Clark, G. L., The Law of Torts

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system will enable us infallibly to reach the pre-appointed text for the matter in hand. No doubt Professor Cook would cheerfully concede this. And in the hands of a teacher of his stamp one may be sure that the right emphasis will be put in the right place. Yet even a tempered analytical exposition must always postulate something that is not in the legal materials themselves. It cannot be applied to them in a thoroughgoing way without doing them a certain violence. When we postulate a logically interdependent body of legal precepts, logically derivable from a few principles, or logically referable to certain distinctions, we are creatures of the scholastic jurisprudence in which the foundations of modern legal science were laid. This does not mean that we are to throw over our analytical method. The teacher must seek to put his corner of the law in the order of reason, and to teach the student to do the like for each fragment with which he has to do. But he must bear in mind that the analysis is his attempt to make the law intelligible, and that analysis is not law, nor are systematic categories of legal authority. Students are so prone to tie to schematic outlines which they may commit in lieu of thinking, that the common-law teacher cannot be too insistent that there is no authoritative and all-solving institutional scheme of Anglo-American law.

Also one may doubt whether the general topics in this first volume ought to take up one-third of a whole course in equity. The meaning of "jurisdiction" may be brought out as the matter comes up incidentally in cases in other connections. A large part of the study of specific performance is a study of what is meant by inadequacy of the legal remedy. Another large part of specific performance is a study of the principles governing the exercise of the chancellor's discretion in which the balance of convenience, and the policies as to the exercise of jurisdiction involved in the maxims, are continually presented. It is entirely possible to teach these things effectively from Ames's cases, although no special chapters or sections are devoted to them. Indeed, if we are to keep our courses within reasonable limits we must proceed in some such way. It is not necessary to have an express treatment of a subject in a case book in order to bring it out by teaching from the cases therein.

With all allowance for such considerations, however, system is a great need in our law. Certainly the systematic treatment of equity will owe much to this volume, and teachers of equity will await with lively anticipations the two that are to come.

Roscoe Pound.


It must require some courage on the part of a present day author, especially if he has a well-informed interest in the history of law and the distinctions in our legal doctrines, to set forth "The Law of Torts" in three hundred and forty-four small pages of large type. Any one of a half dozen divisions of his subject might readily tax the limits of a bulky volume. Probably, an exact and scholarly effort to set forth a ground plan for our law of torts as a whole, or to present a scientific classification of torts, or to show their historical development in Anglo-American law, with adequate concrete illustration, would have room enough in a volume of this size. But the treatise in hand discloses no objective of this sort. Its orientation of the subject of torts as a whole is slight and superficial. It offers no classification of the individual torts. Its order of treatment of tort topics follows the line of no scientific or historical
analysis, but has been determined, as the author remarks, "by considerations of convenience of treatment rather than of logic."

In an introductory passage, the author states that the newer topics in torts, "such as liability for negligence and for interference with business relations, are so largely unsettled that it is well nigh impossible to take up the subject of torts as a whole." But this little book shows no purpose to give a systematic exposition of the principles underlying any one topic or any one group of topics — no such purpose, for instance, as characterizes Baty's *Vicarious Liability*. Nor does it make any such attempt as appears in Scott's *Fundamentals of Procedure in Actions at Law* — to vitalize the discussion of a few difficult phases of some of the broad problems with which the law student has to deal at the outset of his course.

The opening topic, Trespass, and the Defenses to Trespass, is followed, in this order, by Conversion, Fraud, "Nuisance and similar wrongs," "Damage through negligence or by accident," including Proximate cause, and Contributory misconduct of the plaintiff, Liability of employers, Defamation, Wrongs through malice, "Interference with various relations."

The work concludes with a chapter very properly entitled "Miscellaneous," presenting, in thirteen pages, the law of torts on Interference with monopolies, Interference with trade interests, "Disparagement of property— non-defamatory statements—privacy" (all in one section of fifteen lines), Contribution and reimbursements between tort feasors, Parties to tort actions, Death by wrongful act, and, finally, "Mental pain and nervous shock."

But even without a definite objective in the general field or in some division of it, this short treatise is an interesting book and is worth a reading. On almost every page the law teacher or the law school upper-classman will find a miniature of a familiar acquaintance in his tort casebook, from *I. de S. et ux. v. W. de S.*, in 1348, down through the centuries. It is very much as if a painstaking student in torts, with a good case-book or two, each, say, of some sixteen hundred pages of cases set forth for a prolonged, inductive study by the student himself of the principles of torts, had attempted to give the point and bearing of each of the more important cases, in the fewest possible words, with brief mention of other cases in point, with frequent references to articles in the leading Law Reviews, with convenient key-number references, and with a line or two of comment or suggestion here and there by the author himself.

So considered, the work has merits. The cases, there are some eighteen hundred of them, appear to be well selected and grouped effectively under apt section headings. The case statements, in the text and in the notes, are plain and concise. Many references to specific Law Review articles bearing on the topics presented or discussing particular cases appear in the notes. The key-number references, frequently in connection with the citations of old cases and the earlier Law Review articles, furnish material aid. And the author's brief comments raise new questions and stimulate further enquiry.

A few of these comments and some of the case-statements appear to be more stimulating than accurate. But *omnis definitio in jure civili periclosa est*. One of the greatest of American law teachers claims that in his many years of teaching he has made for his students but one definition; and he still repents of this one. The present treatise might well be used to point the moral that brief statements of legal principles made without a showing of their underlying reasons, and five-line statements of the facts of cases in which the decisions run close to different principles of law, may be as dangerous as definitions.
BOOK REVIEWS

The value of the book will depend on how and by whom it is used. If it is used by law students in an effort to learn the law of torts by means of predigested tablets, without rumination, its effect can hardly fail to be harmful. On the other hand, the conscientious law student, digging out the principles of torts through his careful analysis of individual cases, will find this small book of use in several ways. It will put him on the track of additional cases to be tested; it will raise stimulating questions as to the correctness of various statements in the book; and it will encourage and facilitate the student's use of the Law Reviews.

CHARLES M. HEPBURN.


Mr. Brown attempts the impossible, and, from the viewpoint of the readers he seeks, he succeeds. He attempts to explain to laymen the legal principles involved in the fairly complex legal subject of municipal bonds. The laymen who read his book, the "bond men," are enthusiastic over it. For them it ignores what they call the technicalities and red tape of the law and it gets down to their much loved brass tacks. Such a book is difficult for a lawyer to review. The very elements in it that bring forth the enthusiasm of its readers are depressing to a lawyer. Its jaunty style, the off-hand assurance of opinion, are at variance with the bar's tradition of legal texts.

But this is not a legal text. It is more and less. It avowedly is written for those whose business is with the buying and selling of municipal bonds. The effort made to state the legal side of the subject meets with but moderate success. The sections on the business side of the subject are presented in an even-handed method that achieves distinction. A broad working knowledge of the business is combined with a canniiness of observation that results in a pleasing and valuable dissertation on practical points. The treatment of sales at par and evasions thereof is an example.

The field of the subject is well outlined and discussion is furnished of all its outstanding features. The pedagogical arrangement of principle followed by illustration is frequently used. Charts, tables, and forms abound throughout the book. Appendices furnish a definition of terms, a copy of the 1921 North Carolina Municipal Finance Act, and an "Outline Analysis of Subject" that adds little to the table of contents. The matter of proportion is one for personal judgment, but to some it may appear that the author stresses too lightly the important difference in safety between a security that is a general obligation of the issuing municipality, for which a general unlimited tax levy can be compelled, and the great class of securities shading off in desirability from those that have a limited tax levy to those payable slowly from a special assessment against benefited property. Nor is the distinction made between a bond and a warrant, nor between a bond and one of the many hybrid forms of certificates of indebtedness that recent legislatures have been all too fond of fathering.

The lawyer's interest centers in the legal phases of this work, and here irritation arises. The definition of a negotiable instrument as "an obligation which may be transferred free from equitable defenses which the maker may have against the original holder" is as inaccurate for the attorney as it must be useless for the uninitiate. Its only justification is to prove again the futility of mere definition as an aid to elementary exposition. The statement is made that a blank bond which is stolen and