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George Lefcoe, Land Finance Law: A Symposium Review

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WHAT are the skills that we seek to give those who will be graduates of our law schools? In part, the answer to that query may help to measure the effectiveness of the approach and the compilation of materials that comprise Professor Lefcoe's *Land Finance Law*.¹

The function of a law school and the methodology of teaching law are increasingly the subject of critical examination.² That which seems clear, however, is that during the latter portion of the legal training provided in our schools today, there is need for new approaches to legal education.³ The honing process of our preparation of lawyers must be relevant and should provide a basic knowledge of the more specialized subjects proffered in the last two years of the curriculum. But there is a need for the process to be taught in a form and manner that makes it meaningful for the student. Professor Lefcoe's *Land Finance Law* is a significant effort to provide a vehicle for the instructor who is willing to undertake this challenge.

Somewhat in the manner of the allegory of the mule which needed to be slammed in the head to gain his attention to directions otherwise ignored, the first part of this book attempts to draw the student's attention to the currency and relevance of the subject, relating it to the difficult problems posed by the dilemmas of our urban poverty. The student is immediately confronted with the conflict between the economic realities of slum ownership and the needs of the poor for adequate housing. Aspects of the problem, such as the function of economics on housing supply and condition, the impact of our tax policy on housing, and the role of fair housing statutes and building codes are all presented in effective fashion. Only after having exposed the student to the complexities of the problem through these materials does Professor Lefcoe invite an examination of the more appealing issue of tenant rights and remedies. Included in these materials are two of the most important recent decisions, both in the District of Columbia Circuit.⁴ These cases provide a significant tool for effective tenant representation. However, importantly, they are not presented without first having given a sufficient ground work in the economic implications of their

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1. G. LEFCOE, *LAND FINANCE LAW* (1969).

2. See *LAW IN A CHANGING SOCIETY* (G. Hazard Jr. ed. 1968).

3. The first year or year and one-half of the curriculum seems sufficient to provide the grounding in the quest for conceptual distinctions that constitute the "basic training" in analytical skill for the law student. The latter portion of the curriculum should be available for innovation, specialization, field work and clinic activities. *Id.* at 147, 164-66.

4. *Brown v. Southall Realty Co.*, — F.2d — (D. C. Cir. 1968) holding that housing code violations known to the landlord at the time of making a lease could render that instrument void, relieving the tenant of the obligation of rent; and *Edwards v. Habib*, 397 F.2d 687 (D.C. Cir. 1968) restraining retaliatory eviction of a tenant who had complained of housing code violations of her landlord.

exercise on behalf of tenants. For instance, the potential of increased rentals as a concomitant to necessary repairs is only one of the dilemmas that must be faced by attorneys who bring such actions.⁵

The necessity for an approach which first considers "contemporary" problems as an introduction to a field of law should be apparent to all currently engaged in the teaching of law, given the searching for "relevance" that is currently central to the law student of today. Once attracted to the subject and faced with the contradictions of our current efforts to ameliorate the condition in our urban core, Professor Lefcoe has attempted to draw the student into (and walk with him through) the intricacies of this subject. Perhaps the book attempts to do too many things at once. What seems clear, however, is the fact that it is an important addition to the available teaching materials which attempt to supply the student with a necessary understanding of the system of land finance. Its use can produce a graduate who can effectively operate in the many and varied roles assumed by lawyers who deal with the problems in this field. There is no denying, in fact Professor Lefcoe acknowledges, that exposure to the functioning of our monetary system and the examination of the variety of mortgage devices may be too much of a mouthful for many students.⁶ Further, the inclusion of such a broad subject as mortgages as only a portion of the material has resulted in the exclusion of much that one might like to see in a full exposure to the field of mortgages. It would seem, nevertheless, that one must make a choice, however difficult, between producing an informed generalist and a true expert. Although opinions may differ, the soundness of a solid exposure to the significant concepts rather than a more extensive examination of all aspects is a valid course structure, particularly as measured by the ability of graduates to effectively deal with legal issues in practice.

As one who has dealt professionally with both the policy and practical problems in this field, I have observed that his materials have given students a working knowledge far superior to that one otherwise comes to expect from law graduates.⁷ Further, aside from the fact that these materials provide a

5. Financed by antipoverty grants, the residents started rent strikes, pressed city agencies to inspect the worst buildings and record violations, and demanded that landlords make repairs.

"We thought we could get action," Mr. Owens said, "but the landlords just ran. It all happened so fast."

"We pulled a rent strike about a year ago," said Mrs. Ella Thomas, who moved to Brownsville four years ago from Alabama. "But as soon as the landlord saw he couldn't get any more money out of us he disappeared. We all had to move out, and now the building is abandoned."

Some may suggest that his "combined" materials fit better either as separate courses or merged with other portions of the curriculum. Structuring mortgage law and commercial real estate transactions with housing programs for low- and moderate-income families, however, may be the only way to entice students into the study of these other materials and also to assure that those interested in urban legal studies and poverty law have the necessary background in land financing to effectively serve their future clients.

6. P. ix.

7. Three of his students, as attorney advisors for the Department of Housing & Urban Development, have worked closely with me on a variety of policy and practical problems.

sufficient base for the practicing lawyer in this field, upon which to build with actual work experiences, one might also postulate that it provides the necessary basis for exploration of the legal and policy concepts to a depth that is often unobtained in most course offerings in these areas. To state this another way, the material is sufficiently practice oriented that the student receives a firm working foundation so that he may consider the issues from the perspective and with the insight of one whose preparation in the basic skills enables him to examine the subject in greater detail.

As with his early work on *Land Development Law*⁸ these materials are functionally or activity oriented. Perhaps it is this fact that makes them more effective in producing graduates whose preparation for practice is of such a high caliber. Thus, rather than seeing issues only from a conceptual or doctrinal vantage, the body of law bearing on the activity is studied and evaluated. This, of course, tends to increase student interest, since he is encouraged to view the activity from the perspective of a participant. Applicable legal concepts are not ignored by this approach, but are integrated within this context. This approach also permits the combining of material from other disciplines, since the organization is by activity rather than legal concept. This tends to highlight the relationship between economics, social policy and the law.

The "activity" approach also has resulted in the insertion of questions requiring analysis of the varying doctrines that apply to the activity to help the student consider for whose benefit they operate. Of necessity, this may force one to the available treatises for a better grounding in the concept than is provided by the materials themselves. Usually, however, this fact has been anticipated and adequate cross-references are provided.

Several pedagogical aspects of this material are worthy of special mention. There is an extensive use of applicable statutes to clearly illustrate the approaches taken by legislatures in dealing with the various issues. Documents pertaining to particular transactions are also included. This provides an exercise in legal skills which one suspects is all too often neglected in our law training of today. It is, moreover, a much more difficult discipline than is required from the reading of appellate cases. The opinion writer at least attempts to explain the rationale for his decision. The same is not true for the legislative or contract draftsman. Here the premium is usually on precision, with significant implications hinging upon certain words. The draftsman, however, whether of statutes or contracts, is rarely trying to educate or explain.⁹ His function is to synthesize competing interests into an acceptable compromise, a compromise that may be lost if all the nuances become too clear. To understand this, to examine it critically and to discover the implications of the precise language used is one of the most demanding tasks required of lawyers. Thus, one welcomes an aware-

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

9. Little assistance in understanding legislative intent is gained from Committee Reports and, even if of some guidance, certainly they had little impact from the standpoint of an informed vote upon the various legislators recorded in favor of the measure.

ness of this fact by the use of such statutes or documents as an integral part of the material in this book.

Another innovation is the use of the Astromart Problem. This can provide a simulated exercise by which the student can examine, by doing, the various activities involved in a significant land transaction. Seen from the perspectives of the various actors this can become a lively teaching tool. It could allow the student to assume responsibility, develop documents and perform in a role which will give him valuable experience for the future. It could thus help to enliven what otherwise is often a "tedious" portion of the law school curriculum.¹⁰

Mention should be made, however, to one supplement that might have made this book more effective for the instructor. Although to some it might seem presumptuous, it would not have seemed out of line for the author to have indicated in the preface his manner of presentation of the material to his students. Those utilizing his book could thus have the benefit of his methodology of using the materials. This is particularly true because of the uniqueness of his approach.¹¹ This would still leave those who use his materials the option of variation from that methodology.

The organization of the material into three general subjects permits certain flexibilities with the material and enhances its usefulness. The first part is presently the best presentation available on housing for low and moderate-income families.¹² The newly published section on housing by Professor Berger as part of a five-part presentation in *Law and Poverty*,¹³ although focused from a different perspective¹⁴ does not give the same grounding in federal programs.¹⁵ Professor Berger's work, however, does provide several helpful supplements. For instance, it contains the second *Thorpe* decision¹⁶ which is only

10. *Supra* note 3.

11. *E.g.*, it is not apparent that the "Astromart Problem" can be and is used by the author to structure a simulated, role playing exercise by his students.

12. A review of federal housing programs with particular emphasis on the developer's perspective can be found in J. KRAZNOWIECKI, *HOUSING AND URBAN DEVELOPMENT: CASES AND MATERIALS* (1969). It does not, however, focus on the policy issues raised by Lefcoe concerning the ability of the existing federal program to accomplish their objectives, but, in effect, assumes their efficacy and provides an excellent treatment of mechanics of implementing projects under these programs. A marriage of this material with Lefcoe's *i.e.*, by utilizing it in place of the commercial transaction in part 3 might prove a very happy union.

13. *CASES AND MATERIALS ON LAW AND POVERTY* (P. Dodyk ed. 1969).

14. One clear indication of this perspective can be seen from its table of contents which lists "Landlords' Duties," and "Tenants' Remedies." As part of a law and Poverty course offering, Prof. Berger's materials are excellent, with the caveat that the "poverty lawyer" still needs (and often will not recognize it) a solid grounding on the market economics of housing and land financing.

15. Only 13 pages on the various federal housing programs are contained in Berger's materials, plus 4 pages on section 235.

16. *Thorpe v. Housing Authority of the City of Durham*, 393 U.S. 268 (1969). This second grant of certiorari sustained the authority and implicitly the responsibility of HUD to promulgate rules to local housing authorities to implement the congressional intent that the ultimate beneficiaries of this government assistance enjoy a "suitable living environment," *i.e.*, not be subject to eviction without some measure of due process.

alluded to by comment in Lefcoe's book.¹⁷ Berger also has included the *Gautreaux* decision¹⁸ which has significant implications for federal housing programs, at least giving one alternative to the dilemma between "gilding the ghetto" and assuring racial integration of housing.¹⁹ The fact that it is missing from *Land Finance Law* is an example of the necessity of supplementary materials in this fast changing area of the law.²⁰

The housing materials, since they constitute a separable portion, might be utilized as part of a more traditional property course to provide more "relevant" materials for a first-year class.

The third part, Structuring a Commercial Real Estate Transaction, provides through the Astromart Problem the focus for the student to closely examine a complex real estate transaction. As noted previously, this can be handled as a role playing exercise. The accompanying materials seem to give sufficient background for the exercise. Its relevance to current minority efforts to build an economic base in the ghetto²¹ seems clear.²² Equally "relevant" is the discussion of the potential inherent in the National Housing Partnership. This part provides an interesting and useful exposure to the financing intricacies of commercial undertakings.

Part two, Mortgages and Mortgage Markets, comprises the majority of the materials. Its organization, somewhat on a chronological basis, is an effective method of presentation. As noted previously, it is not, by itself, a complete course in mortgages, but measured by reasonably objective standards, does provide a sufficient grounding in the process and its applicable legal concepts. Its materials on monetary policy as applicable to the mortgage market and particularly the perspectives it provides on the secondary market are important additions to the material on this subject. Further, they constitute essential knowledge for the practitioner in this field. Monetary policy is a critical factor in housing or commercial land finance decisions. Its understanding will provide the student with an important extra dimension in his dealings with these problems.

Overall, Professor Lefcoe is to be congratulated on providing a very useful and needed work, combining materials in an interesting experiment, on a broad spectrum of activities which involve the lawyer in land financing law. If the

17. P. 157.

18. *Gautreaux v. Chicago Housing Authority*, 296 F. Supp. 507 (E.D.N.D. Ill. 1969).

19. *Id.*, After finding racial discrimination by the City in selecting sites for public housing projects, the court enjoined further projects in areas of minority racial concentration unless 3 out of every 4 new units were situated outside such areas.

20. For instance, exceptionally useful materials are now available from The Report of the President's Committee on Urban Housing (1968) and The Report of the National Commission on Urban Problems, *Building the American City*, (1968).

21. As noted in Sturdivant, *The Limits of Black Capitalism*, 47 HARV. BUS. REV. 122 (1969), one of the most successful efforts involving black economic development has been Progress Plaza in Philadelphia, a shopping center organized through the efforts of the Rev. Leon Sullivan.

22. *Supra* note 8 at viii-ix.

concerns expressed²³ about the type of preparation we have been providing our law graduates have, as I think, a significant basis then new course materials such as this are a welcome change of direction.

23. *Supra* note 2.