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Book Review. Toulmin, H. A., Trade Agreements and the Anti-Trust Laws

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Practitioners should find the book useful for the same reasons. The volume contains full references to the *Restatement* and to L. R. A. and A. L. R. notes, which aim to take the place of exhaustive citation of cases.

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Trade Agreements and the Anti-Trust Laws. By Harry Aubrey Toulmin, Jr.¹ Cincinnati: The W. H. Anderson Company. 1937. Pp. xviii, 540. \$7.50.

"When Moses mounted Mt. Sinai with his code of Ten Commandments," begins Mr. Toulmin's book, "he started the code making industry." If this statement were historically accurate, it would still be irrelevant. Reading it, one insists to oneself that the book cannot be as bad as that; but plodding through the succeeding pages one is forced to the conclusion that really it is. It is difficult to be fair, consequently, to the author's evident sincerity and earnestness or to the compendium of materials which his pages contain, albeit incomplete and badly arranged.

The volume is mainly concerned from a legal point of view with codes of fair practice and patent-licensing arrangements in relation to the anti-trust laws. Its purpose "is to tell the businessman what he can do as well as what he cannot do." That purpose is unfolded in a rambling text whose organization has only a remote relation to the chapter and section headings into which it is divided; which is filled with irrelevancies, inconsistencies, and inaccuracies; and which is unsupported by authorities for many of the statements which it contains. Not a single law review article is cited and most of the books which have appeared upon the subject are ignored.

As regards arrangement, it is true that codes and trade practice submittals are dealt with in the first part of the book, and that the Robinson-Patman Act is treated at the end. The latter subject, however, claims sections 9, 10, and 11 near the beginning, under the chapter heading, "What the Trade Practice Submittal Means to Business." Patent arrangements are covered in Part II, "Industrial and Trade Agreements," with a brief discussion of international cartels thrown in. Within the sections, incongruous material is frequently jumbled together. Thus section 6 refers in quick succession, under the heading "Early Attempts at Codes in the United States," to service clubs, trade associations, patent pools, price-fixing by patentees in connection with

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licenses to manufacture, the arrangements which govern Lloyds of London, the "need of this nation for spiritual regeneration in business fair play," and "the bitter fruits of living by the commercial knife." In Chapter V, misbranding is mentioned over and over in indistinguishable ways, under section headings which suggest related topics, such as deceptive practices. In section 31, price discrimination by absorption of freight charges is treated under the head of "Contracts," following sections which deal with good faith in the making and carrying out of contracts. Resale price maintenance is discussed in general terms in the chapter on patent pools and patent licenses (sections 106, 107). The treatment of the scope of interstate commerce awaits the discussion of the Robinson-Patman Act (section 124), with no analysis of the cases cited, which have arisen in many fields of regulation. Price-fixing of all sorts, governmental and private, is dealt with in a miscellany of material in section 63, which cites *United States v. Standard Oil Co.* and omits *United States v. Trenton Potteries Co.*

Inconsistencies appear frequently. On page 17, "the anti-trust laws have substantially emasculated business trade associations"; on page 21, trade associations can enforce "respectability" by publicity or penalties, or leave the offender to "the mercies of a government regulatory body." An encomium of the Supreme Court's patent decisions (p. 176) is partially offset (p. 186) by severe criticism of the cases which invalidate the attempted extension of patent monopolies to the supplies that are used with patented articles. The Robinson-Patman Act "has set up new problems of uncertainty for business men" on page 10; on page 236 it "puts certainty into the law of competition."

Inaccuracies are not lacking. The degree of assurance involved in Federal Trade Commission approval of trade practice submittals is overstated (pp. 10, 23, 27). It is alleged (p. 147) that "The only thing that the anti-trust laws prohibit [in regulation to price-fixing] is the fixing of a price at such a high and exorbitant point as to unreasonably restrain commerce and impose either upon competitors or customers." Apparently (p. 132) it is illegal for a "rich and powerful competitor" to attract the employees of a rival by "offering an increased salary or other compensation."

Naïve assumptions abound. There have been "only a very few violations" of 140 trade practice submittals since 1919 (p. 1). Doubtless it is *reported* violations which the author has in mind. "Spiritual regeneration" involves concern with the "soul" (p. 7). Statistics "obviously" cannot be employed for purposes of control (p. 89). "Public confidence is inspired" by sales at "cost plus a fair profit" (p. 92). Advertised goods "must live up to high quality" (p. 154). A resolution of the upholstery textile industry, forbidding misbranding with

respect to "quantity, quality, grade, or substance" is accepted as "short and sharp" (p. 43).

This review might be continued indefinitely. Enough has been said, however, to indicate that, regrettably, the effort and resources which have gone into Mr. Toulmin's book have not produced a volume that has utility except as an expression of the opinions of one who has given attention to the problems reviewed. Appendices of over 100 pages containing the leading anti-trust statutes and a number of typical trade practice rules and agreements add supplementary concrete material to the presentation.

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BOOKS RECEIVED

Cases and Materials on the Law of Credit Transactions. Second Edition. By Wesley A. Sturges. St. Paul: West Publishing Co. 1936. Pp. xiii, 1802. \$6.50.

Cases and Materials on Trials, Judgments and Appeals. By Thurman W. Arnold and Fleming James. St. Paul: West Publishing Co. 1936. Pp. xxvii, 869. \$5.50.

Cases and Other Materials on Trade Regulation. By Milton Handler. Chicago: The Foundation Press, Inc. 1937. Pp. xxxv, 1288. \$7.00.

Cases on Trade Regulation. By S. Chesterfield Oppenheim. St. Paul: West Publishing Co. 1936. Pp. lii, 1518. \$6.50.

The Ultimate Power. By Morris L. Ernst. New York: Doubleday, Doran & Co., Inc. 1937. Pp. xv, 344. \$3.00. A discussion by one of the country's leading younger lawyers of the governmental changes which are the issues of the day.

Zoning. By Edward M. Bassett. New York: Russell Sage Foundation. 1936. Pp. 275. \$3.00. The laws, administration, and court decisions during the first twenty years.