

Missouri Law Review

Volume 20
Issue 1 *January 1955*

Article 12

1955

Book Reviews

Follow this and additional works at: <https://scholarship.law.missouri.edu/mlr>



Part of the [Law Commons](#)

Recommended Citation

Book Reviews, 20 MO. L. REV. (1955)

Available at: <https://scholarship.law.missouri.edu/mlr/vol20/iss1/12>

This Book Review is brought to you for free and open access by the Law Journals at University of Missouri School of Law Scholarship Repository. It has been accepted for inclusion in Missouri Law Review by an authorized editor of University of Missouri School of Law Scholarship Repository. For more information, please contact bassettcw@missouri.edu.

et al.: Book Reviews
Book Reviews

AMERICAN LAW OF PROPERTY. Vol. VIA, Rights Incident to Possession of Land, by Clyde O. Martz. Boston: Little, Brown and Company, 1954. xi, pp. 202, lvi.

The *American Law of Property*, written by twenty-four co-authors with Professor A. James Casner as editor-in-chief, was published in 1952 and was reviewed in a recent issue of the *Missouri Law Review*¹ Part 28, Rights Incident to Possession of Land, by Professor Clyde O. Martz of the University of Colorado School of Law, was not ready in 1952 when the other parts of the treatise were published;² this part is now published as Vol. VIA and completes the treatise as originally planned. This volume has 202 pages of text, and has its own table of cases, table of statutes, and index. The subjects covered are "Freedom from Trespass," "Private Nuisance," "Lateral and Subjacent Support," and "Water Rights," topics usually included in a law school course on Rights in Land, although sometimes included in whole or in part in a course on Torts.

A detailed review for this additional volume is beyond the scope of this brief notice, but I have attempted to evaluate the volume on the basis of its treatment of two problems within its scope which are of great current interest to Missouri lawyers. This sampling indicates that this volume is of the same high quality as the parts of the treatise published in 1952.

*Professor of Law, University of Missouri.

1. Eckhardt, 19 Mo. L. REV. 97-9 (1954). For other reviews of the AMERICAN LAW OF PROPERTY, see the following:

Schuyler, 39 A.B.A.J. 223-4 (1953);

Keyes, 24 BAR BULL. (Boston) 46-8 (1953);

Symposium of Reviews, Hawley, Seed, Bloomenthal, Basye, Cross, Turrentine, Horowitz, 41 CALIF. L. REV. 349-76 (1953);

Dunham, 53 COL. L. REV. 440-7 (1953);

Nossaman, 66 HARV. L. REV. 1338-45 (1953);

Tefft, 46 L. LIB. J. 45-8 (1953);

Page, 13 MD. L. REV. 276-82 (1953);

Aigler, 51 MICH. L. REV. 1107-10 (1953);

Rarick, 37 MINN. L. REV. 640-3 (1953);

Sparks, 28 N.Y.U.L.Q. REV. 1052-62 (1953);

Allen, 48 N.W.U.L. REV. 523-6 (1953);

Keenan, 27 ST. JOHN'S L. REV. 401-4 (1953);

Cranston, 5 STAN. L. REV. 890-9 (1953);

Fritz, 31 TEX. L. REV. 611-14 (1953); and

Schuyler, 101 U. of Pa. L. REV. 1250-6 (1953).

2. The delay was due to the fact that the treatise as originally planned did not cover rights incident to possession. Such problems were covered by the *Restatement of Torts* rather than by the *Restatement of Property*. At a later date it was decided to include this material in the *American Law of Property*, but it was then too late for the manuscript for this part to be completed by the original publication date. See 1 AM. LAW PROP., p. x. This reviewer is of the opinion that this material should be included in a treatise on property, regardless of the *Restatement* allocation of the material.

Elder v. Delcour,³ opening a non-navigable portion of the Meramec River to fishermen, is of great interest both to riparian owners and to fishermen, and probably will become a leading case. This problem is well covered in the text and notes in Vol. VIA.⁴ It is a pleasure to report that the inadequacies this reviewer noted in the original index volume are not found in the separate index to Vol. VIA.

The other problem of great current interest within the scope of Vol. VIA is the extent of the privilege to take water for irrigation. At a Water Policy Conference at the University of Missouri in February, 1954, persons representing the major water interests in Missouri explored the many problems of water use, including the problem of existing Missouri law.⁵ It is probable that one or more bills dealing with the problem of water use will be introduced for consideration by the Sixty-Eighth General Assembly. Several cases are in the circuit courts. Any lawyer dealing with irrigation and related water problems will get real help from the discussion of the basic concepts and principles in Sec. 28.55 *et seq.* of the *American Law of Property*.

Pocket part supplements for the original seven volumes of the *American Law of Property* also have been received. These pocket parts, with a total of 326 pages, cover the years 1952-1954. These parts include not only citations to new state and federal statutes and some 1300 new cases, but also include new text material. The pocket parts were prepared by the several original authors and show the same careful scholarship that went into the original volumes. New pocket parts are planned every two years.

WILLARD L. ECKHARDT*

3. 269 S.W.2d 17 (Mo. 1954), reversing 263 S.W.2d 221 (Mo. App. 1953).

This case is the subject of a comment by Garner in a recent issue of the *Review*: See 19 Mo. L. REV. 401 (1954).

4. § 9.49; § 28.10, nn. 27-29; § 28.17, n. 20; § 28.55, n. 14; and § 28.59, nn. 6, 7.

5. REPORT ON MISSOURI WATER POLICY CONFERENCE, College of Agriculture, University of Missouri, Columbia (1954). This report includes, at pp. 6-9, an abstract of an address by the reviewer on *Existing Missouri Law of Riparian Rights*. At pp. 36-44 is the text of an address by C. E. Busby, Esq., of the United States Soil Conservation Service, on *Water Law and Administration*, an able and comprehensive discussion of water rights in the several states.

See Hanna, Recent Cases, *Property—Rights of a Riparian Owner in Missouri with Respect to Obstruction of a Natural or Artificial Watercourse*, 13 Mo. L. REV. 67-74 (1953); Burrell & Stubbs, Comment, *The Rights of a Riparian Landowner in Missouri*, 19 Mo. L. REV. 138 (1954).

The Attorney General of Missouri has issued a letter opinion dated April 30, 1954, on "Watercourses: Irrigation," which was prepared by Hugh P. Williamson, Assistant Attorney General. This opinion is conservative in that it expresses the "natural flow" theory. It is probable that the Missouri courts will adopt a more liberal standard with reference to permitted water use.

*Professor of Law, University of Missouri.

EVIDENCE: By Charles T. McCormick: St. Paul, Minnesota: West Publishing Co., 1954. Pp. 774.

The closing month of 1954 has seen the publication of another excellent handbook on the law of evidence. There is an advantage to having several such books, as they present different viewpoints on various problems.

First, the reviewer calls your attention to the format of this book by the eminent author, Professor McCormick. It is a wider book than former hornbooks published by West. This is due to the fact that there are two columns of text and notes on each page. The reason given by the publisher for this change is that authorities on reading claim that short lines are easier to read than long ones. This may well be true for the younger generation, which is being taught to read groups of words at a glance. The print is very clear.

Now let us consider the basic reasons why this is a first-class book.

To the writer, the most important cause for this is that a first-class honest mind has for many years devoted much of the time to careful, thorough research and to thoughtful consideration of evidential problems.

This has led to several results which will be listed below, not necessarily in the order of their importance.

Up-to-date topics are covered. Illustrations of these are the newer methods of discovery, pre-trial conferences, modern scientific techniques used in criminal investigations, and the suggested codes of evidence.

The historical backgrounds of many rules of evidence are presented. Examples of such historical matter are found in connection with discussions of opinion evidence, impeachment, the law of privilege, hearsay, and records of past recollection.

Throughout the book, in addition to citations to cases, frequent references are made to other texts, especially to Wigmore's treatise, to law review articles, to notes in annotated selections of cases, to encyclopedias, to digests, and to legislative enactments.

As might be expected, the author has, in controversial situations, given readers the benefit of his conclusions, buttressed by reasons therefor. One may not always agree with his decisions—and what author can ever expect such agreement—but his conclusions are always within the realm of possibility.

Finally, the author looks to the future and predicts the evidence law under which future lawyers will practice.

Your reviewer gladly commends this book not only to law students but to practicing lawyers.

CARL C. WHEATON*

*Professor of Law, University of Missouri.