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Zelermyer: Legal Reasoning, The Evolutionary Process of Law

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tudinarian, as is too often the case in this area. The proposed remedial statute is a model of careful draftsmanship, studiously defining a maximum of prohibited areas of conflict of interest while avoiding areas where conflict of interest can be made to appear only by a specious process of verbal logic. The over-all plan of the proposal goes far towards achieving a balance between preserving the public interest against probably countervailing private interests of employees, and preventing frustration of the public interest through discouragement of government service by those who justly feel that over-rigorous conflict-of-interest prohibitions demand too great a sacrifice of their personal economic interests. And, while the proposal of the Committee satisfies the test of realistic pragmatism, it is also quite apparent that the purpose and aim of the proposal is the idealistic one of achieving, by legal machinery, the establishment and maintenance of an optimum ethical standard of conduct for government officials.

It is to be hoped that the inherent excellence of this report, coupled with the prestige of its sponsors, will persuade the Congress to take action, at an early date, in this long-neglected field.

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Legal Reasoning, The Evolutionary Process of Law. By William Zelermyer. Englewood Cliffs: Prentice-Hall, Inc. 1960, pp. ix, 174.

In this brief and readable book, Prof. Zelermyer gives us a glimpse of what goes on in the judicial mind in formulating an opinion. He demonstrates that, despite the doubts of some laymen and most first year law students, there *is* logic and reasoning behind the decisions that appear in the various reporters and casebooks. In the opening section of the book, we are introduced to the seven categories of legal research material which the author compares to the seven seas. This wealth of material demonstrates that there is no such thing as "the law" from which instant and easy decisions may be made. Indeed, when we see the vastness of the seas that must be explored in arriving at the decision in one case, we might wonder that decisions are given as quickly and clearly as they are. The opinion, incidentally, that is given by way of illustration is one in a case involving two rival dancing schools and it is well and wittily written, showing that the law need not always be dull and that judges can, and often do, see the humorous side of problems they are called upon to decide.

In the conluding pages of this first chapter it is shown that even in applying a statute, which perhaps comes closer than anything else to conforming to the popular idea of "the law", a great variety of factors outside the statute itself must be taken into account—so many indeed that quite often a court's interpretation of a statute seems directly opposite to what the words used by the legislators appear to mean. This result may puzzle

those not trained in the law, and even on occasion those who have been so trained. But a reading of this chapter shows that there is a reasoning process behind such results. We may or may not agree with the reasoning but it is there.

In the second chapter of the book there is explored the reasoning which lies behind the decision of a personal injury case. The famous *Palsgraf* case is used as an example. This is the longest and perhaps the best section of the book, involving, as it does, a painstaking analysis of the factors considered by both the majority and the dissenting justices in deciding the difficult question of causation posed by the case. The treatment of the specific facts in *Palsgraf* is prefaced by a brief general discussion of rights and duties, interesting in itself and useful in setting the stage for the brilliant display of legal reasoning engendered by Mrs. Palsgraf's ill-fated excursion to Rockaway Beach. The case is traced from the Supreme Court trial, through the Appellate Division and finally into the Court of Appeals, where the two previous verdicts for Mrs. Palsgraf were reversed and judgment given for the defendant, Long Island Railroad. The appellate judges considered a vast number of cases in arriving at their various conclusions and these are cited and quoted from extensively to show the reasoning behind these decisions. The fact situations are, of course, different in those cases, since the *Palsgraf* case involving a woman hit by a scale, knocked over by the explosion of a package of fireworks, which had been jostled from under the arm of a man boarding a train several feet away, was highly unusual. In fact, *Palsgraf* sounds more like a tort examination question than something likely to happen.

All the myriad cases cited, however, although differing factually, involved the question of causation, the vital problem in *Palsgraf*. The long series of citations and quotations demonstrates how a judge reasons from dissimilar fact situations involving similar legal questions to arrive at a decision in the particular case before him.

The reasoning of both majority and dissent is sketched out showing that equally good legal reasoning can lead to two different results—a fact hard for many laymen to realize.

The chapter ends by showing how the *Palsgraf* case decided in 1928 has now slipped into the stream of legal thought and become itself an oft-cited case on the question of causation.

Prof. Zelermyer then turns from the field of torts to that of labor relations and discusses the changes that have come about in the past seventy years in the treatment of labor-management disputes by legislatures and courts.

The history of the subject is traced from the 1890's when labor unions were enjoined as unlawful conspiracies. We see how, gradually, changing ideas as to the respective rights of labor and capital brought changing premises as foundations of legal reasoning and in the results of that reasoning. These changing concepts show vividly how flexible a tool is legal reasoning, and how wrong is the notion that the law is set and immutable. The

law is, rather, ever-changing, ready to meet the demands that it uphold new rights with the variations occurring in a changing society, yet always on guard to see that existing rights are not infringed.

In this section we see the interplay between court and legislature, how judicial thinking has been changed by legislation, and how in turn court decisions have brought about the passage of new, and the amendment of old, statutes.

The book closes with a short discussion of the flexibility and changeableness of the law and a warning to beware of drawing general conclusions from a reading of one case.

To sum up, *Legal Reasoning* should prove interesting and informative to those who have ever wondered as to what lies behind the pronouncements handed down by our courts of law. The book is well written and readable, and, since it is beamed primarily toward those outside the legal profession, Prof. Zelermyer was wise in deciding to omit the use of footnotes, so dear to the hearts of legal writers.

All in all, the book is well done and worthy of a reading by anyone interested in the law, particularly law students, or litigants, potential or actual.

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