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SMU Law Review

Volume 21 | Issue 4 Article 1

January 1967

Introduction

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by

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There appears to be a rebirth of scholarly interest in the field of real property law. That interest has never flagged so far as the practitioner is concerned, although the emphasis has shifted with the steady growth of title insurance and the increased participation by lay groups in what was once viewed as the lawyers' private domain. There has been a tendency in recent years to see land law as a largely "finished business," following the publication of the great treatises which covered nearly every phase of real property doctrine. Moreover, other areas of law, ranging from international transactions to constitutional issues of wide sweep, have appeared more glamorous and more immediate than the age-old questions involved in the allocation and control of land. Eventually, the population explosion and the omnipresent pressures of urbanization were bound to force a re-examination of basic property doctrine, particularly in those areas where constitutional law and property law collide. A survey of legal scholarship today will disclose a shift toward greater concern about private versus public decision-making in the use of land. Surely this is the stuff of the law of property; shades of Tiffany in modern dress.

Although this symposium presents a "mixed bag" of real property problems, it is significant that two of the five articles deal with the conflict between private and public rights in land. The state has three basic powers which it can use in its efforts to regulate land in the public interest: the police power, the power of eminent domain, with its always troublesome issues of just compensation, and taxing power. Mr. Bickley comes to grips with the first of these in "Local Controls Over Private Property Rights;" and Judge Palmore faces the second in "Damages Recoverable in a Partial Taking." Although we do not always look at it this way, these struggles between the landowner and the government (national, state and local) are the price we pay for private property, *i.e.*, for a large amount of private volition in controlling the "things" of this earth. If public ownership were the rule, rather than the exception, then land use decisions would be freely made by public bodies. Would they necessarily be better decisions? Even if they would, a fact that is by no means clear, this nation has not been willing to pay such a price. We place a high value on the maximum amount of private volition consistent with the public welfare and, of course, have great difficulty in knowing where to draw the line. It is this line drawing which is attracting renewed scholarly interest and which enlivens this symposium even though the authors may be writing about rules, procedures and processes that raise the basic question only by implication.

The other three articles also reflect this revived concern for property

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doctrine, although in a more conventional vein. Fixtures we have had with us always, or so it seems, but the Uniform Commercial Code has raised a significant number of new problems in an old area. Professor Cosway discusses these matters in "Fixtures Under the Uniform Commercial Code." His article illustrates the seamless web quality of the law where a code, designed primarily for personal property transactions, impinges on the sister field of real property.

Messrs. Irwin and Conant play a traditional Texas theme on new strings as they write about "Qualifying as an Oil and Gas Lessee in Northern Canada." Here, too, public law, in the form of natural resource regulations, has an important role to play but in a somewhat different guise than in the first three articles. New exploration and new engineering techniques, like new codes, have a direct impact on the law and it is not surprising to find the *Southwestern Law Journal* turning its attention to a natural resource somewhat removed from the Texas oil fields.

As a "Future Interests" buff, I am delighted that the symposium includes that old faithful—the Rule Against Perpetuities. Having mastered its intricacies as a student, puzzled over it as a teacher, and seriously wondered whether it was worth all the bother as a legal reformer, I am still intrigued by Professor Larson's "Perpetuities in Texas." The Rule speaks to the present like a spectral voice from the past; would it really change anything much if we abolished it? Now that we law teachers are finally becoming concerned about social science research techniques perhaps we should put the Rule under what passes for a legal microscope and study its actual effect on the accumulation of wealth. Were we to find the light not worth the candle, I should be sorry, but then on bad days I still mourn the demise of the Rule in Shelley's Case.

This symposium is a blend of the old and the new in that delightful combination which is the essence of the law of land. Custom, tradition, local practice have always bulked large in real property and its study is an excursion into history as well as an exercise in logic and an example par excellence of the art of the practical. For the devotee its fascination is infinite; for the neophyte its policy judgments, implied and overt, open a new door to legal activism. This symposium may, at first blush, seem but a miscellany of real property articles, but after a little reflection, it is the world of land law in miscrocosm.