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Book Reviews

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BOOK REVIEWS

CASES AND MATERIALS ON MODERN PROCEDURE AND JUDICIAL ADMINISTRATION. By Arthur T. Vanderbilt. New York: Washington Square Publishing Corporation, 1952. Pp. xx, 1930.

In his *Cases and Materials On Modern Procedure and Judicial Administration,* Chief Justice Arthur T. Vanderbilt of New Jersey has presented a novel and highly effective approach to the teaching of procedure.

The introductory chapter of Part I of the casebook considers the importance of procedure in the work of the practicing lawyer and in the study of law, the place of the federal rules of civil and criminal procedure in the movement for judicial reform, and the major problems of procedure. Chapter 2 sets forth the famous address by Dean Pound on "The Causes of Popular Dissatisfaction with the Administration of Justice," and Dean Wigmore's comment thereon, written thirty years later, under the title "The Spark That Kindled The White Flame of Progress." Judge Vanderbilt feels that Dean Pound's address should be prescribed reading, at least once a year, for every judge, practicing lawyer, law professor, and law student, on the day that he returns home from his summer vacation and starts a new year of professional activity.

The student is given a panoramic view of procedure through the arrangement of the subject matter in the remaining ten chapters of Part I of the casebook. This arrangement is based upon the different steps involved in litigation, beginning with Jurisdiction, and continuing in logical fashion through Parties, Venue, Process, Remedies, Pleadings, Pre-Trial Procedures, Trial and Judicial Review to Execution, with a chapter devoted to each step. The federal rules of civil procedure and the federal rules of criminal procedure duplicate each other to a considerable extent, and are therefore parts of a single procedural system. The appropriate federal rule is set forth in these ten chapters in the order of the rule's application to each such step in litigation. Excerpts from committee notes and helpful comments by Judge Vanderbilt appear after most of the rules. The remainder of each such chapter consists of valuable text material from recognized authorities and well chosen illustrative cases of recent origin, followed by notes which provide a basis for stimulating class discussion. Included in the chapter on pleading are federal

forms of the various pleadings together with a transcript of a proceeding on arraignment. There is found in the chapter on pretrial procedure a demonstration of a pretrial conference which adds much to an understanding of the subject.

The historical aspect of procedure is properly assigned a place of minor importance and is presented by the inclusion in the casebook of materials taken from the writings of Langdell, Maitland, and Pound.

The human element involved in the administration of justice is discussed in the chapters on Judicial Selection and Related Problems, Jury Selection and Service, the Legal Profession, and Judicial Administration, respectively, which appear as Part II at the end of the casebook. Judge Vanderbilt calls attention to the direct relationship between the efficient administration of justice and the manner of selection, tenure, and salaries of judges, the honesty and intelligence of jurors, the qualifications of lawyers, the manner in which judges, jurors and lawyers work together, and he reminds the reader that there cannot be a complete understanding of procedure without some knowledge of the problems of the individuals who man the courts.

Judge Vanderbilt has been eminently successful in realizing his aim of "taking the mystery out of procedure, of showing its significance in the judicial process, as well as in the lawyer's every day life, of exhibiting the most modern system of procedure in operation and demonstrating its essential usefulness as an aid in the investigation and ascertainment of the truth in litigation, and of revealing the progress, or the lack of it, in each state in meeting the minimum standards of judicial administration recommended by the American Bar Association." Such success is to be expected when a project of this kind is undertaken by one so outstanding as a teacher, as an advocate, and as a judge. What may not be generally known is that Chief Justice Vanderbilt, more than any other one person, is responsible for the adoption of the federal civil and criminal rules of procedure. These rules have gone a long way toward overcoming what Judge Vanderbilt describes as the "delays in procedure, and technicalities of pleading, and the complexities of practice that have aroused the ire of . . . clients much more frequently than the actual decisions of courts on the merits of the cases submitted to them."

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HANDBOOK OF LAW STUDY. By Ferdinand F. Stone. New York: Prentice-Hall, Inc., 1952. Pp. xi, 157.

Here at last is a book to advise the novice in his faltering entrance into the study of law. In a brief, well organized book Professor Stone has anticipated and answered many of the queries and problems which confront every beginner at the threshold of legal learnings. The purpose is to deal with fundamental questions of law training and practice in a simple, explanatory fashion. Professor Stone's approach is as direct and informal as it is interesting and informative.

Beginning with a discussion of personality traits and special talents requisite in the makeup of a successful lawyer, the author suggests what basic skills should be cultivated and what background should be laid in the pre-law educational stages. Then, to warn the newcomer what he may expect, the general function of law in society is discussed and the usual law school organization and curriculum are described. Separate chapters deal with such ever-present student problems as how to brief cases, how to analyze and categorize a given legal problem, and how to prepare for and write law school examinations.

The sources of the rules which form the fabric of the law and the growth of law through judicial decision, legislative enactment, and administrative ruling form solid material for a concise summary which emphasizes the integration of these several phases of law-making into a single body of law.

The chapter on techniques of argument and persuasion should prove especially interesting and valuable to every student of the law. Alternative approaches to argument explained by the author include strategies based on logic, history, sociology and economics. Just as valuable is the chapter on legal ethics. Professor Stone offers a frank discussion of moral and ethical problems met in the practice of law.

All in all, the book is a significant contribution to the field of legal literature—a field which all too often overlooks the doubts and problems of the beginner. For a lawyer called up to counsel anyone contemplating law as a profession, Professor Stone's handbook will furnish a ready reference.

JIM R. CARRIGAN

JUSTICE ACCORDING TO LAW. By Roscoe Pound. New Haven: The Yale University Press, 1951. Pp. 98.

Virtually anything written by Roscoe Pound is worth reading and this latest work is no exception. Essentially it is an inquiry into the basic premises upon which the law is built. It consists of the texts of three lectures by Dean Pound on "What is Justice?" "What is Law?" and "Judicial Justice." As these topics indicate, the book deals with questions as old as the law itself. To some degree this book may probably be regarded as the summation of Roscoe Pound. In a brief foreword, he virtually says as much: he points out that he is expressing, without the hampering impedimenta of footnotes and other scholastic apparatus, the impressions and conclusions gained from sixty years of practice, study, teaching and experience.

A few of the things Dean Pound has to say will be disputed. In the closing chapter he returns to a point of view concerning administrative law which has stirred controversy in the past. His comment that the "power theory" of international law has been international law's undoing implies a criticism of widely held views on the nature of relationships between sovereign states. But probably no final judgment on these matters is possible now. One puts the book down with the overall sense of having participated in a pleasant and thoughtful excursion into the heartland of the law, and having returned with profit and increased insight into its innermost workings.

If one did not recall that jurisprudence is popularly supposed to be dull and heavy, one would be tempted to describe the work as sparkling in the clarity and lucidity of its presentation. It is beautifully written; and because the book is short, it can be read in much less than an afternoon. It may be suggested that the imprint which it leaves on the mind will last much longer than that.

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THEFT, LAW, AND SOCIETY. By Jerome Hall. Indianapolis: The Bobbs-Merrill Company, Inc., (2nd edition) 1952. Pp. viii, 397.

In the introduction to this work, the reader immediately encounters an explanation of the process of legal and factual research

into socio-legal problems of crime. Theft was the crime chosen to illustrate the inter-relation of social problems and legal problems. The author traces the evolutionary development of primitive larceny into several differentiated crimes as social need sought a more refined set of standards. Our modern law of theft was molded during the 18th century. Historical records clearly reveal the genesis of modern theft principles and their original motivations. The author details the history of one case to exemplify typical conditions and problems from which one may deduce criteria for generalization. In short, the thesis presented is that law is evolved from social problems and attempts at their solution.

The book is organized into two main divisions. In the first is presented the history of theft in England beginning with an historical and institutional interpretation of the Carrier case. The second chapter of part one concerns the growth of the law of embezzlement, criminal fraud, larceny by trick, and the receipt of stolen property. The rapidity of growth in these phases of theft law is attributed to the industrial revolution's tremendous expansion of commerce and the consequent demand for a credit economy. This new economy based on credit required new protections for the merchant class. Next the author takes up the substantive law of larceny. In early times movable chattels, especially cattle, were most important to the people; consequently choses in action, being of relatively slight significance, were not included as subject to the crime of larceny. This omission evoked limited legislation which the courts liberally expanded to include unforeseen problems in the continual judicial tightening of the gap between legislative and social conditions. The functions of technicality and discretion in criminal law are dealt with in Chapter Four. Between the legal structure and the social problems for which it was designed, gaps open and lag sets in. Since the changes needed are too detailed, frequent, and varied for legislation, and need for administration is fundamental and constant. When the strict enforcement of the law would be too severe, administrators, by invoking technicalities or exercising discretionary power can practically nullify the law. Finally, legislative mitigation results. Because of the broad discretion reposed in prosecuting attorneys and magistrates in the United States, the majority of felonies are reduced to misdemeanors and juries decide only about five per cent of the cases.

The second part of the book deals with current socio-legal

problems. Mr. Hall's major criticism of modern law is that it does not differentiate between non-professional offenders and persons who deal in stolen goods as a form of institutionalized behavior. The author begins this section by relating the early history of the legal process in England. He then discusses, from a sociological viewpoint, the law of theft in New York, where the problem has been most serious. Convictions in New York average about one-third in relation to violations because the emphasis is not upon conviction of the culprits, but upon obtaining return of the property through reward offers and the efforts of private or insurance company investigators. Industry protective organizations have proved most effective in reducing theft. It is notable that New York, since 1943, has differentiated in the treatment of professional receivers and receivers for consumption.

The most acute modern problem is auto theft since the most frequent offenders are minor boys who steal cars for "joy rides." Because the stolen cars are generally recovered after abandonment, and because law officers are lenient toward youthful offenders, fewer than six per cent of these thefts result in arrest. Insurance companies are presently striving for uniform state regulation to require registration of motor vehicles and licensing of dealers. Embezzlement is a second serious modern problem. Mr. Hall feels that most people, at some time during their lives have converted property left in their possession by another. In the United States a wholesale lack of law enforcement practically nullifies legal sanctions. Generally embezzlers are trusted employees who are motivated by what may be loosely termed a "good reason." Restitution is frequent. The suggested solution calls for more complex preventive methods and the elimination of the more obvious opportunities and temptations. An additional aid would be a legal requirement that insurance companies report all claims to the district attorney. Possibly the high point in the book is the author's well-planned proposal for a model penal code. Such a code, in today's world of rapidly changing conditions and complicated social problems is direly needed.

Generally the book can be described as a scholarly, interesting, and well documented treatment of a fascinating field of criminal law. The volume can be enthusiastically endorsed as a worthwhile addition to the library of the lawyer who in leisure time would like to explore the inter-relation of the law of theft with the social problems of today and yesterday.

JOHN G. MUTSCHLER

PROBLEMS OF THE FAMILY, By Fowler V. Harper,* Indianapolis: Bobbs-Merrill Company, Inc., 1952. Pp. x, 806. $9.00.

Here is a unique contribution to the literature of domestic relations, which will undoubtedly prove interesting and instructive alike to the student of law, the practicing lawyer, and the layman, for it is a compilation of not only carefully selected case material illustrating the court's views of various legal problems of the family, supplemented by excellent text notes, but also an equal quantity of material selected from the literature of anthropology, sociology, psychiatry dealing with the family.

As Professor Harper states in the preface, the book was prompted by a recognition of the desirability of integrating knowledge from these fields with case law in order that the student of law might have a better understanding of the innumerable factors involved in family problems. He tell us that as a teacher of domestic relations he was increasingly impressed by the inadequacy of case books devoted exclusively to legal aspects of family troubles as a medium for teaching the complexities of the interpersonal relationships involved and the true nature of the difficulties resulting in litigation. As he says,

> "The problems of the family just wouldn't divide into the strictly legal and non-legal. Increasingly apparent also became the fact that the isolation of legal matters and their treatment in a vacuum was a misdirected way of attacking one of society's greatest ills. The social, psychological and legal aspects of family problems were all mixed up together. One got the impression, indeed, that often lawyers, judges and legislatures were dealing merely with overtones of complexities, an understanding of which only disciplines other than law can give."

Professor Harper does not suggest that lawyers need become social scientists to deal with family problems any more than they have been clergymen in the past although the approach to family problems generally has been through religious and moral as well as legal considerations. He does advocate a familiarity with what these related disciplines have to offer. It is to encourage this approach that he has combined materials from all sources in the volume, and in the reviewer's opinion he has thereby produced a totality of effect that makes a real impact upon the reader.

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A quick survey of the book can hardly show how successfully its scope has been expanded beyond the usual treatment of domestic relations, but it may be possible to convey some idea of the kind of emphasis to be found. There are seven chapter headings: Patterns and Theories of Family Organization, Premarital Problems, Creation of Marriage, Problems of Marital Adjustment, Intra-Family Relationships, Relations of Family Members with Others, Problems of Family Disorganization.

Introductory in nature, the first chapter deals with the anthropological and cultural history of marriage as an institution. It focuses attention on varying concepts of normal behavior and reciprocal obligations in marriage in primitive and Christian cultures, present and past. The author shows how the dynamics of social, economic and cultural forces have wrought fundamental changes in the functions of the family institution and have tended toward its disorganization. This is significant insofar as it is the loosening of these institutional bonds coupled with weakening controls of Church and State that have resulted in greater freedom for the individual and increased the responsibility of the community to certain family members.

Studies based on the Kinsey Report keynote the treatment of problems growing out of pre-marital relations. The frequency of such relations, suggested reasons for them, and the "chaos of existing sex laws" resulting from divergent state policies or vagueness of the laws are pointed out. Notes supplemented by tables show the diversity of statutory provisions on the subject. As the creation of marriage is largely a matter of conforming to statutory requirements, it is to be expected that this chapter will deal almost exclusively with case law. However, it is generously studded with editor's notes which result in a truly comprehensive coverage of the subject.

Chapter IV is devoted to human nature aspects of marriage too often overlooked or misunderstood by the courts. Problems of marital adjustment are discussed in a number of sociological and psychological studies and well-selected cases under the headings Sexual Maladjustments and Personality Conflicts. These give a penetrating treatment of conflicts arising out of physiological variations in the sex impulse and the inability of mates to adjust to one another. It is noted that the determination of what constitutes cruel and inhuman treatment, the grounds cited in a vast majority of divorce cases, has been generally unsatisfactory. That

a more scientific approach to the matter is in the offing is suggested.

In intra-family relationships, it is interesting that the rights and obligations of spouses are set forth in almost exclusively judicial opinions, but the rights and obligations of parents and children and the welfare of the young and old are elaborated upon in numerous notes and articles.

The final chapter dealing with the problems of family disorganization is enriched with numerous sociological and psychological interpretations. Renewed emphasis is placed on the need for recognizing the personal elements in marriage and bringing these into harmony to prevent disintegration of the family rather than depending on external pressure from Church and State. The book concludes with several proposals for reforms whereby the courts might become instruments for preventing divorces rather than "faintly glorified public morticians." Suggestions from a study by the National Association of Woman Lawyers appear sound.

A 22-page bibliography of additional source material, (both legal and non-legal), may encourage further reading. It will, if the leaven of Professor Harper's new treatment has done its work.

MRS. ROBERT FEIDLER

BOOK NOTICE

THE LAW OF MUNICIPAL CONTRACTS WITH ANNOTATED MODEL FORMS by Charles S. Rhyne (National Institute of Municipal Law Officers, 730 Jackson Place, N. W. Washington 6, D. C., 192 pp., Price $7.50).

The National Institute of Municipal Law Officers announces the release of its latest publication, THE LAW OF MUNICIPAL CONTRACTS WITH ANNOTATED MODEL FORMS by Charles S. Rhyne.

This volume is the first of its kind in this field. It is a practical handbook on municipal contract law with model forms, and is suitable for the use of both municipal attorneys and municipal purchasing agents.

Prior to publication, a draft of the manuscript of this volume was submitted for comment to numerous city attorneys, city purchasing agents and other persons in the public purchas-

ing field, who have had wide experience in the field of municipal contracts. Their comments were then utilized in preparing the final draft of the manuscript.

The model forms presented in this volume are the first available in this field. The annotations to these model provisions will assist in clarifying the technical language legally required to accomplish modern public purchasing objectives. The model forms include: model contract proposal forms; general contract conditions (with annotations); special contract provisions suitable for general use; special model provisions applicable to paving streets, highways, or sidewalks; model forms for contractor's performance, payment of maintenance bonds; model form for prequalification of bidders, a form of bid, and other model forms suitable for other contract purposes.

The court decisions on the basic law of municipal contracts are outlined as concisely as possible. Included are a consideration of the contract powers of municipal corporations, ultra vires and illegal contracts, personal interest of municipal officer, competitive bidding, advertisement for bids, action on bids, the form of agreement, "cost-plus" contracts, impossibility of performance, escalator clauses, bonds and deposits, and prequalification of bidders.

The tremendous increase in municipal functions in recent years, coupled with the fact that nearly all municipal functions are carried out under contracts of various kinds, has created a vital need for this authoritative handbook on the law of municipal contracts. Municipal attorneys and purchasing officers have long urged this need upon their official national organizations: NIMLO and the National Institute of Governmental Purchasing. This volume, covering the basic legal principles in the field, together with model forms on all phases of the subject, is intended to meet this need.

The volume contains a detailed table of contents, table of court decisions, and a detailed index, which adds to its maximum usefulness as a day-by-day handbook for municipal attorneys and purchasing officials.

BOOKS FOR SALE