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George Lefcoe, Land Finance Law: A Symposium Review

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GEORGE Lefcoe's *Land Finance Law* follows in the wake of his recently published basic property offering *Land Development Law*, and closely resembles it in style and format.¹ The generous use of carefully selected background materials enriches the overall presentation and will undoubtedly stimulate student interest. Professor Lefcoe has succeeded in underscoring the interplay of such non-legal factors as the land developer's profit orientation, politics, organized social pressures and the like. The materials also provide an overview of some of the burning issues of the day, as these issues are reflected in law of property.

As the author acknowledges in his preface, the casebook is made up of three quite distinct segments. Part one, *Housing For Moderate Income Families And The Poor*, embraces some 300 pages. Part two, *Mortgages and Mortgage Markets*, constitutes the bulk of the material and covers just under 700 pages. Part three, *Structuring The Commercial Real Estate Transaction*, encompasses 200 pages and is devoted to such miscellaneous topics as tax aspects of leases and mortgages, shopping centers, the lease as a financing device and the public sale of real estate securities. This thumbnail sketch of the table of contents reveals what may well be the strongest and weakest aspects of this work.

Some may argue that a casebook devoted primarily to mortgage lending should not be sandwiched between materials devoted to urban housing problems and miscellaneous financing devices. Others may take the position that the casebook attempts to cover too many disparate subjects within the field of property, and, as a consequence, does not do justice to any of them. Nevertheless, a sound case may be made for the view that Professor Lefcoe has assembled a wide variety of interesting materials, which may be used to form the nucleus of several different advanced property courses. This reviewer takes the latter view and believes that the casebook's orientation mirrors the great change that has occurred in society, law and law study within the past decade. Much of our basic property material has aged considerably in this relatively short span of time. By the same token, today's students seem less than fascinated with historical rules and property dogma. Their attention can no longer be held with wills, trusts and future interests courses (even when these staples are sugar coated with tax strategy and presented as "Estate Planning"). In order to keep pace with these developments, law students will have to be brought along much more rapidly than formerly was thought to be necessary or advisable. Much of the basic property law material will have to be relegated to non-classroom coverage.

In time, the class discussion will resemble constitutional law courses, as

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1. Professor Lefcoe's latest endeavor builds upon chapter five of his basic property casebook which contains approximately 50 pages devoted to land finance.

the need for stability and historical perspective in property matters give way to the onslaught of twentieth century living and the demands of social justice.² Indeed, the day is not far off when the daily newspaper (or at least the Sunday real estate section of the *New York Times* or other newspaper) may provide a more relevant source of materials than do the recognized casebooks.

In the late forties, most observers would have agreed with the position taken by Casner, Leach and others, to the effect that law students should be grounded in the fundamentals of property law, before undertaking a critical evaluation of more modern (particularly public law) aspects of the field. Nevertheless, recent developments of far reaching consequence indicate that the relative stability of the last quarter-century is giving way to radical change. Five years ago, few would have predicted the rapid shifts which have taken place in the area of landlord-tenant responsibilities, the resurgence of rent control in metropolitan areas, collapse of the mortgage market and like events. Against this backdrop, it is both difficult and impractical to attempt to present traditional material in the traditional manner. The student coming away from such a course would be shortchanged in at least two aspects.

He would be laboring in ignorance of the portion of the iceberg he doesn't know exists—the labyrinth of economics, politics and miscellaneous non-legal factors which underlie the black-letter law that he has learned. Again, his learning could be swept away with a stroke of the legislative or judicial pen, as ideas (such as the "rent strike") come of age and modify or supplant, prior law. In this connection, Lefcoe's materials devoted to federal fiscal policies and operating restraints upon institutional lenders serve to acquaint the student with the larger policy questions which filter down and ultimately affect the retailing of credit in the housing field. Similarly, in addressing oneself to the problem of providing low and middle income housing, it is worthwhile to compare the effectiveness of public housing, federal rent supplement programs, rent control, prefabrication of homes, condominium housing and other proffered solutions, side by side. In a real sense, these are the problems which will provide grist for the student's later practice, not "Worthier Title," the "Rule in Shelley's Case," and like doctrines. While the latter may serve as useful pedagogical tools (or as historical background with which the student should at least have a passing acquaintance), both the basic and advanced property course have to reflect the changing reality that is the workaday world of the property owner, the lessee and the financial institution.

In this connection, it may be questioned whether property professors have done enough in the field of strategic social planning. Whatever one's views may be on the population explosion, for example, it is safe to conclude that our major cities are overpopulated and underfinanced. Moreover, many of them are in the

2. The well rounded property curriculum of the 1970's will no doubt feature an introductory course, with advanced students later branching off into "Urban Problems," "Land Use Planning," "Land Finance" or "Estate Planning," as their interests dictate.

position of the wonderful one horse shay, as public buildings and facilities (such as subways), built and paid for by prior generations, reach the end of their useful life. Yet little has been done on regional studies, reorganization of the fiscal structure of state and local governments and the like. Property instructors may be accentuating their role as a link with the past, to the neglect of their obligation to assist in fashioning property concepts for the future. In this we may be akin to the law reviews which only recently have begun to depart from encyclopedic coverage of everything legal, in favor of far more productive concentration in specialized fields.

This reviewer doubts that Professor Lefcoe's latest work will revive the course in mortgages as a separate offering, despite the fact that his analysis of banks and federal credit policies would make such a course far more interesting than its forerunners. Nevertheless, his casebook does fill a need in the area of advanced property studies, where all too little of quality has been published to date.

