THE IMPROVEMENT OF CONVEYANCING

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BOOK REVIEWS


Recent years have witnessed considerable interest in the complexities, weaknesses, and difficulties involved in the rather common experience of transferring a piece of real estate. Articulation of the perplexities, however, is not enough. Development of a more rational, simplified and secure method of protecting the real estate purchaser is a vital necessity. Toward the accomplishment of this goal, The Improvement of Conveyancing By Legislation is a valuable tool and a notable addition to the available literature.

This book is the first publication of an intensive research project jointly sponsored by the University of Michigan Law School and the Real Property, Probate and Trust Law Section of the American Bar Association. The other publications, Model Real Estate Title Standards, and A Handbook For More Efficient Conveyancing, have already been published. Each part is a complete unit.

The importance of the work is both attested and enhanced by the pre-eminence of its principal author, Professor Simes, in the property field. It is altogether fitting that, after retirement, he and Michigan should continue their cooperation for the improvement of the law.

A significant feature of The Improvement of Conveyancing by Legislation is that the suggested remedies are practical, pragmatic, and attainable. The reforms are not radical or revolutionary. They are aimed at making the existing system more workable, not at supplanting it with something entirely different. An ardent reformer might be somewhat disappointed because the basic property structure and conveyancing system are not changed. The realist, however, after noting the lack of progress made by the Torrens system, and the lack of enthusiasm for any attempt to radically change, if indeed it could be constitutionally possible, the entire


property and estate structure, will be happy enough with improvements. The book wisely adopts what appears to be the most feasible method of reform.

The Improvement of Conveyancing By Legislation contains 33 model acts plus a text discussion fully explaining the objective of each and depicting what each act will and will not do. The book is divided into two principal parts: Part I entitled Major Remedies, and Part II being entitled Specific Problems and Their Solution. There are also four appendices dealing primarily with the major remedies and discussing at length problems of constitutionality, the effectiveness of particular provisions, and comparing similar legislation already enacted in various states. There is also an index, a table of cases, and a most valuable bibliography on marketable title legislation.

The four major remedies relied on to simplify conveyancing procedures are: (1) marketable title acts; (2) curative acts; (3) an act concerning the evidentiary effect of the record; and (4) statutes of limitations. Statutes of limitation and curative acts are, of course, quite common, but the model acts are designed to be more comprehensive, unified, and complete. The “Act concerning the evidentiary effect of the record” is based on common law presumptions, common procedures, and specific matters dealt with in particular legislation in various states. Explanatory texts and notes clarify the provisions of each act.

The material on marketable title legislation should be of vital interest to the attorney in Florida and other jurisdictions where such an act or other reform is being considered. This is one of the principal methods of reform and is discussed at length. The effect of the act, its operation and its limitations, the constitutional aspects, and a detailed study of similar legislation already existent in some states, presents a balanced and objective appraisal of its utility. The value of this material to a practitioner in a state with a newly enacted marketable title act will be immeasurable.

The Improvement of Conveyancing by Legislation is not a code on conveyancing procedures but, instead, is a compilation of model acts which can be enacted separately or in conjunction with each other. Together, the acts constitute a coherent and unified attack on a tremendously complex problem, but each act can and should be tailored to the particular needs of the particular state. In promulgating the model acts, the authors took pains to make the acts complement each other and to avoid contradictory provisions. In adapting them to the needs of particular states, the draftsmen will likewise have to exercise caution to avoid conflicts and to attain uniformity.

Principal aims of the suggested acts include lessening of the burden of the title examiner, and making the title record more complete, more reliable, and more accessible. In this manner, the whole system becomes more comprehensible and more workable. Encompassed within the confines of this little volume is a wealth of material on the workings of the present conveyancing system and on suggestions for its improvement. Not only the scholar and reformer, but every practitioner who ever reflects on the process of land transfer, will find the book of utmost significance and usefulness.

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Professor Kimball has presented a detailed study of the social-political-legal interplay which occurred between insured and insurer during the great growth years (1835-1959) of the insurance industry. Wisconsin was chosen as the locus because of its historical position as a non-radical state, neither leader nor laggard, in its insurance industry and in legislation concerning that industry. Thus, the book is representative and could be applied to many states after minor transpositions of time and detail.

The author initiates the neophyte into the industry by showing the reason for and the growth of insurance from the individual single line underwriter, to the syndicate, to the multiple line corporation. Byways are constructed into the workings of the stock, mutual, reciprocal and state fund methods of reaching the ultimate objective of insurance—spread of risk. Two basic types of insurance are investigated, life and property. Property is dealt with in both the fixed and inland marine lines.

The author considers the creation of the fund needed to meet claims, the protection of that fund, the administration of claims and the action and reaction between the industry and the public. Considered under these major headings are rating regulations, premium collection, licensing of agents and internal management of companies, particularly with regard to fund investments.

The most interesting aspect of this book is Professor Kimball’s thorough outline of the legislative and administrative actions taken by state legislatures and insurance commissioners. Not only are the successful laws and regulations set forth but also those attempted and thwarted or completed and aborted, with the reasons for all.
BOOK REVIEW

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The cogent manner in which this book delineates the political and social realities affecting this major segment of democratic industry recommends it as an advanced primer for collateral reading by the law student.

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