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Book Reviews

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BOOK REVIEWS

CASES ON DOMESTIC RELATIONS. By William Edward McCurdy. Second Edition. National Case Book Series. Callaghan and Company, Chicago. 1933, pp. xix, 896.

CASES AND MATERIALS ON DOMESTIC RELATIONS. By Albert C. Jacobs. The Foundation Press, Inc., Chicago. 1933, pp. xlviii, 994.

These two casebooks, differing in marked degree in arrangement and materials of the law of Domestic Relations, offer interesting contrasts. Mr. McCurdy's casebook, as in the first edition, is orthodox; it contains no important innovations in the scope or arrangement of the materials covered. It will be noted chiefly for its fuller treatment of the topics covered. If one accepts the ideal of the compiler, he can find nothing but praise for as fine a piece of workmanship as has been given to the teaching profession in years.

On the other hand, Mr. Jacobs' casebook contains innovations in both the scope and arrangement of the materials covered; it is an unusual and at times amazing casebook. The emphasis is sociological rather than legal. Much non-legal material has been included. All the social sciences are kept in mind all the time. The course becomes a social science "problem study" rather than a law course in the orthodox sense. Such a casebook, one of the Columbia-Yale series, is interesting as an experiment.

The reviewer has chosen Mr. Jacobs' casebook for use this year. It is interesting to experiment. And sometimes progress lies in that direction.

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CASES ON AGENCY. By Roscoe T. Steffin. American Casebook Series, West Publishing Company, St. Paul. 1933, pp. xxix, 836.

In this new casebook in the field of agency one finds a regrouping of materials. This has become necessary in the opinion of the compiler because of modern business requirements. The "principal" today is the modern business organization in its various forms. Typical agents are its officers, directors, managers, and employees. Times have changed. The shift requires a reworking of materials in this field.

While the arrangement is new, quite a number of the old landmark cases, English and American, have been retained. However, more than half of the material is new to agency. An interesting innovation is a table of law review articles. Footnotes are full, authoritative, helpful.

LAW AND THE SOCIAL ORDER: ESSAYS IN LEGAL PHILOSOPHY. Morris R. Cohen. New York. Harcourt, Bruce & Company, pp. xii, 403.

In spite of the fact that each of these essays has been published in substantially the form in which it is here made available, issuance of the volume seems to constitute a landmark in the history of American thought. From many points of view, the materials in the book appear to have large significance: for the lawyer preoccupied with the purely technical problems; especially for the attorney who essays the role of community leader; for the philosopher; for the literary man; for the student of social life. The present discussion is written perforce from the point of view of the last class of readers.

The emphasis on *human* as distinguished from *property* rights marks Cohen as an unusual student of the law. The fact that judges are ordinarily elderly and have attained prominence in many instances by their activity in the protection of property rights, as is repeatedly and effectively pointed out, gives their decisions an unconscious—sometimes a conscious—bias in favor of property rights which has led to a flavor in the law distinctly antithetical to the social philosopher's insistence on the rights of human beings. It is distinctly heartening to the latter to find an eminent student of the law making such remarks as the following respecting his colleagues on the bench. "When students of history and political science gave up the ancient individualistic theories of inalienable rights, American courts still spoke of the natural rights to take property by will, and of employers as having the natural right to make their employees utterly dependent upon them by paying them in truck or company store orders, or prohibiting them from joining trade unions, etc. Teachers of legal and social science have pointed out the intellectual poverty and narrowness of vision which underlies these conceptions. I can merely add that in most cases these decisions show ignorance of what ought to be well known legal history" (p. 150). Again, in his assertion (p. 34) that the doctrine of assumption of risk becomes brutal under modern conditions of employment, he leaves no doubt as to his position on the side of those who are interested that the law prohibiting contracts against the public morals shall cover the case of those impoverished by sweatshop, predatory, or parasitic industries instead of ignoring these considerations in behalf of the interest of free contract or "property" of those who need no special solicitude on the part of the state. (*Of* p. 44 with *Adkins v. Children's Hospital*, 43 Sup. 394.) It is in this same general frame of mind that the author favors a definite state policy directed toward abolition of inheritance (pp. 27-31), though he would not suggest so sudden a change as to upset vested interests or as to break radically with expectations which have been developed under property concepts recently prevailing.

In the second place, students of social affairs find in Professor Cohen another champion of the view that the law should and can make more enlightened social ideals effective. This notion is expressed, not only in his vigorous essay insisting on the formative

character of the law (pp. 235-247), but also in his notion that the courts must make prevailing social views effective (pp. 112-148). In many of his views regarding these matters, as he himself shows (pp. 32-37 and 327-351), he follows Dean Pound; however, in the matter of the extent to which the results of judicial legislation shall be taken as definitive, he takes sharp issue with the Harvard Dean (see especially pp. 336-340); Cohen holds that the judiciary is expert in the same sense as the engineer, and his results should be reviewed and rejected in somewhat the same measure.

Observations such as the following cannot in the long run be entirely ignored. "When judges . . . speak, as they have, of being bound by law rather than economic theory, they assume their antiquated economic theories to be self-evident facts and, as such, part of the fixed legal order" (p. 201). Attention is directed (p. 200) to the fact that Mr. Justice Holmes pointed out this type of bungling in a particular case as early as 1897.

Many students of politics will appreciate Professor Cohen's protest against "our system of government by the judiciary or the aristocracy of the robe" (p. 23). Even more appreciated, perhaps, will be the evidence marshalled to show that our predominant judiciary has failed to impress favorably the rest of the world (pp. 152 ff.). This whole matter is very closely related to the vigorous opposition to Dean Pound's version of the "supremacy of the law."

Part I, "The Social Scene," is made up of a collection of book reviews. The discrimination of the author is illustrated in the review of Mr. Herbert Hoover's *American Individualism*, written in 1923, in which he anticipates the President Hoover who could share responsibility for Secretary Doak's red-baiting mania and who insisting on "rugged individualism," could watch women and children starve while the federal treasury was raided by war veterans and armaments manufacturers. Part II, "Law and the Social Order," relates a number of fundamental legal institutions to their historical and social background and puts property, contract, and even the judicial process itself in a light which many students of affairs will find largely new. Part III, "Law and Reason," having to do with the logical processes of law, will prove the least interesting of the entire volume to the social student, though its significance is easy to see. Part IV, "Contemporary Legal Philosophy," is a review of the philosophy of law in Europe and the United States. For the most part, the discussion here is associated with individual scholars who have had a large part in the formulation of current legal philosophy. Representing the United States, for instance, are Roscoe Pound, John Chipman Gray, Jerome Frank, and Mr. Justice Holmes.

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LAW OF THE PRESS. By William G. Hale and Ivan Benson. Second Edition. West Publishing Company, St. Paul. 1933, pp. x, 610.

This is a modern presentation of the Law of the Press, including statutes, text, and cases. It is designed for courses in schools of Journalism and as a handy reference manual for the active journalist. The text relative to libel, the right of privacy, and contempt has been substantially rewritten. For the purpose designed, the book is a workable, helpful manual.

CASES AND MATERIALS ON VENDOR AND PURCHASER. By Milton Handler. Property Series, West Publishing Company, St. Paul. 1933, pp. xix, 925.

This casebook is a regrouping of materials dealing with real estate contracts and conveyances. New in scope and method of organization it is designed for teaching in one course some of the materials heretofore taught in courses on Property, Equity, Procedure and Contracts. Such grouping, it is believed, will enable the student to consider the problems arising out of the transfer of real estate in their entirety.

The volume is one of a new property series regrouping and reclassifying property and related fields. The book is divided into three parts—the Real Estate Contract, The Conveyance, and Rights in the Land of Another. Cases are followed by queries and ample annotations. The queries are thought-provoking and helpful.

The reviewer finds himself much interested in this casebook but wonders how it would fit into the average curriculum. The property series of the West Publishing Company badly needed regrouping and reclassifying. Anyone who has used the series can testify to that fact. But in addition to regrouping the property material Mr. Handler has included much material commonly taught in other courses. The reviewer is a teacher of equity. He doubts that it is wise to take the materials in this casebook from the course in equity. To do so, raises once more the query: Shall equity be taught as a separate subject? But the casebook, its table of contents and its material are interesting and the experiment will be watched with interest.

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PROBLEMS IN PUBLIC UTILITY ECONOMICS AND MANAGEMENT. By Dr. C. O. Ruggles. McGraw-Hill Book Company, Inc. New York and London. 1933, pp. xv, 737.

To one familiar with the Harvard case system as used in our law schools today, the adaptation of the fundamental principles of that system for use in the modern schools of business administration is in-

teresting. Professor Ruggles' work on "Problems in Public Utility Economics and Management" is an excellent example of this use of the case system. In dealing with legal phases of the subject, the departure is not so marked. Instead of making use of the opinions of the court in such cases as *Munn v. Illinois* and *German Alliance Insurance Company v. Lewis*, the author has made use of lengthy excerpts from both majority and dissenting opinions. In management problems, mere statements are made of some utility company's effort to meet its particular problem, whether it be one of expanding sales of its product, or improving the service offered the public. In rate making questions, the reports of public service commissions have been heavily drawn upon.

The book contains, in part, at least, nearly all the most important court and commission decisions on production problems of public utilities, management; organization and finance; wholesale marketing of public utility service; retail marketing of public utility service; valuation; rate-making and fair return; and regulation and management of public utilities. At the end of each section thought-provoking questions are given, which are bound to raise interesting class discussions. The book, however, has a wider use than the class room. It should be of value as a reference book for public service commissions, company executives and lawyers.

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CASES AND MATERIALS ON THE LAW OF TRUSTS AND ESTATES. Richard R. Powell. Vo. 2, pp. xxxvii, 1040, West Pub. Co., St. Paul.

The first volume was reviewed in 21 Kentucky Law Journal 498 by Professor Carnahan. The second volume, as the first, is divided into three parts, Part IV dealing largely with income and inheritance taxes; Part V dealing with the creation of trusts and future interests and with statutory and common law limitations on the use and transfer of property, e. g., the rule against perpetuities, and accumulations; and Part VI dealing with the control, investment, apportionment, transfer of the trust *res*, powers of appointment and the extinguishment of equitable interests. The historical and introductory material is found largely in the first volume. While these volumes are intended to approach the concepts of trusts and estates functionally, and while there is some shift of emphasis, the problems herein treated are dealt with in a rather orthodox fashion. The selection of cases is excellent, and the notes, comments, and queries are clear. References to legal periodicals are found throughout.

ALVIN E. EVANS.

THE CONSTITUTION. By Frank A. Magruder and Guy S. Claire. McGraw-Hill Book Co. 1933, pp. xii, 395.

This short annotated Constitution gives the text of our fundamental law and discusses briefly some of the leading cases that have arisen under each clause. It should be of value to the layman who desires to become familiar with the elementary principles of our governmental system. It is entirely too elementary and too incomplete for a college text, although it might be useful as a handbook for a high school course in Civics. The authors in the preface point out the crying need of an educated electorate in a republic, and it is hoped that this work will be read and will stimulate a further interest in the study of constitutional law among our citizens.

FORREST REVERE BLACK.