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BOOK REVIEWS

CASES AND OTHER MATERIALS ON JUDICIAL REMEDIES. By Austin Wakeman Scott* and Sidney Post Simpson.** Published by the Editors, Harvard Law School, Cambridge, Mass., 1938. Pp. xi, 1309. Price: \$7.00.

This book has been prepared by its authors to be used in a new first-year course at the Harvard University Law School. Any valid appraisal of the book must give controlling consideration to the purpose of its authors and the place of the book in the curriculum of the school it was designed to fit. The value and deficiencies of that curriculum (if any) become pertinent subjects of discussion. Professor Simpson has made the following statement concerning the new course: "The first year there are to be four full courses and two half courses, one in each half year; a course in Procedure—we are calling it Judicial Remedies and Procedure—which will be taught very largely from an historical standpoint, which will cover court organization, the forms of action, something as to common law pleading and procedure, the history of equity, something of equity pleading, and something as to the jurisdiction of equity as it is exercised in tort and contract cases. That is a departure for us. In prior years we have had a first year course in Civil Procedure at Common Law, and second year and third year Equity courses. Now we propose to increase the number of hours in the first year procedure course and put some equity into it."¹

The book contains materials on the following subject-matters: Judicial Organization, An Outline of Proceedings in an Action at Law, The Common Law Forms of Action, Pleading in Actions at Law, Trial Procedure at Law, Appellate Review at Common Law, Judicial Jurisdiction of the Person, *Res Judicata*, Attachment and Garnishment, Enforcement of Judgments, Extraordinary Legal Remedies, History of Equity, An Outline of Proceedings in a Suit in Equity, The Exclusive Jurisdiction of Equity, The Concurrent Jurisdiction of Equity, The Auxiliary Jurisdiction of Equity, Equity Procedure, Enforcement of Equitable Decrees, Effect of Decrees, Equitable Execution, Procedural Merger of Law and Equity, and Modern Civil Procedure.

It will be noted from the above that the course for which this book has been produced supplants the former course in Civil Procedure, which was designed to take care of the introductory work in the first-year curriculum. This book, it will be observed, deals with four rather distinct subject-matters: (1) the Organization of Courts; (2) the Historical Development of Common Law and Equity; (3) the Substantive Law of Equity; (4) Civil Procedure, both in its historical and modern aspects. The latter does not purport to be an exhaustive treatment of the subject-matter, for it is to be supplemented by a course of four semester-hours in the third year. However, the distinctly procedural materials in the book occupy some 831 pages out of a total of 1273 pages, or approximately two-thirds of the book.

The Common Law Actions is a subject-matter which is still found in practically all first-year curricula. The inclusion of similar materials in the field of Equity is not so common, but the present case-book constitutes additional evidence of a growing conviction that a beginning student needs instruction in that field. Apart from the procedural and jurisdictional aspects of those subject-matters, the materials are definitely in the fields of Legal History and Judicial

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1. Handbook of the Association of American Law Schools, 1937, p. 62.

Process and should be dealt with primarily on those bases. In the present case-book those two subject-matters are separated, and this seems to me to be the principal objection to the organization of the materials in the book. Something will be gained when the author of a case-book in this field consolidates and integrates those materials so that the historical development of our law is dealt with as one subject-matter. Certainly a great deal can be said for the effectiveness of teaching those subject-matters by placing the contrasting materials side by side. The student under such an arrangement would stand a much better chance of developing a real understanding of modern law and would have a truer picture of the English development.

As a basis for an introductory course, this case-book, in comparison with several other efforts along the same line, has paid comparatively little attention to the subject of Court Organization. There are no materials in the field of constitutional law or elementary legal philosophy and likewise none on "the attorney as officer of the court". Likewise, the book makes no effort to introduce the beginning student to the subject-matter of Legislation and Legislative and Judicial Processes in that field. Professor Simpson has publicly stated that those omissions were both intentional and justifiable. As to the subject of the Legal Profession, he has said this:

"That there is a demand for the inclusion of courses in Legal Ethics in law school curricula is undeniable. This demand, while it probably reflects to some extent fear by an overcrowded profession of 'unethical' practices which may result in increased competition, involves in the main an attempt to raise the standards of the legal profession in the public interest. To some extent, it represents the reaction of the profession to public criticism of law and lawyers and to insistent demands that it put its own house in order. But while the main basis of the demand is a noble one, the remedy demanded is a snare and a delusion. To quote from the Committee on Curriculum: 'Either . . . a course (in Legal Ethics) would be one in legal etiquette, which we believe to be unnecessary; or one in how far a lawyer can safely go, which we believe to be pernicious; or one of 'hortatory moral instruction', which we believe to be useless; or one to prepare men for bar examination questions on the Canons, which we believe to be no function of the School.' . . . The public character of the lawyer's function and the duty of the university law school to communicate to its students a sense of responsibility and the ideals of what should be a profession of justice cannot be too much stressed. But this inescapable duty of a law school can be discharged best—indeed, in my judgment, it can be discharged *only*—by making every course in the school to some extent a course in the social significance of law and the responsibility of lawyers. The imparting of such moral education must proceed indirectly and interstitially but always pervasively in each law teacher's instruction and in his relations with his students."²

He has expressed the same general judgment as to materials on Legislation; that is, the subject-matter is valuable but can well be taught as an incident to other courses. (This was stated at the meeting of the Association of American Law Schools in 1937.) That judgment actually conceives of the subject-matter of Legislation as being relatively unimportant. It is not worth devoting much time to and then only incidentally. One could teach any of the accepted first-year subjects as a by-play to other courses. Clearly, for example a faculty could teach the subject-matter of Contracts as an incident to courses in Torts, Criminal Law, or Property. I can see no reason why that would not be as effective as teaching

2. Simpson, *The New Curriculum of the Harvard Law School* (1938) 51 HARV. L. REV. 964.

the subject-matter of Legislation under a similar scheme. The judgment actually assigns to the field of Legislation an unimportance which is in keeping with the common law dogma on the subject but which is unrealistic so far as modern law is concerned. Any judgment which assigns a value to the niceties of the law of consideration above that of the field of Legislation must finally rest on tradition without other merit.

The judgment against the value of some special attention to the subject-matter of the Legal Profession is open to the same criticism. There may be good reasons for not openly teaching this subject but the reasons assigned are not those good reasons. It is as easy and as effective to teach the law of Crimes and Torts and Contracts by precept as it is to teach the law governing the legal profession. The fact is that there is a very considerable body of substantive and procedural law in that field, whereas Professor Simpson apparently regards the subject-matter as one dealing largely with the problem of good manners and morals. Offhand I should think that one would have as much difficulty teaching the rules peculiar to the relationship of attorney and client by conduct as he would in teaching the general law of contracts by conduct.

The conclusion expressed to the effect that students will learn only to evade the rules of professional conduct if they learn what they are shows an amazing lack of confidence in the substantial character of a law school student body and is defamatory so far as the Harvard student body is concerned. Again the reason given applies equally well to the courses in Contracts, Torts, and Crimes and all courses for that matter. If students are taught the accepted legal standards in those fields, they will inevitably misuse the information! It is somewhat unusual that a university will urge ignorance as a university objective.

Character is one thing, and knowledge or information is another, but most people think that the latter improves the former. Character in its native state is very infrequently conceived of as being the best attainable. Most people might agree that it cannot be improved much by preaching, but they ought to disagree on the proposition that it is improved by ignorance.

Professor Simpson's position ascribes a substantive value to the subject-matters omitted which is at odds with observable facts and proposes an instructional method which is open to the criticism of being superficial and ineffective.

So far as the procedural aspect of the book is concerned, the book represents a compromise between first-year work on this score which is definitely introductory, and first-year work which is definitely exhaustive. Most schools still place the detailed courses on Procedure late in the law school curriculum and devote little time to the subject in the first year. There are advantages and disadvantages to a scheme which places the subject-matter of Procedure exclusively in the first or third-year curriculum. The materials on this subject in the book under discussion are really quite comprehensive and cover the subject in considerable detail.

The principal objection to the Harvard arrangement is one of duplication. The new Harvard curriculum includes in the third year an additional course in Practice which is described in the current Harvard Law School Register as an "advanced course in pleading and practice, with particular reference to the Codes and Federal Rules of Civil Practice". The present book already covers Code and Federal procedure in considerable detail.

The value or necessity of teaching procedure twice is open to serious question. On the face of it, one might about as well have third-year courses in all of the first-year work. If one is going to teach Procedure in the third year, much can be said in favor of minimizing the procedural aspect of a first-year course on the subject and thus making room for the subject-matters omitted by this case-book and its course.

One may accept without question the scholarly and instructional value of this case-book over the subject-matter covered. The caliber of the authors of the book guarantees that the materials used represent a high standard of careful scholarship. The materials are certainly carefully selected and are annotated with exhaustive references to additional materials. As stated earlier in this review, the final value of this book can be appraised only in the light of the curriculum it was designed to serve and the value of such a curriculum. This reviewer believes that the first-year curriculum can very advantageously be broadened to include the subject-matters which this case-book omits, even at the sacrifice of a first-year consideration of the details of Procedure. At least, if one omits those subjects for the reasons assigned by Professor Simpson, he falls far short of making out a *prima facie* case.

Bernard C. Gavit.†

PRINCIPLES OF BUSINESS LAW IN PENNSYLVANIA. (Second Edition.) By Sheldon C. Tanner.* George T. Bisel Co., Philadelphia, Pa., 1938. Pp. ix, 860. Price: \$5.00.

This bulky volume is a second edition of a work originally published in 1934. It has been enlarged and so thoroughly revised that it is in many respects an entirely different book. Perhaps, the most noticeable improvement is the elimination of the lengthy statutory quotations conspicuously appearing in several chapters of the earlier edition. These statutory excerpts have been summarized and illuminated in a textual form.

The book, as its title indicates, is distinctly a Pennsylvania manual; but the decisions and rules of law in other jurisdictions have not been overlooked. Frequently the law of other states is discussed and distinguished. The book is arranged in an orderly manner along standard lines. It cannot be classified as a book adhering strictly to the "functional approach" of business law. There is the usual introductory chapter on the study of law, followed by chapters systematically and thoroughly treating all the principal topics usually listed under the head of business law. The greater portion of the text is given over to the law of contracts, with separate chapters on Offer and Acceptance, Seal and Consideration, Contractual Capacity, Good Faith and Business Transactions, Unenforceable Contracts, Statute of Frauds, Operation and Interpretation of Contracts, Discharge of Contracts. Other chapters deal with Personal Property, Agency, Partnership, Corporations, Negotiable Instruments, Judicial Process, Bankruptcy, Real Estate, and Decedents' Estates.

The work, of course, is of little value to the practicing lawyer as it is entirely too elementary and is presented in a general form. It is designed primarily to meet the needs of college academic students and business men. A knowledge of the law is no longer regarded as the property of lawyers alone. *Principles of Business Law in Pennsylvania* is for the man of business a safe and reliable guide, by aid of which, he can avoid many of those hazards of litigation that often so seriously disturb success. It fulfills an educational want, which is becoming more and more imperative, as the modes of business become more complex, intricate, and extended. A text that treats only the law of a particular state is usually less confusing and far more understandable to laymen than a general text not stressing the law of any particular jurisdiction.

A business man should not study law in order to become his own lawyer. There is an old saying that "a man who is his own lawyer has a fool for a client".

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