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George Lefcoe, Land Finance Law: A Symposium Review

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IN his first publication, *Land Development Law*,¹ Professor Lefcoe concentrated on subdivision development as the framework for presentation of most of the legal principles normally covered by conceptual pigeonholes in conveyancing and land-use controls materials. The "activity-oriented" approach to the land development subject-matter was a contribution to the trend toward adding functional and empirical dimensions to law school courses so as to bring a sense of relevance and realism to the classroom. Thus, despite some objectionable features, *Land Development Law* was justly hailed as a "style-setter."²

One might have assumed that Lefcoe would be so fascinated with this arrangement, and with the comment that his first book engendered, that any additional work which he authored would serve to elaborate some particular component touched upon in the sweep of the first publication. For instance, a land finance coursebook could have been organized to refocus on the subdivision process with the emphasis on the financial considerations at the acquisition, tract improvement, construction, and permanent loan stages. The various topics of conventional real estate security law could have been incorporated in such a format with interesting results.

But in *Land Finance Law*,³ the author declines the opportunity to make new use of subdivision development as a springboard for a detailed examination of one of the essential parts of property law. Although much space is devoted to land security patterns especially applicable to conventional housing, the author goes beyond the confines of that activity and includes materials on federally-supported programs and commercial structures.

Despite the possible advantages of an activity-oriented organization, the decision to shift to a more general approach is well-advised. If the latest coursebook had been patterned after the first, and both were used in the law school curriculum, the property law offering would tilt dangerously toward suburban-housing myopia. Aspiring property lawyers need broad exposure to the various segments of real estate activity, whether they fancy themselves as candidates for counseling positions in the world of real estate investment and development or as advisors to the poor on matters of housing and environmental improvement. Only through a general inquiry can the student understand the similarities and distinctions among lending practices, and the choice of alternatives among financing devices, involved in such activities as residential tract development, federally-supported housing, shopping centers, office buildings and apartment

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1. G. LEFCOE, *LAND DEVELOPMENT LAW: CASES AND MATERIALS* (1966).

2. See Heyman, Book Review, 77 *YALE L.J.* 1260 (1968); Jacob, Book Review, 20 *J. LEGAL ED.* 373 (1968); Cunningham, Book Review, 66 *MICH. L. REV.* 794 (1968). This is not to detract from the pioneering effort of Professor Dunham, who developed a functional organization of conveyancing in *A. DUNHAM, MODERN REAL ESTATE TRANSACTIONS* (1953).

3. G. LEFCOE, *LAND FINANCE LAW: CASES AND MATERIALS* (1969).

complexes. This book provides the fulcrum around which such a wide-ranging exploration can be structured.

Breadth has its disadvantages. An attempt at comprehensive coverage runs the risk of fragmentation and digression which leaves the instructor and student struggling for coherence. If an extensive coursebook is designed for use as a unit,⁴ there must be an apparent unifying theme that runs deeper than the title under which the various topics are catalogued. At several points, *Land Finance Law* lacks this important ingredient of congruity.⁵

For example, part one, dealing with indigent tenants' problems (chapter 1) and the federal low- and moderate-income housing programs (chapter 2), provides a jolt for anyone concerned with the proper structure of an advanced specialty course in property law. The *idea* of including materials on the federal programs has merit: students interested in real estate finance should at least be on speaking terms with these programs so that they can advise developers and citizens' groups of the opportunities for involvement and can guide them through the nerve-racking complexities of such an endeavor. But in the context of a land finance course, this material should be geared toward the perspective of the persons attempting to package such a project rather than dwell on snippets which establish the policy bases for the schemes.⁶ More emphasis on the former approach would have provided a connecting link with the development processes examined elsewhere in the book, and would have given the student a feel for the contrast in financing arrangements among the types of real estate ventures. Further, focus on the *raison d'être* assumes that this is the only exposure to these matters that the student will get. It would probably be more realistic to suppose that these basic issues would be hashed out in other courses—*e.g.*, the introductory property course and the poverty law offering—and that the student who subscribes to a land finance course would rather spend his time being exposed to the many intricate problems facing developers and non-profit groups who participate in the programs.

4. At least one recent coursebook is devised for use in more than one course, and is available in paperbound parts. *CASES AND MATERIALS ON LAW AND POVERTY* (P. Dodyk ed. 1969). Although Professor Lefcoe suggests that *Land Finance Law* can be disassembled for use in different courses, such a treatment seems unwise if not impracticable. Professor Cunningham correctly points out that none of the parts of the book is adequate for separate-course treatment. For instance, the Housing segment of *Cases and Materials on Law and Poverty*, available as separate material, seems better suited for a course, or mini-course, on Low-Income Housing Problems. In fact, so much of Lefcoe's book should be taught as a unit (despite the fragmentations and digressions discussed herein) that it would be a mistake to sever the various considerations such as lease arrangements and mortgage law.

5. Other participants in this symposium refer to the congruity problem, but evidently find it of less significance. In fact, Professor Guido thinks that the book forms "a coherent, although rather complex picture," and that "there are connections between the . . . topics that justify the use of the entire book in one course." Professor Cunningham, who has used the book in the classroom (in photocopied version), discusses the pedagogical problems inherent in the work, but is more concerned with length than with coherence.

6. The former perspective is emphasized in J. KRASNOVIECKI, *HOUSING AND URBAN DEVELOPMENT: CASES AND MATERIALS* (1969), although Professor Guido's observation that this book leans too heavily on the statutes and regulations of the programs, and describes the administration of the programs in minute detail, is well taken.

In juxtaposition with the rich diet of mortgage law and banking data which constitutes the bulk of the book, the material on the indigent tenant in chapter 1 begs for congruity. It is difficult to understand, for example, what relevance *Edwards v. Habib*⁷ has to real estate finance, other than the obvious fact that all housing problems are related in some way to money. The short of it is that, without denying the need for inclusion of this material in the law school curriculum,⁸ it is doubtful that a course which would make use of this book is the proper receptacle.

The tendency toward digression, or at least blurred focus, is again evident in chapter 12. Without question, inclusion of material on shopping centers is an attribute of the book. As other writers in this symposium point out, the lease is a relatively new financing device that should be examined in a land finance course, and its usefulness to real estate syndicates compared with the mortgage. But the content of the material chosen does not adequately explore the financing process involved in a development of this type. Although there are allusions to some of the practices of institutional lenders which underwrite the centers,⁹ most of the discussion inexplicably centers on management of the existing center.

In addition to these examples of looseness, the book can be at least mildly criticized for either omitting or giving inadequate treatment to several topics that should be considered in a land finance course. Mr. Prather and Professor Cunningham note that there is no coverage of the relevant provisions of article 9 of the Uniform Commercial Code. In chapter 4 on Construction Financing, the author ignores the basic but complex problems relating to priorities between mortgagees and "mechanics," and the methods by which each perfects his claim; after relegating the matter to a footnote citation on page 490, he dives into tangential issues such as stop notice and equitable liens. Although many institutional lenders are now demanding equity participation—*i.e.*, "a piece of the action"—in commercial land ventures, no consideration is given to this development. There are many other omissions, several of them significant, listed by Professor Cunningham which need not be reinventoried here.

While *Land Finance Law* is not of the same style as Lefcoe's first work in that it does not center on one particular segment of the real estate industry, there is a more essential kinship. As in the first materials, the author creates a learning apparatus that depicts the context in which the lawyer works. The stale rubrics and doctrinal trappings do not occupy center stage; the "ambiguous and blurred distinctions" of old cases and histories are replaced by a format that reflects the concern of many property teachers for molding courses in

7. 397 F.2d 687 (D.C. Cir. 1968).

8. An excellent set of materials on the indigent tenant has been added to A. CASNER and W. LEACH, *CASES AND TEXT ON PROPERTY* 499-560 (2d Ed. 1969), for use in the first-year course.

9. *E.g.*, pp. 1074-80.

such a way that they relate to contemporary operations in the real estate market.¹⁰

The separate treatment given construction financing¹¹ and permanent financing¹² is an example of this functional approach. The fact that the various participants are concerned with different problems during construction than at the closing date of the long-term mortgage makes such a bifurcation realistic. The lender is concerned with security, the developer with rapid completion and occupation, the contractor with a steady flow of credit, the suppliers and construction workers with regular payments for performance, and the public officials with compliance with the building code and public land-use controls. This interplay of interests creates peculiar problems and gives rise to legal constructs not normally present at later stages. Failure to point out the major considerations at these two distinct financing stages has been a critical short-coming of real estate security casebooks.¹³

The inclusion of a raft of materials depicting the internal operations of banking institutions¹⁴ is another significant innovation. Herein are discussions of depositors' and shareholders' rights, applicable antitrust laws, regulatory controls (at which point state usury laws and the federal truth-in-lending legislation could have been added), and the investment patterns of the mortgage lenders. An argument could be made that 175 pages of this coverage shifts the book too much toward the lender's perspective. Certainly the spotlight should be trained as much on the developer's desk as on the lender's board room. But aside from the issue of proper balance in presentation, it is clear that consideration must be given to these policies and procedures for the simple reason that an understanding of the institutional setting is fundamental to a working knowledge of real estate security law.

Chapter 8, Mortgages and Monetary Policy, should be an integral part of any land finance course. Granted, a land finance course is no place to grapple with the esoterica of macro-economics—most of us are not up to it; yet it is difficult to understand how a course concerned with real estate security can ignore the influences of basic economic factors and at the same time maintain a semblance of relevance. A casual observer of front-page news items has some awareness of the affect of economic trends on construction activity, and the average realtor can bowl a listener over with patter about interest rates, discounts, supply of credit, and the like. A law student interested in real estate development should know at least as much. The materials chosen for this purpose may be inadequate to achieve the goal, and the fragments on English and

10. Lefcoe briefly discusses his philosophy on this methodology in the preface to *LAND DEVELOPMENT LAW*, *supra* note 1 at viii.

11. Pp. 479-608.

12. Pp. 609-88.

13. *Compare, e.g., G. OSBORNE, CASES AND MATERIALS ON SECURED TRANSACTIONS* (1967).

14. Pp. 303-478.

Brazilian practices are only interesting asides, but there is a basis for classroom exploration and the inclusion is commendable.

Another illustration of the book's functional orientation is the treatment of mortgage assignment issues within the broader and more worldly context of the secondary mortgage market.¹⁵ Although the author has glossed over some of the important doctrinal intricacies involved in mortgage transfers,¹⁶ he has done so intentionally,¹⁷ choosing instead to introduce the student to mortgage brokers, institutional investors and "Fanny Mae."

On balance, Lefcoe's second effort is a noteworthy compilation. The asset side of the ledger is hefty enough to mask the flaws. It fills a void that has undoubtedly plagued many property teachers who have not had the time or resources to develop their own materials for such a necessary course. Hopefully, Professor Rohan's doubts about the revival of the land securities course will prove unfounded, and this book will generate renewed interest in this facet of property law. *Land Finance Law* will encourage others to prepare materials on the subject for personal classroom use, and will be used by many as at least the basic material for a functionally-oriented problem course on land finance. Supplemented by guest speakers and materials designed to fill the gaps and strengthen the central focus of the presentation, the book is tentatively slated for use by this author as soon as curriculum changes permit.

15. Pp. 931-92.

16. For an appreciation of the amount of material omitted on this facet of mortgage law, see G. OSBORNE, *HANDBOOK ON THE LAW OF MORTGAGES* 605-92 (1951).

17. In the preface, p. vii, the author states: "[I]f I have been glossy or inept at setting forth some of the doctrinal intricacies, I have tried to provide an appropriate place where others, from their deeper expertise and with greater patience, can fill the gaps and correct the improper inferences."

