Book Review. Cases on Business Organization by R. Magill and R. P. Hamilton

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historical and scholarly development of the law of Theft. The author in a masterful way takes us back into Eighteenth Century agricultural England, shows us the economic situation, pictures the thief’s environment, depicts his acts, and the awkward and sometimes brutal attempts of the law to convict and punish. Always lagging behind the thing which calls it into existence, the law changes, grows, reforms; it tries to keep pace with economic and social evolution; but yet it lags. When attempts are made to effectuate obedience by sheer cruelty, the jury fails to convict.

If the courts of New York are over-emphasized, Mr. Hall may be pardoned. During the course of the research, the author lived in New York where a wealth of material is available. Besides, to attempt to represent all forty-eight states would be “confusion worse, confounded.” An alarming array of facts demonstrates the great traffic in receiving stolen property. How the law has attempted to curb it; how the traffic affects society; how the law has been adjusted to meet the problem—all these are presented. Readers of the book will appreciate Professor Hall’s forceful contribution to the literature on automobile theft.

What is the solution? Happily, the author does not indulge in platitudes nor panaceas. He does not try to shroud the situation in an even greater entanglement of legal verbiage than now exists; he does not feign to advance an assumed pseudo-psychological approach; he does, however, expound the sound psychological effect of social approval and disapproval. Individualization is advocated along with a more flexible classification of crimes, and thus he recognizes the psychological fact of individual differences; but individualization is not embraced as a cure-all. Perhaps the best characterization of the author’s approach is that it is preeminently sane.

John Edward Bentley.

WASHINGTON, D. C.


This is a two-volume work purporting to cover all the law of business organizations, sufficiently, at least, for those law students who are not to become specialists upon the subject. As will presently appear, however, it may be doubted that this intention is carried out. The first volume, consisting of somewhat over five hundred pages, relates solely to the law of agency. The second volume, about two and a half times as large as the first, covers the law of partnerships (limited, and otherwise), corporations, joint stock associations, business trusts, etc.

The fundamental test of all case-books is the selection of cases, and the editors in this respect have done, on the whole, a very good
job. Perhaps some criticism might be made that the cases, particularly in the second volume, are unduly long and complicated, but this is by no means an unmixed disadvantage; the necessarily laborious efforts of the student to summarize the points of the case in brief form and to classify them logically is undoubtedly an important part of the educational process. On the other hand, there is a considerable tendency to select a large proportion of New York cases. It must be admitted that New York is our big business state par excellence, and that cases on this matter are naturally more numerous and frequently more instructive there than in other jurisdictions. Nevertheless, the editors' proclivity toward New York cases seems overdone, particularly as some of these cases seem to raise points of New York practice merely.¹

But this work, like many others of recent vintage, is only partly a case-book. There are long excerpts from text books, and longer notes by the editors, such notes being usually a cross between a digest and a treatise. The notes are sometimes overly theoretical, and the excerpts from treatises intensify this defect. Fortunately, however, in most of the notes the editors set themselves to the more humdrum but probably more useful task of summarizing the authorities on a particular point. These notes are much more helpful than the old-fashioned case-book notes, which gave merely a citation of authorities without any discussion. Nearly all the cases cited by these editors are briefly but adequately summarized, and there are often incisive and helpful comments and searching questions, which should be useful alike to the instructor and the student.

Turning now to the contents of the volumes separately, the first volume, as already stated, covers the subject of agency. The various points are treated largely from a chronological point of view; that is, the treatment starts with the formation of the agency, then considers the rights and duties of all concerned, and ends up with the termination of the relation, though with an additional chapter respecting the differences between agency and other relations. No doubt there is much to be said for this method of treatment, though one disadvantage is that it starts the students with the dryest and perhaps the most technical part of the whole subject—namely, the formalities of the contract creating the relation. It may be noted, however, that some of the cases put in this category seem really to involve substantive problems. While the problem of independent contractors is very sketchily treated, the subject-matter of this volume is on the whole competently covered.

The second volume likewise is chronologically arranged. It starts with the nature and formation of the various sorts of business units; then considers the going concern, particularly with regard to management, creation of claims against the enterprise and distribution of assets; and concludes with the consideration of solvent dissolution. In each topic, under the various subdivisions relating

to the going concern, the several types of business organization are individually treated. The obvious purpose is to enable the student to compare the advantages and disadvantages of these various types.

It will be noted that there is no treatment of insolvent dissolution—a problem ordinarily much more serious than solvent dissolution. The editors explain this omission by saying that inclusion would make too long a book, and furthermore, that it would result in a duplication, because that subject is usually treated in the course on Creditors' Rights. It is submitted that the latter is not a very satisfactory reason for the omission. The editors themselves urge that the chief objection to the conventional separate courses on Corporations and Partnerships is that many students do not take both courses. The same applies, under this new arrangement, to the additional course on Creditors' Rights, even assuming (which cannot always be the case) that such problems are adequately covered in such a course.

The treatment of partnerships, except for the omission of insolvent dissolution already referred to, seems to be thorough; respecting corporations not nearly so much can be said. The insufficient discussion of the problem raised by the disregard of the corporate entity is a serious defect. This is anything but a merely technical problem, though even so considered it has unusual pedagogical value. This problem is treated only in a note which, though somewhat detailed, is obviously quite inadequate for such an important subject. It should be said, however, that several cases in the latter part of the book do actually have a direct bearing upon this problem.

The absolute disregard of the problem of payment for stock is regrettable. The editors state rather naively in the latter part of the book that the problem of stock-watering is not treated because it rarely becomes of practical importance except in the case of insolvency—which is somewhat equivalent to saying that one need not build his house carefully since no trouble will arise until the house falls down. It must be admitted that this problem of stock-watering has been made somewhat less significant by such expedients as no-par-value stock, but it has certainly not become unimportant; no lawyer is fit to form a corporation who does not understand at least the seriousness of this problem and the necessity of unusual care to comply with the requirements. This is the most glaring and the most inexcusable defect in the book, though another rather serious defect is the unsatisfactory treatment of the problem of promoter's liability.

Much fuller is the treatment of the problems of a corporation as a going concern, though it seems to the reviewer that the problem of restrictions on transfers of stock is perfunctorily covered. But the treatment of solvent dissolution is thorough; this only intensifies the aching void felt in the absence of any consideration of insolvent dissolution.

The mechanical features of this work are well worked out. Included in the second volume is an Appendix containing the Uniform Partnership Act, the Uniform Limited Partnership Act, the
Uniform Business Corporation Act, and the Certificate of Incorporation and By-laws of a New York corporation.

In summary, then, although the reviewer believes the treatment of some phases of the law of business organizations to be imperfect while other phases are over-emphasized, it is his opinion that the editors have conscientiously and competently performed their appointed task. Their method of considering the various forms of business organization together has a real value, and these books furnish an excellent tool for that purpose, though the reviewer is not certain that this fundamental change of arrangement is inherently desirable. The new combination is in many respects preferable to the customary course organization, but some important problems have of necessity been omitted in order to keep the books within any reasonable compass, and particularly to make them usable in a law course of the usual length. If one is willing to adopt the new procedure, however, he will scarcely find better treatment, at present anyway, than appears in the work under review.

Robert C. Brown.

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"What is Equity?" asked Maitland in a passage quoted at the outset of this book; and the longer the reviewer lives the more he is apt to compare this with an older and more penetrating question, "Quid est Veritas?" An answer may be found, of course, in the statement of Spence, which Maitland in effect adopts, that equity is a body of law formerly administered by the High Court of Chancery. That, however, does not help much, for there is still a nebulous outline.

Hence, as study of the equitable process is an important part of the business of our Law Schools, it is no wonder that of late years they reopened the question as to the best way of performing the task. The point, indeed, is not yet fully settled. We know how Harvard goes about it; we are familiar with the interesting innovations that Columbia has made of late years; and the world is greatly indebted to the studies that have been offered by scholars that bear such names as Pound, Durfee and Cook, to say nothing of other efforts on the part of Mr. Chafee, and of Mr. Simpson also.

In their present work the editors profess to follow the lines that were charted by Ames, once Dean of Harvard Law School; and therein they will awaken many a pleased response, for the work of Ames has indeed lived after him. To him all persons, at least of the reviewer's generation, are indebted; and it is hard to do any work of the pedagogic variety, without feeling his influence. Cer-