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Book Review: AMERICAN CIVIL PROCEDURE / MILITARY LAW UNDER THE UNIFORM CODE or MILITARY JUSTICE / CASFS AND MATERALS ON THE LAW OF CORPORATIONS

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BOOK REVIEWS

AMERICAN CIVIL PROCEDURE. By William Wirt Blume. Englewood Cliffs, New Jersey: Prentice-Hall, Inc. 1955. Pp. 432. $6.50.

SPANNING as it does the fields of common law, code and equity pleading, and making an excursion into the field of evidence, the course charted by Professor Blume in his book *American Civil Procedure* encompasses an almost limitless procedural horizon. To explore fully each of the topics on which this work touches could involve little less than an encyclopedia of procedure. Accordingly, since the text is limited to 432 pages, each of the areas of procedure are, of necessity, treated in summary form.

Professor Blume explains in the preface that the manner in which the material is organized and presented in Part I, entitled Claims for Relief, is a reflection of the view that every rule of substantive law can be translated into a statement of the factual conditions which form the basis for the granting of a legal remedy. The major portion of the first chapter, Legal and Factual Conditions of Relief, is therefore devoted to a description of the relief available in each of the principal civil actions at common law, under the codes and in equity. In each instance there is an enumeration of the factual conditions that must prevail in order for the particular relief to be available. Compressed as this material is within a chapter of 37 pages, the author can do no more than set forth certain fundamentals in summary form, the actions of replevin and detinue, for example, each being dealt with in a single paragraph.

The succeeding five chapters of Part I "consider the procedural steps that must be taken to show to a court that all substantive conditions of the relief sought have been met." The initial chapter in this group, Statement of Factual Conditions, describes the allegations a plaintiff must make in his declaration, complaint, or bill in equity, in stating the various causes of action, numerous illustrations being used as a supplement to the textual material. This is followed by a chapter, Proof of Factual Conditions, which briefly touches upon some of the more important problems of evidence, including burden, method, and technique of proof. In the next chapter, Statement of Legal Conditions, the emphasis is placed upon instructions to the jury, and by way of illustration, liberal use is made of charges taken from the reports of decided cases. A chapter on Finding of Legal and Factual Conditions, dealing primarily with the verdict, followed by a chapter on Basis and Form of Judgment, round out Part I of the text.

In Part II, entitled Civil Actions, the author has included chapters on the Commencement of a Civil Action, the Scope of a Civil Action, and the Trial of a Civil Action. These chapters include a discussion of parties, jurisdiction, venue, defenses, demurrers, motions, and manner of presenting a case to a jury, as well as numerous other procedural problems. As all of this material is presented in 178 pages, the treatment of each topic must obviously be tailored to meet the limitation in space.

As an outstanding scholar in the field of procedure who might have compiled a major treatise on any one of the areas treated, Professor Blume has, instead, chosen to prepare a work which might best be described as an outline of numerous aspects of civil procedure. Despite the fact that the book's usefulness is limited by its summary treatment of complex problems, the material has been thoughtfully organized, the writing is incisive, and the presentation is made with a fine clarity of style. It does not appear that this work could be effectively utilized in law school procedural courses in view of the fact that generalization must necessarily conceal, rather than reveal, the complex problems involved in the subject matter with which it treats. This is apparent when consideration is taken of the fact that, for example, little more than a page is devoted to a statement of the hearsay rule of evidence and its exceptions.

However, this is a book which could, with good purpose, grace the shelf of a law office. By its very nature of treating in summary form such a wide range of problems on procedure, it may afford the attorney a quick and ready reference to be used in refreshing his recollection on problems with which he has not dealt for some time, or with which he has had but limited experience. Having quickly reacquainted himself with the problems involved, he may then turn to his state statutes, reports, and digests, and find a solution to the problems with a minimum expenditure of time.

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MILITARY LAW UNDER THE UNIFORM CODE OF MILITARY JUSTICE. By William B. Aycock and Seymour W. Wurfel. Chapel Hill: 1956. University of North Carolina Press. Pp. 430. $7.50.

ON MAY 31, 1951, the Uniform Code of Military Justice became law, supplanting the Articles of War which had been in effect, in one form or another, since June 30, 1775. This act substantially revised both trial and appellate review procedures with respect to all the armed services. In particular, it established a Court of Military Appeals as the highest appellate tribunal in the courts martial system.

This court, composed of three civilian judges, only two of whom can be members of the same party, has rendered many hundreds of opinions during its brief tenure. It is the authors' avowed purpose to collect and analyze this fundamental body of military case law. Expanded from five law review articles, their book covers the first three and a half years of the court's life and it is a safe bet that no significant decision during that time has been overlooked.

It is impossible (and unfair) in a short review to consider the many aspects of military justice so thoroughly explored by Messrs. Aycock and Wurfel. However, several points deserve special emphasis because of their jurisprudential importance. One of these is that involving the power of federal courts to grant writs of habeas corpus to examine the legality of military detentions.

The authors argue with some heat the only the federal court in the district in which the military prisoner is confined should issue the writ. Until the recent decision in *Toth* v. *Talbott*,[1] they had ample authority to buttress their position.[2] However, it seems to me that their insistence on this restrictive viewpoint is unrealistic in the light of the extremely broad coverage of the Code itself in terms of persons affected.

Article 2 extends military jurisdiction to conform with the necessity for worldwide troop distribution. It does not seem quite equitable to deny to service personnel stationed overseas the right to use this traditional writ on the strength of the shibboleth that the Constitution does not follow the flag. Despite the *Toth* case, it might yet be incumbent upon the Congress to specifically extend the habeas corpus jurisdiction of, say, the District Court for the District of Columbia to cases where the petitioner is confined outside of the geographical area of any federal district court.

Parenthetically, it might be noted here that the *Toth* case also invalidated Article 3(a) of the Code which permitted the military to try discharged veterans for certain crimes committed while in service. This decision, of course, was rendered after the publication of this book and marks the first constitutional reversal suffered by the Code.

[1] 350 U. S. 811, 76 Sup. Ct. 1, 100 L. Ed. 4 (1955); see p. 218 *supra*.
[2] See Ahrens v. Clark, 335 U. S. 188, 68 Sup. Ct. 1443, 92 L. Ed. 1893 (1948).

That it is not destined to be the last was indicated by *Covert* v. *Reid*[3] in which that portion of Article 2(11) which subjected persons "accompanying the armed forces without the continental limits of the United States" to trial by courts martial was declared unconstitutional.

The authors make a valiant, although I think comparatively meaningless, effort to exorcise the term "military due process" as an "unhelpful catchphrase . . . of nebulous meaning." In its place they would substitute the phrase "material prejudice" which the Court of Military Appeals has plucked from the language of Article 59 of the Code.[4] Under this term, they would lump all the traditional violations of procedural and substantive due process so familiar to the civilian lawyer. However, they go one step further and subscribe wholeheartedly to the Court's recent conclusion that "certain violations of military due process may . . . be cured."[5] This "purgation" theory is intriguing, to say the least, and deserves much more space than is allocated to it here.

This is an excellent volume which should be in the library of all concerned with military justice. Succinctly written and extremely well-documented, it exhaustively covers the case work of a new court which, if its career has been brief, has made the most of its time. It is to be hoped that the authors keep up with their subject's output in the future and revise their book accordingly as new cases change, as they will, existing law.

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CASES AND MATERIALS ON THE LAW OF CORPORATIONS. Second Edition. By Robert S. Stevens and Arthur Larson. St. Paul: West Publishing Co. 1955. Pp. 741. $12.00.

THIS is a new edition rather than a new casebook and I do not think it an untoward comment that the major and significant difference from the first edition is in typography. The new work employs a system of dividing each page into two columns of printed material instead of the usual running of a printed line across the entire page. This technique has accomplished the result of compressing the 1200 pages of the first edition into the 741 pages of this edition with about the same amount of material.

To effect this economy of pages it is also necessary to physically use more of the same size page so that the top, bottom and side margins are now smaller. It is obvious that this plan yields more lines per page, but I cannot state as a fact that the type is smaller or that there is less space between lines or both. However, I can state that this new format makes it more difficult for me to read, whether it be an optical illusion or not.

As a chronic and confirmed user of the margins, top, side and bottom, for writing comments and notes, I must add that I am jealous of the encroachment upon that space. Without laboring the point further, it is sufficient to say that the new format makes more difficult the already difficult task of case reading.

Insofar as the book itself is concerned, it is my opinion that the old edition was one of the best in the field and I am of the same opinion concerning the second edition.

Basically the new edition represents the bringing up-to-date of an eight-year-old volume. There is no change in the approach to the problem of presentation. In case

[3] 24 U. S. L. WEEK 2238 (1955).
[4] See United States v. Berry, 1 USCMA 235, 2 CMR 141 (1952).
[5] United States v. Gibson, 3 USCMA 512, 517, 13 CMR 68, 73 (1953).

content, 58 old cases have been replaced by 28 important recent decisions. Most important, however, to student, teacher, and lawyer is the fact that the text and footnote material has been substantially revised and brought up-to-date.

In a course like Corporations, the importance of cases and materials can not be over-emphasized. The editors, realizing that the course covers a vast area, have attempted to highlight the problem with illustrative cases and then develop the same and the collateral material in the text and footnotes.

There is also a thorough collation of the materials to appropriate statutes with scholarly distinctions being drawn between the common law and statutory rules. Sound pedagogy requires a complete statutory analysis in this course, because of the bar examiners' increasing curiosity in this subject and because it is a subject which frequently confronts even newly admitted members of the bar. Even a new edition of a casebook which did nothing more than include the recent major statutory changes would be worth the effort.

In this work the text and notes not only contain the newest legislative changes but the newest judicial construction thereof. An example of such a change is the inclusion by the editors of the new New York statutory rule concerning the irrevocability of proxies which became effective in 1953. This is important, of course, to New York students, who must know this statute, and to all students generally, as it represents a liberal trend in the proxy coupled with an interest field, which fact is pointed out in a revised footnote on page 186 of the casebook.

An example of the latest judicial construction is found in the notes after the *Brentmore* case in the casebook. The problem deals with the rights of holders of voting trust certificates and the editors point out that the *Brentmore* case[1] was one in which the certificate holders sought only the names of the holders of other such certificates.

After outlining further questions arising out of the same problem, and the pertinent statutes, the editors bring to the reader's attention a recent New York case which allowed the beneficiary of a voting trust to inspect the corporation's books of account.[2]

There are also frequent references to the Model Business Corporation Act and an attempt to show state acceptance of that suggested legislation.

The "materials" text is very detailed and is mostly in the form of comment and analysis of cases in point and of law review articles. The editors have also made available generous references to the learned text writers for the ambitious or interested students.

In the first edition the editors included as a main case, one decided by the Appellate Division of the New York Supreme Court.[3] Shortly after the appearance of the casebook the New York Court of Appeals reversed[4] the Appellate Division. The case is now relegated to a footnote, with the story told there of the reversal. I for one would have preferred the lower court decision to have remained in the casebook to demonstrate the power of a persuasive dissenting opinion, of which Justice Cohn's was a classic example.

In addition to reversals, a new edition should present important and interesting

[1] Brentmore Estates, Inc. v. Hotel Barbizon, Inc., 263 App. Div. 389, 33 N.Y.S. 2d 331 (1st Dep't 1942).

[2] In the Matter of Zlota Baczkowska v. 2166 Operating Corp. et al., 304 N. Y. 811, 109 N. E. 2d 470 (1952).

[3] Baker v. Macfadden Publications, Inc., 270 App. Div. 440, 59 N. Y. S. 2d 841 (1st Dep't 1946).

[4] Baker v. Macfadden Publications, Inc., 300 N. Y. 325, 90 N. E. 2d 876 (1950). (1950).

cases newly appearing on the legal horizon, and quite a few are in the new edition. Since proxy fights are now frequently appearing, many interesting questions arise in litigation. The editors have included a new main case on reimbursement by the corporation of the proxy campaign expenses of management and the opposition,[5] and related materials in the text and notes.

The editors have included as a main case a recent decision by the New York Court of Appeals[6] which will undoubtedly find its way into many casebooks in this course. The problem is whether a stockholder's suit to compel the payment of dividends is a direct or a derivative suit. It is collaterally important in New York because that state requires certain stockholders to post a bond as security for costs in derivative actions. The decision is as close as it can be in New York, 4 to 3, and the majority and dissenting opinions are thorough and instructive. The editors point out law review comments on this case, as they do throughout the work, and have a very interesting footnote following it.

I do not feel that anyone would profit by an analysis of the table of contents of this work. The editors have carefully covered the field in my opinion but I would have preferred a few more recent cases on minority stockholders, who are also employees of close corporations, litigating their rights under stockholders' agreements preserving their right to be employed, against the will of the majority.

Aside from the unfortunate change in format I find the new work a highly effective teaching device and carefully and thoroughly put together.

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[5] Rosenfeld v. Fairchild Engine & Airplane Corp., 284 App. Div. 201, 132 N. Y. S. 2d 273 (2d Dep't 1954). This case was affirmed in 309 N. Y. 168, 128 N. E. 2d 291 (1955); *reh. den.* 309 N. Y. 807, 130 N. E. 2d 610 (1955).

[6] Gordon v. Elliman, 306 N. Y. 456, 119 N. E. 2d 331 (1954).