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The Law of Persons and of Domestic Relations, by Epaphroditus Peck

Robert C. Brown

Indiana University School of Law

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BOOK REVIEWS

The Law of Persons and of Domestic Relations. By Epaphroditus Peck. Third Edition. Callaghan and Company, Chicago, 1930. Pp. lxxii, 481.

This well known text book on the subject of domestic relations and personal status now appears in its third edition, brought up to date. It seems to be designed primarily for use in law schools which conduct their instructions on the text book plan, but it may be useful for collateral reading for students studying by the case method, and also for practicing lawyers. While necessarily elementary, it covers the important points with respect to the various statuses of infancy, insanity and alienage; also the law of husband and wife, including marriage and divorce, and also, included in the latter subdivision, a discussion of some of the knotty problems in the conflict of laws relating to divorce. The book concludes with brief discussions of the relationships of parent and child, and guardian and ward.

The most fundamental defect in the book is one which affects not its accuracy but its practical utility. The citations do not include references to the National Reporter System although they do include some references to various series of selected cases. As the National Reporter System is the most commonly used, and sometimes the only possible, method of obtaining access to cases from outside jurisdictions, a book which omits citations to it must be considered a good deal of an anachronism.

A few more minor criticisms might be made with reference to the actual text of the book. For instance the author though discussing to some extent the status of American Indians does not seem to realize that they have all now been made citizens of the United States. (8 U. S. C. 3.) He also appears to find a conflict between the attitude of our government in favor of the right of expatriation and our restrictive immigration laws. The reviewer is unable to understand how these two things have anything to do with each other.

A more serious defect is in connection with the definition of "collusion" which the author says "is an agreement by the two parties to manufacture a case, or to suppress material facts, so that the court may be misled into granting a divorce." The weight of authority and it seems the better view is that any agreement between the parties for the purpose of facilitating the action even though with honest motives and without any intent of misleading the court is "collusion," so that the author's definition is too narrow.

Another minor criticism might be that the attempt of the author to put the husband's liability to support the wife upon an

“agency” basis is unfortunate and misleading. In one place he speaks of this as “imputed agency,” which may be technically correct; but in another place he speaks of it as an “implied agency,” which is clearly wrong. It would conduce to clearness of thought of both courts and text writers if this liability would be referred to as what it actually is—namely, one imposed upon the husband by law and without his consent. To speak of the wife as in any sense his agent is not only inaccurate but is distinctly confusing because of the very usual situation where the wife is in fact and law the agent of the husband.

However, with the possible exception of the omission of the National Reporter citations, these are minor criticisms and do not seriously impair the usefulness of the book. The scope of this work is definitely limited to that of a very elementary text book and there is no adequate discussion of perplexing problems of the subject such as, for example, the liability of an infant who has misrepresented his age. But this is not a criticism, as it was never intended to discuss such problems. The book is and purports to be nothing more than a brief statement of the generally prevailing rules of law in this subject. On the whole the work seems to be accurately and carefully done. Within this limited scope it seems entitled to commendation as a useful piece of work.

ROBERT C. BROWN.