BOOK REVIEWS

CONDOMINIUMS AND COOPERATIVES. By David Clurman and Edna L. Hebard. New York: John Wiley & Sons Inc. 1970. Pp. 395. $14.95.

Based on the questionable authority of the Sunday supplements, the quality of life in the United States is deteriorating. Car buyers acclimate themselves to compact and sub-compact models; fast-food franchises proliferate serving meals as convenient fuel, napkins, waiters, even tables gone; *La Cote Basque* an anachronism. The American dream, subject of novel and play, once realized in a home of one's own, is now a mobile home, or, as likely, an apartment.

For whatever reason, economic or social, in real estate, consumers have determined that there are unique advantages in combining communal living and individual ownership. Property owners are unbundling the bundle of rights that traditionally went with their status, keeping some that offer tax and equity benefits, discarding others, such as absolute privacy, and substituting what shared expense provides: at one level, parks instead of gardens, at another, bath and tennis clubs in place of private pools and tennis courts.

What this amounts to is a kind of mutual fund of housing: equity ownership, but management contracted out to professionals; pooling of resources to finance projects beyond a single property owner's ability; diversification of economic risk—the individual housing unit, not unique, may be sold as well on the merits of the community enterprise as on the size of its rooms or lay-out.

Two principal legal devices have been developed over the years to accommodate this trend. The condominium form comes to us from various civil law codes, born of peccable latin lineage. In essence, the owner of a condominium unit owns his portion of the realty development in fee simple absolute; he has a recordable deed evidencing this, may mortgage his property, is separately taxed and may freely sell. Additionally, he obtains an interest in the elements common to the building housing his unit. In other words, he obtains rights to use hallways, basements, elevators and, of course, the underlying land itself.

The cooperative form, principally found in New York City, builds on corporate law concepts. The cooperator is a tenant with a permanent lease given by the corporation of which he is a stockholder. Financing is more difficult for him to obtain for the obvious reason that, should a sufficient number of tenants fail to make rent payments, called

"maintenance", the corporation's property may fall into disrepair or even, on default of mortgage payments, be foreclosed upon. Exactly this happened during the depression years. The cooperator pays an *aliquot* share of the cooperative corporation's mortgage, tax and upkeep expenses, with appropriate *aliquot* tax deductions. A general rule is that he must have the corporation's consent, expressed through its directors, to sell his stock, *i.e.*, his apartment. Blackballing prospective buyers, as Miss Barbara Streisand recently testified, is by no means unheard of. On occasion the corporate charter provides that the corporation has the right to repurchase the cooperator's stock at a fixed price, thereby depriving him of gain in equity.

The cooperative and condominium are forms of real estate ownership whose time has come. The authors, in this useful book, modestly set out to furnish "a basic introduction and a reference to these two new categories of housing." However, as might be expected by those who know Mr. Clurman to have one of the most innovative minds among government regulators, the authors have created more than an instructional guide for attorneys.

To the practicing attorney their book is a convenient source of required government forms, including an actual condominium offering plan. Equally useful are forms of condominium mortgages, warranty deeds, sale agreements and corporation by-laws. Attorneys concerned with drafting legislation or regulations will find the documents reproduced, especially the New York regulations and California condominium questionnaire, invaluable.

Beyond this, the volume, in a brief but enlightening manner, covers dozens of items of crucial interest to a practical realty project using either form of ownership. Tax factors are of obvious interest, but the legal prerequisites to establish a home owner association are certainly bed-rock material. Little is slighted; for example, a discussion of resort condominiums ranges from management and building codes to police unit cruising tours and storage space for children's bicycles.

In short, Mr. Clurman and Professor Hebard have produced a timely and important book, a rare text which may be read profitably by a varied non-professional audience and members of the bar. While not designed to be the ultimate word on the subject, *Condominiums And Cooperatives* is a comprehensive summary of the concepts, problems and source materials relevant to this developing real property area.

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THE LAW RELATING TO ACTIVITIES OF MAN IN SPACE. By S. Houston Lay[1] and Howard J. Taubenfeld.[2] Chicago and London: University of Chicago Press, 1970. Pp. xii, 333, Bibliography, Index. $17.50.

While engineers and scientists are adapting and developing the hardware and techniques required for space activities, the legal profession must adapt and develop laws to cope with the myriad legal problems arising from these activities. This comprehensive book, written under the auspices of the American Bar Foundation, is a valuable addition to other scholarly writings[3] which have considered these problems. Its distinguished authors have identified and precisely analyzed pertinent international law and related sources and have provided perceptive insights into possible solutions to legal problems resulting from space activities.

This treatise is logically organized, compendious and authoritative and the easy-to-read text reveals the immense amount of professional research required for its compilation. The impressive silver-colored cover seems to suggest a relationship to astronauts, space vehicles and appurtenances being launched into outer space. It commences with a concise and fascinating review of the physical structure of outer space and then proceeds to a consideration of the political, legal and technical aspects of man's military, scientific and commercial activities in that milieu. These activities include the use of personnel and space vehicles, satellites and other hardware for world-wide communications, weather surveillance, military operations and the discovery of valuable earth and space resources. Competing government and private interests and the power and prestige gained through space activities are also scrutinized.

The 1963 Nuclear Test Ban Treaty prohibits testing nuclear weapons in outer space but Communist China and France have refused to abide by the treaty. Further, the Soviet Union has objected to the United States employment of space satellites for the collection of intelligence information over Russian territories, claiming this practice constitutes illegal espionage.[4] The United States argues that outer space is in the same category as the high seas which are outside the jurisdiction of any state and, therefore, the use of satellites in free space is permissible in

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3. *See e.g.*, M. MCDOUGAL, H. LASSWELL & I. VLASIC, LAW AND PUBLIC ORDER IN SPACE (1963).

4. For an East European Socialist concept of Space Law, *see* G. GAL, SPACE LAW (1969).

law. The authors contend these disagreements highlight the urgent need to extend the role of law into outerspace. Their contention is well-founded.

The volume next surveys the legal-political framework governing the resolution of major controversies concerning the use of space and notes that there is no workable legal definition of outer space and that national claims to outer space are legally barred by tacit and/or treaty agreements among the various states. The question of defining the permissible limits of state power to prescribe or enforce rules governing individual conduct in space activities is explored extensively. The analogy of outer space to the high seas has been utilized by many writers but Professors Lay and Taubenfeld employ the analogy with an exemplary clarity which will be appreciated by thoughtful readers. They theorize that the developing law of outer space now includes many concepts of the law of the high seas.

Next, relevant national and international treaties, declarations and statutes are investigated to determine whether they are evidence of the law of space or merely of international custom which is a source of international law. One important conclusion drawn is that the combination of customary law and estoppel seem to make it arguable that member states are legally bound by the major broad general principles contained in United Nations resolutions concerning outer space.

The text progresses to a perusal of the legal status of objects placed in space or on celestial bodies and then to a valuable chapter on satellite communications. The authors then examine the liabilities for damages arising from space activities. They assert that these liabilities do not necessarily require a legal regime other than that applicable to international claims in general[5] but that the novel aspects of these activities generate many new types of accidents and damages, such as those resulting from radioactive fallout from hydrogen bomb tests in outer space, and new problems of air and space pollution.

Emphasis is placed on the difficulties of compensating damaged parties in view of the diverse social welfare functions, legal systems, standards and other differences existing among states. The authors suggest that any treaty which is adopted to cover liabilities arising from outer space activities should include provisions which permit the parties to an action to agree on the applicable law to be applied; where there is no treaty, they suggest that a claimant state should be allowed to

5. *Compare* C. JENKS, SPACE LAW 315 (1965).

supplement international law with its laws and those of other involved states. Their discussion of absolute liability for damages caused by space activities is highly relevant, cogent and timely. They recommend that the theory of absolute liability be adopted with the exceptions of contributory negligence of a willful variety and in the cases where space activities cause damage to each other as in a collision between two satellites. The use of absolute liability in space law is laudatory; however, when one considers the unique and esoteric character of space operations, any exceptions may unduly and seriously delay the rapid settlement of claims.

The difficulties of establishing amounts of recovery for damages are explored; an important conclusion is that unlimited liability could cripple or severely limit space activities. As has been experienced under the Warsaw Convention, states have widely differing views as to the values of human life and suffering; for example, many states are appalled at the seemingly large recoveries for such losses in the United States.

This work is enhanced by its valuable appendices, extensive bibliography and copious footnotes. Suggestions and recommendations are competently supported and well-chosen examples ably illustrate the authors' contentions. Further, established principles are easily distinguishable from professorial conclusions. Professors Lay and Taubenfeld are to be commended for this valuable contribution to the law of space. Their book is highly recommended as a reference work and teaching aid to students, teachers, lawyers and others requiring current and authoritative information on the law of space. It should also prove informative to anyone involved in international relations, political science and other disciplines concerned with space activities.

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