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Book Reviews

James H. Graham

James J. Kearney

James H. Neu

Robert K. Rodibaugh

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In *Begendorf v. Swift*, 183 N. Y. S. 917 (1920) the court held that when tips are received from customers without knowledge of employers the amount so received should not be considered in fixing the amount of compensation under Workmen's Compensation Law in the absence of evidence of a custom to give tips to persons so employed.

In *Bryant v. Pullman Co.*, 177 N. Y. S. 488 (1919) it was held that tips received by a pullman car porter are understood by the porter and the company to be a part of his "wages."

The situation is well analyzed by the court in *Sloat v. Rochester Taxicab Co.*, 163 N. Y. S. 904 (1917) where in referring to the tips of a taxicab driver it said: "The employes could not have received the tips if the employer had not put him in the way of getting them, and we may well conclude that the tips were an advantage received from the employer similar in effect to board, lodging, or rent furnished in addition to the money-wages paid. Many times a guest at a hotel, a passenger upon a sleeper, or a person receiving service from the employee of another is glad to recompense a pleasing manner or an extra service by a reasonable tip; but according to the present custom tips are not usually the voluntary act of the person who gives them. The employee with the knowledge and consent of the employer furnishes a service which compels the payment of a tip and if the tip is not paid the service is so grudgingly and unsatisfactorily given that the person served is willing to pay it the next time. The person rendering the service considers that the tip is his as matter of right and involves no particular favor. An extra large tip may be appreciated but the ordinary tip is considered a payment of money actually due. The usual tips have come to be considered a part of the cost of the entertainment at a hotel or upon a sleeper or public conveyance, and it is realized both by the person paying and receiving them that it is a part payment of the wages which the employer compels the person served to pay. In effect therefore, the employer, and not the employee alone is benefited by the tip usually paid."

The courts in *Zappas v. Roumeliote*, and *Ex parte Farb, supra*, lay down a rule which in effect states that there must be an actual contract between employee and employer before tips, which they regard as gratuities, can be considered as wages.

The courts in *Zappas v. Roumeliote, supra*, and *Ex parte Farb, supra*, lay down a rule which in effect states that there must be an actual contract between employer and employee with full knowledge of the tips, which they consider as earnings, that is sufficient to include them as wages. This latter rule seems to be the better and general rule. It is a well known fact that employers do ordinarily pay a lower wage when they know the employees will receive tips for the services they render while on the employer's time so it seems best in justice to all parties concerned that the courts recognize this.

John H. Verdonk.

BOOK REVIEWS

CIVIL SERVICE MANUAL. Capital Publishing Institute, New York City. \$1.00.

Although most civil service positions are not in the legal field, the LAWYER feels that the relationship of law and government is close enough to permit it to review such a manual on civil service and to recommend its study to those interested in any type of civil service position. The publishers have succeeded in gathering together general information concerning civil service exams plus practical advice for those contemplating the taking of such an exam.

The manual emphasizes the importance of thorough preparation for any exam. However, it goes further than merely to advise study. It specifically advises what to study and gives page after page of examples and suggestions. It thoroughly covers the field of subjects to be found in former exams including arithmetic, English, and grammar, spelling, vocabulary, reading interpretation, proverb interpretation, civics, and analogies.

Besides the manual, the same house has published a similar manual dealing with civil service arithmetic exclusively, and another for court attendants. Both of these additional manuals are every bit as practical and useful to a civil service applicant as is the CIVIL SERVICE MANUAL itself. The manual for court attendants is particularly exhausting in its scope. Its sections deal with the duties of the court attendant, the court systems, the rules of the Supreme Court of New York, legal terminology, New York State Government, the Federal Government, in addition to the usual subjects of arithmetic, English and spelling.

Altogether these three manuals will be found most useful for those seeking government positions this June.

James H. Graham, Jr.

FEDERAL PROCEDURAL FORMS. By Alexander Holtzoff¹ and Allen R. Cozier.² The Bobbs-Merrill Co. Indianapolis, Ind. 1940. Pp. xxiii, 1010.

The final, and therefore, probably the only proper, reviewer of any form book is the court who passes upon the propriety of the use of the form in any given case. However, without waiting for the completion of such an involved process, it is safe to say that this excellent work will receive the approval of the bench and bar alike. Many of the forms have already received judicial approval and the authors have demonstrated great skill in drafting forms not already tested by litigation.

Because of their close connection with the New Federal Rules the authors have caught the spirit behind such rules and the included forms are models of brevity and precision.

The forms cover Civil and Criminal Actions, Special Remedies and Proceedings, and many types of administrative proceedings. This book would make a valuable addition to the tools of any lawyer engaged in Federal practice except in admiralty.

James J. Kearney,³

RESTATEMENT OF THE LAW. Property — Future Interests. Parts III and IV by the American Law Institute, 1940, American Law Institute Publishers.

The American Law Institute has just recently finished the third volume of the Restatement of Property. Parts III and IV of this work continue and conclude the subject of Future Interests, and these parts have been published in Volume III of the Restatement of Property.

The present work purports to deal with problems of construction and the special topics of Interests of Expectant Distributees and Powers of Appointment.

¹ Special Assistant to the Attorney-General.

² Special Attorney, Department of Justice.

³ Of the faculty of the Notre Dame College of Law.

The draft of the book was approved by the Council of the American Law Institute last year. The subject matter of the text has been acquired through the collaboration of some of the leading men in the country in the field of Property Law.

Part III of the book deals with the Creation of Future Interests. First, the authors outline the general principles of construction. Under this heading the reader is introduced to the general principles necessary for the better comprehension of the creation of a future interest.

With this background, one learns next of the Construction of Limitations. Under this heading the specific topics of Requirement of Survival, Death or Death Without Issue, and Miscellaneous Problem are reviewed in great detail. The following chapter deals with the various types of Class Gifts. A complete and thorough discussion of the kinds of class gifts which are available, means by which class gifts may be created, and the distribution of such gifts is forthcoming.

A problem which is always difficult for the student of future interests finds explanation in the discussion of Limitations to "Heirs," "Heirs of the Body," "Next of Kin," "Relatives" and To Other Groups Similarly Designated. Under this heading one first is introduced to the construction of the above limitations. Next, comes a clear and concise review of the Rule of Shelley's Case and the Doctrine of Worthier Title.

Part IV of the book introduces the reader to some Special Topics, namely, Interests of Expectant Distributees and Powers of Appointment. Although in the strict sense neither of the above topics are future interests they were included in this text because of their close relation to future interests in actual practice.

The form employed in presenting the material is to state the general principles of law on the particular subject, then offer several illustrations to further explain the question being discussed, and finally offer comments which discuss exceptions and ramifications to the general rules. This procedure offers the students of the subject a clear concise picture of the material being presented, and necessarily facilitates comprehension of the topic.

The book contains a complete index to the textual material as well as a table of contents and a parallel reference table from the tentative draft.

The American Law Institute is well known for their Restatement of the Law. The present volume on future interests offers the student of the law a concise, complete and correct picture of the general principles of the law of future interests which are discussed, based on the combined knowledge and experience of the leading men in this field.

James H. Neu.

THE LAW OF THE ORGANIZATION AND OPERATION OF COOPERATIVES. By Israel Packel.¹ Matthew Bender and Co. Albany, New York. 1940. \$5.00. Pp. xvi, 307.

"Thousands of cooperatives, millions of members, billions of dollars of trade, and yet to hosts of lawyers the cooperative movement is nothing more than a subject of unsatisfied intellectual curiosity. To enable the movement to have a healthy growth and to give it a fair opportunity to assert itself, the lawyer should not lag behind the economist or other specialist in his knowledge and analysis of the subject." In this simple statement in the first section of his book the author

¹ Of the Philadelphia Bar.

indicates both the reason for the book and his own insight into the great importance of the problem presented.

Most lawyers think that cooperatives are ill-conceived devices of the poor formulated for their struggle against the rich, but although the consumer cooperatives are important it is apparent to even the cursory reader of this book that the cooperative is a legal tool which in the hands of an informed lawyer can be of benefit to all classes in society.

Within the limits of the relatively few pages comprising this book Mr. Packer covers the nature and types of cooperatives, their formation, and discusses the problem of drafting cooperative charters and by-laws. Following this the author considers the problems inherent in the ownership, control, management, and financing of cooperatives and concludes with a well developed chapter on the relation between the government and cooperatives.

Following this the author appends working forms which in volume cover one-tenth of the book and might well be the most important part of this excellent book as far as the lawyer representing a cooperative is concerned.

The cooperative is a good but comparatively little used weapon in the armory of the law. Lawyers and students interested in its use may get valuable information from this book.

James J. Kearney.²

THIRD COPYRIGHT LAW SYMPOSIUM, THE THIRD ANNUAL NATHAN BURKAN COMPETITION. Sponsored by the American Society of Composers, Authors and Publishers, New York City. Pp. 393.

Each year the American Society of Composers, Authors and Publishers sponsors an essay competition on the subject of "Copyright Law." This competition is a memorial to the eminent Nathan Burkan who, from the founding of ASCAP in 1914 until his death in June of 1936, was the Society's beloved General Counsel.

"The purpose of the Competition is to encourage study of Copyright Law, analyses of the need and justification for, the social benefits derived from, and the wise public policy of enacting such law, and to induce original and impartial thinking upon the whole subject."¹

Colleges and universities offering courses in law are invited to compete in this competition. ASCAP makes an award of \$100 to the student in each school who, in the opinion of his Dean, has contributed the best paper on the subject of "Copyright Law." From this group of winning essays the five best are reprinted in a book entitled, "Copyright Law Symposium."

The 1940 competition attracted entrants from eighty-one law schools. And, although it has been customary to reprint only the five best essays, the Society, upon the suggestion of Dr. John H. Wigmore, who judged the contest, saw fit to publish the seven best papers. Dr. Wigmore found seven papers of such great merit as to warrant their inclusion in the THIRD COPYRIGHT LAW SYMPOSIUM.

The winning essays were adjudged to have finished in the following order: first, "A Re-examination of Literary Piracy" by Mr. Frank R. Miller of the State University of Iowa; second, "Public Performance For Profit: Past And Present" by Mr. Frank D. Emerson of Western Reserve University; third, "The Law of Copyright And The Right of Mechanical Reproduction of Musical Compositions"

² Of the faculty of the Notre Dame College of Law.

¹ Foreword, xv.

by Mr. Calvin Welker Evans of the University of Arizona; fourth, "American 'Popular' Music And The Copyright Law" by Mr. Irving Propper of Brooklyn Law School; fifth, "The Businessman Deals With Copyright" by Mr. Robert W. Bergstrom of Chicago-Kent College of Law; sixth, "Common-Law Rights Before Publication" by Mr. Howard B. Pickard of the University of Oklahoma; and seventh, "The Development of Motion Picture Copyright" by Mr. Milton Harold Aronson of Washington University.

ASCAP is to be commended for their worthy and successful effort in stimulating interest in the field of Copyright Law. This Symposium contains a wealth of information, and students of coyright will find it both interesting and valuable.

Robert K. Rodibaugh.

WILL WE HAVE INFLATION? By Harry Scherman.¹ Simon and Schuster, New York. 1941. p. 171.

One of the current problems which face the lawyers of the country as well as the general ppplace is whether or not the United States is heading towards an inflationary period. The author, appreciating the magnitude of this current problem, attempts to answer the question, "Will We Have Inflation?"

First, one is introduced to the subject by a definition of the word inflation — "a money supply in the nation that is being more and more fully used by the people and that is increasing fast — faster than the goods and property that are already on the market to be sold or that are being currently produced." With this introduction by way of definition, the author is able to give an adequate picture of the problems which are created by the present status of money in regard to our economic problems.

The author relates that inflation in this country is "not inevitable" but then, one is shown the possibilities for inflation created by the present emergency, Gold Prohibition Law, and the ever rising debt.

It is pointed out that inflation actually comes from the individuals who make up the common populace and that these people should attempt to "beat inflation" — and we can beat inflation "if everybody concentrated upon that public objective, instead of worrying about his own little sensitive skin."

Many pages are devoted to an explanation of the money problem in the United States as affected by the present paper money standard, the Gold Prohibition Act, the Government's hoarding of gold at Fort Knox, and the part which the Federal Government can and will play in determining whether or not inflation will come to the United States.

The book reads well and the author has done remarkably well in presenting this complicated economic problem in language which the common layman can grasp and comprehend with the minimum of effort. The style employed by the author is that of question and answer. Each chapter head represents a question and the subsequent lines answer the question.

The author leaves three possible means by which we may avert inflation, namely, each of us as individuals should unite and cooperate to prevent inflation, Mr. Roosevelt's Gold Prohibition Law should be repealed and the gold of the country once more put into free circulation so that it may act as a natural Stopper of Inflation, and the immediate reduction of the national debt should be fostered to create a greater confidence in the government by the populace.

James H. Neu.

¹ Author of *THE PROMISES MEN LIVE BY.*