

Washington University Law Review

Volume 14 | Issue 3

January 1929

Review of “Trade Associations: The Legal Aspects,” By Benjamin Kirsh

Joseph A. McClain Jr.
Washington University School of Law

Follow this and additional works at: https://openscholarship.wustl.edu/law_lawreview



Part of the [Law Commons](#)

Recommended Citation

Joseph A. McClain Jr., *Review of “Trade Associations: The Legal Aspects,” By Benjamin Kirsh*, 14 ST. LOUIS L. REV. 338 (1929).

Available at: https://openscholarship.wustl.edu/law_lawreview/vol14/iss3/19

This Book Review is brought to you for free and open access by the Law School at Washington University Open Scholarship. It has been accepted for inclusion in Washington University Law Review by an authorized administrator of Washington University Open Scholarship. For more information, please contact digital@wumail.wustl.edu.

Book Reviews

TRADE ASSOCIATIONS: THE LEGAL ASPECTS, by *Benjamin S. Kirsh*. New York: Central Book Company, 1928. Pp. 271.

The courts in this country once held with Adam Smith that:

“ . . . people of the same trade seldom meet together, even for merriment and diversion, but the conversation ends in a conspiracy against the public or some contrivance to raise prices.”

According to Mr. Kirsh, however, this view has been relinquished and more evidence than mere meetings or organized activity is required to cause the court to find that competition has been interfered with unduly. In fact, the author believes that a new era has arrived in the field of trade association activities. Not only does he perceive a tendency on the part of the courts to give sympathetic consideration to unified efforts of trade associations in the fields of trade statistics, credit bureaus, uniform cost accounting methods, patent interchange systems, uniform basing point systems, simplification and standardization of products, collective purchasing bureaus, and promotion of foreign trade, but he finds that the legalistic approach is being abandoned in applying the Sherman Act and more and more the courts are examining economic and other non-legal data before passing on the legality or illegality of such activities. And for his conclusions the author certainly has some evidence, and it is hoped that more will accumulate.

The author attempts to say what *may be done* as well as to say what *can not be done* in the way of organized activity, and this attempt is truly worthwhile to lawyers and business men who desire some information on what is permissible as well as to know what is forbidden. But, as he admits, the decisions are not yet clear enough to enable one to draw definite lines in many instances.

On the whole the book is a distinct contribution to the law surrounding trade associations and general questions arising under the Sherman Act. At times one is inclined to feel, however, that the author has interpreted in too favorable a light certain cases of the Supreme Court, for instance, the Maple and Cement Cases, for it is very difficult to say just how far the Court has committed itself in these and other comparatively recent cases which seem to favor organized activity in certain fields. Then, too, there seem to be instances in which the treatments of trade association practices slightly overlap, but in the majority of instances such overlapping appears to be a necessity in order to get a well developed treatment.

The post-war conditions in regard to production, distribution, and sale are effectively analyzed and their relation shown in the development of a more scientific attitude on the part of the courts in dealing with problems which they had formerly treated in purely a legalistic manner. The constant references to non-legal material are very valuable in throwing light on the views of business men and in accentuating the economic factors involved in the legal control of industry, and all of these virtues make the book a

very valuable one for reference as well as for its critical attempt to evaluate the technique of the courts in handling modern business problems.

J. A. McCLAIN, JR.

Mercer University Law School, Macon, Georgia.

LAW FOR ENGINEERS AND ARCHITECTS, by *Laurence P. Simpson* and *Essel R. Dillavou*. St. Paul: West Publishing Company, 1929. Pp. xvii, 633.

This volume is described by one of the authors as intended to satisfy the need for a book which will furnish the information that will assist the professional Engineer and Architect "in avoiding unpleasant and expensive pitfalls, and to aid him in protecting his employer's and his own rights and interests." If this is true and if "engineers and architects have become counselors and advisers in the investigation and promotion of enterprises, and the main reliance of the building owner for the knowledge he must have as to the requirements demanded by law relating to his project," the book devised for the purpose will be sadly inadequate.

It is not believed that the above quotations, taken from the preface, rightly state the objective in the preparation of the book, or else the contents of the volume are not in accord with its purpose. What has been done, and within the scope of a small book very well done, is a presentation of the general principles of business and property law in convenient form for a course in that subject, such as is usually given in engineering and architectural schools. The book offers no threat that the engineer or architect will become the counselor or main reliance of the builder from the legal standpoint on matters other than those relations of everyday life, with which every person concerned with such matters should be familiar. It furnishes a concise treatment of the general principles of contract law and the law of agency, sufficient to take care of the daily conduct in such matters and to warn of the need of a lawyer's advice when matters become at all complicated or pathological. In the treatment of the subjects of Workmen's Compensation in 60 pages and Regulation of Public Utilities in 40 pages, it is obvious that only enough of the subject matter can be given to indicate that there are pitfalls for which a lawyer's advice is the only aid possible. That an engineer or architect should know the general principles involved in the attachment of and release from mechanic's liens, or the steps necessary in securing an easement before erecting a telephone line on another's property, is very proper. An outline treatment in a few pages, with some illustrative cases will teach him and remind him that here are possible pitfalls to guard against and regarding which it is wise to get expert advice.

It were well for everyone, as well as engineers and architects, to know as much or more of the law of negotiable instruments and of sales than is given here, very concisely and well edited, but in such brief form as to arouse the curiosity rather than to offer possibility of mastery.

And so, as a law book, it is a well edited hand book of information on those rules of conduct in some of the common relations that arise between engineers and architects and their clients, illumined and made interesting with well chosen cases from which the technical and procedural portions