent table of cases.

The reviewer can unqualifiedly state, on the basis of several years' experience in the use of Parks and on one year's experience in the use of Osborne, that Mr. Osborne has performed a very valuable service in giving this casebook to the teaching profession. The task has been accomplished in a thorough, scholarly, and workmanlike manner. The cases are well selected and provoke extensive and fruitful discussion. The editing is careful and accurate.

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Cases and Materials on Real Property. By Ray Andrews Brown. Chicago: Callaghan & Co., 1941. Pp. vi, 563. \$5.00.

Intended for use in the first year course on real property, this book, in effect, falls into three parts. Part one, the opening chapter, is a concise, somewhat abstruse analysis of the nature of the law of real property. Emphasis is upon definition and classification, with only sketchy and incidental reference to the evolution and social significance of the twin concepts, property and ownership. Although lacking sweep and imagination-kindling qualities, this chapter is a thoroughly workmanlike job done in the dry, precise manner conventionalized by the Restatements.

Part two—chapters two through six—is an excellent historical introduction to the law of real property. Herein are materials on tenure, seisin, the common law methods of transferring interests in land, uses before and after the Statute of Uses, and the common law scheme of estates in land. Happily these topics, like those covered in part

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one, are developed in a series of essays written by Professor Brown for inclusion in this volume. Thus are students spared the exasperating stops and starts, gaps and overlaps inevitably resulting from the scissors-and-paste method of presenting such background material by a collection of excerpts from legal treatises.

The discussion of estates in land, present and future, contained in part two, serves as a frame of reference for part three, which develops these matters in detail largely through the medium of decided cases. The possessory estates in land and the various types of cotenancies are exhaustively treated in chapters seven through thirteen, and the subject of future interests is examined in the last five chapters.

In general, the content of part three is traditionally arranged. The cases have been selected and edited with consummate skill. While Professor Brown has not made mere "newness" a canon of choice, he has included, for a property casebook, an unusually large percentage of recent American cases. And he has succeeded in obtaining a particularly fine geographical distribution of this case material. As a result, the book is fairly representative of modern authority in these United States. The importance of contemporary statutes, however, is not adequately emphasized. Footnotes refer to statutory provisions, and many of the reported opinions discuss statutes, but the text of typical statutes is not set out and high-lighted in the body of the book.

"Forewords" written by the editor introduce the student to some of the more difficult topics by giving him the necessary historical background together with suggestions concerning the general nature of the problems raised in the cases that follow. Especially noteworthy is the truly brilliant little essay tracing the origin and development of the rule against perpetuities. In addition to these "forewords," extensive notes follow almost all the principal cases. These notes frequently include a wealth of material dealing with problems on the periphery of those discussed in the principal cases. Also, they contain appropriate citations to leading treatises, to articles and annotations in the law reviews, to the adjudicated cases, and to the Restatements of the Law of Property. Nowhere, however, are sections of the Restatement reprinted in full. Illustrative of another type of note found in part three is the exceedingly useful explanation of the descent of possessory estates in fee simple—a matter that it would be profligate of time to develop by case analysis and synthesis. Parenthetically, it seems unfortunate that there is not a similar note briefly explaining the concept of community property; and another discussing, also briefly, the nature and the apportionability of rent.

Departing from orthodox practice, Professor Brown reserves consideration of the defeasible estates in fee simple and the defeasible life estates for that part of the book dealing with the future interests in land. At the same time estates for years on conditions subsequent and determinable estates for years are developed in the chapter on the possessory estate for years. This division of material on defeasible estates seems particularly unfortunate in light of the fact that the case¹ inserted to develop the alienability of possessory estates in fee simple involves the validity of a restraint on alienation couched in language of condition subsequent. The court held this restraint void; but in discussing the case in class the question will almost inevitably arise: what sort of estate would have been created if the limitation had been valid? And this question, quite naturally, will lead to inquiries concerning the types of estates created by lan-

¹ *Porter v. Barrett*, 223 Mich. 373, 206 N.W. 532 (1925).

guage which, if effective, would create special limitations, executory limitations, and mere covenants. There seems to be no convincing reason why the students' curiosity concerning these matters should not be satisfied at once, as is customary in other casebooks. To discuss the characteristics and incidents of the defeasible fee simple estate and the estate on conditional limitation, does not require an exhaustive discussion of the characteristics and incidents of the possibility of reverter, the right of entry for condition broken, and the executory interest. All that is necessary is to classify the respective possessory estates and explain the legal effect of the happening of the specified contingency.

More than offsetting this adverse criticism is the skillful manner in which the material on estates for years, tenancies at will, tenancies at sufferance, and periodic tenancies is organized so as to give a reasonably complete picture of the vitally important problems stemming from the landlord and tenant relationship—a desideratum, believe it or not, which is attained by only a very few casebooks on property.

As the editor indicates in his preface, the comparatively small space (229 pages) in this book devoted to future interests necessarily results in the treatment of that subject being illustrative rather than exhaustive. For example, there are only five cases on the rule against perpetuities, two cases on gifts to a class, one case on statutory modifications in the rule against perpetuities, and no discussion of the doctrine of *Moore v. Littell*.² Thus, at best, a student can be expected to acquire little more than a surface familiarity with the fundamental doctrines underlying this fascinating but superlatively complicated field. Professor Brown believes that such an acquaintanceship is better than none at all. And he points out that in most law schools the subject of future interests is developed in detail only in an elective third year course taken by relatively few students. It seems, however, that this subject may well cover a legal area in which a little knowledge is more dangerous than no knowledge at all. Thus naive and confiding students studying this book may be misled into thinking that their first year course in property has given them all they need to know about future interests for run-of-the-mine, client-caretaking purposes. And that, of course, is simply not true. Apart from these dangers, it seems that the time required for even the summary treatment of future interests contemplated by this book could better be devoted in the first year to an examination of equally important but more readily understood problems, such as, for example, those dealing with the so-called "natural rights" respecting land, air, and water.

Despite these cogent (?) observations, many property teachers will applaud the scope of this book! And all will praise the masterly fashion in which the editor has attained his professed object of emphasizing "the practical effect which the system of estates has upon the actual rights and duties of land holders."³ Perhaps no other standard first year book does more to minimize the risk, implicit in the subject matter, of the study of estates degenerating into mere mental gymnastics in classification and nomenclature.

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² 41 N.Y. 66 (1869).

³ Preface, p. v.

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