

# Michigan Law Review

---

Volume 51 | Issue 7

---

1953

## *Casner: AMERICAN LAW OF PROPERTY. A Treatise on the Law of Property in the United States.*

Ralph W. Aigler  
*University of Michigan Law School*

Follow this and additional works at: <https://repository.law.umich.edu/mlr>



Part of the [Property Law and Real Estate Commons](#)

---

### Recommended Citation

Ralph W. Aigler, *Casner: AMERICAN LAW OF PROPERTY. A Treatise on the Law of Property in the United States.*, 51 MICH. L. REV. 1107 (1953).

Available at: <https://repository.law.umich.edu/mlr/vol51/iss7/21>

This Regular Feature is brought to you for free and open access by the Michigan Law Review at University of Michigan Law School Scholarship Repository. It has been accepted for inclusion in Michigan Law Review by an authorized editor of University of Michigan Law School Scholarship Repository. For more information, please contact [mlaw.repository@umich.edu](mailto:mlaw.repository@umich.edu).

## RECENT BOOKS

This department undertakes to note or review briefly current books on law and materials closely related thereto. Periodicals, court reports, and other publications that appear at frequent intervals are not included. The information given in the notes is derived from inspection of the books, publishers' literature, and ordinary library sources.

## BRIEF REVIEWS

AMERICAN LAW OF PROPERTY. A Treatise on the Law of Property in the United States. A. James Casner, Editor-in-Chief. Boston: Little, Brown. 1952. Seven volumes. \$115.

The preparation of a treatise covering the entire field of Property law is an enormous undertaking—the area to be presented is so vast. Rarely has any one person undertaken such a task. A complete coverage of the law of Property necessitates a presentation not only of the law of land—Real Property—but also of the law of Chattels—Personal Property. Scores of books, each one dealing with a particular field in the general Property area, have been published. Putting together all the books on Personal Property and Real Property, or on some part thereof, one would have, at least quantitatively, quite a library.

Such a library is quite beyond the average lawyer. Despite the stress that is being laid these days upon the public law subjects, at least in law schools, the fact remains that most of the time of the general practitioners over the country is being devoted to problems in the unexciting areas of private law—property, contracts, torts, business organizations, etc.—and they need to have close at hand usable, reliable and helpful comprehensive treatises dealing with such subjects.

Professor Washburn's treatise on Real Property in two volumes was one of the earliest American efforts to bring together materials covering Real Property generally. Tiffany's well known work in two volumes appeared in 1903. This was expanded and revised in the three volume edition published in 1920. Then, in 1939, came the third edition of Tiffany in six volumes, a project of Callaghan & Company.

In 1924 appeared Thompson's six volume work, a treatise that seems never to have achieved a standing comparable to its bulk. In addition to the six volumes there were one of forms and one supplement in 1929. In 1939-40 the work had grown to twelve volumes.

In the period from Washburn to Tiffany and Thompson, a number of books on Real Property in general, most of them in one or two volumes, were made available to the profession, and during the same time a lot of treatises on selected areas were published. To deal with Real Property in its entirety, without even a reference to Personal Property, in one volume seems an almost impossible task; it can be little more than a mere survey.

Despite the multitude of books dealing with the subject in general or with certain topics, there was still ample room in the profession for an up-to-date com-

prehensive treatise, one that would serve the day to day needs of the general practitioner.

Apparently at almost the same time plans for such a treatise began to take shape in at least two quarters. Professor Powell of the Columbia Law School announced his intention to publish a comprehensive presentation of the law of Property in five volumes. His years of intensive work as one of the key figures in the preparation of the American Law Institute's *Restatement of the Law of Property* along with his many years of teaching Property made his announcement one of wide interest. Three of his volumes have been published.

The other plan was associated with Little, Brown & Co., the well known publishers. It too contemplated a comprehensive treatment of the entire subject, the completed project to be the combined productions of a considerable number of pundits with a deep interest in Property, each one writing the part assigned to, or selected by, him, the whole to be under the general editorship and supervision of another distinguished Property teacher, A. James Casner of the Harvard Law School. In the Preface, after pointing out the vastness and variety of the field to be covered, Professor Casner goes on to say: "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."

Despite the five thousand or more pages, many topics have had to be covered a bit thinly. For example, there are 227 pages devoted to Landlord and Tenant, a subject for which Professor Tiffany found need for two large volumes, and on Oil and Gas Rights this treatise has 329 pages while Professor Summers' monumental treatise is in eight volumes—text and statutes. It thus seems that there may still be occasion for use of texts in special fields.

A striking example of a writer's (presumably Professor Leach's) appreciation of the fact that in special treatises a particular area has already been adequately covered is found in the sixth volume in dealing with the Rule against Perpetuities. Here the author contents himself with a careful survey and cross references to other publications for more detailed treatment and citations.

The treatise, divided into twenty-seven parts, is in volumes averaging approximately eight hundred pages with a seventh volume containing the Table of Cases and Index. An additional volume dealing with "Rights Incident to Possession of Land" is expected to be published during 1953 as a supplement to the sixth volume.

The work is entitled "American Law of Property," a title which is a bit broader than the contents; there is no coverage of the law of chattels except in relation to future interests. Essentially it is a treatise on the law of land.

This is not to say that this new work is not good, indeed excellent in parts. The finished product being the bringing together of the work of so many writers, it is inevitable that one finds different levels of quality. Anything on Perpetuities by Professor Leach is bound to be good, so also Future Interests by Professor Simes or by Professor Casner, Mortgages by Professor Osborne, Wills, etc., by

Professor Atkinson, to mention only a few. In six large volumes it is, of course, easy to pick out specific items with which a reviewer may find fault or disagree.

The profession, in making use of a treatise, wants not only points of view and analyses but, perhaps even more, references to authorities, not only those that the author may have thought were sound, but others. No one in reading about determinable fees and possibilities of reverter in this book would get track of the unusual decision of the Iowa court in *Dvorak v. School District*, 237 Iowa 442, 22 N.W. (2d) 238. The court there considered a conveyance of a small tract out of a quarter section to the district, the deed declaring, "The same to revert to the owner of (the 160 acre tract) when it shall cease to be used for school." After sixty-five years the use for school purposes had ended and action was successfully brought by the owner of eighty acres (out of which the small tract had been carved), part of the 160 acre tract. In the light of established principles, the decision may be open to serious question, but a lawyer using the book might want to get track of the case.

In §2.13 one finds a classification of the states with reference to their legislation affecting estates in fee tail. Ohio is listed as one in which the statute converts what would have been an entailed estate under the earlier law into "an estate tail for life in the first taker, remainder in fee simple absolute in the person or persons who, by inheritance, acquire the estate of such first taker." Passing over the language "estate tail for life in the first taker" as a clumsy way of saying that there may be estate tail for one generation, it is just plain error to say that there is a "remainder" in those who succeed by inheritance. The Ohio Supreme Court in *Dungan v. Kline*, 81 Ohio St. 371, clearly decided that such inheritors took by descent, not by way of remainder, the statute having the effect of cutting off the reversionary interest of the creator of the estate and thus enlarging accordingly the estate in fee tail that has been inherited from the grantee in tail.

In the discussion of the intriguing subject Estoppel by Deed the author points out that "in most states" it is established doctrine that when an estopped grantor acquires the outstanding interest, which he is estopped to assert, that interest by operation of law immediately is vested in the estoppel grantee (or his successor). This, of course, is a statement of the commonly accepted doctrine that the after acquired interest "feeds the estoppel." It would have been well if attention had been directed to the fact that there is authority, notably *Jordan v. Chambers*, 226 Pa. 573, to the effect that such after acquired interest remains in the estopped grantor, though he is not permitted to assert it as against the grantee and successors. Thus in the *Jordan* case the paper title giver was not allowed to defeat the claim of an adverse possessor by proof that the latter had become estopped to deny ownership in his grantee, that is, the legal ownership was still in the adverse possessor with merely an equitable interest in the estoppel grantee. Yet the *Jordan* case is cited as if it were in accord with "the established doctrine."

One may wish that the subject of delivery of deeds might have been treated a bit differently. It surely is misleading to speak of two "deliveries" in the case of delivery to B, a custodian, as is done in §12.67. If the instrument was really

delivered—meaning that step which manifests that as to the one executing the instrument the transaction has passed from preparation and contemplation to accomplishment—when handed to the custodian, then there is no further “delivery,” as lawyers should use the term. If “delivery” is made by the custodian, then there was no “delivery” when the grantor placed the document into his hands. One might wish for more light on the troublesome problems as to when the operation of the instrument in the case of the true escrow “doth relate back.”

As stated above, anyone who has any acquaintance with the subject matter of a treatise of five thousand pages can readily point out not a few omissions, errors, and positions which he deems unsound. The features of this work which are adversely criticized above must not be taken as characteristic of the entire treatise; the entire product is not to be likened to a basket of apples which may be spoiled by a few bad ones. Unquestionably these volumes contain a vast amount of excellent, thoughtful material. Though in some areas of the law of Property resort to more detailed treatises will be found desirable, for general use this work will be found interesting and helpful. It is a real addition to the literature on the subject.

*Ralph W. Aigler*  
*Professor of Law,*  
*University of Michigan*