



1952

Book Reviews

Olaf H. Thormodsgard

Ross C. Tisdale

Follow this and additional works at: <https://commons.und.edu/ndlr>



Part of the [Law Commons](#)

Recommended Citation

Thormodsgard, Olaf H. and Tisdale, Ross C. (1952) "Book Reviews," *North Dakota Law Review*. Vol. 28 : No. 2 , Article 11.

Available at: <https://commons.und.edu/ndlr/vol28/iss2/11>

This Review is brought to you for free and open access by the School of Law at UND Scholarly Commons. It has been accepted for inclusion in North Dakota Law Review by an authorized editor of UND Scholarly Commons. For more information, please contact und.common@library.und.edu.

BOOK REVIEWS

1950 ANNUAL SURVEY OF AMERICAN LAW. By New York University School of Law. Prentice Hall, Inc. New York, 1951. Pp x, 915.

From 1928 until 1940, the University of London Department of Law published each year the *Annual Survey of English Law*. The purpose of the *Survey of English Law* "was to provide the reader with a general view of the growth of the law, whereby he may, without undue expenditure of time and effort, follow the processes of change and development which are constantly in operation." The latest information is that the *Annual Survey of English Law* has been revived. Publication ceased for a time due to the necessities of war.

The proven worth of the *Annual Survey of English Law* was one of the prime factors which prompted the faculty of the New York University School of Law under the leadership of the then Dean Arthur T. Vanderbilt to prepare and publish the *Annual Survey of American Law*. The first volume was published in 1942. The fundamental aim of the enterprise was expressed in the first volume in the following terms: "Each volume aims merely to present in orderly fashion the significant trends in the more important branches of the law through the year. It seeks simply to cut a path through the wilderness of single instances so that the lawyer and the intelligent laymen may follow the development, subject by subject."

The *1950 Annual Survey of American Law*, the ninth in this series, follows a uniform plan similar to that of the preceding books. For the purpose of classification, the subjects have been grouped in five divisions: Part I, Public Law in General; Part II, Public Law, Social, Business and Labor Legislation; Part III, Private Law; Part IV, Adjective Law; and part V, Legal Philosophy, History and Reform. Forty-five teachers associated with the School of Law of New York University prepared the surveys in their respective specialized fields.

The most impressive feature of the plan is its practicality, a quality which appears at once even in the discussion of so recalcitrant a field as International Law. Written by Yuen-Li Liang, lecturer on International Law at New York University, the paper comments on international legislation and specifically on the controversial Genocide Convention. Special attention was given to the purposes and accomplishments of the International Law Com-

mission. An analysis was made of American judicial decisions on international law problems and recent decisions were reviewed, while comments and references were made as to recent literature. Lawyers in the midwest, reading this brief survey, will be impressed with the effect of international problems on the civil, economic and commercial life of America.

The chapter on "The United States and the United Nations" was written by Prof. Clyde Eagleton and is limited to fifteen pages. Within those pages the writer comments on the specific international problems which have arisen in connection with Indonesia, China, Korea, and the former Italian colonies in Africa. A brief analysis of the "Point 4" program of technical assistance for undeveloped regions is presented, together with a report on the accomplishments of the U.N. Trusteeship Council and a brief comment on the activities for 1950 of the International Court of Justice. The readers of this chapter will be given an informative insight into the problems which confront the United Nations, particularly in dealing with the Soviet Union.

In the chapter on Conflict of Laws, Prof. William T. Tucker, Jr., not only gives a survey of the recent books, law review articles and literature on the subject, but comments on interesting cases dealing with the topics of Jurisdiction, Limitations Upon the Exercise of Judicial Jurisdiction, and Choice of Law. He expresses a hope that with the aid of future legislation, greater uniformity as to conflict of law cases should be and will be attained.

"Questions of civil rights continue to dominate the field of Constitutional Law," is the first sentence of Prof. Ralf F. Bishoff in his chapter on "Constitutional Law and Civil Rights." Where is the dividing line between individual freedom and the power of the federal government to enact measures against subversive ideas which may create a "clear and present" danger? In an attempt to suggest the scope of the problem, Prof. Bishoff analyzes numerous cases arising out of the Internal Security Act of 1950 and the non-Communist affidavit provisions of the Taft-Hartley Act. Cases arising out of loyalty programs as enacted by the several states and by municipalities were not only tested in state courts but also in the United States Supreme Court as they involved the difficult problem of freedom of speech. As in preceding years, 1950 had a significant number of cases arising out of racial discrimination, freedom of religion, searches and seizures, and the regulatory powers of the state.

Professor Bernard Schwartz's chapter on Administrative Law has special merits. During the time that the Federal Administrative Procedure Act has been in force, over three years, it has been interpreted by the courts in accordance with the intention of Congress. However, the writer points out that if competent trial examiners are not appointed by the Executive Department, the real benefits of the act will be lost. In the cases cited and analyzed, proof was given that the Supreme Court has had a friendly and reasonable attitude toward the basic principles of the Federal Administrative Procedure Act. Numerous citations were given to cases involving the scope of review in deportation and exclusion cases. The rights of the parties in hearings before the Federal Communications Commission, National Railway Adjustment Board, and other boards and commissions were briefly compared and explained. Citations to leading textbooks and law review articles are given.

Eight pages are devoted to the topic of Civil Service. With the increased number of federal and state employees who secure their classification under federal or state civil service acts and are entitled to a certain degree of tenure and privileges under the Social Security Act, the problems of administration and the complex rights of these employees under federal statutes, state laws, and city ordinances will continue to increase. With over 4,000,000 government employees and an annual payroll of over \$15,000,000,000, it is self evident there will be litigation as to examinations, appointments, promotions, veterans' preference and dismissals. In recent years, several important cases as to judicial review of dismissals have appeared. Likewise, in recent years there has been legislation by the several states and the federal government restricting the political activities of civil service employees. This field of law will present increasing problems for the legal profession.

In the chapter on Federal Income Taxation, written by Prof. Harry J. Rudick, a brief analysis of the Revenue Act of 1950 was made. Prior to 1938, a corporation which was engaged in commercial activities but by virtue of its charter distributed all its net income for charitable purposes was exempt from the federal income tax. The Revenue Act of 1950 now provides that even in the case of exempt organizations, if the organization operates a business which is unrelated to the exempt purposes of the organization, then it shall be subject to the regular corporate tax. In

other words, Congress has closed the loopholes which formerly recognized exemptions to charitable, educational and religious organizations from taxation even on income derived from commercial activities. Unique changes were made by the Revenue Act of 1950 as to the sale of partnership assets, as to what is taxable income, as to when taxes may be deferred, and as to what constitutes capital gains and losses. All these congressional changes were made primarily in order to meet the rise in federal expenditures caused by the Korean War.

The subject matter of the chapter on "Federal Estate and Gift Taxation," written by Prof. Lloyd G. Soll, includes material on transfers in contemplation of death, transfers intended to take effect at death, transfers with retention of the right to possession or enjoyment, retained powers over trusts, joint tenancies and tenancies, insurance proceeds, and gift taxes. There were not as many statutory changes in the 1950 Federal and Estate Tax Acts as in 1949. In an excellent review, the leading 1950 cases were explained and interpreted.

In the chapter on "State and Local Taxation," Prof. Jerome R. Hellerstein made a selection of unique cases, recent statutory changes and other topics which are of special interest to practising lawyers. What is the extent of the power of a state to impose a privilege tax on a foreign trucking corporation engaged exclusively in interstate commerce? The case of *Spector Motor Service Inc. v. O'Connor*, 181 F.2d 150 (1950), and related cases were the basis of his critical analysis. Interesting comment was presented on the immunity of federal securities from state taxation. In explaining the sale and the use tax, Prof. Hellerstein emphasized that the problem which troubles the tax commissioners is whether the transaction is a sale of tangible personal property or the rendition of services. Allocation of income taxes, exemption of charitable and benevolent institutions from taxation, and the liability of municipalities for taxes on property owned by the cities and used for profitable ventures were other topics presented in his paper.

The chapter on "Local Government" by Prof. William Miller contains very short comments on rent control, the model primary law, home rule, annexation, what constitutes a public purpose when promoting industrial areas, and the censorship of movies, the enactment of new building codes and the adoption of anti-Communist ordinances. The materials considered in this chap-

ter are those which are normally included in the title of Municipal Corporations. References were made to recent cases and legislation on schools, officers and employees, indebtedness, taxation, public works, torts and zoning and planning. The chapter constitutes a revisit to the law of municipalities to note the many recent changes.

The chapter on "Criminal Law" was written by Prof. Paul W. Taffan, a sociologist and a lawyer. He commented on the leading 1950 appellate cases dealing with homicide, treason, robbery, larceny, and burglary. He emphasized that while very few of the sex crime cases appear in appellate decisions, sex offenses as a whole have increased. Several states have enacted statutes aimed at the discovery and special treatment of the sex deviate. Some of the statutes provide for the commitment of sexual psychopathic persons for indeterminate periods, departing to a considerable extent from regular legal theories of criminal procedure and administration. Psychiatrists, physiologists and sociologists jointly with lawyers have an opportunity for real public service in preparing proposed legislation which will help solve this social-legal problem. Professor Taffan made extensive reference to leading law review articles, text books and case books on criminal law. One is impressed with the very real contribution of several groups of scientists to the problems of criminal law and administration.

Part II of the book includes chapters on Social Security by Lois MacDonald, Professor of Economics; Public Housing, Planning and Conservation by Herman D. Hillman, Lecturer on Public Administration; Cooperatives by Professor John Henry Merryman of the Santa Clara School of Law; The Antitrust Law by Prof. Walter J. Dernberg; Security Issues and Exchange by Chester T. Lane, former member of the Securities and Exchange Commission; Unfair Trade Practices by Prof. Walter J. Dernberg; Food, Drug and Cosmetic Law by Prof. Thomas W. Christopher; Federal Labor Law by Prof. William L. Dennis; State Labor Law by Prof. Sylvester Petro; and Wages and Hours by Prof. Robert A. Levitt. Topics such as these are, at the present time, unique and limited in importance to the lawyer practicing in the midwest. In the more densely populated areas of the country, however, they are of tremendous and growing importance. In many of these fields, lawyers, engineers, architects, economists and social workers must plan solutions jointly, in a common effort. It is evident there will

be a certain amount of social experimentation, which in time will result in litigation, adjudication, and adjustments. For the mid-west lawyer, therefore, these chapters will be of real and challenging interest. North Dakota attorneys will be on familiar ground when they read the chapter on Cooperatives, which have had tremendous growth in this state and which may be classified as big business.

North Dakota lawyers will also be on more familiar ground when they read Part III, which deals with private law. The chapter on Contracts was written by Prof. Lawrence W. Simpson. Prof. George H. Williams wrote the chapter on Agency. Prof. Ray Garrett, Jr., prepared the brief survey of 1950 cases on Sales. The chapter on Business Associations was jointly prepared by Prof. Miguel A. De Capriles and research associate Margaret P. Reichardt. The co-author of Collier, *Bankruptcy* (14th ed.), Prof. Charles Seligson, reviewed the Bankruptcy Act and the 1950 cases. There is a brief survey of corporate reorganizations under the Bankruptcy Act by Prof. John Gerdes and Teaching Fellow Dudley L. Miller. The chapters on Transportation by Arnold W. Knauth, Admiralty and Shipping by Nicholas J. Healy, Communications by Edward R. Schoen, and Insurance by William F. Johnson were each brief and meritorious. The material on Equity by Ralph E. Kharas, Real and Personal Property by Elmer M. Million and Arad Riggs, Future Interests by Bertel M. Sparks, Trusts and Administration by Dean R. D. Niles, the Law of Succession by Prof. Thomas E. Atkinson, Torts by Paul D. Kaufman, and Family Relations and Persons by John V. Thornton were extensive, well written, and of real practical value to practicing attorneys. This was equally true of the chapter dealing with Patent Law by David S. Kane. In a complex commercial and industrial economy, these subject matters are growing in importance to lawyers and business firms.

There are four chapters in Part IV, Adjective Law. Herbert Peterfreund prepared the Survey on Civil Procedure; J. Walter McKenna wrote the chapter on Criminal Procedure; Dean Judson F. Falknor of the University of Washington School of Law prepared the chapter on Evidence; and Ludwig Teller made a survey of the subject of Arbitration. There has been an extension of the use of arbitration in the field of labor, business, and international relations.

The title to Part V is Legal Philosophy, History and Reform. Chapter one is labelled "Jurisprudence" and is written by Prof.

Edmond N. Cohn. Mr. Cohn reviews the basic legal philosophy of Prof. Morris R. Cohen as expressed in his book, *Reason and Law*. The writer also discusses Jerome Frank's *Courts on Trial: Myth and Reality in American Justice*, as well as Jerome Hall's *Living Law of Democratic Society*.

Professor William T. Dean, in the chapter on Legal History, comments on Dean Pound's book, *The Formative Era of American Law*, as well as on Mark de Wolfe Howe's *Readings in American Legal History* and Prof. Hurst's book on *The Growth of American Law*.

In the last chapter, Prof. George H. Williams gives a report on "Legal Education and Bar Activities." He comments on Chief Justice Arthur T. Vanderbilt's "A Report on Pre-Legal Education," which became source material for the American Bar Association of American Law Schools in their attempt to improve the standards of pre-legal education. He refers to the merits of law schools in sponsoring legal writing and in the publication of law reviews. The legal profession, to retain the respect of the public, must not only be prepared in private law subjects but also in public law courses. Unless trained in the field of government, the voting public will prefer to select their representatives from other professions rather than from the legal profession.

The primary purpose of this extensive review of the *1950 Survey of American Law* is to call the attention of the lawyers of the midwest to this unique book and the series to which it is the latest addition. The experts who prepared this volume have made available a summary of the important legislation of the several states and citations to the legal literature of today which the busy lawyer, judge, and layman can read and study. This book and the eight prior volumes would be worth while to have in the office library or as part of the home library. The legal profession is grateful to the faculty of the New York University School of Law for having sponsored the *Annual Survey of American Law*.

OLAF H. THORMODSGARD*

CASES ON SECURITY, by Edgar N. Durfee. Indianapolis: The Bobbs-Merrill Company, 1951. Pp. Xi, 629.

This book might well be entitled "Cases and Materials on Security." The editor has limited himself to 90 leading cases — in contrast, other casebooks dealing only with the subject of mortgages

* Dean, University of North Dakota School of Law.

of real property would ordinarily contain anywhere from 130 to 200 leading cases. However, the editor has not produced a book insufficiently documented, nor one that fails to cover the subject adequately. His 90 leading cases serve as a peg on which to hang 190 or more footnote cases, many of which are set out in sufficient detail to entice the student to further investigation. Some of the footnotes are in reality rather complete editorial comments on the subjects introduced by the leading case. In short, footnotes have been used as a device to introduce the practical aspects involved in utilization of security devices, social and economic problems, and types of legislation found in various jurisdictions to meet these problems.

In addition to footnotes the author has included extensive textual treatment of the following subjects: History of Mortgages, Mortgage Foreclosure, Parties to the Action, and Redemption. Particularly effective use of text is made in the Chapter on Priorities where the general topic is introduced by a textual "orientation" of the student, and the cases dealing with mortgages for future advances are preceded by text. The balance of the chapter is a discussion of the refunding mortgage, circular priority, assignment problems, conflicting claims to land, conflicting claims to mortgage, and conflicts between assignee and mortgagor as to the amount due. The text does not consist of excerpts taken from the work of other writers, but is the editor's own attempt to explain, teach, and lead the student to a better understanding of the subject as a whole. It is a book produced from the teacher's viewpoint. Its single aim is to teach security, and the writer feels that it is well done.

If the book merits adverse criticism it would appear to be on the one score that the attempted treatment of personal property security is too ambitious for the space devoted to it. About two thirds of the book is devoted to real property security, and only one third to personal property security problems. These are materials the writer has touched upon in the course on Sales and in certain limited aspects in the bankruptcy course. From a pedagogical point of view perhaps these materials logically belong in a course on property security devices. However, the writer feels that they belong in all three places. The emphasis — the point of view — in each instance is different, and all three points of view are necessary to a better understanding of the subject of security devices. Certainly, any school adopting this casebook will find no cause

to regret that it includes a comparative study of personal security devices — even though brief. In any event, this book is a refreshing attempt to produce a teaching device rather than a heavily footnoted collection of cases.

ROSS C. TISDALE*

BOOK NOTICE

THE PREPARATION AND TRIAL OF CASES IN THE TAX COURT OF THE UNITED STATES, by Loyal E. Keir of the Des Moines, Iowa, Bar. Published by the American Law Institute collaborating with the American Bar Association, 133 South 36th Street, Philadelphia 4, Pennsylvania. 1952. \$2.50. 165 Pages.

This book is the third in a series of three which deal with the ordinary problems involved in a Federal income tax matter, beginning with the preparation of the return and ending with litigation.

The legal problems involved in the preparation of an income tax return were covered in the first book, *Legal Problems in Tax Returns* by Thomas P. Glassmoyer and Sherwin T. McDowell of the Philadelphia Bar.

The second volume entitled *Procedure Before the Bureau of Internal Revenue*, by Edgar J. Goodrich and Lipman Redman of the District of Columbia Bar, is a guide to procedure in matters before the office of the Bureau of Internal Revenue, terminating either with settlement or when the case is set down for litigation.

This third of the trilogy involves the last stage of the tax case, the preparation and trial in the Tax Court. As with the first two, this book is written as a guide to the general practitioner, even though experienced tax lawyers will also find it useful. Emphasis is on the procedural and practical aspects of tax litigation.

The book is written on a step-by-step, "how to do it" basis, starting with the statutory notice of deficiency and extending through the various stages of a tax case until it is concluded by the opinion and decision of the Court. Advice is given at the outset as to the function of the Tax Court and as to the considerations underlying the choice of the Tax Court, the District Court, or the Court of Claims, as a forum for tax controversies.

* Professor, University of North Dakota School of Law.

The author has written the text material in a personalized, easy-to-read conversational style. The sentences are short, and the words are of few syllables. To promote readability and reader interest, the author has used footnotes sparingly and has kept rules at an irreducible minimum. For the most part the problems and suggestions are illustrated by the case of William Jones. While all of the parties in the Jones case are fictitious the facts of the case are actually adapted from the author's files.

Although the book is essentially directed to the technique of litigation, special emphasis is given to the possibilities of settlement at various stages of a docketed case. In this connection the author has drawn upon his own past experience as an attorney in the Office of Chief Counsel, Bureau of Internal Revenue, to give the reader an insight into the manner in which a case is handled from the government's side.

Included in the Appendix are the Rules of Practice of the Tax Court and a Uniform System of Citation which will aid the reader not only in preparing tax briefs but in brief writing generally.

BOOKS RECEIVED

READING IN JURISPRUDENCE AND LEGAL PHILOSOPHY, By Felix S. Cohen and Morris R. Cohen. New York: Prentice-Hall, Inc., 1951. Pp. xvi, 927. \$8.50.

ADMINISTRATIVE LAW, By Reginald Parker. Indianapolis: Bobbs-Merrill Company, Inc., 1952. Pp. x, 312. \$.....

ACCOUNTING FOR LAWYERS, By A. L. Shugerman. Indianapolis: Bobbs-Merrill Company, Inc., 1952. Pp. viii, 592. \$15.00.

MODERN REAL ESTATE TRANSACTIONS' CASES AND MATERIALS, By Allison Dunham. Brooklyn: The Foundation Press, Inc., 1952. Pp. xviii, 1029. \$8.50.

GUILTY OR NOT GUILTY, By Francis X. Busch, Indianapolis: Bobbs-Merrill Company, Inc., 1952. Pp. ix, 287. \$3.50.

PRISONERS AT THE BAR, By Francis X. Busch. Indianapolis: Bobbs-Merrill Company, Inc., 1952. Pp. ix, 288. \$3.50.

POWELL ON REAL PROPERTY, VOLUME 3, By Richard D. Powell. New York, Albany: Matthew Bender & Company, 1952. Pp. ix, 880. \$1.50.