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Book Reviews

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David R. Lowell, Robert L. Burke, Florence A. Vande Bogard, Robert H. Ford, Ross C. Tisdale, and Thomas W. Benson

BOOK REVIEWS

CASES ON CRIMINAL LAW AND PROCEDURE. By Augustin Derby and Lester B. Orfield. Indianapolis: Bobbs-Merrill Company, 1950. Pp. xiii, 832. \$6.50.

CRIMINAL LAW AND PROCEDURE, CASES AND READINGS. By Jerome Hall. Indianapolis: Bobbs-Merrill Company, 1949. Pp. xiv, 996. \$7.00.

The two recent casebooks on criminal law and procedure here reviewed provide the professor of law with a choice between two up-to-date and well-balanced selections of cases, either of which is recommended for the case study of criminal law and procedure.

Co-editors Orfield and Derby, in this their third edition, present a satisfactory grouping of cases which illustrate the considerable recent development of the substantive criminal law and the even greater changes as to criminal procedure. The many changes, additions, and omissions over the prior edition are considered an improvement. Numerous annotations to the cases are provided with references to texts and law reviews; this facilitates the additional reading which must be done by the student, inasmuch as case study alone fails to provide the needed background, an indispensable element in the study of criminal law and procedure.

More attention has logically been paid to decisions of state courts than to federal jurisdiction since the larger amount of criminal practice is in the state courts. English cases serving as precedents are occasionally presented, *e. g. MacNaughton's Case*. The work is divided into two books: the first division on the substantive law and the second on adjective law. Book one considers the inchoate crimes, parties, the crimes against persons, property, criminal responsibility, and the defenses. The criminal procedure division follows the typical order of jurisdiction and venue, arrest, preliminary examination, bail, function of the grand jury, indictment and information, arraignment, trial, motions, sentence, judgment and appeal. The controversial rights provided the accused by the constitution receive detailed attention with inclusion of the recent federal cases on searches and seizures.

The outstanding work of Jerome Hall is continued with this superior collection of cases and readings. This book is also divided into two sections and is of approximately the same size and format as the above reviewed work. Yet, it is far more devoted to analysis of the criminal law and procedure. The specific material elements of the crimes are defined and examined with considerable theoretical material to aid the student.

The criminal procedure material presents the stages of criminal prosecution with much less historical background and analysis than the author has given to the law of crimes. The author has made use of the Federal rules in rounding out the subject material and has integrated them into the field of criminal procedure, federal and state. Annotations to law reviews and other texts are supplied throughout the book, particularly in the first section on substantive law which comprises approximately three quarters of the book.

David R. Lowell †

LABOR LAW, CASES AND MATERIALS. By Russel A. Smith.* Indianapolis: Bobbs-Merrill Company, 1950. Pp. xxxi, 1450. \$8.50.

Bound in a loose-leaf construction, this book is designed primarily as a course for students of Labor Law. A comprehensive coverage of the subject is made which should be of value to students and to others interested in this field of the law. To an attorney practicing in the field of labor law, the book, though of interest and of value for its source materials, would be of little practical aid in such practice as it is chiefly an academic discussion.

The material is divided into four parts with Appendices I and II.

† Member of the North Dakota Bar. Former editor of the North Dakota Law Review, now on active duty with the armed forces.

Part I (99 pages) deals with the history, organization, and structure of American labor groups, together with a treatment of the legislative attitude toward unionism. Sketches of most of the prominent labor groups and their leaders are drawn.

Part II (73 pages) through the use of text material and cases, discusses Unionization and Collective Action. The development of statutory and judicial protection against employer anti-union tactics is shown together with the judicial recognition and approval of unionism. Unfair practices and coercion by the unions are thoroughly treated.

Part III (340 pages) through the use of text with excerpts from leading cases, develops Collective Bargaining and Dispute Settlement. The subject matter of Collective Bargaining is discussed in some detail, as well as the legal status of such agreements. Arbitration as a method of settling labor disputes is also treated.

Part IV (110 pages) involves the Institutional Problems of Unions and takes up the legal status of unions, the internal operation of unions, jurisdictional controversies, and the effect of unions on our political life.

Appendix 1 lists the Legislative Regulations of Conditions of Employment.

Appendix II lists eight Federal Labor Acts.

The subject matter of this work is easy to read and is developed in a logical, uncomplicated style. The book lacks an Index which is a serious deficiency, and the numerical paragraphing system lends itself to some confusion. The author displays no apparent bias in his treatment of this controversial field of Law, which is a rare accomplishment.

Robert L. Burke †

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† Member of the North Dakota Bar.

LAW OF CONTRACTS. By Grover C. Grismore.* Indianapolis: Bobbs-Merrill Company, 1949. Pp. lxiii, 538. \$6.00.

In a clearly written and carefully authenticated work Mr. Grismore has set forth the basic rules of contract law and the theory behind them. Fundamental concepts are traced from their inception through successive modifications to their present-day form and application. Appropriate illustrations are given from the decided cases to exemplify and clarify the rules. Where a considerable conflict has arisen among various jurisdictions, Grismore first sets forth the conflicting views, then discusses the merits of each as to logic, justice, policy and business practice.

Whether the reader be interested in a broad knowledge of the field of contracts or in specific research, he will find the text an invaluable aid. Excellent footnotes refer to cases, treatises, sections of the Restatement, and law review articles in sufficient numbers to enable the researcher and the more serious student to study certain points in detail.

As the author himself states, the book follows the basic conventional course in contracts found in the law schools. There are twelve chapters dealing with the usual topics in contract law. Each chapter is divided into subdivisions. The arrangement is logical, the treatment concise. The author's stated object is to enable the student to procure a grasp of this important subject, and in this he succeeds admirably.

Mr. Grismore has not written a deep and difficult work, nor did he intend to do so. Yet, with its adequate index, authenticity, and brevity the practicing attorney as well as the student will appreciate the text. In it the attorney will find a quick means to determine the problems raised in his contract cases and how they will probably be resolved by the courts. Furthermore, the attorney will gain much by Mr. Grismore's excellent discussion and analysis of the desirability of the adoption of various views.

Florence A. Vande Bogart.†

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THE LAW OF REAL PROPERTY, Volume 2. By Richard R. Powell. Albany: Mathew Bender and Company, 1950. Pp. xiii, 857. \$16.50 per volume.

This is the second of a proposed five volume treatise. It lives up to the high standard established by the first volume which was reviewed in 27 N.D. Law Review 77 (1951).

This volume deals with Part 3 of the treatise (Permissible Interests in Land) and is divided about equally between Present Interests and a portion of Future Interests. The next volume will complete Part 3.

The first chapter is written as an introduction to the whole of Part 3 and sets out the four principal ways in which interests in land can be differentiated, viz., duration, relationship to possessory rights, degree of beneficial enjoyment, and whether the interest is owned by one or more persons. The first half of the book is devoted to present interests and follows the traditional organization based upon the estates in land, an organization which is indelibly impressed upon all property students. This portion of the book obviously stresses the duration of the interest as the basis of differentiation. Treated in order are estates in fee simple, fee simple conditional, fee tail, life, years, period to period, at will, at sufferance, and miscellaneous possessory interests including sharecropping agreements, cemetery lots and homesteads. The historical evolution of each type is traced, as well as the modes of creating the interest, its characteristics and statutory modifications, if any.

Particularly noteworthy is the material dealing with estates for years. Two hundred pages thoroughly cover such problems as rent, repairs, and condition of the premises. Statutory materials are effectively interwoven, including the emergency legislation resulting from the last two wars.

The handling of the material has been facilitated by elimination of repetition wherever possible. For example, some topics which are, as Professor Powell puts it, "cross-cutting", are to be handled separately in the volumes to come. Waste and fixtures are examples of topics that are not separately treated under each of the classifications based upon duration.

Three-hundred-forty pages devoted to future interests follow the material on present interests (the remaining one hundred ten pages comprise the Index). This material has a fine introductory chapter outlining the scope and organization of the material and tracing its historical evolution beginning prior to 1300. After the future interests have been defined and differentiated, the problems of transferability, protection, ineffectiveness in inception, termination, creation and general rules of construction, implication, and requirement of survival each receive a chapter. Again, the statutory materials are well integrated with the text.

The book covers approximately the first two hundred sixty sections of the American Law Institute's Restatement of Property, as well as much which was not treated by the Restatement, and the two sets can be effectively used together.

The writing is of an even, high quality and is recommended without qualification.

Robert H. Ford †

MATERIALS AND PROBLEMS ON LEGISLATION. By Julius Cohen. Indianapolis; Bobbs-Merrill Company, 1949. Pp. xiv, 567. \$7.50.

CASES AND MATERIALS ON LEGISLATION. By Charles B. Nutting and Sheldon D. Elliott. St. Paul; West Publishing Company, 1950. Pp. xvi, 629. \$8.50.

A comparison of these two case books is of interest because of the different methods of approach adopted by the respective editors. Mr. Cohen has directed his efforts towards training the student in that branch of the attorney's work which cannot be found in the law books. He suggests that his purpose is to build a book around the seven functions which the modern lawyer must perform while serving his client in the legislative arena: "(1) ascertaining whether given legislative means will accomplish desired ends; (2) drafting legislation; (3) engaging in those activities which are included within the permissible areas of lobbying, and counseling on matters of par-

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liamentary strategy; (4) appearing before governmental agencies engaged in administrative legislation; (5) advising clients on their rights and duties before legislative, investigatory committees; (6) ascertaining the meaning of ambiguous language when it is disputed in the courts; and (7) utilizing legislative materials in advocacy."

To accomplish his task Mr. Cohen has centered his cases and materials around the Federal Food and Drug Act. The result is a necessarily heavy emphasis on Federal case law dealing with a specialized problem. To utilize copious materials to the best advantage he has made use of the problem method, and includes problems to be used on the state level. On the policy level the book shows excellent craftsmanship. Yet one may wonder whether the author's approach is advisable before the student has received a firm foundation in the subject of legislative organization and mechanics.

Nutting and Elliott have followed the standardized approach of previous case books in the field. Contrasted with Cohen's work, this case book is primarily on the state level. To the student it offers foundation material on the machinery and functioning of legislative bodies, and an insight into constitutional limitations before proceeding into the abstract field of legislative policy and drafting. Legislation and the Common Law, Enactment of Measures, Amendment, Revision, and Repeal, Interpretation of Statutes, and Drafting of Legislation are a few of the chapter topics adequately treated.

While Cohen's book deals primarily with developing skills in guiding legislative policy through the medium of draftsmanship and other devices, Nutting and Elliott give these matters no special emphasis in a more complete but elementary coverage of the entire field. The first book is suitable for work with advanced students, while the second work, as the editors suggest, has its place in the first year before students are too thoroughly indoctrinated in the common law. Cohen's book complements the second work beautifully. The choice of materials in both instances seems excellent, and the use of the problem method by Cohen makes his book unique in the field. In keeping with the more elementary nature of the second book, materials have been kept to a minimum. Yet, those relating to drafting of statutes are deserving of special mention.

Depending upon the class and the purpose of the teacher, either book is worthy of commendation. The length of either lends itself readily to a two hour semester course.

Ross C. Tisdale †

THE UNIFORM CODE OF MILITARY JUSTICE. By Colonel Frederick Bernays Wiener.* Washington, D.C.: Combat Forces Press, 1950, Pp. 275. \$3.50.

Because of the enactment in 1950 of the Uniform Code of Military Justice, which will displace the old Articles of War on May 31, 1951, the need for a concise and simple explanation of the changes affected became apparent. Colonel Wiener's text adequately serves that purpose. Having served as Judge Advocate and having written several books on military law, Colonel Wiener has given an advance interpretation and comment as to the effect of the new law which will undoubtedly prove quite authoritative.

The explanation which precedes the body of the law is an invaluable introduction to the substantive and procedural changes inaugurated. The most revolutionary and democratic revisions are procedural: only lawyers may practice before a general court martial; the law officer now occupies a position analogous to that of a judge and does not retire with the other members of the court to decide the case; and enlisted personnel now have an absolute objection to trial by summary court martial unless they have been offered and have refused company punishment. The Colonel also questions the expediency of removing, to a certain extent, the summary nature of military law.

The law proper is set out in the form of a text according to the numerical order of the provisions of the code. Since no law can be viewed and fully comprehended in a vacuum, the superceded sections of the old Articles of War are included under their bold face counterpart in the new law. The publication of the comments and explanations of the Congressional Commit-

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tees plus the brief and informative comments of Colonel Wiener under each section give a clear insight as to the import of each section of the new law.

The cross reference tables in the back of the book provide an immediate reference from the Articles of War to the corresponding sections of the Uniform Code of Military Justice.

Since the Uniform Code of Military Justice will govern all of the branches of the armed forces, this concise text is highly recommended to any personnel who are subject to military law and also to those who are responsible for the administration of that law.

Thomas W. Benson †

UNIFORM COMMERCIAL LAWS, CASES AND MATERIALS. By Frederick K. Beutel. Indianapolis: Bobbs-Merrill Co., 1950. Pp. xxiii, 881. (Statutory Supplement). \$8.50.

This book appears to answer the problem: How can students be induced to read and apply statutes? Dean Beutel has compiled his book on the premise that commercial law is statutory law and a student should be taught to go to the statute first, cases being used only to illustrate good and bad techniques in the construction of statutes.

In view of the fact that the fields of sales and bills and notes are covered in the space of 800 pages, the question arises whether the coverage is adequate. Purely on the basis of statistics, the answer appears to be in the affirmative. Any two case books purporting to cover the same fields would require anywhere from 600 to 1000 cases. Through the use of 128 illustrative cases and numerous problems keyed to the relevant statutes and the Restatements, Beutel covers much the same material with a great saving in space, and with a change in emphasis which gives new life to the subject matter and increases the effectiveness of the book as a teaching instrument.

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Lawyers and teachers alike are familiar with the difficulties involved in the application of commercial law principles. The Uniform Acts are not closely integrated and judicial construction has only served to increase confusion. Since a Uniform Commercial Code is now on the horizon, this seems an appropriate time to abandon the case system as an ineffective crutch, and lead the student firmly into problems of statutory construction.

The book seems well planned for this purpose. By keying each problem to the relevant statutes, the student soon learns to move from statute to statute, as he formerly moved from case to case. It is one thing to read about statutes in cases, and another to read and apply the statute itself. This book has the right approach. While an elementary course in legislation would seem advisable as a prerequisite, second year students should be able to handle the course with some additional time devoted to principles of statutory construction. The editor suggests four semester hours where preceded by a course in legislation, and from five to six semester hours otherwise.

The eminence of the editor, and his long experience in the field of commercial law, leads one to believe that this book deserves more than the usual cursory examination.

Ross C. Tisdale †

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