

BOOK REVIEW

Gerald O. Dykstra and Lillian G. Dykstra,  
The Business Law of Real Estate. The  
Macmillan Company, New York, N. Y., 1956.  
839 pp. Index. \$7.50.

This text-casebook was written primarily for business law professors and their students for use in real estate law courses at the undergraduate level. The title is interesting and is explained in the preface as follows:

. . . Since the authors have been teaching and writing in the Business law field for approximately two decades, it is only natural that their approach to the subject should be announced in the title--The Business Law of Real Estate. This accounts for the omission of materials on Wills, Trusts, Descent and Administration of Estates, where the businessman will, of necessity, have the advice of employed legal counsel, and, in the space so conserved, the inclusion of such topics as Trespass, Nuisance and Liability to Licensees and Business Visitors. . . .

Part I, Introduction, includes a short and interesting resume of the nature of property and its classification. The "Bundle of Rights" concept is covered. Next, the reader is informed that a study of property, in the legal sense, is more concerned with the rights of or interests in the thing than in the thing itself.

Part II, Lands and Estates Therein, includes a definition of land, with a discussion of estates in land and fixtures. In connection with fixtures, the Dykstras appropriately note that the status of the litigating parties is just as important as the three time-honored tests (annexation, adaptation and intention) in determining whether or not a chattel has become a fixture.

Part III, Acquisition and Transfer of Title or Interest, covers 371 pages of the total of 839 in the text. There are chapters on Installment Land Contracts, Deeds, Leases, Mortgages, Adverse Possession and Easements. Installment land contracts are defined as contracts for long range financing of the purchase price of the land by the vendor retaining legal title as security. Unfortunately, the term "land contract" has been used carelessly and may refer to installment land contracts or the preliminary sales-purchase agreement. The text under review makes a clear distinction between these two concepts.

Part IV, Public and Private Restrictions on the Use of Land, has chapters entitled, Zoning Ordinances, Restrictive Covenants, and Eminent Domain. In view of the tremendous growth of cities, suburban sub-divisions, highways, dams and other public projects, these chapters are concerned with areas of increasing importance.

Part V, Rights and Duties of Owners and Occupiers of Land, includes chapters on Adjoining Landowners, Trespass, Nuisance, and Liability to Trespassers, Licensees and Invitees. I have found that the study of the material on liability to

trespassers, licensees and business invitees is especially interesting to business school students.

Part VI, Real Estate Brokers, contains a short section which is mainly concerned with real estate broker commission rights. This material is somewhat repetitious with the material usually included in general business law courses that cover agency law.

The publication of the volume under review is good news for the teachers and students of this subject. It is a special blessing for those of us who insist on teaching real estate law by the case method. Prior to the publication of this volume, I used a real estate law textbook which was not an adequate vehicle for the case method of teaching law in that it was primarily a "Hornbook" with only a limited number of very brief, high-school-type case presentations.

I am of a school that believes that juniors and seniors in a business school are competent to read, analyze, brief and recite on full-fledged law cases. It is my experience that business school students will respond and learn under the case method of teaching. Prior to the publication of this book, I felt compelled to assign my real estate law students outside cases in Dillavou and Howard, Lusk, Anderson, Spencer and Gillam and other business law casebooks containing sections on real property law. By using the book under review, the necessity for this procedure has been alleviated. The authors have selected a sufficient number of adequate cases to effectively challenge and teach the student. The cases have been carefully edited and selected, and the factual situations are such that they provide the bases for lively classroom recitation-discussion sessions.

Real estate law, like many other areas of law, varies considerably from state to state. Experience in Kansas, Texas and Louisiana has given me practical enlightenment which backs the above generalization. For example, in Texas one seldom hears the phrase "real estate mortgage" in legal circles. The three-party deed of trust takes the place of the traditional two-party real estate mortgage in Texas. It is certainly impossible to publish a usable real estate law text that will begin to cover all of the statutory and case variations found in the several states. The best that an author can do is to cover general principles and theories and make it clear to the student that in some states the law may vary because of statute, court decision or custom. This, I believe, is sufficiently done by the Dykstras.

My only disappointment in the book under review is concerned with quantity rather than quality. In my opinion, several important areas of real property law are regrettably ignored. It is my hope that the following suggested additions will be considered by the authors and publishers in the next edition. First, a text of this type should include a glossary covering general legal terms as well as such real property gems as "hereditament," "equity of redemption," etc. Second, no legal forms are included. Students need to study, analyze and be able to recognize common legal forms (deeds, mortgages, contracts of sale, etc.). Third, I would also suggest the inclusion of some material on community property and its historical background.

It is also my feeling that water law, and oil and gas law should be covered in the real estate law course. This book has no special sections in these areas. Water law is destined to become an increasingly important part of the body of law

known as real property law. Water is by all measures the most important mineral to be found in many areas. Due to the scarcity of water in many states, extensive water conservation codes either are already enacted or are inevitable in the future. Irrigation, water drainage, stream pollution, adequate city water, adequate water for industry, disposal of atomic energy wastes, and fishing and recreational projects are the major problems of many communities and states. Classroom discussions reflect consistently the fact that students are vitally interested in and fascinated by the principles and theories of water law.

My students in Kansas, Texas, and Louisiana have always shown a tremendous curiosity about oil and gas law. Many come from rural families that have land under lease for oil. Quite a number intend to go to work for oil companies. A listing of the 30 largest nonfinancial corporations in the United States contains no less than 11 oil corporations.

Some may feel that it is futile to try to cover water law and oil and gas law along with all of the other traditional areas covered in a real estate law course. The student of real estate law should be a junior or preferably a senior with a background of 3 to 6 hours of business law and a course in real estate theory and principles. A real estate law course is generally considered an advanced course and is taken either as a part of a real estate and insurance major or as an elective. Thus it is my feeling that the professor of real estate law should have, and generally does have, a select group of eager students with an excellent background for their work. Under such circumstances the class will move rapidly and, under proper stimulation, will be able to cover a lot of material.

In conclusion, this text-casebook (in its present form) is a fine piece of work. It is well written, attractive to the eye and reflects the best in scholarship. It is recommended highly to students and teachers of real estate law. Investment officers, mortgage officers, realty brokers, builders and lawyers will also find it a wise investment. I predict a long and healthy life for this volume. I only wish it had been available earlier. In fact, I wish it had been available during my hectic law school days when I was plowing through the niceties of real property law.

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