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BOOK REVIEWS

WEBSTER'S REAL ESTATE LAW IN NORTH CAROLINA.

Revised edition by Patrick K. Hetrick.[†] Charlottesville, Virginia: The Michie Company, 1981. Pp. viii, 650. \$60.00.

REVIEWED BY RONALD C. LINK[‡]

A revision of a standard reference should be evaluated in light of two considerations. The first is whether the reviser's purposes were well-chosen. The second is whether the reviser accomplished his goals. Professor Hetrick's revised edition of *Webster's Real Estate Law in North Carolina*¹ succeeds on both of these counts. It is an excellent revision of an excellent book.

In the decade since its publication in 1971, the late Professor Webster's book has established itself as the standard reference on questions of real estate law in North Carolina. Webster's purpose was to review for practicing lawyers and law students the fundamental principles of North Carolina real property law and he succeeded admirably. The book was well conceived, thoroughly researched, and clearly written. It should be noted that Webster did not propose to cover every possible aspect of North Carolina property law. He focused on present estates, acquisition and transfer of ownership, and title examination, eschewing the Torrens System as not widely used and condominiums as not yet timely. Webster also exempted the subject of future interests,² intending a second volume on that subject as a complement to the original book. His untimely death defeated that project, and law book publishers generally, believing that the subject would have limited commercial appeal, have not commissioned a book on the North Carolina law of future interests.

Webster's approach to the materials was to state the law as he found it, not as he would have preferred it to be. With only a few exceptions,³ Webster displayed massive self-restraint in refusing to succumb to the academic temptation to parse, analyze, explicate, synthesize, theorize and criticize. This largely descriptive approach was generally a strength and only occasionally a

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1. 1 J. Webster, *Real Estate Law in North Carolina: Possessory Estates and Present Interests in Real Property* (1971).

2. Some future interests topics inevitably crept into the discussion of present estates. For example, the Rule in Shelley's Case surfaced in the discussion of grants to the heirs of a living person, 1 J. Webster, *supra* note 2, § 152, and the Rule Against Perpetuities appeared in connection with various defeasible fees and the interests associated with them. *Id.* §§ 41, 405.

3. See, e.g., the criticism of *Reed v. Elmore*, 246 N.C. 221, 98 S.E.2d 360 (1957), which held that a purchaser must examine all out conveyances of prior holders of record title, not just those conveyances of the parcel in question. 1 J. Webster, *supra* note 2, § 402.

weakness. It was a strength by enabling concise and clear treatment of a huge subject; its only limitation was in not giving the practitioner or litigator some hints about which rules were archaic or misguided.⁴ Curbstone opinions, however, are easy to come by, and North Carolina courts seem not too interested in professorial innovations.⁵

Professor Hetrick describes his revision as a general updating of existing footnotes and text, as well as an undertaking of new coverage of such topics as options, real estate brokers, residential tenancies, mechanics' liens, implied warranties, and deceptive-practices legislation.⁶ The threshold question is whether a new edition was due, and the answer definitely is in the affirmative. At a cautious estimate of fifty real property cases per year, more than five hundred decisions have been reported in the decade since Webster was published. Some of these decisions answered previously unresolved questions or gave new answers to old questions: Does a builder-vendor impliedly warrant habitability of a dwelling?⁷ Does sale of property subject to a restrictive covenant limiting use to single-family residential purposes imply a warranty that the property is usable for such purposes?⁸ Does existence of an ordinance preventing a purchaser's intended use of commercial property constitute a breach of the covenant against encumbrances?⁹ Does extension of a lease containing an option to purchase also extend the option?¹⁰ Does a due-on-sale

4. In forums more appropriate for theoretical examination, Webster has left a major body of work. See, e.g., his North Carolina Law Review series on the quest for clear land titles: Webster, *Doubt Reduction Through Conveyancing Reform—More Suggestions in the Quest for Clear Land Titles*, 46 N.C.L. Rev. 284 (1968); Webster, *Toward Greater Marketability of Land Titles—Remedying the Defective Acknowledgment Syndrome*, 46 N.C.L. Rev. 56 (1967); Webster, *A Relic North Carolina Can Do Without—The Rule in Shelley's Case*, 45 N.C.L. Rev. 3 (1966); Webster, *The Quest for Clear Land Titles—Making Land Title Searches Shorter and Surer in North Carolina Via Marketable Title Legislation*, 44 N.C.L. Rev. 89 (1965); Webster, *The Quest for Clear Land Titles—Whither Possibilities of Reverter and Rights of Entry?*, 42 N.C.L. Rev. 307 (1964).

5. But see Justice Morris' eminently sensible opinion in *Rodin v. Merritt*, 48 N.C. App. 64, 268 S.E.2d 539 (1980), holding that an option to purchase conditioned upon the purchaser's ability to cause the property to be rezoned did not violate the Rule Against Perpetuities. Justice Morris reasoned that the parties contemplated performance of the contract within a reasonable time not greater than 21 years. See *North Carolina Nat'l Bank v. Carpenter*, 280 N.C. 705, 707, 187 S.E.2d 5, 7 (1972):

In cases from other jurisdictions, judges—some text writers joining them—have advanced an interesting theory, somewhat professional in its approach, contending that stock splits and stock dividends occurring after the execution of a will are merely changes in form and not in substance and should go to the legatee even though they were declared and delivered to the testator during his lifetime. In short, they contend in such case, the will should speak as of the date of its execution rather than the date of the testator's death. The argument is not at peace either with our statute or our decided cases.

6. J. Webster, *Webster's Real Estate Law in North Carolina* v (P. Hetrick rev. 1981) [hereinafter cited as *Hetrick*].

7. Yes. *Hartley v. Ballou*, 286 N.C. 51, 209 S.E.2d 776 (1974).

8. Yes. *Hinson v. Jefferson*, 287 N.C. 422, 215 S.E.2d 102 (1975), which is apparently the only case of its kind in the United States.

9. No. *Marriott Fin. Servs., Inc. v. Capitol Funds, Inc.*, 288 N.C. 122, 217 S.E.2d 551 (1975). An existing violation of the ordinance does breach the covenant. *Wilcox v. Pioneer Homes, Inc.*, 41 N.C. App. 140, 254 S.E.2d 214 (1979).

10. Yes, if the parties so intended. *Davis v. McRee*, 299 N.C. 498, 263 S.E.2d 604 (1980).

clause constitute an invalid restraint on alienation?¹¹ Does the revised North Carolina procedure for foreclosure under power of sale constitute a deprivation of property without due process?¹² Does the anti-deficiency statute prevent a purchase-money mortgagee from abandoning the security and suing on the note?¹³ Does a landowner have an unqualified right to fend off surface waters without regard to the consequences to other landowners?¹⁴ Does a family care home violate a covenant restricting use to single-family dwellings?¹⁵ Does a right of first refusal extending in duration to the maximum period of the Rule Against Perpetuities constitute an invalid restraint upon alienation?¹⁶ Does historic preservation constitute a valid purpose of zoning?¹⁷ Does the holder of an unrecorded option to purchase take priority over subsequent recorded purchasers?¹⁸ Does a creditor's suit to set aside an allegedly fraudulent conveyance constitute an action affecting title to real property within the *lis pendens* statute?¹⁹

Furthermore, the North Carolina General Assembly has been actively changing the real estate practice in the last decade. New or amended comprehensive laws include the Residential Rental Agreements Act,²⁰ amendments to the power of sale foreclosure statutes,²¹ amendments to the mechanics' lien laws,²² the Administration of Decedents' Estates Act,²³ the Real Property Marketable Title Act,²⁴ and the Eminent Domain Act.²⁵ Also significant were

11. No. *Crockett v. First Fed. Sav. & Loan Ass'n*, 289 N.C. 620, 224 S.E.2d 580 (1976).

12. Apparently not. See *Turner v. Blackburn*, 389 F. Supp. 1250 (W.D.N.C. 1975).

13. Yes. *Ross Realty Co. v. First Citizens Bank & Trust Co.*, 296 N.C. 366, 250 S.E. 2d 271 (1979). The statute, however, does not apply when the security is a leasehold interest, a chattel real. *Kavanau Real Estate Trust v. Debnam*, 299 N.C. 510, 263 S.E.2d 595 (1980).

14. No. *Pendergrast v. Aiken*, 293 N.C. 201, 236 S.E.2d 787 (1977).

15. No. *J.T. Hobby & Son, Inc. v. Family Homes, Inc.*, 302 N.C. 64, 274 S.E.2d 174 (1981). See this Survey, Property Law, at 1431.

16. No. *Smith v. Mitchell*, 301 N.C. 58, 269 S.E.2d 608 (1980).

17. Yes. A-S-P Assocs. v. City of Raleigh, 298 N.C. 207, 258 S.E.2d 444 (1979). The validity of purely aesthetic zoning is still an open question. See *State v. Jones*, 53 N.C. App. 466, 281 S.E.2d 91 (1981) (aesthetics alone may be a valid zoning purpose); *County of Cumberland v. Eastern Fed. Corp.*, 48 N.C. App. 518, 269 S.E.2d 672 (dictum that aesthetics alone may justify a sign ordinance), cert. denied, 301 N.C. 527, 273 S.E.2d 453 (1980).

18. Yes. *Lawing v. Jaynes*, 285 N.C. 418, 206 S.E. 2d 162 (1974). G.S. 47-18, the Conner Act, was amended after *Lawing* to bring options within the operation of the Act. Law of June 9, 1975, ch. 507, 1975 N.C. Sess. Laws, 1st Sess. 527 (effective October 1, 1975).

19. Yes. *North Carolina Nat'l Bank v. Evans*, 296 N.C. 374, 250 S.E.2d 231 (1979).

20. Law of June 28, 1977, ch. 790, 1977 N.C. Sess. Laws, 1st Sess. 1006 (codified as amended at N.C. Gen. Stat. §§ 42-38 to -44 (Cum. Supp. 1981)).

21. Law of June 6, 1975, ch. 492, 1975 N.C. Sess. Laws, 1st Sess. 509 (codified at N.C. Gen. Stat. §§ 45-21.9, -21.16, -21.16A, -21.17, -21.21, -21.29, -21.33, -21.45 (1976)).

22. Law of June 23, 1975, ch. 715, 1975 N.C. Sess. Laws, 1st Sess. 940 (codified as amended at N.C. Gen. Stat. § 44A-7(1), -8 (1976)); Law of May 12, 1977, ch. 369, 1977 N.C. Sess. Laws, 1st Sess. 372 (codified as amended at N.C. Gen. Stat. § 44A-12(c) (1976 & Cum. Supp. 1981)); Law of July 1, 1977, ch. 883, 1977 N.C. Sess. Laws, 1st Sess. 1209 (codified as amended at N.C. Gen. Stat. § 44A-13(c) (1976 & Cum. Supp. 1981)).

23. Law of April 12, 1974, ch. 1329, 1973 N.C. Sess. Laws, 2d Sess. 629 (codified at N.C. Gen. Stat. §§ 28A-1-1 to -26-9 (1976)).

24. Law of April 23, 1973, ch. 255, 1973 N.C. Sess. Laws, 1st Sess. 240 (codified at N.C. Gen. Stat. §§ 47B-1 to -9 (1976)).

25. Law of July 10, 1981, ch. 919, 1981 N.C. Sess. Laws, 1st Sess. 1382 (codified at N.C. Gen. Stat. §§ 40A-1 to -69 (Cum. Supp. 1981)).

changes or additions to certain specific statutes: G.S. 52-10, a new sex-neutral statute regarding privy examinations for conveyances from one spouse to the other;²⁶ G.S. 43-63 and 43-64, providing that the mere designation of a record owner as "trustee" does not limit his power to convey a good title;²⁷ G.S. 45-36.3, requiring the holder of a recently-cancelled mortgage to acknowledge satisfaction within 60 days;²⁸ G.S. 1-38(b) and (c), the color of title amendment facilitating proof of possession under known and visible lines and boundaries;²⁹ various Machinery Act amendments, including G.S. 105-361, requiring the tax collector to furnish a written certificate of taxes due;³⁰ and G.S. 58-132, providing that title insurance may be issued only upon the opinion of a licensed attorney, not upon that of an employee of the company.³¹ Clearly the onslaught of new laws warranted a revised edition of Webster.

Hetrick's basic approach is to update the original Webster edition and to add certain new topics. Hetrick follows Webster's original organization, retaining the original twenty-five chapters and adding two chapters on real estate brokerage and the Marketable Title Act.³² The only deletions are of materials that have been superseded by new cases or statutes. Generally, Hetrick updates the earlier edition by adding discrete sentences or paragraphs at the beginning or end of a Webster paragraph or section, so as not to interrupt the flow of Webster's words, and this unobtrusive technique works very well.³³ Hetrick has promoted some of Webster's subsections to separate sections,³⁴ and has elevated some of Webster's footnotes to text.³⁵ These changes felici-

26. Law of May 13, 1977, ch. 375, §2, 1977 N.C. Sess. Laws, 1st Sess. 375 (codified as amended at N.C. Gen. Stat. § 52-10 (Cum. Supp. 1981)).

27. Law of April 29, 1975, ch. 181, 1975 N.C. Sess. Laws, 1st Sess. 142 (codified at N.C. Gen. Stat. §§ 43-63, -64 (1976)).

28. Law of May 29, 1979, ch. 681, 1979 N.C. Sess. Laws, 1st Sess. 724 (codified as amended at N.C. Gen. Stat. § 45-36.3 (Cum. Supp. 1981)).

29. Law of April 20, 1973, ch. 250, 1973 N.C. Sess. Laws, 1st Sess. 236; Law of May 5, 1975, ch. 207, 1975 N.C. Sess. Laws, 1st Sess. 190 (codified as amended at N.C. Gen. Stat. § 1-38(b)(c) (Cum. Supp. 1981)).

30. Law of May 18, 1973, ch. 604, 1973 N.C. Sess. Laws, 1st Sess. 914 (codified as amended at N.C. Gen. Stat. § 105-361 (1979)).

31. Law of April 3, 1973, ch. 128, 1973 N.C. Sess. Laws, 1st Sess. 107 (codified as amended at N.C. Gen. Stat. § 58-132 (1975)).

32. N.C. Gen. Stat. §§ 47B-1 to -9 (1976).

33. By the time of subsequent editions, the law may have changed enough to call for substantial rewriting, but the basic law as stated by Webster remains accurate in 1982. Hetrick occasionally rewrites a Webster section, but these changes represent an improvement of the original edition. The only area in which substantial revision might have been justified is in the discussion of leases in Chapter 12, where much of the discussion is qualified by provisos that the Residential Rental Agreements Act, N.C. Gen. Stat. §§ 42-38 to -44 (1976), is assumed not to apply. The new Act is discussed separately in Chapter 6, Non-Freehold Estates, Hetrick §§ 65-71, but may have been integrated into Chapter 12 on Leases.

As did Webster, Hetrick resists the temptation to editorialize, despite such ripe topics as the rule that a mistaken belief that one is the true owner negates adverse possession, Hetrick § 293, and a set of confused cases on the difficult issue of covenants running with the land. Hetrick § 387. See, e.g., *Raintree Corp. v. Rowe*, 38 N.C. App. 664, 248 S.E.2d 904 (1978).

34. E.g., Hetrick § 292 (tacking in adverse possession, formerly at 1 J. Webster, *supra* note 2, § 262(b)); Hetrick § 301 (adverse possession by tenants in common, formerly at 1 J. Webster, *supra* note 2, § 260(b)).

35. E.g., Hetrick §§ 465-73 (types of private deeds, formerly at 1 J. Webster, *supra* note 2, §§ 382(a)-(i)).

tously serve to emphasize important materials.

From a bewildering barrage of appellate cases, Hetrick generally has selected the most important cases, given them proper emphasis, and put them in the right places.³⁶ New cases emphasized in the text either deal with important doctrinal matters³⁷ or contain clear statements of general principles.³⁸ One particular feature helpful to the researcher is that the revised edition cites federal court cases dealing with North Carolina property issues.³⁹ Neither the original Webster edition nor the Hetrick revision includes a table of cases or statutes; such a feature would be helpful, albeit lengthy.⁴⁰ In addition, readers will need to be alert for court of appeals decisions reversed in the inevitable gap between writing and publication of the book.⁴¹

Hetrick's incorporation of new statutes is equally sensitive. He displays a good sense of relevance in selecting those statutes most important to the practicing bar.⁴² For example, while adding a chapter on the new Marketable Title Act,⁴³ Hetrick does not fail to note in a separate textual section⁴⁴ the contemporaneous passage of the color of title amendment that facilitates proof of adverse possession in overcoming the onerous requirements of *Mobley v. Griffin*.⁴⁵ This seemingly minor amendment may prove to be of more practi-

36. But see Hetrick § 197 n.196 (Garrison v. Blakeney, 37 N.C. App. 73, 246 S.E.2d 144, cert. denied, 295 N.C. 646, 248 S.E.2d 251 (1978), the infamous "seal case," which caused so much consternation, might have deserved more attention).

37. See, e.g., Hetrick § 504.

38. See, e.g., Hetrick § 307.

39. E.g., Hetrick §§ 352 n.28, 356 n.79. The revised edition also cites pertinent law review articles, although the listings are not always exhaustive. See, e.g., Hetrick § 149. (Omissions include Whitman, Transferring North Carolina Real Estate (pts. 1 & 2), 49 N.C.L. Rev. 413 (1971), 49 N.C.L. Rev. 593 (1971); Note, The Implied Warranty of Habitability in North Carolina Revisited, 58 N.C.L. Rev. 1055 (1980)); Hetrick § 278 (Note, Mortgages—Use of Due on Sale Clause by a Lender is Not a Restraint on Alienation in North Carolina, 55 N.C.L. Rev. 310 (1977)).

40. Section 390 of the text states the court of appeals holding in *Smith v. Mitchell*, 44 N.C. App. 474, 261 S.E.2d 231 (1980), an important case on the validity of preemptions, while section 504 states the supreme court holding in the same case, 301 N.C. 58, 269 S.E.2d 608 (1980), reversing the court of appeals. This result might have been avoided by a table of cases. The index is revised, although perhaps not with as many cross references as one might like. For example, a search for *Crockett v. First Fed. Sav. & Loan Ass'n*, 289 N.C. 620, 224 S.E.2d 580 (1976), the leading due-on-sale clause case treated in § 278 of the text, would find no heading leading to it under due-on-sale clauses or restraints on alienation. It is indexed under "Mortgages and Deeds of Trust—Foreclosure—Due-On-Sale Clause."

Another useful feature, at the price of only a few additional pages, would be a detailed table of contents. The current table of contents lists only the chapter headings, and the reader has to turn to the first page of each chapter to find the titles of the sections in the chapter.

41. E.g., *J. T. Hobby & Son, Inc. v. Family Homes, Inc.*, 302 N.C. 64, 274 S.E.2d 174 (1981), rev'g 46 N.C. App. 231, 266 S.E.2d 32 (1980) (discussed at Hetrick § 388 nn.55 & 56). The supreme court's decision that a family care home does not violate a single-family residential covenant appears to have been codified in G.S. 168-20 to -23. Law of June 12, 1981, ch. 565, 1981 N.C. Sess. Laws, 1st Sess. 834.

42. E.g., N.C. Gen. Stat. §§ 43-63, -64 (1976) (Hetrick § 174). See generally notes 21-32 and accompanying text *supra*.

43. N.C. Gen. Stat. §§ 47B-1 to -9 (1976). In the new chapter on the Marketable Title Act, Hetrick quotes the full text of the Act. More productive use of space might have been made by giving examples of the operation of the Act from the literature, as was done in Hetrick § 508 n.6. See also examples in the articles cited in Hetrick § 508 nn.5 & 7.

44. Hetrick § 295.

45. 104 N.C. 112, 10 S.E. 142 (1889).

cal impact than the Marketable Title Act.⁴⁶ Also, the author has been careful to note the effective date of new legislation; this feature should be especially helpful to title examiners.

The new topics added to the revised addition are well-chosen. Options, which are fairly common arrangements, are treated at length. While often the lawyer is not consulted when his client lists with a broker, all too often the lawyer is involved if the listing sours. Likewise, the national evolution in landlord-tenant rights and duties has begun to appear in North Carolina cases and statutes. Mechanics' lien laws and foreclosure procedures are of tremendous practical importance to lawyers, title insurers, and lenders, as well as purchasers. In addition to their obvious uses, the implied warranty cases are important for counselling builders. Deceptive-practices legislation presents new possibilities to the litigator.⁴⁷ All of these developments are treated in the revised edition. With the pending draft of a second-generation condominium law, it made sense to withhold treatment of that subject, although it should be noted that the revised Eminent Domain Act was passed after the manuscript was prepared.⁴⁸

Two areas deserve particular emphasis. The materials on water rights are substantially rewritten.⁴⁹ Sections 358 and 359 include an extraordinarily helpful summary of federal and state statutes affecting water use and rights; similar sections for statutes affecting land use would be a good addition to the next edition. Special note should also be taken of Webster's materials on title examination: these are very helpful, and Hetrick has included them more or less intact,⁵⁰ with occasional updating to reflect changes in practice.⁵¹

The only major area not covered is that of professional responsibility, including ethical duties and malpractice considerations. In the last decade, this general area has evolved from an abstract field of academic speculation to

46. See Everett, *Marketable Title Act*, in *Institute on Real Estate Practice—Vital New Developments* IV-16 to -26 (N.C. Bar Ass'n Found. 1973).

47. Recent cases evidence increasing use of the unfair trade practices statute in the real estate context. By complaining under G.S. 75-1.1 the plaintiff hopes to secure treble damages under G.S. 75-16 and attorney's fees under G.S. 75-16.1. N.C. Gen. Stat. §§ 75-1.1, -16, -16.1 (1981). See, e.g., *Marshall v. Miller*, 302 N.C. 539, 276 S.E.2d 397 (1981) (action against a landlord); *Stone v. Paradise Park Homes, Inc.*, 37 N.C. App. 97, 245 S.E.2d 801, review denied, 295 N.C. 653, 248 S.E.2d 257 (1978) (suit against a builder). The use of these theories seems to be growing, but the unfair trade cases apparently are not treated in the revised edition. See generally Aycock, *North Carolina Law on Antitrust and Consumer Protection*, 60 N.C.L. Rev. 207 (1982).

48. Law of July 10, 1981, ch. 919, 1981 N.C. Sess. Laws, 1st Sess. 1382 (codified at N.C. Gen. Stat. §§ 40A-1 to -69 (Cum. Supp. 1981)).

49. Hetrick §§ 349, 353, 356-59.

50. Hetrick chs. 21-27. Hetrick has accomplished his revision with a manageable increase in length. Webster's edition was 628 pages and the Hetrick revision is 650 pages. The typeface and margins, however, are reduced in the new edition, yielding about 6 or 7 more lines per page, so the true length is more than 22 pages beyond the original.

51. E.g., §§ 461, 465 n.38, 510. The North Carolina Bar Association (N.C.B.A.) has adopted and promulgated a widely-accepted set of standard forms for residential real estate transactions. These forms, especially No. 1 (Opinion on Title) and No. 2 (Offer to Purchase and Contract), may profitably have been incorporated into the revised edition. Hetrick continues the Webster usage of the term "certificate of title" rather than "opinion on title." Many attorneys have gravitated toward the "opinion" usage, in order to avoid any implication that the attorney is guaranteeing the quality of the title. N.C.B.A. Form No. 1 uses the term "opinion on title."

a set of definite issues affecting the daily practice of law. It is perhaps no coincidence that the first major North Carolina attorney malpractice case arose in a real estate context,⁵² where the relationships and duties of the parties are often blurred. Subsequent cases on alleged malpractice also include several that involve property attorneys.⁵³ The North Carolina State Bar, in CPR 100,⁵⁴ has attempted to answer the question of whom the lawyer represents in a single-family residential transaction; discussion continues over the wisdom of CPR 100, but it has major implications for the closing attorney. Debate boils over such questions as whether the attorney should attend the closing⁵⁵ and when the closing attorney should disburse funds or release the deed.⁵⁶ A North Carolina statute attempts to prohibit kickbacks in connection with the issuance of title insurance,⁵⁷ but it has been alleged that certain companies have taken advantage of a proviso in the statute⁵⁸ to funnel payments to favored attorneys. The use of freelance paralegals raises question of ethics, malpractice, and the structure of the real estate practice,⁵⁹ and a State Bar interpretation of G.S. 84-2.1 defining the practice of law is imminent.⁶⁰ These and other issues suggest the value of an organized and widely disseminated treatment of the lawyer's role in the real estate transaction.

52. *Chicago Title Ins. Co. v. Holt*, 36 N.C. App. 284, 244 S.E.2d 177 (1978) (a case of first impression on whether liability of an attorney is grounded in contract or in tort).

53. E.g., *United Leasing Corp. v. Miller*, 45 N.C. App. 400, 263 S.E.2d 313, cert. denied, 300 N.C. 374, 267 S.E.2d 685 (1980) (under certain circumstances a third person not in privity may sue attorney in negligence).

54. 8 N.C. St. B. Q., Apr. 15, 1977, at 81.

55. See Melvin, *Closings*, in *Institute on Real Estate Practice—Vital New Developments VII-2 to -5* (N.C. Bar Ass'n Found. 1973).

56. See generally Whitman, *Transferring North Carolina Real Estate: How the Present System Functions* (pt. 1), 49 N.C.L. Rev. 413, 462-67 (1971).

57. N.C. Gen. Stat. § 58-135.1 (1975).

58. "No persons or entity shall be in violation of this section solely by reason of ownership of stock in a bona fide title insurance company, agency, or agent." *Id.* § 58-135.1(c).

59. If a freelance paralegal does not engage in the unauthorized practice of law when he furnishes a title report to an attorney, so the argument runs, how is it an unauthorized practice for him to furnish the report to a non-lawyer? And if he may furnish the report to a non-lawyer, may not that non-lawyer be the purchaser or a lender who will make use of the report, potentially bypassing the attorney's opinion?

60. N.C. Gen. Stat. § 84-2.1 (1981): "The phrase 'practice of law' as used in this Chapter is defined to be performing any legal service for any other person, firm or corporation, with or without compensation, specifically including . . . abstracting or passing upon titles . . .;" see 7 N.C. St. B. Newsletter 1 (1982).

NORTH CAROLINA FAMILY LAW

Revised fourth edition by Robert E. Lee.† Charlottesville, Virginia: The Michie Company, 1979-81. 4 Vols.

REVIEWED BY SALLY BURNETT SHARP‡

The recent publication of the revised fourth edition of Professor Robert E. Lee's *Family Law in North Carolina*, is a welcome event for students and practitioners of domestic law in this state.¹ The third edition of the multi-volume treatise had long been the standard and indeed virtually the only major work in the field. It had not, however, been revised since 1964 and had therefore become increasingly less useful. The new edition, now expanded from three to four volumes, will once again become a valuable reference tool.

Not surprisingly, the revised edition perpetuates most of the strengths and weaknesses of its predecessor. Fortunately, its strengths are many. It is, first of all, well organized and easy to use, its basic format and structure unchanged from the previous edition. Volumes 1 and 2 center, as before, largely on issues involving husband and wife, including courtship, marriage and divorce. Volumes 3 and 4 deal with issues affecting children, including such diverse topics as custody, juvenile courts, and tort immunity. Most major topics include an interesting, and otherwise virtually unavailable, discussion of the history of various aspects of North Carolina domestic law. Professor Lee's treatment of the often confusing procedural aspects of divorce continues to be useful.²

The extent to which chapters or topics have been revised or expanded varies considerably. Occasionally there appears to be a considerable amount of old wine in new bottles. For instance, the chapters dealing with acts prior to marriage and annulments have remained virtually unchanged, both in terms of text and documentation. A few chapters have been updated merely by the addition of more current footnotes.³ On the other hand, several chapters have been extensively revised and rewritten, notably those covering the critical areas of alimony and custody. In addition, volume 4 contains an interesting and wholly new chapter titled "Miscellaneous Laws Relating to Children", which treats issues such as abortion, contraception, sterilization and surrogate motherhood.⁴

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1. R. Lee, *Family Law in North Carolina* (4th ed. 1979-81).

2. Chapter 5 is devoted entirely to procedural problems of divorce. It is extremely useful. Other procedural issues are similarly well discussed throughout the treatise.

3. Chapter 14, for example, dealing with Support and Family Expenses, is virtually identical to that of the third edition, except for some minor footnote additions. Chapters 7, 8, 9 and 13 are also changed only slightly.

4. In a remarkable, and unusual, excess of egalitarianism, Professor Lee comments in this chapter that: "It is a rather curious turn of circumstances when a minor child who is totally

More often, new developments are covered by the addition of new sections within existing chapters. There are, for instance, new sections on alimony, custody, antenuptial agreements, parent locator services, recognition of custody judgments, changing life styles and tort immunity, to name only a few. It is also gratifying to note that the new edition includes some discussion of most of the more significant uniform acts.⁵

In general, however, the major value of the revised edition lies in its meticulous incorporation, in one fashion or another, of the formidable statutory and case law changes that have occurred in North Carolina in recent years.⁶ These revisions reflect a profound appreciation of and familiarity with the complexities of North Carolina domestic law. In some instances, of course, major changes have occurred since publication of the new edition.⁷ And it is particularly unfortunate that legislation providing for equitable distribution of property upon divorce was not passed prior to publication of this edition.⁸ Nonetheless, the treatise is a valuable resource for the established family law attorney, and an invaluable one for those with less expertise in the area.

In two major respects, however, the new edition is a disappointment. First, there are several instances in which the significance or ramifications of recent developments could profitably have been explored much more fully. In *Wheeler v. Wheeler*,⁹ for example, the North Carolina Supreme Court held for the first time that support and other provisions in separation agreements might be dependent covenants.¹⁰ The implications of this holding are considerably significant, yet the case is noted, in a different context, only briefly.¹¹ Similarly, the volumes continue to contain quotations, often several pages in length, from a significant case; the cases themselves, however, receive little independent analysis.¹² Without such analysis the treatment of a confusing

incapable of giving legal consent for sexual intercourse, . . . can have an abortion without consent of his or her parents." 4 R. Lee, *supra* note 1, at 74.

5. The discussion of the Uniform Reciprocal Enforcement of Support Act, N.C. Gen. Stat. §§ 52A-1 to -32 (Cum. Supp. 1981), is particularly useful and well done. 2 R. Lee, *supra* note 1, at 337-66.

6. Many of the sections of the treatise that are not devoted to North Carolina law are considerably less valuable. In one instance, for example, a 1932 source is cited for a list of jurisdictions granting limited divorces. 1 R. Lee, *supra* note 1, at 184.

7. The father is, for instance, no longer primarily responsible for support of minor children in North Carolina. The recent amendment to G.S. 50-13.4 therefore renders inaccurate the statement at 2 R. Lee, *supra* note 1, at 10, to the contrary. See N.C. Gen. Stat. § 50-13.4 (Cum. Supp. 1981). Likewise, G.S. 50-11(c) has been amended, so that the discussion at 2 R. Lee, *supra* note 1, at 151-52, to the effect that a plaintiff dependent spouse could not seek both alimony and a divorce under the one year separation statute, is now incorrect. See N.C. Gen. Stat. § 50-11(c) (Cum. Supp. 1981).

8. G.S. 50-20, clearly the most significant development in North Carolina family law in many years, did not become effective until October 1, 1981. N.C. Gen. Stat. § 50-20 (Cum. Supp. 1981). The lack of any discussion of equitable distribution will undoubtedly constitute the most serious deficiency in Professor Lee's treatise. Presumably, however, discussion of the new act will also constitute a major portion of the first of the supplementary pocket parts planned for the study.

9. 299 N.C. 633, 263 S.E.2d 763 (1980).

10. *Id.* at 642, 263 S.E.2d at 768.

11. 3 R. Lee, *supra* note 1, at 37 n.102.

12. See, e.g., the discussion of *Bunn v. Bunn*, 262 N.C. 67, 136 S.E.2d 240 (1964), at 2 R. Lee,

topic, such as incorporation of divorce agreements by decrees, is considerably weakened. New statutory developments are occasionally treated in the same fashion.¹³

Ironically, the treatise combines analytical deficiency with editorial excess. Good revisions of standard works should encompass exclusions as well as inclusions, and Professor Lee has excluded very little commentary from his previous edition. This is unfortunate in many respects. The author's speculations as to the causes, for instance, of rising divorce rates, diminishes to some degree the academic objectivity and professionalism that readers expect from such a study.¹⁴ His comments on other matters might be offensive to many readers.¹⁵

Despite these flaws, however, *North Carolina Family Law* remains the single most useful tool for the practitioner of this state. It is, in all instances, an invaluable starting point for inquiry into any area of North Carolina domestic law. In many instances, it is considerably more.

supra note 1, at 221-224; and of *Link v. Link*, 278 N.C. 181, 179 S.E.2d 697 (1971), at 2 R. Lee, supra note 1, at 478-79. Although *Bunn* may reasonably be said to speak for itself, *Link* is a complex and important new case which deserves, but does not receive, considerable discussion. The same is true with the critical new case of *Moore v. Moore*, 297 N.C. 14, 252 S.E.2d 732 (1979), quoted in full at 2 R. Lee, supra note 1, at 527-531.

13. See, e.g., the brief treatment of N.C. Gen. Stat. § 50B (Cum. Supp. 1981) (domestic violence) reprinted at 2 R. Lee, supra note 1, at 603-07, and of the Uniform Marriage and Divorce Act, at 1 R. Lee, supra note 1, at 214.

14. It would seem to contribute little to the usefulness of the treatise, for instance, to speculate that one of the reasons for the rising divorce rate may be that more "women have jobs outside of the home . . . [and are] no longer dependent upon their husbands for economic support; contacts with other men have been multiplied." 1 R. Lee, supra note 1, at 208.

15. "[C]onsider the plight of the young husband who is capable and anxious to have sexual intercourse with a most attractive and sexually appealing wife, who might be as young as, or younger than, he, and though fully capable is yet unwilling. In this . . . case the young man may not have any legal remedy in North Carolina Nevertheless, the law does not say that being a man, he cannot take charge of the situation and do something himself. A husband cannot be guilty of rape in forcibly having intercourse with his own wife." 1 R. Lee, supra note 1, at 130.