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SECURITIES LAW. Edited by Herbert S. Wander  
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American Bar Association. 1968.

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# BOOK REVIEWS

SELECTED ARTICLES ON FEDERAL SECURITIES LAW. Edited by Herbert S. Wander and Warren F. Grienberger. Chicago, Illinois: American Bar Association. 1968. Pp. xiii, 985. \$12.00.

Never before has the business community been confronted with such a staggering amount of governmental regulation. As the securities markets have grown in size and complexity, the federal securities laws, rules, regulations, and judicial decisions have mushroomed into a vast source of controls. This development has been accompanied by the growth of an extensive amount of literature dealing with the problems in this area. Editors of law reviews actively solicit articles, and there have been many issues of legal and financial periodicals devoted entirely to symposia of securities regulation.

In view of the sizeable amount of published writing, one cannot help but sympathize with the editors in their task of selecting the 44 articles which comprise the important volume *Selected Articles on Federal Securities Law*. To the extent that they have attempted to choose those articles "which have proved to be of the greatest practical value to securities lawyers,"<sup>1</sup> they have to a large measure been successful. For the most part, the editors have not included theoretical articles, but have selected articles which are of everyday use, even though such articles may deal with complex problems to the securities regulation practitioner. In this connection, the book makes an excellent desk reference for the corporate and securities lawyer and would complement casebook materials nicely as a teaching device.

Of course, it would not be difficult to criticize the editors for omitting certain classic articles. But in compiling a book of selected articles in a vital and fast growing field, it is understandable that limitations of space forced the editors to draw the line at a certain point. And the reader cannot complain too much because most of the major areas of current federal securities regulation are represented by a significant work. Most of the articles have been revised and up-dated for this publication which further adds to its practical importance.

The book is divided into three major chapters. The first, dealing with the Securities Act of 1933, is subdivided into sections containing articles concerned with preparation and processing of public offerings, exemptions from registration, enforcement and liability, accounting, and mergers, consolidations and sales of assets. To illustrate the extent to which these articles are of *current* significance, the "Checklist for Underwriters' In-

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1. SELECTED ARTICLES ON FEDERAL SECURITIES LAW vii (Wander & Grienberger eds. 1968).

vestigation,"<sup>2</sup> contained in this chapter, includes an addendum regarding *Escott v. BarChris Construction Corporation*.<sup>3</sup>

The second chapter, devoted to the Securities Exchange Act of 1934, is comprised of articles dealing with registration and periodic reporting, regulation of brokers and dealers including financial and credit controls, proxy regulation, restrictions on insider trading, tender offers, transactions by a corporation in its own shares and other areas related to the antifraud provisions of the 1934 Act. An example of the practical importance of the articles in this chapter is the excellent analysis by Professor Hugh L. Sowards of the Securities Acts Amendments of 1964.<sup>4</sup> Professor Sowards saves the busy lawyer much time by clearly and concisely describing that legion of over-the-counter companies which, by virtue of the 1964 amendments, became subject to the registration, reporting, proxy and short-swing trading provisions of the 1934 Act.

Chapter three, perhaps the least important chapter with respect to most securities attorneys, contains two articles, one surveying the regulation of investment companies from 1940 to 1950, but up-dated for the present compilation, and the other dealing with the meaning of "investment company" under the Act. While these articles are good ones, this chapter is relatively insignificant when compared with the rich collection in the first two chapters. But in view of the space limitations, this result is certainly preferable to sacrificing any of the articles included under the Securities Act of 1933 and the Securities Exchange Act of 1934.

This writer would like to emphasize that the book is not just a collection of securities law articles<sup>5</sup> but is designed to be of service, not only to the specialist, but to the general practitioner who may employ it as the starting point in his research in many securities problem areas. Thus the book will be a functional addition to the libraries of lawyers who, along with their businessmen clients, have become acutely conscious in recent years of the substantial impact of federal securities regulation on daily commercial transactions.

JAMES S. MOFSKY\*

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2. *Id.* at 65.

3. 283 F. Supp. 643 (S.D.N.Y. 1968).

4. H. Sowards, *The Securities Acts Amendments of 1964: New Registration and Reporting Requirements*, 19 U. MIAMI L. REV. 33 (1964), in *SELECTED ARTICLES ON FEDERAL SECURITIES LAW* 439 (S. Wander & W. Grienberger eds. 1968).

5. Other relatively recent collections of articles concerning securities regulation include: *CORPORATE COUNSEL'S ANNUAL* (H. Friedman & H. Schlagman eds.) and *CORPORATE PRACTICE COMMENTATOR* (F. O'Neal ed.).

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THE LAW OF AIRSPACE. By Robert R. Wright. Bobbs-Merrill Publishing Company, 1968. 575 pp. \$17.50.

In a most readable manner, *The Law of Airspace* not only implies that Lord Coke and his maxim, "cujus est solum, ejus est usque ad coelum"<sup>1</sup> do not fit into the contemporary scheme, but goes on to show why with unquestionable clarity. As the author indicated, "Lord Coke never took an airplane ride and, as far as we know, never even thought about it."<sup>2</sup>

This book is not meant to cover only aviation law. It shows us that the application of airspace law is a fairly recent phenomenon, and that pertinent cases, statutes, transactional material and public policy aspects should be understood by today's practitioner whether he practices privately or is associated with a corporation or state or federal governmental agency. Moreover, *The Law of Airspace* should also be of value to the law faculty, law students, appraisers and others in the real estate field, community planners, and others interested in the law in this area.

In the beginning chapters, the Coke and Blackstone<sup>3</sup> concept of "property" is discussed at length. Wright indicates, however, that in contemporary times, with the advent of aircraft, the expressions of these early legal scholars are obsolete.<sup>4</sup> Much of this book is devoted to a practical and reasonable demonstration of why the theories of Coke and Blackstone, *i.e.*, that ownership of land means ownership of everything above it as well as everything beneath it, are untenable in our modern America.<sup>5</sup>

As is most necessary in a study of air law, and what seems to be the basic format in writing a comprehensive work on this subject, Mr. Wright has made an exhaustive study of early English and American "invasion of property" cases. Thus, he points out the theories used and notes the tenability of each in modern times.<sup>6</sup> Mr. Wright is to be commended for his brevity in summarizing the extensive study he made in this area, and for sending the reader on to his most informative handling of contemporary problems, benefits and procedures in relation to aviation law, armed with an adequate knowledge of background in this field. For example, using common law property concepts, the author indicates that certain types of ownership, *e.g.*, ownership of the land, may in contemporary

1. 2 BLACKSTONE, COMMENTARIES ON THE LAWS OF ENGLAND 8 (Cooley ed. 1899).

2. R. WRIGHT, THE LAW OF AIRSPACE 7 (1968).

3. 2 BLACKSTONE, COMMENTARIES ON THE LAWS OF ENGLAND (Cooley ed. 1899); COKE ON LITTLETON, Lib. 1, ch. 1, § 1, 4a (1628).

4. Leading case books such as J. CRIBBET, F. FRITZ & C. JOHNSON, CASES AND MATERIALS ON PROPERTY 1 (2d ed. 1966), and O. BROWDER, R. CUNNINGHAM & J. JULIN, BASIC PROPERTY LAW 2 (1966) begin in approximately the same manner.

5. The common law concept of ownership was expressed in terms of use and distance. Thus, the owner possessed space from the heavens on down to the molten core of the earth.

6. The area has also been well surveyed in leading treatises to date such as O. BILLYOU, AIR LAW (2d ed. 1964); R. FIXEL, THE LAW OF AVIATION (2d ed. 1945); A. MCNAIR, THE LAW OF THE AIR (3d ed. 1964); HAZELTINE, THE LAW OF THE AIR (1911); and H. HOTCHKISS, THE LAW OF AVIATION (1938).

times conflict with modern forms of ownership, *e.g.*, ownership of the air space.

The most recent development of the upper chamber concept, in the modern condominium, is traced briefly from its origin up to its influence on today's property rights laws. The author notes that the condominium has such a dynamic effect on the property laws of today that every state, save Vermont, has enacted legislation to aid in the regulation of this form of property ownership.

Once it is conclusively shown that the condominium and the theory of the "upper chamber" have found a most workable place in our modern land ownership scheme, and that both the application as well as the definition of the *ad coelum* maxim are shown to be inapplicable today, the author conducts a comprehensive study of the ownership problem in regard to airspace. In tracing this major aviation problem, the theme used by the author is that *ad coelum* in terms of airspace ownership was made responsive to social and economic demands of the air age with recognition being simultaneously accorded to its inherent limitations that became obvious only after the tests enforced by the age of aviation were applied. The "privilege of flight" theory, the "fixed height" theory, and the "possible effective possession" theory shown in today's leading aviation law cases, are termed by the author as tools by which modern air law has built its foundation. These theories are also part of the basic foundation upon which *The Law of Airspace* has been built.

In a chapter on ownership of airspace in America the author states that the commercial and public use and development of airspace has only begun, and that it will increase and become more legally and economically entrenched as urban problems intensify. He then shows how various cities are currently handling the problem.<sup>7</sup>

A tracing of American case law in highway and bridge, railroad and condominium cases, shows conclusively that the courts of this country have for some time recognized, and have been dealing with the creation of separate interest in airspace disconnected from the surface. Pointing out the recent state and federal enactments permitting the creation of separate interests in rights in airspace over highways and railroads, and an apparent trend in recent state legislation to sanction ownership and subdivision of airspace generally, this book clearly shows that Stuart S. Ball was correct when he concluded forty years ago that the American courts "seemed to recognize ownership in the airspace."<sup>8</sup> Yet perhaps it could now be said that he was understating the totality of this truth.

In an attempt to demonstrate the utilization of airspace and its sociological as well as economic impact on America, page upon page of this book is devoted to noting many instances of commercial utilization

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7. R. WRIGHT, *THE LAW OF AIRSPACE* 260-68 (1968).

8. Ball, *The Vertical Extent of Ownership in Land*, 76 PA. L. REV. 631, 682 (1928).

of airspace. Such a comprehensive listing shows the reader just how much deep, painstaking research has been put into this work.

The reader is made aware that whether he can purchase airspace rights is no longer in issue today, but that consideration of the use or sale of airspace for private purposes over publicways or railroad rights-of-way immediately initiates several issues which still must be resolved. The prospective purchaser of airspace rights is put on notice that he will confront statutes and regulations on both the federal and state level that will hinder his purchase.

Since the traditional view of the lawyer as one who by custom directs his attentions to the law involved and the instruments necessary to effect the desired transaction, does not fit into the modern scheme where the attorney may also serve as financial advisor or business organizer for his clients, a study is made of the problems, pitfalls and benefits of purchasing airspace. It is in this area that this book becomes one of most beneficial and original proportions.

The author successfully attempts to show the reader the maze of problems that may be confronted in the appraisal of airspace value. Moreover, he has also set forth specific examples and has applied to them either formulas created by others, or ideas of his own in an attempt to find solutions to the problems presented.

The author indicates a preference for the Kuehnle method<sup>9</sup> of commercial airspace valuation, which, along with certain derivations, would prove to be of sufficient theoretical soundness to withstand any judicial scrutiny which may ultimately be applied. In addition, Wright includes a tracing of an airspace transaction from its inception to its completion. Discussion of the various types of legal arrangements and instruments used in transferring rights in airspace, methods of description employed, and typical provisions contained in these instruments, are clearly set forth for the reader.

The transfer of title to a condominium apartment has been specifically omitted because of the availability of books on this subject to the practicing lawyer.<sup>10</sup>

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9. In KUEHNLE, HOLMES, WEED & WHITE, *CASE STUDIES IN AIR RIGHTS AND SUBSURFACE TUNNEL ROAD EASEMENTS* 4 (1964) it is stated, "[A]s the land becomes less valuable the percentage of the total land value that must be paid for the access increases. Air right value finally arrives at the zero point where access right and land value are the same." The Kuehnle formula is as follows:

$$V - (X \div Y) - I = A$$

$$V - A = R$$

*V* represents the land value before removing the airspace interest.

*Y* represents the economic value lost due to reduction of utility and income in the design of the building for airspace construction.

*X* represents the additional cost of construction.

*I* represents the interest on the investment for the increased period of construction resulting from the divided space-surface interests.

*A* represents the value of the "air-rights" after severance of the airspace.

*R* represents the value of the remainder.

10. Noted in particular is P. ROHAN AND M. RESKIN, *CONDOMINIUM LAW AND PRACTICE* (1965).

Having clearly stated that it is not his intention that this study be used by the practicing attorney as a "form book," the author included in an appendix many sample instruments. These samples and the discussion in relation thereto, are intended to demonstrate what others have done in transactions of this type, and should be used only as possible guides for the lawyer who should be left to his own devices to formulate the best possible legal arrangement under the circumstances in which he is involved.

If the lawyer, real estate broker and layman will use this book in accordance with its general purpose, *i.e.*, to be an introduction into the possible problems and necessary preventive moves necessary in the drafting of airspace right instruments, he will surely find *The Law of Airspace* a most useful and valuable tool.

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