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Review of “Primer of Procedure,” By Delmar Karlen

William Wirt Blume
University of Michigan

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BOOK REVIEWS

PRIMER OF PROCEDURE. By Delmar Karlen. Madison, Wis.: Campus Publishing Co. 1950. Pp. XV, 525. \$6.50.

It should be noted at the outset that "this book is not for lawyers, but for people who want to become lawyers." (Preface, p. viii) Designed for law school use, the book is an extensive introduction to the field of procedure, consisting of four parts: (1) Analysis of a Modern Lawsuit, pp.7-120. (2) Law and Equity, pp. 123-172. (3) Record of Trial, pp.175-453. (4) Excerpts from Federal Rules of Civil Procedure and Forms, pp.457-516. Parts (1) and (2) are text. There are no cases.

In part (1) Professor Karlen patiently leads the beginning law student through the entire course of a civil action, beginning with the summons and ending with the appeal. He states the usual practice (sometimes the Wisconsin practice) ignoring exceptions, and, to a large extent, splits of authority. There are no foot-notes. The object, apparently, is to describe, but not to state, the law of procedure. The materials are simple and clear, and as accurate as the method of treatment permits. Professor Karlen recognizes the difficulties encountered by beginning law students in their first study of procedure, and makes a sincere attempt to minimize these difficulties. The relation of rules of procedure to substantive law is especially troublesome. On p.30 he says: "Every rule of substantive law can be translated into a statement of the factual conditions for the granting of a legal remedy." He does not, however, show how this method of analyzing substantive law will aid in relating it to procedure. He points to a most important key but does not tell his readers how to use it.

Part (2) of the book contains a brief description of the most familiar of the common-law forms of action, followed by similar materials dealing with the rights and remedies recognized and enforced by the old courts of chancery. In tracing the history of *assumpsit* Professor Karlen includes the implied-in-fact promise—a step in the development of *assumpsit* which is often overlooked. There is a text account of *Scott v. Shepard* (The Squib Case), but no other cases. Without illustrative cases, the historical development of the forms of action will be difficult to teach.

Part (3) of the book contains a transcript of the entire record of an actual case. This type of material, while not authoritative, is quite valuable for teaching purposes. It should be noted, however, that the record selected by Professor Karlen is not entirely satisfactory. The case involved a breach of promise to marry. The defendant was a married man who claimed that plaintiff knew he was married when she came to live with him. She claimed that she did not know he was married, but lived with him in reliance on his promise of marriage. She kept his love letters, and introduced them in evidence. Some eighteen pages of the transcript are occupied by this worthless material. The testimony was concerned

with their relationship over a period of years, their sexual activities coming into the story from time to time. Most of the testimony is uninspiring from a romantic viewpoint, and of minimum value from a legal viewpoint. The record is unusually free from rulings on objections, which is good from one viewpoint, but not from that of a teacher who wants to illustrate the procedure of a trial. A better selection would have been an ordinary negligence case. Instead of one long record, three short records might have been better: (1) A contracts case. (2) A torts case. (3) A property case. If sex materials have to be presented to interest beginning law students in procedure, I, for one, am ready to quit the struggle.

Part (4) of the book contains many of the Federal Rules, but not all.

As to how Professor Karlen's book can best be used, I hesitate to say, not having used the book in class. It seems clear, however, that its use will not eliminate the need for teaching all branches of the law of procedure, except, perhaps, the forms of action. The time usually allotted to the forms of action might well be spent on Professor Karlen's *Primer of Procedure*.

William Wirt Blume *

* Professor of Law, University of Michigan.