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Book Reviews

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BOOK REVIEWS

CASES ON LANDLORD AND TENANT. By Albert C. Jacobs. Property Series, West Publishing Company, St. Paul, 1932, pp. XXVIII, 903.

The West Publishing Company is presenting a new series of casebooks on the law of real property. Four casebooks compose the series—Possessory Estates by Professor Richard R. Powell of Columbia, Trusts and Estates by Professor Richard R. Powell of Columbia, Landlord and Tenant by Associate Professor Albert C. Jacobs of Columbia, and Vendor and Purchaser by Assistant Professor Milton Handler of Columbia.

The old series of casebooks on property published by the West Publishing Company was not satisfactory. Teachers of property recognized this. The compilers of the materials themselves did not attempt to follow the selected arrangement in their classes. It is hoped that the presentation of this new series will remedy these defects.

The book contains several lease forms in Chapter I. This is unusual in a casebook but the innovation is practical since it acquaints the student with the form and structure of a lease in its entirety at the very beginning of the course. There are one hundred and forty nice leading cases. In addition many other cases are digested in the footnotes. Extensive use has been made of law review citations throughout the book. The Table of Contents indicates a comprehensive picture of the law of Landlord and Tenant.

ROY MORELAND.

THE PROTECTION OF NATIONALS. Frederick Sherwood Dunn. The John Hopkins Press, 1932, pp. 228. Price \$2.25.

This book is not so much a study of the protection of nationals abroad as it is a thoroughgoing analysis of the customary technique in international law. The second object is primary; the first really only incidental. Any other subject in international law might have served the writer's purpose equally well.

In view of the present state of international law and the increasingly heavy demands upon it this is a work of capital importance. The science of international law has long been under the influence of the positivists, and as a result it has become merely a matter of tracing actual practices, without ever examining its bases in a functional way. Its rules have inevitably become incoherent and conflicting. It is Mr. Dunns' contention that international law can never develop into a rational science until it has found a logical base in the purposes or functions which it is designed to serve in present day international life. These functions can be discovered by a systematic analysis of present rules in the light of their political, social and economic environment. Once a rational foundation has been arrived at, a logical

restatement and rearrangement becomes possible. In a concluding chapter Mr. Dunn attempts to apply this process to the rules dealing with the diplomatic protection of citizens abroad.

This is a stimulating, groundbreaking work, one for which international law has long waited. And it is to be hoped that its influence will be far-reaching.

AMEY VANDENBOSCH.

University of Kentucky.

MEDICAL JURISPRUDENCE. By Alfred W. Herzog. Indianapolis. The Bobbs-Merrill Company, 1931.

That there are many interrelations between law and medicine is a matter of course. Seldom is any one person sufficiently trained in the two sciences to be able to write a useful treatise on what is inaptly, though invariably, called medical jurisprudence. Fortunately, it would seem, the author of the most recent treatise in this general field is not only a distinguished physician and the editor of the *Medico-Legal Journal*, but he has also had a legal training.

Some of the topics dealt with are: The Post Mortem, Signs of Death and Condition After Death, Medical Expert Opinion, The Hypothetical Question, The Medical Expert, Privileged Communications, Dying Declarations, Malpractice, Malingering, Mental Deficiencies, Illusions and Hallucinations, Testamentary Capacity, Criminology, Abortion, Hermaphroditism and Marriage, Legitimacy and Paternity, and many other topics.

This reviewer has had the advantage of the reaction of his colleague, Dr. O. H. Pinney, M. D., to the book. So far as he and I have been able to check the author's conclusions we have found them valuable. The book covers the general field more thoroughly than any other with which we are acquainted. The book will be exceedingly useful to any lawyer who has much occasion to advise physicians or other clients with respect to the legal aspects of medical matters.

ALVIN E. EVANS.

CASES AND MATERIALS ON THE LAW OF TRUSTS AND ESTATES, VOL. I. Richard R. Powell. West Publishing Co., St. Paul, 1932, pp. xliii, 1027.

The extent of the modern changes from the presentation of the property field first contributed by Gray's compilation in six large volumes is nowhere more clearly delineated than in the first volume of this new work covering the combined field of Wills, Trusts and Future Interests.

One fundamental premise of the editor is that the three subjects, conventionally taught as separate fields, are in practice and in theory but the subject of property distribution and that, by proper synthesis, this fundamental unity of theoretical approach and economic purpose may be better coordinated, at the same time resulting in the saving of a substantial percentage of classroom hours. To accomplish this end the books have been divided into six main headings:

Vol. I. Part 1. Introductory, furnishing historical background and information as to economic problems.

Part 2. The formal rules of ascertainment of the manifestly desired disposition, to which effect is to be given.

Part 3. Building an instrument for the disposition of property which accurately manifests the actual desires of the disposing party.

Vol. II. Part 4. Conservation of wealth by consideration of taxing statutes by the draftsman.

Part 5. Social limitations upon disposition of property

Part 6. Problems arising in the course of effectuating the dispositive provisions.

The course covering two volumes, of which the second is in preparation, is designed for eight semester hours, whereas the generally allotted time for the subjects of Wills, Trusts and Future Interests aggregates eleven semester hours.

Some explanation is necessary of the term "Wills" as used in connection with this volume. Professor Powell has included but very little material on the handling of intestate estates and has excluded administration, as those groups are conventionally presented in case books on Wills, confining his material to what may be termed the mechanics of will making, i. e., testamentary intention, formalities of execution, mistake, incorporation by reference and revocation.

A decided contrast with the presentation used by Gray is found in the selection of materials. One of the fundamental aims is to give to the student a larger informational content, a substantial portion of this being supplied by text materials, excerpts or digests of law review articles and by digests of cases. A great number of cases have been referred to but "mere citations to cases have been reduced to a minimum. Fully three quarters of the thirty-five hundred cases referred to in these two volumes have their facts and results sufficiently given to enable the student to appraise their contribution."

While Gray had a large percentage of English cases, (and this plan was followed by Kales), in what may be called the historical approach, Professor Powell has, wherever possible, used recent American cases to illustrate the modern view of the courts. The volume also contains excerpts from nearly 550 pertinent statutes, inserted at appropriate places.

Due to the fact that there is a constant overlapping in these various fields, it is not always possible to classify cases accurately in each of the three subjects, but an attempt has been made to show the distribution in this volume of cases within these groups, as indicated in the following table:

POWELL'S COMPARATIVE DISTRIBUTION OF CASE MATERIAL IN VOLUME I.

	Pages of Materials Devoted to Group	Leading Cases in Group	Digested Cases in Group	Total Leading Cases and Digests, Period Covered.					
				English, Before 1900	English, Since 1900	American, Before 1900	American, 1900-1910	American, 1910-1920	American, Since 1920
Wills ¹	277	38	21	11	4	17	10	10	12
Trusts	337	58	42	7	3	20	12	20	39
Future Interests	413	71	39	24	4	29	14	15	23

¹ This does not include materials on descent, some of which are included in Future Interests.

COMPARATIVE AMOUNT OF MATERIAL IN SEVERAL CASE BOOKS.¹

	Future Interests		Trusts		Wills	
	Pages	Cases	Pages	Cases	Pages	Cases
Powell: Trusts and Estates ²	413	110	337	100	277	59
Powell: Future Interests	962	213				
Kales: Future Interests	723	203				
Costigan: Trusts			997	253		
Scott: Trusts			799	307		
Costigan: Wills ³					462	172

¹ This comparison is only relative, due to the fact that only Volume I has been published. A tentative index of Volume II indicates approximately equal division of space to Trusts and Future Interests. This would probably at least double the number of pages and cases devoted to each of Trusts and Future Interests.

² Using the total number of leading cases and case digests.

³ Excluding Descent and Administration of Estates.

Professor Powell has achieved well his purpose of furnishing a large amount of fact content by the use of digested cases and textual material and has supplied in the cases fact situations of modern import. But there is a tendency for students to accept as ruling law a recent decision, which tendency does not exist where selection is made from earlier cases, especially the English cases. The older cases had a decided tendency to straight reasoning, whereas many of the modern cases rely largely upon precedents and, (perhaps due to the convenience of secretaries), frequently run into unnecessary length. Since a great amount of references have been included in the footnotes, one might inquire as to the usefulness, in the main, of including citations to cases given by the courts in their opinions.

There is a marked departure from the earlier case books on Trusts

in regard to the distinguishing of trusts from other relationships. In their respective case books on Trusts, Professor Costigan devotes 266 pages, consisting of 78 cases, to this development and Professor Scott 124 pages, consisting of 50 cases. The former is extremely unwieldy. But the only reference which has been found in Professor Powell's volume is the following (footnote, p. 75)

"In the Restatement of the Law of Trusts, made by the American Law Institute, Tentative Draft No. 1, an attempt is made to state the differences between a trust and a bailment (section 8; an executorship or administratorship (section 9), a guardianship (section 10), an agency (section 11), a mortgage or pledge or lien (section 12), an equitable charge (section 13), a condition subsequent (section 14), a debt (section 15), a contract to convey (section 16), a contract for the benefit of a third party (section 17), an assignment of a chose in action (section 18), and a partial assignment of a chose in action (section 19)."

Another important departure is the failure to include any cases on the special trust analogies created on the relationship of banker and customer, conventionally included by Professors Scott and Costigan. Unless a separate course in Banking is included in the curriculum, one might wonder as to the advisability of excluding the short collection of materials which would be necessary to cover these problems.

Question also arises as to whether the material on Wills has not been unduly abbreviated. It must be remembered that the classification given above includes only Volume I, but a tentative outline of Volume II does not indicate any substantial inclusion of material on Wills. It is true that there is a considerable duplication of Wills in both Trusts and Future Interests but, from a pedagogical standpoint, is not a sufficient amount of duplication desirable to warrant extending somewhat the number of cases on Wills? The emphasis of the work, by page content, is strongly toward the other two fields, suggesting a minimizing of the importance of the material conventionally included in a course on Wills.

An overlapping is indicated in the suggested Part 4, the conservation of wealth of the disposing party by due consideration of taxing statutes. If a course in Taxation precedes the course on Trusts and Estates, the section may well constitute a brief review by indicated application to special problems; if otherwise, might this not be left for the later courses?

Professor Powell continues the insertion of questions to bring out theories and comparisons applicable to the cases. "By this device the students when they come to class are nearly as far along as otherwise they would be at the end of the class. The class time can be used in going further." There has been some objection to this method upon the ground that the students should work out this approach for themselves. But there are strong proponents for each view.

The book shows the result of great research and painstaking compilation and offers a decided variation from the stereotyped method of

case preparation particularly objected to by third year students. A special effort has been made by the presentation of appropriate materials and questions to stress "the social implications of the clauses written into trusts and wills. " and "the social consequences of wealth accumulations, of the institutions of inheritance and testamentary disposition. " The material has been tested by Professor Powell and others over a period of several years, and pedagogical experiment has demonstrated to the editor the utility of the selection and arrangement. There is no better proof of the value of a case book than its usefulness as a teaching tool and the first volume appears to offer a worth while teaching method in the coordination of the three branches of the law included within its scope.

WENDELL CARNAHAN.

University of Louisville, School of Law.

SOCIAL POLITICS AND MODERN DEMOCRACIES. By Charles W Pipkin. New York. The Macmillan Company, 1931. Two volumes, pp. xii, 377, xii, 417. Indexed.

In these two well-indexed volumes Professor Pipkin thoroughly and authoritatively describes the social, economic, and political conditions in England and France since 1800. The events of the past century are dealt with more generally in order to provide the necessary background for such a study and the last three decades are intensively dealt with.

One volume is devoted to England and the other to France. Social legislation, industrial regulations, labor organizations, civil service, trade unions, pensions, factory regulations and many other phases of the social and economic life of these two great countries is clearly and interestingly presented. Professor Pipkin compares the conditions of one country with that of the other in such a manner that the reader gets a picture of the situation in its entirety. His understanding of the legal implications naturally involved in the development of such a subject is one that should be of great aid to the law student. This work should be of especial interest to the student of law because the author succeeds in showing the relationship of legislation in both countries to the movements in the realm of industry. There is no better way to come to a full understanding of our own laws and regulations dealing with pensions, workmen's compensation, minimum wages, social insurance, housing, unemployment, and a multitude of other phases relating to modern labor in this complex social system than by a careful perusal of these volumes. The layman will find plenty of interest and will no doubt be surprised to learn that England and France have accomplished so much in this field while we lag far behind.

The reader gets an insight into the workings of two great democracies. An opportunity is afforded to compare the technique and methods so differently employed by each country to attain a certain end. The effect is to make one more apprehensive of whether this democracy of

our own is headed and more appreciative of the accomplishments as well as the problems of England and France.

PAUL K. WALP.

Superior, Wisconsin.

PROGRESS IN INTERNATIONAL RELATIONS By Manley O. Hudson. 1932, pp. x, 162, index. Stanford University Press, Stanford University, California.

This attractively written volume is an outgrowth of the Borah Foundation Lectures which were given at the University of Idaho in 1931. There are ten short but adequate chapters outlining the development and measure of progress in the international field. The author describes the nature of international organizations prior to 1914, going as far back as the beginning of the Nineteenth Century to compare the facilities of communication with those of today. He next shows the influence of the World War on international relations. The League of Nations, the International Labor Organization, and the Permanent Court of International Justice are briefly but clearly described together with an inventory of their respective records. The current development of International Law, world peace, and the position of the United States in relation to international organization are other topics dealt with. The reader not only gets an excellent description of the growth and trend of international organization in connection with the various agencies established during the past sixty years but he is also impressed with the part played by the United States in promoting this progress. The book is readable, convincing, and scholarly. It does not go into details or treat with minutiae so as to be tedious or tiring. Law students will find the portions on the World Court and the current status of International Law stimulating and informative. It should be remembered that the author is also a lawyer. The appendix contains the Covenant of the League of Nations, roster of League Members, and the Statute of the Permanent Court of International Justice.

PAUL K. WALP.

Superior, Wisconsin.

OUR WONDERLAND OF BUREAUCRACY. By James M. Beck. Macmillan & Co., 1932, pp. xv, 272.

James M. Beck in his book, "Our Wonderland of Bureaucracy" presents a vivid and amazing picture of the mushroom growth of bureaucracy in the federal government. In the Introduction, the author states that no attempt is made to set forth the many admirable features of some of our government bureaus. Rather his purpose is to show the effect of this development (1) in changing well established principles of constitutional law, (2) in relation to the problem of public indebtedness, and (3) on the morale of our citizenry. The Lord Chief Justice of England, the Right Honorable Lord Hewart, has written a similar warning concerning the growth of bureaucracy in that country in a thought-provoking book, "The New Despotism."

This work, by a former Solicitor General of the United States is timely in a period of depression when one of the chief problems confronting the federal government is the balancing of the budget. It seems to the reviewer that the chief merit of the work lies in the fact that it acquaints the layman with the existence of a serious problem and may serve as a basis for arousing his interest. Before anything can be done to dispose of useless and duplicating bureaus and commissions and bring about an intelligent reorganization and consolidation of government departments, it will be necessary to study the very problem that the author omits; to-wit; the comparative utility and necessity of the various boards and commissions constituting our bureaucracy.

Some may think that the work is useless in that it is an attack on a growth that is inevitable. Obviously, it is no valid argument against the present system to state that "if Washington, Hamilton, Franklin and Madison were to revisit our land, they would not recognize their own handiwork." It is not convincing to hark back to the "Golden Age" and quote the philosophy of the Sage of Monticello that "the best government is the one that governs least." With the very complexity of modern life, the development of administrative agencies is inevitable. The only realistic attack that can be made is as to the limits, extent and scope of that growth, and on this reasonable men may differ.

This work is written in a controversial style; it is intended as a challenge; and the author in marshalling facts and figures gives an incomplete picture. If it is to bear fruit, it seems to the reviewer that its main function is to direct attention to some of the flagrant injustices, wastes and indecencies connected with our bureaucracy. It is outside the realm of practical politics to attack the system of bureaucracy as an outlaw and demand its complete destruction. But it is one of the most pressing and practical of political problems to remove the waste and inefficiency and despotic practices in our government bureaus. We believe, that Mr. Beck, as a propagandist has made a contribution toward the creation of an aroused public opinion which is an indispensable requisite to any lasting reform.

FORREST REVERE BLACK.

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