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Book Reviews

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BOOK REVIEWS

RESTATEMENT OF THE LAW OF TORTS. By the American Law Institute. First Edition. St. Paul: American Law Institute. 1934.

The first two books of the complete work of the *Restatement of the Law of Torts,* by the American Law Institute, are now ready for the lawyer and the law student. The American Law Institute has seen fit to piece together the laws governing the vast field of Torts which will give to everyone interested a comprehensive and thorough insight into this branch of legal study. This *Restatement of Torts* follows on the heels of a Restatement of the Law of Contracts by the same publishing company, and, therefore, ought to be heralded with much acclaim, since the prior work is the finest in its field.

The books that are before us, the finished work so far, embody the same general theory as the *Tentative Draft of the Restatement of the Law of Torts,* but the finished volumes have been re-sectioned and in some degree the work has been re-arranged. The *Tentative Draft* treated the subject of "Negligence" in the middle of its work, but the finished texts treat this important subject in a separate volume, and thus break the field of Torts up into important component parts. This method seems to us to be not only simpler but more logical. Another impressive feature of the finished work is that definitions have been placed in a concise grouping at the beginning of the first volume, thus giving the student a glossary that is easily accessible.

Perhaps the only thing we regret is that the commentaries that were a part of the *Tentative Draft* have been omitted. While it is undoubtedly true that these commentaries took up much space and thereby made the texts more cumbersome, nevertheless they contained many helpful citations, which, meager as they might have been, still were better than no citations at all. It is with a tinge of regret that we note their omission.

The section numbers have been changed, due in part to the fact that the definitions have been placed according to sections, and while this new arrangement will lead to momentary difficulty when comparing the completed editions with the *Tentative Draft,* still the difficulty will be a purely academic one, and the worth of the books will not be detracted from thereby.

A perusal of the work before us shows that many changes have been made in the wording, both in the bold face type and in the servient succeeding material. Perhaps it will not go amiss to cite a few examples of typical changes. The topic "Want of Skill" is worded as follows in the large type: "When an act is negligent if done without reasonable skill, the skill which the actor is required to exercise to avoid being negligent in the doing of the act is that which he, as a reasonable man, should recognize as necessary to prevent the act from creating an unreasonable risk of harm to another." The *Tentative Draft* in its bold type treats the same subject as follows: "The skill which the actor is required to exercise in the doing of an act is that which the actor as a reasonable man should recognize as necessary to prevent the act from creating an unreasonable risk." Also the *Tentative Draft* neither headed nor captioned its sub-sections to this main topic of "Want of Skill," but the completed volume not only heads the sub-sections by small letters, but also, in many instances, captions these sections—for example, "Amount of Skill Required," "Skill of Beginners." The unfinished treatise headed the section dealing with "Battery" in this manner: "Conduct violating the right of freedom from offensive bodily touching [battery]." The bound volumes treat this material under a Scope Note, and do not go into as

much detail on that particular phase as does the *Tentative Draft*. The sub-division of the main topic is not the same, and the old unfinished edition was more minute in so splitting up the divers portions of the subject. These examples merely go to show how much research and work was done in order to bring the rough draft up to the present standard, and how well the authors have covered their subject in minute detail.

The importance that these books will play in the field of law and of legal research is well-emphasized by the importance placed upon the previous work of this body in formulating the *Restatement of the Law of Contracts*.[1] In the Ohio case of *W. B. Saunders Co. v. Galbraith*[2] Judge Mauch says: "We are content, however, to take the Restatement [of the Law of Contracts] as the law of this state without exploring its soundness, and hold that of its own vigor it is adequate authority. This is not to say that the Restatement is of necessity perfect, and that in it is to be found the law's last word. We only hold that he who would not have it followed has the burden of demonstrating its unsoundness." Undoubtedly this statement is a broad one, but it is an example of the importance which the courts have placed upon the *Restatement of the Law of Contracts*, and it is not too broad an assumption that the courts will go equally as far in giving to the *Restatement of the Law of Torts* the same judicial sanction. The unquestioned skill of the authors of the work will garner a reputation for it, we are sure, that will place it in close proximity to decisions of courts of last resort insofar as authority is concerned.

From the point of view of the student this work ought to be invaluable. The splendid treatise of every topic, the wealth of examples, and the composite nature of the texts ought to give to the *Restatement of the Law of Torts* a prominence second to none in its field. The *Tentative Draft* proved to be a great asset to the student, and with the advent of the newer bound volumes the American Law Institute ought to feel justly proud that it has once more rendered a service to the legal mind.

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THE CANON LAW OF WILLS. By Jerome Daniel Hannan. Washington, D. C.: The Catholic University of America. 1934.

As a partial requirement for a degree of Doctor of Canon Law Jerome Daniel Hannan has written this book on the Canon Law of Wills. This book, while it contains much material that is purely historical in the Ecclesiastical sense, is nevertheless valuable in that the citations are quite exhaustive. The author has not attempted to exhaust the entire field of wills, but rather gives one an insight into the matter of wills as they have been interpreted by and affect the Catholic Church. The author himself states in the foreword to his book that "The Code provides no explicit guidance on many of the problems that inevitably arise in the administration and execution of wills." A distinct emphasis has been placed upon the problem of charitable bequests. After a thorough discussion of this subject and a synopsis of the changing law in several of the states on this subject, the author completes his discussion by showing that the present tendency is to support charitable trusts even though the beneficiary be indefinite and the trust be established in perpetuity.

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[1] See 8 NOTRE DAME LAWY. 114-116.

[2] 178 N. E. 34 (Ohio 1931).

From the opening topic of the nature and origin of wills down to the end of his work Father Hannan is clear on the points he makes, and exhausts his particular topics in a pleasing way. The historical discussion that this work gives is invaluable from the standpoint of the student and as an aid in research, for the subject of wills is traced back to early times. From the standpoint of the cleric this text ought to be one of great interest not only for the legal information given, but also for the discussion of the attitude of the Church toward particular phases of the subject.

The practical worth of this text taken from the viewpoint of the lawyer and of the matter of fact attitude of the world is perhaps not great, for by this book many of the requirements of a will are drawn, not from the generally accepted Common Law on the subject, but from the Canon Law. It cannot be said, therefore, that this work is valuable in regard to the validity of present day wills, but it is valuable in certain respects on particular phases of the subject of wills, and the citations from the various states are bound to prove helpful in many instances. We can, however, recommend this text as a background study of the course in wills, and as a historical treatise of the field it covers. The student of wills could not go amiss by using this book as collateral reading.

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