Book Reviews

CASES AND TEXT ON PROPERTY *by A. Casner and W. Leach. Little, Brown & Company 1969 (2d edition). 1370 pp. $16.00;* NEW APPROACHES IN THE LAW OF PROPERTY *by Sheldon Plager. Foundation Press 1970. 174 pp. $2.95.*

Reviewing the second edition of a largely unchanged book is a difficult task. If the principles upon which the first edition was based are accepted, one compares the second edition to the first and remits readers to reviewers of the first edition for further comment.[1] Persons who maintain a fondness for the first edition of this book[2] will be happy to see that the changes made are minimal in most areas. The book retains its doctrinal approach to property law, and continues the theme that in order to usefully serve modern society, the law of real property must emancipate itself from its feudal progenitors and embrace the realities of the commercial world. It does not, however, spend its time tilting at feudal windmills, but comes to grips with many of the hard issues of property law.

The casebook has three principal strong points. First, it does not assume that the instructor has twelve hours available to introduce the novitiate to property law.[3] By judiciously whittling most of the

1. Beuscher, Book Review, 60 YALE L.J. 1448 (1951); Dunham, Book Review, 50 COLUM. L. REV. 1150 (1950); Moynihan, Book Review, 64 HARV. L. REV. 869 (1951).

2. A. CASNER & W. LEACH, CASES AND TEXT ON PROPERTY (1st ed. 1951) [hereinafter cited as *1st ed.*].

3. *But cf.* C. BERGER, LAND OWNERSHIP AND USE (1968); and C. BERGER, A. AXELROAD & Q. JOHNSTONE, LAND TRANSFER AND FINANCE (Temp. ed. 1969).

materials, the authors permit the average teacher to cover much of the doctrinal material in the standard six-hour first-year property course.

Second, the book is not written to examine property law from a particular point of view. The entire doctrinal body of law is introduced. No attempt is made to tailor the book to specific types of property problems.[4] Nor is it, in its major focus, a planning book. However, one of the major changes from the first edition is the presentation in the second edition of the private land use control materials in a land planning setting.

Third, the book is essentially a case and problem method book. As in the first edition, the problems stand out as gems of pedagogy. They surround the student with variations on the fact situation, forcing the student to apply what the text has so graciously provided for him, analogous doctrinal materials, and, in some cases, new subjects, generally with the happiest of results. I have commented earlier on the variations apparent in the problem method.[5] Casner & Leach is the epitome of the useful problem method casebook that is not particularly a planning book.

There are three areas of significant change from the first edition. These sections, drafted originally by Mr. Donald S. Snider of the New York Bar, involve landlord and tenant, private land use devices, and public land use devices. The quality of these new sections, for teaching purposes, varies widely, but the improvements generally outweigh the disadvantages. They will be discussed below in due order.

It is one of the prerequisites of the book reviewer's union code to disclose his background in the subject matter and the manner in which he uses the book. In doing so, he runs the risk of some other professor writing a critical review of his course. So be it. I must thus disclose that I was raised on Casner & Leach. Professor Charles Haar in my student course used the first edition at the Harvard Law School. When I entered teaching, I chose Casner & Leach as my property casebook. Although with some hesitation, I have adhered to it ever since, despite close calls at seduction by other works more recently published that devote more attention to

4. *But cf.* G. LEFCOE, LAND DEVELOPMENT LAW (1966).
5. Lazerow, Book Review, 5 SAN DIEGO L. REV. 431, 435-38 (1968).

zoning, eminent domain, and urban renewal.

I teach a six hour sequence of property running three hours each semester during the first year. There are no advanced required courses in property, although most of our students elect some part of the estate planning sequence (trusts, wills, future interests, estate and gift taxation, and estate planning).[6] The normal electives in land use planning, municipal government and environmental control are available, but few students take them. For this reason, and also because the commercial transactions courses are well attended, I am convinced that the six hour first year course should be devoted primarily to real property. The personal property matters are chosen because they provide an excellent introduction to realty.

My discussion of the book will follow the order of my course. I begin, as have teachers from time the memory of man runneth not thereto, with the wild animals.[7] In this, one is less concerned with teaching the slippery concept of possession than with providing an introduction to the legal method in its best sense, and a clear notion of law as involving a choice between competing policies and values, many of which are assumed rather than expressed. At the outset, the dichotomy between law and public policy to which students otherwise become addicted must be destroyed. Much of this investigation would be viewed by doctrinalists as irrelevant. For instance, the case of *Keeble v. Hickeringill*,[8] inserted in the casebook for other pedagogical purposes, has been an excellent vehicle for discussion of the comparative weight of economic, recreational or aesthetic interests in determining legal policies. As in a symphony, this theme is repeated throughout the course.

A second reason for spending several weeks with the wild animals is indiginous to our law school. We have both a day and an evening program. The day program presents the rather standard first year offerings of civil procedure, contracts, criminal law and procedure, property and torts. In the evening division, only property, contracts, and torts are offered to entering students. If the student is to understand the materials in the procedural framework in which they arise, he must have some introduction provided in his other courses. Casner & Leach provide—either by textual materials, judicious selection of cases, or by giving the instructor a good opportunity to springboard—an acceptable introduction to the proce-

6. I have commented elsewhere on the undesirable fragmentation of the subject of estate planning into these component courses. *Id.* at 434-35.

7. A. CASNER & W. LEACH, CASES AND TEXT ON PROPERTY 9-26 (2d ed. 1969). [hereinafter cited as *2d ed.*].

8. *Id.* at 16-17.

dural setting of the cases reported. While such an introduction is sauce for the day students, it is valuable protein for the evening students.

The chapter on wild animals illustrates a strong point of the casebook. It presents in a minimum of reading space material that can be used by students for a maximum of thought. A three line problem on the manufacture of buttons from mussels taken from another's river[9] provides the student with all the materials he needs to undertake, in class, a thorough analysis of the competing policies underlying the doctrine of accession, and the different ways in which these policies may be formulated into legal rules. This, in turn, can be used as a springboard to discuss the appropriate legal rules to be applied to the improver of another's real property.

The authors use another good technique repeatedly. Returning to the symphonic analogy, they provide hints of the theme before its major appearance, and echoes long after it has died away. This encourages repeated consideration of the same or similar doctrines at different points, with the student at different stages of legal maturity. For instance, three months after the above problem, we compare the law's treatment of the good faith improver with the tenant or mortgagor who attaches fixtures.[10] Still later, we can discuss the position of the improving land sale contract purchaser who later defaults in his payments. Likewise, adverse possession and prescriptive rights are scattered throughout the book,[11] and a recording case contains important discussions of implied reciprocal servitudes and marketable title before being treated in full elsewhere.[12]

Chapter 3 deals with possession, from bailments and treasure trove to adverse and constructive possession.[13] These materials, which are somewhat rearranged from the first edition, are not substantially changed. A recent case where the true owner's interference resulted in interruption of adverse possession presents good

9. *Id.* at 22-23.
10. *Id.* at 629-38.
11. *E.g., id.* at 57-71, 85, 90-92, 966-71, 1130-45. The first edition contains a preface by the authors at v-xii. Such a bifurcation is avoided in the second edition by eliminating all discussion of the order of march. vii-ix.
12. Buffalo Academy of the Sacred Heart v. Boehm Bros., Inc., *2d ed.*, 833-38.
13. *2d ed.* at 27-71.

material for discussion of a difficult area.[14]

Remedies of a possessor, combining both personal and real property possessors, is next.[15] This group of cases is concerned primarily with rights and remedies, and places the book firmly on a concern with the remedies available in each situation. As we shall see later, departure from the remedial aspects in the section on covenants has weakened that part of the book. Sixty pages devoted to gifts follow.[16] I assign delivery and donative intent[17] as outside reading. They are useful background for estate planning and for the section on deeds, but are easy to comprehend without class time.

The following material on bona fide purchasers of personal property[18] is extraordinarily useful, but quite complex. No systematic treatment can be given to these materials, which combine case study with selections from the Uniform Commercial Code in appropriate areas, and problems that call on the student to use both. A detailed investigation of these matters properly belong in the commercial transactions course, and I think close analysis of negotiable instruments may confuse the student unduly. Nevertheless, the Uniform Commercial Code sale of goods provisions introduce the beginning student to comprehensive statutory material, and constitute useful counterfoils to the statutory material on adverse possession, which is closely read at times and ignored at other times. The inclusion of some material in this chapter is questionable. For instance, *Hessen v. Iowa Automobile Mutual Ins. Co.*,[19] as the authors note, is an absurdly simple question, which is adequately set forth in other cases. Its inclusion is justified because of the opportunity to illustrate the horror that occurs when a court mechanically incorporates concepts by reference that have no relation to the subject matter before the court, and permit the authors to teach some insurance, equity, and evidence. This serves as a constant counterpoint emphasizing that the study of law is unitary and that the arbitrary distinctions made in law school are for teaching purposes only. The cases, statutes, and problems defining the concept of bona fide purchaser do such a good job that later material on bona fide purchasers of real property, except for the excellent problems, is superfluous.[20]

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14. Mendonca v. City Serv. Oil Co. of Pennsylvania, *id.* at 69-71.
15. *Id.* at 72-97.
16. *Id.* at 99-159.
17. *Id.* at 99-112. I could with equal justification consider chapter 6, 113-47, a prelude to delivery in escrow of deeds of real property, and a foreboding of the difficult area of estates in land, but I choose not to.
18. *Id.* at 161-203.
19. *Id.* at 162-66.
20. *Id.* at 876-85.

At this point Professor Casner and I part company, and I heartily join Professor Leach's admonition to concentrate on what the authors feel is the most important part of modern property law, the recording system, and keep students at case study throughout the entire first semester, rather than tackle the chapters on estates in land.[21] In fact, the materials on estates in land,[22] concurrent interests,[23] and future interests,[24] while clearly the best materials prepared on those subjects, have been pushed further and further into the second semester; they now constitute the antepenultimate subject matter of the course. This is both because of the unsuitability of the treatment and the subject matter to a rigorous, modern, legal analysis, but also due to the fascinating (or, if you prefer, ensnaring) tendency the material has to bog down student and instructor in minutia and historical inquiry. If given free reign, this material can consume an inordinate amount of time. Postponement to the end of the year prevents this. Nor do I find any pedagogical cost to the postponement if the chapters on history and estates[25] (50 pages) are skimmed before taking up landlord-tenant.

The recording section is another superb triumph of education. This chapter has been substantially condensed from the first edition by changing principal cases into problems[26] and eliminating cases and problems completely.[27] The authors continue to include *Ayer v. Philadelphia & Boston Face Brick Co.*[28] on the scope of title search question, despite the fact that the case hardly mentions the issue for which it is inserted in the casebook. Perhaps there is no better case to illustrate the point; I have discovered none.[29] Despite its reduction, the recording chapter is extremely complete. All the problems of defective recording, chain of title, and inquiry notice are examined. I added an excerpt from *Hull v. Gafill Oil Co.*[30] to provide the student with yet a fifth view on the significance of possession in one without record title, but this is unnecesssry.

21. *1st ed.* at xii.
22. *2d ed.* at 221-76.
23. *Id.* at 277-317.
24. *Id.* at 319-64.
25. *Id.* at 221-76.
26. *Compare 2d ed.* 798-99 with *1st ed.* 765-69.
27. *E.g., 1st ed.*, 773-82.
28. *2d ed.* at 823-28.
29. Or perhaps it is included to demonstrate that even the great Holmes could be an inadequate legal craftsman.
30. 263 Mich. 650, 249 N.W. 24 (1933).

Before beginning landlord-tenant, students should read the Statute of Frauds chapter[31] and the material entitled A-B-C of Taxes for Property Lawyers, which has been made a pocket part in the second edition. This wise move permits the authors to revise it annually as taxes are changed. Such a revision is demanded particularly by the Tax Reform Act of 1969[32] (sometimes referred to as the Lawyers' and Accountants' Relief Act). The student's understanding of this chapter in particular should be tested by reviewing quickly the problems at the end of it. The excellent summary which is not a staple in property casebooks, draws the student's attention to these influential factors.

The first semester closes with landlord-tenant.[33] This is one of the sections of greatest change from the first edition. It has been revised, reorganized, and substantial new material added. One useful aspect of the revision is the insertion of subtitles to guide the student through the rather lengthy material.

The first chapter of this part, relating to landlord and tenant's responsibilities to the condition of the premises,[34] is substantially expanded and better organized. It takes the students through all the variables that can occur. Statutory material is adduced at appropriate places. There is sufficient opportunity for comparing the likely impact on residential tenants and business tenants, and for inquiring about drafting techniques that could avoid particular problems.

The doctrinal materials have also been substantially expanded. Materials relating to the landlord's liability in tort for the condition of the premises have been changed and greatly expanded to include a number of situations. The section on tenants' responsibilities has been expanded to include a case relating to the tenant's obligation to the landlord to refrain from making excessive noise.[35] This case, together with a prior decision,[36] provide the instructor with an excellent opportunity to discuss the burden of assuring quiet enjoyment, and whether that burden is to be placed on the landlord, the fellow tenant, or on no one. The cases, as illustrated by the casebook, are in disarray and fail to fully consider the question.[37]

"Corrals and Escapes" might be the title of the next bifurcated

31. *2d ed.* at 679-82.
32. 26 U.S.C. §§ 1-7701 (1969).
33. *2d ed.* at 365-676.
34. *Compare 2d ed.* 369-437 with *1st ed.*, 434-68.
35. Louisiana Leasing Co. v. Sokolow, *2d ed.*, 415-18.
36. Phyfe v. Dale, *2d ed.*, 380-81.
37. The authors also provide Stewart v. Lawson, *2d ed.*, 381-83.

chapter on landlord-tenant problems. The first section can best be approached as a planning section wherein the students consider various devices that the landlord may use to assure performance.[38] Cases discuss security deposits, rent acceleration clauses, forfeiture clauses, and self help through forceable entry and detainer.

The second part of the chapter relates to times when the tenant is excused from performance, considering commercial frustration in leases, constructive eviction, surrender and acceptance, and condemnation of the property.[39] Included are valuable materials specifically related to law reform which the teacher so inclined can utilize. There is also an opportunity, in connection with the materials on condemnation, to discuss some of the principles underlying eminent domain rules and their implications.

The authors then add another new chapter entitled "The Indigent Tenant."[40] The materials in this chapter relate to condition of the premises, both at the outset and during the tenancy, and the remedies of constructive eviction, rent strikes, rent withholding, rehabilitation, and the others in the tenant's arsenal of weapons. It also considers the problem of retaliatory eviction, and the standard waiver by the tenant of any tort liability the landlord might incur. This is compared to the UCC provision on unconscionable clauses, and I am tempted to add *Akin v. Business Title Corporation*,[41] invalidating exculpatory clauses demanded by escrow holders. These matters which rightfully should be treated earlier along with the respective responsibilities of landlord and tenant, are treated in a separate chapter simply because they contain a few cases relating to indigent tenants. The point is well taken, as it implies that the cases are applicable only to indigent tenants, rather than a cutting edge of law reform in the area of landlord-tenant applying to all classes of tenants. But the authors have no doubt chosen to separate them into a different section in order to emphasize that these cases do not constitute even a substantial minority of the jurisdictions.

The separation of the indigent tenant materials from those treating the responsibilities of both parties facilitates the student's

38. *2d ed.* at 438-61.
39. *Id.* at 461-98.
40. *Id.* at 499-560.
41. 264 Cal. App. 2d 153, 70 Cal. Rptr. 287 (D.C.A. 1968).

awareness of the dichotomy between the results that should obtain in a business setting and the proper rule to be applied to a residential setting. It is important to elicit the nature of the differing policy considerations and common factual patterns. The chapter on the indigent tenant emphasizes the question with particular sharpness, and leads many students to realize that the gap between the indigent residential tenant and his wealthier brother has been greatly overstated.[42]

More materials should be included here on rent control. The first edition contained an excerpt on feudal rent control in World War II.[43] It was rightly eliminated, but surely the New York experience has something to teach us.

Assignments and subleases are the subjects of the next chapter.[44] The first part of the chapter, relating to the traditional doctrine, is basically unchanged: one superfluous case is omitted.[45] Subtitles are again added to aid the students' compartmentalization and understanding of the material. Cases have been added relating to the lessor's absolute right to refuse to give various types of consent,[46] and the developing trend in some courts to construe leases as contracts wherever this option is open to them.[47]

The material on holdover tenants is basically unchanged,[48] with the chapter on fixtures following.[49] This is largely the same, although some cases have been added. The fixtures chapter wisely leaves to the course in commercial transactions the statutory development in this area.

Finally, landlord and tenant is concluded with a description of a commercial leasing situation, followed by the lease that was in fact negotiated.[50] Much of this chapter is carried over from the first edition, and is an excellent device for fixing the students' attention on a particular situation. The student can be asked to read the fact situation and lease at the beginning of the landlord-tenant section, and refer each case to the lease to see if it is adequately resolved. Then, after the doctrinal material has been taken up,

42. This view is fortified by Himmel v. Chase Manhattan Bank, *2d ed.*, 526-31.
43. *1st ed.* at 544-51.
44. *2d ed.* at 561-96.
45. *1st ed.* at 486-90.
46. Gruman v. Investors Diversified Servs. Inc., *2d ed.* at 583-88; Dress Shirt Sales, Inc., v. Hotel Martinique Associates, *2d ed.* at 588-92.
47. Wright v. Baumann, *2d ed.* at 592-95.
48. *2d ed.* at 597-617.
49. *Id.* at 618-38.
50. *Id.* at 639-70.

several problems directed specifically to the sample lease provide further intellectual food for thought.

The first part of the second semester is spent on the development and use of land. This material begins with a chapter on vendor and purchaser.[51] The authors include a sample contract for the sale of land, which can be referred to throughout the succeeding materials on vendor and purchaser in order to illustrate how the contract solves the particular issue in the case, if it does so at all. Some property teachers might complain about this material as the second edition, like the first, omits principles relating to the enforcement of contracts for the sale of real property, or other remedies for breach. Informal agreement at the University of San Diego allocates these materials to the contracts course. Either course might appropriately handle them, but the instructor using Casner & Leach must provide a supplement if he is to do the job.

The material on implied warranties in the contract relates only to the question of title infirmities. The authors make no mention of implied warranties of condition of the premises, an area of concern to the developer and of some flux at present. Supplementary cases on this point should be used.[52] The section on equitable conversion has been pruned to advantage.[53]

Next, the authors take up the mortgage in 17 pages of text and problems,[54] including a sample mortgage. This section is correctly billed as an introduction; as such, it is excellent. It reads well, covering points needed for the understanding of mortgages (or trust deeds, if that is used in your jurisdiction), but it does not purport to be a systematic treatment of doctrine in this area. This represents a judgment by the authors that the systematic treatment must be left to the course in secured land transactions. The judgment is essentially correct. No purpose would normally be served, even in a California law school, in illuminating the opaque intricacies of antideficiency legislation. On the other hand, the authors treat antideficiency legislation in a brief, derogatory word, inadequate as an introduction and too prejudicial for students who

51. *Id.* at 683-729.
52. *E.g.*, Waggoner v. Midwestern Dev. Inc., 154 N.W.2d 803 (S. Dak. 1967).
53. *Compare 2d ed.*, 709-29 *with 1st ed.*, 648-72.
54. *2d ed.* at 729-46.

are given no materials upon which to formulate an opinion. A supplement is called for that permits consideration of the purposes of antideficiency legislation without becoming embroiled in its complexities.[55]

The chapter on deeds[56] opens with a typical Casner & Leach device—the reproduction of sample deed forms. Fewer forms could be reproduced with the same effect. There follow materials on escrow, the legal description, and covenants for title and the remedies they provide. Each of these sections provides an adequate general background for the student, although one might be tempted to complain that there is little discussion of the relationship between the purchaser and seller on the one hand, and the escrow holder on the other. A similar defect in the first edition on real estate brokers has been remedied.[57]

The students next proceed to devices used in the planning of land developments.[58] The casebook casts this as material for a planning course. The material is best used in that fashion, although it is susceptible to a more traditional approach. The first section provides cases on the selection of neighbors, both involving discrimination on grounds of race, color, religion, or national origin, and discrimination based on other factors.[59] As noted below, the race materials are much better edited than in the first edition. The other materials are new, and consider the various rules relating to cooperatives, condominiums, homeowners associations, and the use of the long-term lease. The student is confronted with these forms of development and required to evaluate their relative advantages and disadvantages. The new material is excellent, and adequately fulfills the promise of the problem method.

The next device examined for control of the use of land is the covenant enforceable at law.[60] This section is much improved from the first edition by the substitution of text material for cases, based largely on Professor Clarke's definitive work. Some tax matters are included, and the important *Neponsit*[61] case remains to provide discussion of both privity and the touch-and-concern requirement. There is also treatment of the covenant not to compete, and it is

55. *E.g.*, Paramount Sav. & Loan Ass'n v. Barber, 263 Cal. App. 2d 166, 69 Cal. Rptr. 390 (D.C.A. 1968).
56. *2d ed.* at 747-93.
57. *Id.* at 683-85.
58. *Id.* at 983-1191.
59. *Id.* at 986-1024.
60. *Id.* at 1024-1051.
61. Neponsit Property Owners' Ass'n., Inc. v. Emigrant Indus. Sav. Bank, *2d ed.* at 1033-40.

substantially more than is deserved by the question.[62]

Perhaps the most important traditional restriction, equitable servitudes,[63] is next, and this section has been greatly enhanced by the addition of several short notes relating to the theories by which prior purchasers can hold subsequent covenantors to their covenants. But the section is weakened by the elimination from a prior section of several problems ranging from equitable defenses to injunctions to enforce covenants.[64] This is surprising, in view of the authors' tendency to combine substantive law with remedies throughout the casebook. A new section relates to covenants where the benefit lies in gross, and the burden is intended to run with the land.[65] Additional sections on architectural control[66] and retaining flexibility in the development[67] have been added to expand the student's view to include most of the relevant legal materials on land development.

The questions of terminating restrictions on developments and excessive restraints on alienation[68] have been reorganized, cases rendered moot by the developing constitutional doctrine in the area of equal protection have been removed, and materials on statutory changes relating to covenants have been added.

The chapter concludes with extended materials relating to easements and licenses.[69] The authors have here made an attempt to bridge the gap that has long existed in property law. Easements and licenses were largely considered freaks of the law, with no practical application in most casebooks. The authors have attempted to orient the easement to land development and to its natural use in that process. In some cases, this reorientation is effective; in others, it fails. Perhaps the continuation of the planning approach through the insertion of problems in the section on easements would be a useful addition to make the easement's position in land development clearer. Some of the easement materials, such as pre-

62. *2d ed.* at 1043-51. The participation of Professor Leach as *amicus* in one of the cases no doubt induced its inclusion.
63. *2d ed.* at 1052-78.
64. *1st ed.* at 1065-67, 1091-92.
65. *2d ed.* at 1069-78.
66. *Id.* at 1078-88.
67. *Id.* at 1088-96.
68. *Id.* at 1096-1109.
69. *Id.* at 1109-1190.

scriptive easements, do not yield to a planning approach. This is true also of the material on licenses, since a license, by its very nature, is a result of non-planning; wherein lies the distinction between licenses and easements. Again, the section has been made more intelligible to students by the use of subheadings delimiting the topics under discussion.

Logically, the public devices for land use control—zoning and eminent domain—[70] should next be considered. It is in this area that the casebook is weakest. The first edition contains only two cases concerning the constitutionality of zoning, *Euclid* and *Nectow*,[71] a series of problems relating to contract zoning and non-conforming uses, and a constitutional case on eminent domain taking.[72] The second edition retains *Euclid* and *Nectow*, adding materials on zoning and architectural restrictions for aesthetic purposes, and on the amortization of non-conforming uses. On the latter subject, however, *Hoffman v. Kinealy*[73] beautifully raises all of the problems with the concept. There is no material on the exclusion of uses from a community, planned unit developments, the control of development sequence, conditional use permits, and perhaps most important, standing to participate in zoning decisions. These questions constitute the guts of the zoning decision; the challenges to zoning for aesthetics are of little practical importance, copious literature to the contrary notwithstanding.[74] These cases do demonstrate the difficulty judges have had in justifying regulation on bases other than economic.

Equally deficient is the section on eminent domain,[75] containing only two questions: First, what is a taking? Second, what is a public use? There is no comment on the amount of payment to the owner of the condemned property. True, the problems raised by condemnation of a property subject to lease are discussed in the landlord-tenant section.[76] There is, however, nothing to hint at a discussion of the computation of the condemnation price for the property taken, the damages to adjacent parcels not taken, such as loss of access, interference with enjoyment, or even the permissible scope of the taking when a full taking appears to be a less expensive net proposition than a partial taking. All of these matters must be

70. *Id.* at 1191-1296.
71. Village of Euclid v. Amber Realty Co.; Nectow v. City of Cambridge.
72. *1st ed.* at 1021-48.
73. *2d ed.* at 1243-54.
74. These cases do demonstrate the difficulty judges have had in justifying regulation on bases other than economics.
75. *2d ed.* at 1257-96.
76. *Id.* at 484-98.

raised by the instructor either through classroom hypotheticals or supplementary reading materials. Likewise, the brief section on urban renewal should certainly consider the problems of relocation, either in connection with approval of the renewal plan, or in connection with compensation to the condemnee.

I do not mean to imply that the basic property course should become a course in land use planning and development. As with the other topics considered in the first-year course, there is no time for this. The student who is interested in acquiring an expertise in the field is remitted to the course in land use planning. The student should, however, acquire just as effective an introduction to the law of public controls of land use planning as he does to the private devices of easements and covenants. He should, in short, know how to start looking for the bodies, but not know already where the bodies are buried. The casebook does an excellent job in the area of private remedies; it does not do nearly so well for zoning and eminent domain.

Land use control illustrates conflicting tendencies in the casebook. On the one hand, cases have been pruned of facts and unnecessary or repetitious cases removed from sections. This makes the book sharper in focus, and permits the student to spend more time thinking and less time reading. Where possible, the authors have substituted one case setting forth both views on a question for their previous arrangement featuring a case on both sides of every issue. In line with this approach, most of the cases which were incorporated into the 1959 supplement, have been eliminated or incorporated into problems in the second edition. For example, the first edition presents *Buchanan v. Warley*, *Shelley v. Kraemer*, and *Hurd v. Hodge* at great length, occupying 33 pages of the casebook.[77] The second edition provides *Shelley v. Kraemer* in an edited form occupying only four pages, and *Barrow v. Jackson*, which takes another four.[78] *Buchanan v. Warley* is adequately digested in the *Shelley* opinion. However, the printing of the opinion in *Barrow v. Jackson* for the second edition adds nothing to enhance its prior use as a problem in the supplement to the first edition. The same overstuffing is noticeable in cases discussing whether zoning and architectural restrictions with aesthetic-oriented standards can be justi-

77. *1st ed.* at 987-1020.
78. *2d ed.* at 987-95.

fied on aesthetic grounds alone, or must be justified by the impact of aesthetics on land value. This fault also appears in the eminent domain cases. *Berman v. Parker*[79] is included in full, despite the fact that it is adequately digested in other cases the authors use.[79a] *Miller v. City of Tacoma*,[80] albeit an excellent case, is included with minimal editing, with the result that it consumes 15 pages of the casebook, including two pages solely devoted to cases in other jurisdictions upholding urban redevelopment laws. This hardly seems useful for the student.

Next I consider the materials on estates in land, concurrent interests, and future interests.[81] These textual materials, which are largely unchanged from the first edition, are gems of expository writing. They capture enough of the doctrine to be useful to the title searcher or estate planner, much of the whimsy that lurks throughout the book, and enough historical features to pique the curiosity of even the most dedicated bread-and-butter student. Problems are plentifully provided as a check on the student's understanding of the textual matter. Occasionally, I find it necessary to lecture on particularly obscure points raised in the text. The hot medium of the brief expository lecture seems to sink in better than the cool medium of the printed word. (But *littera scripta manet* when the student begins reviewing for the final examination). The only addition to these materials seems to be the case of *McRorie v. Creswell*,[82] and that adds nothing to the doctrine or the teaching process. The same point is covered in the very next page in problem 15.18, and students do no better in answering that problem having read *McRorie*. The section is improved by the addition of a one page note on the rule against perpetuities.[83] However, that note occurs long before the students discover the difference between a vested and a contingent estate, and does little to draw the student's attention to this distinction. Consequently, when the student is introduced to vested and contingent remainders 70 pages later,[84] the instructor must devise some problems relating to the rule against perpetuities, and refer the student back to the note, in order to give him some comprehension of the rule.

The chapter on water rights,[85] pertains largely to the interplay

79. *Id.* at 1269-74.
79a. *Id.* at 544 N. 41, 546 n.47, 1236.
80. *Id.* at 1281-95.
81. *Id.* at 221-364.
82. *Id.* at 338-42.
83. *Id.* at 255-56.
84. *Id.* at 326-29.
85. *Id.* at 1314-52.

between various components of the private sector for water. However, it is enriched by the Iowa statute for water resource allocation. The materials are serviceable, but could be enriched by a comment on equitable considerations in injunctive relief against pollution.

Finally, as time remains in the semester, students review title insurance and title registration.[86] A sample policy of title insurance was deleted from the second edition, which was a loss. The policy could have been reduced in size by judicious editing. Instead, the authors prefer documents on the groping attempts of the bar to substitute a lawyer-run insurance program, and an opinion on the ethical problems of taking a cut of the premium. The same result could be obtained with a shorter excerpt and a problem. A case on registration is added, but otherwise these well-selected materials in limited and light subjects are carried forward intact.[87]

At this point, the book reviewer's union contract requires mention of the table of contents, index and typographical errors. Risking my continued membership, I decline. Each is present, and those who are seeking miscues will not be disappointed, but *de minimis non curat lex.*

The Casner & Leach materials should be strongly considered by any new law teacher. The doctrine, and even more, the practical operation, of the law of property in all its varied aspects, is an immensely complex and difficult body of knowledge to master. The literature is immense, and the task of the beginning teacher, who is preparing two separate new courses, is unenviable. The criticism set forth in this review is largely minor. The sections are generally well edited, and the cases chosen to raise a plethora of issues that can be adequately handled with a minimum of preparation. The cases are interspersed with almost 400 problems that will provide points of discussion for the class. The authors, in addition, have provided a teaching manual containing excerpts from the materials cited after the problems, as well as the authors' comments on their view of possible solutions. The teacher's manual is looseleaf, and the authors extend promises of future commentary with respect to the cases, the use of the casebook, and other material relating to

86. *Id.* at 918-81.
87. However, I do not share the author's view that title registration is the coming thing in the United States. Its general lack of new concepts and the decline in interest in registration dictate its omission.

teaching the course. Thus, the new teacher finds that he can keep his head above water with the aid of this assistance and, in his second or third year, when the pressure of preparing two different courses is removed, he can expand and diversify his knowledge and teaching preferences.

Finally, a word about the policy-oriented teacher. The publication of the first edition of this book, one year away from a competing volume by Myres McDougal and David Haber,[88] has tended to pose a dichotomy. The McDougal materials act as a vehicle in training law students in policy formulation toward defined social goals, while the Casner & Leach book attempts to teach students to manipulate a closed doctrinal system. Both characterizations are gross canards. McDougal requires a good deal of doctrinal manipulation, and Casner & Leach points the students' attention toward policy formulation. However, the new edition, like the old, does not contain excerpts from non-legal scholarly material designed to expose flaws in the present structure of society crying out for correction. Such material in casebooks is often flabby and informational, without providing significant opportunities for close analysis. The teacher who would have his students engage in other than Benthamite speculation from their fictional armchairs must provide his students with some data from other scholarly disciplines so that they can formulate a model of the complex factors and interactions that influence the allocation of resources we refer to as property law. Here, Casner & Leach and the other available casebooks are all inadequate. In some areas, the material is unresearched, while in others, it is unsuitably prepared for law students. Whatever the problem, the casebook is lacking. The professor who travels the policy path with Casner & Leach must provide his own, either through supplementary materials or lecture. The area in which this is of most concern lies at the interaction of eminent domain, zoning, and the mortgage money market, and their tripartite influence on land development. The book does not do it, and supplementary materials cannot do it either in the time allowed by the other demands of the course. My answer, which may be an inadequate one, has been to leave this to the advanced course in land use planning, while creating as much policy consciousness and suggesting as many problems in the basic course as possible. For these aims, the new edition of Casner & Leach serves quite well.

The second subject of this review is a book by Sheldon J. Plager, Professor of Law at the University of Illinois, entitled, *New Ap-*

88. M. McDougal & D. Haber, Property, Wealth, Land: Allocation, Planning & Development (1948).

proaches in the Law of Property.[89] This thin book is one of a tripartite presentation of new approaches in the first year courses entitled, "Social Justice Through Law Series", all authored by faculty at the University of Illinois as supplements to the existing casebooks.

It comprises a total of 175 pages of cases, notes, and newspaper articles. Part I, covering 53 pages, relates to housing the low income tenant. Part II, 56 pages, relates to fair housing. Part III, 30 pages, deals with the installment sale contract. Parts IV and V, both about 15 pages, relate to zoning and to defense of the environment.

Let it quickly be said that this small book is no supplement at all to Casner & Leach. Following that work by one year, it contains little that was not available when Casner & Leach were published. The sections relating to landlord-tenant and fair housing contain nothing that adds to the appropriate sections in Casner and Leach. The real estate sales material is somewhat confusing for the student, as he must pick over the complaint in *Contract Buyer's League v. F. & F. Investment*[90] in order to determine what the shouting is about. Nor do the zoning or environmental defense matters add significantly to the impact of those materials currently in Casner & Leach. This is so despite the fact that Casner & Leach have no material specifically geared to environmental defense. But the zoning material is far too oriented toward fair housing questions to add anything significant to the admittedly lack-lustre materials presented by Casner & Leach.

However, this book would be a good supplement for the other extant basic property casebooks. The section relating to the low income tenant is well written, and the fair housing section is adequate. Thus, a teacher using O. Browder, R. Cunningham, & J. Julin, *Basic Property Law* (1966); J. Cribbett, W. Fritz, & C. Johnson, *Cases & Materials on Property* (1966); or Berger, *Landownership and Use* (1968), should consider using sections I and II to supply the defects in those texts, but I doubt that parts III, IV or V will be of much use to anyone.

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89. S. PLAYER, NEW APPROACHES IN THE LAW OF PROPERTY (1970).
90. *Id.* at 111.
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