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Book Review

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Book Review

AMERICAN LAW OF PROPERTY. By Twenty-four Co-Authors; Editor-in-Chief, A James Casner. Boston: Little, Brown and Company, 1952. 6 volumes of text, LXXXVIII, pp. 4824; 1 volume of tables and index, pp. 1018. \$115.00

One of the most important law publishing events in recent years is the publication of the *American Law of Property* written by twenty-four co-authors under the general editorship of A. James Casner, Professor of Law, Harvard Law School. Of special interest to Missouri lawyers is the fact that three of the co-authors have taught or are now teaching in the University of Missouri School of Law. Hiram H. Lesar, author of Part 3, Landlord and Tenant, has been a member of the University of Missouri School of Law faculty since 1946, and is Faculty Editor of the *Missouri Law Review*. Thomas E. Atkinson, New York University School of Law, author of Part 14, Title After Probate Action, taught at the University of Missouri School of Law from 1935 until 1945. Merrill I. Schnebly, University of Illinois College of Law, author of Part 26, Restraints on Alienation, taught at the University of Missouri School of Law from 1926 until 1928.

This reviewer has used the *American Law of Property* for almost a year, and in this best test of any law book he has found it scholarly, accurate, comprehensive and practical, a treatise of great value in dealing with property problems which arise in the general practice in Missouri.

A treatise of national scope cannot give every detail or peculiarity of the property law of a particular local jurisdiction. With reference to any particular property problem in Missouri, a Missouri lawyer still will find the several local treatises indispensable;¹ and if he has them available he will look at the leading articles, comments and notes in the several law reviews published in Missouri.² The difficulty with some local treatises is that too often there are no local cases on a problem and the problem is not mentioned at all; and even when there are cases in point, some local treatises do little more than cite cases and give no analysis of the problem. Treatises of national scope written by acknowledged authorities are indispensable because they give the historical background, show how courts in other jurisdictions have dealt with the problem, indicate the several lines of authority and the reasoning supporting the several view, and point out which of the several views should be adopted in a jurisdiction in a case of first impression. In some cases a treatise will discuss a problem where there is no reported decision in any jurisdiction; an example of this is found in the *American Law of Property*. In § 24.36, Validity of Gifts in

1. SILVER, MISSOURI TITLES (2d ed. 1953); GILL, MISSOURI TITLES (3d ed. 1931 and Supplements); GILL, MISSOURI TAX TITLES (1938); GILL, REAL PROPERTY LAW IN MISSOURI (1949); KELLEY, MISSOURI PROBATE LAW AND PRACTICE (5th ed. by Gage, 1926); LIMBAUGH, MISSOURI PRACTICE (1935-1939); HOUTS, MISSOURI PLEADING AND PRACTICE (1938); and other local books having some bearing on property problems.

2. A convenient collection of citations to leading articles, comments and notes on property problems will be found in Eckhardt & Peterson, *Possessory Estates, Future Interests and Conveyances in Missouri*, 23 V.A.M.S., pp. 1-83 (1952).

Default of Appointment Where a Valid Power Is Not Exercised, Professor Leach analyzes a perpetuities problem on which there was no reported decision; two months later his analysis was followed in *Sears v. Coolidge*, 329 Mass. 340, 108 N.E. 2d 563 (1952).

In preparing a draft of revised comment to Missouri Title Examination Standard 6, "Deeds, marital recitals, lack of,"³ which is concerned with the curative statutes on dower, *Missouri Revised Statutes* (1949) §§ 516.060-516.065, it was necessary to prepare a caveat with reference to unreleased homestead. Missouri decisions on unreleased homestead leave many questions unanswered, as did the local texts. The reviewer found Professor Haskins' discussion in the *American Law of Property*, § 5.75 *et seq.*, helpful and illuminating, and in drafting the comment he relied to a considerable extent on the views therein expressed.

The *American Law of Real Property* is thoroughly up-to-date. The text throughout makes copious references to the Restatements; this is particularly valuable in Missouri where the Supreme Court has shown a definite tendency to follow the Restatements in cases of first impression. Under many topics tax considerations receive attention; discussions of tax problems are not intended to be exhaustive and necessarily are brief, but should prove to be of considerable value to the lawyer who is not a tax specialist. Landlord and Tenant, a field noted for its small fees and extraordinarily difficult problems, has long been in need of modern, scholarly treatment, and this is supplied by Professor Lesar in Part 3, § 3.1 *et seq.*

The use of twenty-four co-authors has a distinct advantage in that a specialist deals with each major topic. For example, no other legal scholar could treat Restraints on Alienation, Part 26, § 26.1 *et seq.*, with more authority than Professor Schnebly. The use of twenty-four co-authors also presents a problem in integrating the work of the several co-authors, but this has been accomplished by Professor Casner, the Editor-in-Chief, with notable success.

On the whole the treatise is orthodox in its approach in that the material is presented within the framework of legal categories and concepts familiar to the legal profession. For example, the term "right of entry for condition broken" is used in lieu of the Restatement's "power of termination."⁴ An exception, which the reviewer believes to be an unfortunate one, is that the generally accepted and well recognized

3. 9 J. MO. BAR 181 (Sept. 1953); 23 V.A.M.S., Chap. 442, Appendix (1953 Pocket Part).

4. RESTATEMENT, PROPERTY (1936) § 24, Special Note to *Comment b.*

term "profits" is abandoned in the *American Law of Property* and profits are treated as easements, following the Restatement.⁵

In view of the outstanding excellence of the text, the reviewer regrets to note that the index, even though 438 page long, is not adequate. For example, the problem of the assignability of easements and profits in gross is covered by Professor Rundell in twelve sections, §§ 8.75-8.86, and in an important footnote of almost 4,500 words, § 8.83, n. 1. The reviewer was unable to find any of this text material by using the index. In other instances the reviewer has had the same experience, viz., an index inadequate to enable him to find the pertinent sections or notes in the text, but a rewarding discussion of the problem after he had found the material in the text.

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5. RESTATEMENT, PROPERTY (1944) § 450, Special Note and *Comment f, g*.

Judge Charles E. Clark, whose articles and book, *Real Covenants and Other Interests Which "Run With Land"* (1929), brought order out of chaos in the field of covenants running with the land, vigorously attacks parts of the RESTATEMENT, PROPERTY, Part 5, *Servitudes* (1944). See CLARK, *REAL COVENANTS AND OTHER INTERESTS WHICH "RUN WITH LAND"* (2d ed. 1947); at pp. 8, 66, 80-81, 227-228, Judge Clark deals with the *Restatement's* treatment of profits.

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