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Real Property Law and Practice (Book Review)

Gerald A. Gilbride

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BOOK REVIEWS

REAL PROPERTY LAW AND PRACTICE (3 volumes). By Joseph Rasch. Baker, Voorhis and Company, Inc., 1962. \$62.00 per set.

Real Property Law and Practice (in three volumes—2,704 sections and 2,450 pages) attempts a very difficult task. As stated by the author, it is designed to give the practitioner a useful and practical book on the subject. His intent is to state "clearly and concisely the law of real property as it is today," and at the same time to show how these principles can be utilized to solve the day-to-day problems that a practitioner faces in the field of real property. In line with its stated purpose, this treatise will be valuable to the practitioner who is interested in having, in one text, all of the relevant law affecting real property. It might also be of considerable help to the lawyer who has an occasional real property problem and who therefore needs convenient reference material to refresh his recollection of this subject. It certainly will be of value to the law student who usually finds the subject of real property quite difficult. But, because of its primary emphasis on fundamentals, it is not likely that this work would be of great use to the real estate specialist who is constantly involved in the modern complex real estate transaction. It is not the type of book, nor was it intended to be such, wherein one would find references to appropriate language to accomplish a desired result in drafting an involved real estate agreement.

The treatise discusses all the traditional areas of the law of real property. The first half of the treatise largely concerns itself with the treatment of the basic principles of real property law. As a matter of fact, its development in that part of the text is largely along the lines that are usually pursued in teaching a course on real property. For example, Part One deals with basic distinctions between various types of real property and the general characteristics arising from the ownership of real property. Part Two handles the subject of the creation and division of estates and includes chapters on trusts, powers, future estates, suspension of the power of alienation and co-ownership of property. In Part Three, the specific rights with respect to ownership of real property are considered, including the rights of the owner, the rights of adjoining landowners, easements and profits, restrictive covenants, and public rights. Part Four considers the various methods of

acquiring title and includes discussions of the acquisition of title by contract, marketable title, deeds, recording and the registration of titles. The last four parts of the treatise deal with the more practical aspects of the law of real property, including the preparation and all of the practical aspects of the real estate contract and closing; other methods of acquisition of title such as adverse possession, eminent domain, and others; various liens affecting real property, including mechanic's liens and mortgages; and finally, a discussion of the various actions and proceedings which may be brought concerning real property, including actions for discharge of a mortgage, to quiet claims and title, to establish the regularity of a tax title, for waste, ejectment, partition, and various methods of mortgage foreclosure.

In an attempt to give a complete picture of all of the problems faced by the average lawyer in the field of real property, the author has included subjects which are more properly handled in texts on other legal topics. Thus, one might question the inclusion of an entire chapter (Chapter 3) on the subject of capacity, and also an entire chapter (Chapter 21) on the basic law of contracts. There are thirty-three sections on the subject of capacity in that chapter alone and eighty-seven sections on the basic elements of the law of contracts as they affect the real estate contract. In my opinion, such extended treatment in this type of book is not necessary and can be justified only on the basis of having in one volume all the other relevant law which might possibly affect a real estate transaction.

I would also question the practice of using multiple sections to explore a single problem. For example, in the discussion of the subject of partition there are twenty-two sections all having the title "Who Can Maintain Partition." In the chapter on the subject of waste, there are eight sections on "Who Can Sue," and five on "Who Can be Sued." There are also too many sections consisting of one or two sentences, and it would seem that a good many of them might have been eliminated entirely with a little more careful editing.

Real Property Law and Practice has many worthwhile features, including the usual table of cases, a table of statutes, amortization tables, land measuring tables, attorneys' checklists for the handling of the real estate contract and closing, and a separate index to forms. There is also included a complete set of forms for the major real property actions, such as an action to foreclose a mortgage, an action to foreclose a mechanic's lien, a partition action, and others. Parenthetically, it is unfortunate that a good number of the references to statutes already need revision because of the substantial changes enacted by the New York State Legislature at its last session. At that session, the new Civil Practice Law

and Rules was passed and, in addition, all of the provisions affecting real property in the old Civil Practice Act have been placed in a new statute to be known as the Real Property Actions and Proceedings Law.

It would seem to the reviewer that *Real Property Law and Practice* is valuable chiefly as a reference work to the general practitioner. It is, I feel, an accurate restatement of the basic principles of the law of real property in New York. The author has included in the citations of authority a good many, if not all, of the landmark cases on this subject in this jurisdiction. He has also added a great many other cases which could prove very helpful to an attorney who needs New York authority to substantiate a principle of real property law. As a matter of fact, the work can almost serve as an annotated New York restatement of the law of real property.

GERARD A. GILBRIDE.

October 1, 1962