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Book Reviews

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BOOK REVIEWS

Cases on Labor Law, by Milton Handler, Columbia University School of Law. American Casebook Series. About 786 pages; green fabrikoid binding. West Publishing Company, St. Paul, Minnesota.

The manner in which Labor Law shall be taught in modern law schools has been the subject of a good deal of discussion, which has not resulted in any general agreement. Some adhere substantially to the old method of grouping the course about the various forms of relief granted in the different situations, others abandon the subject entirely as a separate and undertake to teach the procedural aspects in regard to Administrative law concerning the N.L.R.B., and the substantive principle in connection with the separate topics to which they relate, such as Contract, Torts, and Property Law. Neither of these methods stand the real test, if we can observe common concepts or principles which courts of law apply in the treatment of different problems. In this selection the cases have been arranged on the assumption that there are such concepts and principles and that the best method of approach is to develop in the minds of the student a familiarity with the concept and then let them observe for themselves the construction handed down by the Supreme Court.

The book and the intention for which it was written can best be described by the author's own words: "The book deals first with the objects of labor combinations and then with the means by which labor through concerted action seeks to attain its ends. In this way, the means employed can be appraised in the light of the ends sought. Whatever may be the significance of ends in the labor law of the future a thorough study of labor's purposes and objectives deepens one's understnding of the narrower issues presented by the case.

In the selection of cases there has been no conscious inclusion or rejection of a case either because it is new or because it is old. In each section the cases have been arranged to show first the general principle applied, and then its limitations or qualifications, and its special application. This generally results in beginning with some of the old land mark cases and proceeding to more modern ones.

While the modern trend is to stress modern law material there has been included in the first chapters a historical background to give one the early development of labor law. The material included is of considerable non-legal writings which richly serve as a necessary background for the discussion of the legal issues presented in later chapters.

The book is of special significance at this time because the philosophy of labor law has changed radically from the early law. At one time in our history the early law made combination of workmen for mutual aid and protection a criminal or civil conspiracy. From a dormant state of sleep, Labor awoke—organization of workers was the fashion, collective bargaining was the craze, higher wages and shorter

hours was a promise, and the closed shop became proof of their power. In this book we see the principles of labor being stated over again, and I venture to say that fifty years from now we shall have it in a form no man could possibly conceive. This book concerns itself with the development that is transpiring.

The book is divided in eight parts corresponding to the main periods of American labor policy: 1—Objects of Labor Combinations. 2—Picketing and the Labor Injunction. 3—Inducing Breach of Contract. 4—The Boycott. 5—Labor Combinations in Restraint of Trade. 6—Construction and Administration of the National Labor Relations Act. 7—The Collective Bargaining Agreement. 8—The Union and Its Members.

The greatest research contribution is to be found in the first part. There has heretofore been little systematized knowledge concerning the early law of labor, along with its purpose and the means of obtaining those ends.

The policy of the second period, aimed at encouraging picketing and as to whether it was lawful or not depended upon the purpose with which it was carried on. In addition, a broad view is given to the modern legislation of the Clayton Act, Norris-La Guardia Act and the use of the injunction.

The trend of the third period which is classified as "Inducing Breach of Contract" consists mainly of the element necessary in causing a breach of contract. The progression of cases discloses that every contract, regardless of its nature, was viewed from the idea of tort. Later, inducement of breach gave way to prevention of performance and included interference with contractural relations. They even included negligent interference with contract as a cause of action.

Hitherto, one of the justifications offered by labor in obtaining their end was the idea of Boycott. This brings us to the fourth period and can best be defined as the "refusal to deal."

Next, we spring upon a much discussed section dealing with Labor Combinations in Restraint of Trade. In this period we are concerned with the problem of restraint upon commerce affected by a labor union in order to promote and consolidate the interest of its union.

The most important section in the book is the Construction and Administration of the National Labor Relation Act. It covers the constitutionality of the act, Interference, Restraint and Coercion, Interference with Labor Organizations, Discrimination, Collective Bargaining, Investigation of Representatives, State labor relation acts and numerous subsections, followed by a chapter on "collective bargaining agreements."

Mr. Handler has done a good job of research, has analyzed and organized his material well and has presented them with critical consideration. Anyone wishing to obtain the latest view on Labor should purchase Mr. Handler's book "Cases on Labor Law."

—John P. Flanagan.

Lawful Actions of State Military Forces, by Colonel Edmund Ruffin Beckwith, George W. Bacon, James G. Holland, Joseph W. McGavin. Random House, Publishers, 1944, New York, N. Y.

The first paragraph of the introduction of this book gives the main ideal or summation of the purpose for which this book was written: "This book is concerned with the citizen-soldier of a state when in time of public peril he is called upon to perform military duty at home among his fellow citizens. It deals with his lawful powers, and the restrictions on them, when he must discharge the responsibilities of a soldier in the midst of his own people."

The authors have accomplished this theme by the excellent method employed in writing the book. It is more like a dictionary and very easy to find certain specific information in a hurry. All the topics under the chapter headings are numbered continuously with no break in numeration and problems are often cited with their solutions following.

In many instances when there is a conflict of military law and decisions handed down by the court, the authors put down the best possible solution and yet keep from impairing the various court decisions as much as possible.

Another feature is that it is not too involved, it would make a good book to read for general knowledge, and not used as a reference book for military problems only.

On the whole it is a good book, easy to read and understand, a good source of information and very valuable to a lawyer for obtaining specific information in a hurry. It is the first of its kind and sets an excellent standard for the rest to follow in this particular field.

—*J. M. Chrisovergis.*

McKelvey on Evidence, Fifth Edition. One of the Hornbook Series. Published by West Publishing Co., Saint Paul, Minnesota. 1944. Bound in red Fabrikoid. Price, $5.00.

A work such as this is difficult to review in its entirety for in such a review the important and new material should be treated—in this book it would necessitate an entire reprint, however, we herein take notice only of the numerous additions in the fifth edition that make it an indispensable reference for both student and practitioner.

In the first chapter Mr. McKelvey gives a definite reply to the critics of the rules of evidence who say that the rules have been outmoded by the civilization and need of speed in the courts of today; it is titled "Future changes in the rules of evidence."

Another new section, in chapter two, the author examines instances where the doctrine of Judicial notice has been misunderstood and mis-

applied. Under this main topic he states, "the extreme to which the doctrine may reach will be found in a case where it was held the court will judicially notice, and decide a case upon, a state of facts which is contradicted by an admission of the defendant and by evidence, on the ground that such a state of facts is a matter of common knowledge." Further along, the author states, "The principle underlying such cases is that where alleged facts testified to are opposed to all natural laws and common experience, courts will refuse to believe them, on the ground that they will take judicial notice of the incredibility; . . ." the author asks the question ". . . and where is the distinction between what the courts must, and what they may judicially notice?" In the succeeding section as to facts that may be judicially noticed at the discretion of the court, it is noted that the party adversely affected by the facts given judicial notice may and should be permitted to introduce evidence to disprove such facts. An unusual situation is presented wherein the author cites a case where the Judge himself took the stand, was sworn and testilfied to certain facts.

Under the subtopic *matters relating to the government* the author gives a better outline of the topic classifying as to legislative acts, the rule in the state courts, the rule in United States courts, and distinguishing, the law from statutes and court decisions, as to proceedings in other courts, as illustrated the appellate and circuit courts, the final section treats judicial notice in relation to executive acts.

In Chapter XXI the author has added two new sections "Questions of fact preliminary to admission of evidence" and "Law and fact in negligence cases," which he formerly treated under the heading of the "provinces of court as to question of fact"; further adding to the value of his text and facilitating the search for a particular topic by the user of his book. Again, in Chapter V, Sec. 55, 56, 77 and 78, this is evident as the author separates two closely related rules and treats them individually.

The improvement continues as the author further increases the exactness of his work by classifying as in Chapter V. Sec. 79 where he distinguishes criminal and civil cases as to requirements necessary to overcome the presumption of innocence. Under "Presumption of Knowledge of the Law" Sec. 81 everyone is presumed to know the law. Mr. McKelvey cites in note 33 cases which would seem to show that the time worn saying that "everyone will be presumed to know the law" is not one that applies in all cases.

In Chapter VI concerning admissions and their classification the author has again broken down the general heading into a number of sub-headings treating each as an individual topic and supplementing it with specific cases and discussion.

In discussing the Pleas of Guilty and its statutes, a valuable addition is made to an already well treated subject.

Under the title of Physical objects; weapons and similar objects are discussed from a view to the essential characteristics of a confession.

In his chapter on Opinion evidence the author has discussed the growing trend toward opinion testimony connected with everyday life of modern civilization. In the same chapter the author has broadened his treatment of opinion evidence as to handwriting.

In conformity with the trend toward administrative agencies the author discusses in his chapter on Hearsay Evidence the relaxation of the common law rules in proceedings before quasi-judicial bodies.

In Chapter XIV the author discusses physical objects as evidenciary material and the exclusion of objects which may unduly arouse the sympathy or passion of the jury.

The chapter on Pictorial Evidence is no doubt the most outstanding new contribution to the authors book in that it surveys an entirely new field of evidence and no doubt is the most complete treatment of that subject that could be found in any work of its kind. The author shows that the development of pictorial evidence began with the occasional use of a photograph by a witness to explain his testimony; here the photograph is treated as illustrative evidence. Where the phtograph is used as new evidence it serves as a witness.

In conclusion may we say that throughout the fifth edition the author has amplified and clarified; generally increasing the treatment and discussion of practically every section; citing the more recent cases treating the particular subject matter. The special section dealing with Photographs is especially noteworthy in that this is a relatively new field in evidence; and though not practical for class room use photographs do add to the presentation of the case to the court and jury. Progressive judges of today place their whole-hearted approval on this type of presentation and in this work the author has presented this subject in its entirety. The subject matter of evidence is vital to the lawyer as it is his chief "stock" or "tool of the trade" without which he cannot hope to succeed no matter how well he may know substantive law. McKelvey on Evidence fifth edition is the "Plumbers pipe wrench" which fits the every need of both student and practitioner. The writer believes that this fifth edition is a must for the shelves of every law office and library.

—*Peter F. Nemeth.*