

American Law of Property (Book Review)

George F. Keenan

Follow this and additional works at: <https://scholarship.law.stjohns.edu/lawreview>

This Book Review is brought to you for free and open access by the Journals at St. John's Law Scholarship Repository. It has been accepted for inclusion in St. John's Law Review by an authorized editor of St. John's Law Scholarship Repository. For more information, please contact selbyc@stjohns.edu.

BOOK REVIEWS

AMERICAN LAW OF PROPERTY. By A. James Casner, editor-in-chief, and twenty-four coauthors. Boston: Little, Brown and Company, 1952. Volumes VII; Pp. lxxxviii, 5842. \$115.00.

This treatise on the law of property was initiated in the year 1939 under the supervision of Professor A. James Casner as editor-in-chief. In that year a staff of authors was chosen and a master plan was prepared and adopted. The work was apparently proceeding in conformity with the plan until war was declared in 1941, whereupon the editor-in-chief and some of his coauthors left their appointed tasks and assumed the performance of various functions connected with the war.

When this undertaking was resumed at the end of the war, it then appeared that some members of the staff of chosen authors had died and that others had made commitments elsewhere. These eventualities necessitated the selection of other competent authors to complete what remained undone. Since the year 1946 the work has proceeded without interruption.

When notice of the proposed publication of this treatise was first circularized the following questions occurred to the reviewer and presumably like questions occurred to other members of the legal profession. Why another lengthy treatise on the law of property? Does it supply a felt or recognized need? Or is it just another work on property law?

These questions are not idle or improper ones. They are prompted by the fact that there is a superabundance of legal writing in this field. Some of this writing, it may be observed, is excellent and supplies a recognized need in a given area of property law. Some of it, on the other hand, is ordinary, devoid of originality, repetitious, and subserves no useful or constructive purpose.

The editor-in-chief and the coauthors of the *American Law of Property* were obviously aware of these facts. They realized that the publication of just another work on property law would hardly be justified. Hence, they undertook to achieve something new, something unaccomplished by other works in this field. The new contributions which the authors proposed to make are embraced in the following part of the Preface:

“Certain beliefs lie at the basis of this work, and from them stem principles to which the authors have made every effort to conform:

“1. It was believed that the profession needed a comprehensive text on property law; the economics of law practice make it impractical for most law offices to own and replenish a library with various specialized works in the property field. Therefore the principle was established that the treatise should contain, so far as practicable within reasonable limits of size, those subjects which constitute the day-to-day practice of lawyers throughout the country. . . .

"2. It was believed that the field to be covered was so vast and so varied that it had to be split up into segments for analytical, thoughtful and authoritative treatment. It was also felt that there was need, in each segment of the field, for the most matured thought and the most careful expression of a man whose natural bent had drawn him to that area and who had devoted much of his professional life thereto. Therefore the principle was established that the field would be divided into segments each capable of exhaustive study and intensive labor by one author, or at most a team of two, and that the man chosen for the task should be one who had the advantage of years of specialized professional interest and study behind him. An examination of the list of authors and their subjects will show how successfully this principle has been put into effect.

"3. It was believed that the treatment of each segment should be analytical in approach and practical in impact. These are worthy objectives, but admittedly vague. Perhaps they may be better expressed in the negative: the work should not be a mere compendium of rules and citations nor should it be a spinning of theories by academicians. There is a golden mean, and we have consciously sought to attain it—to (a) give the reasoned treatment of each question that enables an attorney to advise or argue with confidence in the logical soundness of his position, (b) offer the most significant cases and other citations, together with the means of locating more comprehensive references, and (c) provide a critique of existing rules which may indicate the direction of change in the law and may be the deciding factor in a close case.

"4. It was believed that integration of substance was essential but that conformity of literary style was of no consequence. . . .

"5. An examination of the master plan as revealed by the table of contents of this treatise will show that it has been our aim to keep the discussion within the framework of legal categories and concepts familiar to the legal profession."

These statements purport to convey the impression that the authors proposed to do something more than had been done in other works on the law of property. Nowhere in this treatise is there more abundant evidence of the consummation of the proposed objectives than in the several chapters of Volume VI covering *The Common Law Rule against Perpetuities*, *Statutory Rules: Perpetuities and Accumulations*. Obviously these are fields of the law well adapted to the complete fulfilment of the announced purposes. These chapters contain a simplified statement of the law "designed for reading and comprehension by those members of the profession who have not made a specialty of the study of the law of perpetuities or of future interests generally," and in addition thereto critical comments designed "to assist the profession in developing a law of perpetuities adapted to the needs of the time and free from the defects of existing doctrine as it has grown up over two and a half centuries." The former may be reasonably expected in any well prepared treatise on these subjects, but the latter represents a contribution intended by the authors of this one.

The subjects treated are, as might be expected, numerous and diversified but not novel. They are familiar to any lawyer having a mere superficial acquaintance with property law. This is in keeping with one of the general purposes of this work, namely, to include only those subjects "which constitute the day-to-day practice of lawyers throughout the country." Hence, the following subjects, among others, are included therein and are statedly treated in accordance with the general purposes announced in the preface: free-hold possessory estates and their characteristics, landlord and tenant, future interests and their characteristics, dower, curtesy, homestead rights, concurrent estates and their characteristics, community property, easements and licenses, covenants, rents and public rights, oil and gas rights, vendor and purchaser, deeds, covenants of title, transfers by judicial or statutory process, title after probate, other methods of acquiring title to land including title by adverse possession, title by estoppel, title by accretion and by reclamation, mortgages, priorities, recording, registration, fixtures, waste, construction problems, class gifts, powers of appointment, common law rule against perpetuities and statutory rules against perpetuities, the common law and statutory rules against accumulations, and restraints upon the alienation of property.

The decision to split this work into parts and to assign each part to one or more authors selected on the basis of experience and learning and the bent of their professional writings was a judicious one. This is amply attested by the high standard of quality uniformly maintained throughout.

This work might be reviewed in a very simple but effective way. One might name the authors and list the contributions made by each. This alone would afford an adequate guarantee of the scholarly excellence of the work and give every assurance that any representation made by them would not go unfulfilled. A. James Casner, for example, the editor-in-chief, authored Part 22 entitled *Class Gifts*; W. Barton Leach and Owen Tudor authored Part 24 entitled *The Common Law Rule against Perpetuities*; Horace E. Whiteside authored Part 25 entitled *Statutory Rules: Perpetuities and Accumulations*; George E. Osborne authored Part 16 entitled *Mortgages*; Lewis M. Simes authored Part 1 entitled *Historical Background of the Law of Property* and Part 4 entitled *Types of Future Interests*; Merrill I. Schnebly authored Part 26 entitled *Restraints Upon the Alienation of Property*; Sidney Post Simpson, John P. Maloney and R. G. Patton authored Part 11 entitled *Vendor and Purchaser*. But this bare recitation even if continued from the beginning of the first volume to the end of the last one would not be sufficient without the additional commentary that the authors have never excelled their respective contributions to this treatise.

A general work on property law designed for use throughout the United States would be of no value if it omitted all reference to the statutory enactments in each state; it would be of questionable value if it did not attempt to determine the impact of such statutes on the common law and to define the area in which such statutes are effective. This work gives appropriate recognition to all property legislation throughout the country as well as to the great landmark statutes of the English law. These are examined, their legal significance is appraised and their effect upon the law of property is evaluated.

In Volume VII (the Index) there is a list of the statutes referred to in the text and footnotes beginning at page 519 and ending at page 577. It would be difficult to find any essential statute which has been omitted.

There is an abundant citation of authority from every jurisdiction in the United States. The table of cases is included in Volume VII beginning at page 3 and continuing to page 516. A conservative estimate would fix the number of such cited cases at a figure somewhat in excess of 40,000. The entire index is very detailed and completely reliable. The format is attractive.

This work should be unusually helpful to practicing lawyers and professors of property law throughout the country. It contains a complete restatement of the existing rules of property law on the multitudinous subjects covered and a comprehensive and detailed analysis of such rules. Extraordinary fulness of the text and extensive documentation are designed to enable lawyers to determine with reasonable certainty the trends and direction of the law and to handle competently novel or unusual problems in the law. While there is some indication even at this early date that this work has already been advantageously used in the adjudication of an unusual question in the field of powers of appointment, it may be confidently averred that such use will correspondingly increase as bench and bar become aware of its adaptability in this respect. But whether a question is new or old, usual or unusual, henceforth neither judge nor lawyer may be certain that his research is sufficiently painstaking and exhaustive until he consults this work and acquaints himself with the wealth of learning contained therein.

GEORGE F. KEENAN.*



AN INTRODUCTION TO CRIMINAL JUSTICE—TEXT AND CASES. By Orvill C. Snyder. New York: Prentice-Hall, Inc., 1953. Pp. xvi, 776. \$8.00.

"Nobody cared how he moved around," said Abe "Kid Twist" Reles. "I looked to kill you and you looked to kill me." The words came from the heavy lips of a slight man whose kinky hair crowned a low wrinkled forehead, beady brown eyes and a flat nose. This cruel, sadistic slugger from the Brownsville section of Brooklyn had begun his criminal career in 1920 when he was just 13. In the next few years he was to be arrested 43 times on charges running the gamut from juvenile delinquency to murder, including five times for the top crime. Yet he enjoyed enough freedom to commit 18 murders in Brooklyn's bloody syndicate of Murder Incorporated, all of which he readily confessed. What was criminal justice in Reles' case? His record—clean of conviction for serious crime—was to remain unbesmirched when somehow he

* Professor of Law, St. John's University School of Law.