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Book Reviews

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BOOK REVIEWS

CASES AND MATERIALS ON JUDICIAL ADMINISTRATION. By Professor Edson R. Sunderland: Callaghan & Co. 1937.

In his new book, Cases and Materials on Judicial Administration, Professor Sunderland has given to the legal profession and more particularly to the law student, a very complete and highly organized picture of legal procedure as it is, and as it should be practiced today. From the outline of the book, it is evident that the author fully realized that before an adequate understanding of the rules of judicial procedure and administration can be had, that that understanding must be based upon the knowledge of the history and organization of the court, its character and functions, as well as, the nature of its powers.

Accordingly, Professor Sunderland, by way of introduction, presents a brief description of the court system as it existed in historic England, the modern English system, and the two-fold American development of the State and Federal courts.

Having laid the groundwork, the author then proceeds to build the superstructure upon which the rules of procedure must, of necessity, be based. The student now commences his study of the organization and the operation of courts: the manner in which courts are organized for the administration of judicial business; the various functions, rights and duties of the agents of justice, including the judge, the clerk, the sheriff, the attorney, the jury system and other subordinate and auxiliary agents such as referees and masters.

The most surprising and informative element in this phase of the book is the extended treatment that the author gives to the ethical and legal obligations of the attorney.

Having completed the description of the vast super-structure of judicial administration and the agency which uses and controls them, the author now turns to the powers, processes and methods used by those agents to show the nature of the results which they are expected to produce.

The first of these comes under the heading of Judicial Power. It is obvious that no just appreciation of the purpose of justice can be had without an understanding of the nature of this power. From a study of this phase of the book, the student should acquire the distinctions between the administrative and judicial scope of the court and the various important activities of both. Included in these activities are such headings as modifying judgments, determining the constitutionality of legislation, granting divorces, condemning property, determining moot questions, rendering advisory opinions, controlling the processes of litigation and protecting the efficiency of the court by exercising control over the personnel of the bar.

Having now sufficiently defined the organization and operations of the court, the nature of its judicial power, the author introduces the highly important legal concept of jurisdiction and attempts to bring out the different classes into which jurisdiction over the subject matter are so conveniently divided in our judicial system. He draws carefully the distinction between civil and criminal jurisdiction, jurisdiction at law, in equity and in admiralty and state and federal jurisdiction. More extended consideration is given to the cardinal distinctions of law and equity and state and federal. Because of their elemental importance, the distinctions of both are presented in some detail.

Closely allied with the preceding chapter yet of greater fundamental importance perhaps, is the next chapter, which deals with the conditions precedent to the courts' exercise of jurisdiction, with venue, methods of commencing suit, and the laws which must be closely adhered to by attorneys to acquire jurisdiction over the person, and the acquisition of jurisdiction over the res.

To complete his treatise of the procedure in judicial administration, Professor Sunderland has given to the law student a book which combines the historic methods and modes of legal pleading with the new modern tendencies, which have evolved from those basic, historical methods, and yet have gone far toward the obliteration of the formal distinctions which existed at common law.

Under this topic of pleading, a treatment of pleading as it works under the modern codes of the various states is given. Cases have been taken at random, in law and equity to show the simplified procedure as it exists today, yet the student is also given the realization of the importance of the fundamental legal concepts of Common Law which underlie these modern developments.

In short, the book gives to the student the opportunity to evolve his procedural education from the antiquated English and American systems to the manner and methods required of him in the legal profession today.

Thomas M. Shea.

SELECTIONS FROM WILLISTON ON CONTRACTS, REVISED EDITION. By Samuel Williston and George Thompson. New York: Baker, Voorhis & Co. 1938. Pp. XXVII, 1049.

A treatise of the wide ranging field of contracts possessing numerous citations to American and English cases cannot but prove to be an invaluable asset to the student and practitioner. Professor Williston, assisted by Professor Thompson, has compiled such a book in the revised student edition. The reader will discern from the title of this handsomely-bound, up-to-date treatise, that this volume does not represent the author's first venture in the writing of text books on the voluminous subject of contract law.

The plan of this Student's Edition, as Professor Williston points out in the preface, is the abbreviation and omission of many footnotes found in the complete eight volume Revised Edition. This new book, containing the identical text of the larger work, is aimed to provide a cyclopedic source of information for the law student, minus the full collection of authorities, for which he may refer to the Revised Edition if necessary. While the note numbers have been changed, it will be easy for the student to obtain the full collection of authorities, as the numbering of the sections remains the same.

The first chapter of this book is aimed to provide an introductory foundation for the study of contracts, by presenting a concise, yet a complete definition of the ordinary terms which may confront a first year law student. The first part of the volume is devoted to the formation of contracts, in which, the making of offers, termination of offers, accepting of offers, and consideration are discussed at great length. Following this, is the capacity of parties, rights and duties under contracts, contracts for the benefit of third persons, and assignments.

The rest of this book is devoted to the Statute of Frauds, performance of contracts, usage and custom, excuses for non-performance, remedies for breach of contract, application of rules of damages, and discharge of contracts by reason of release, recission, accord and satisfaction, and impossibility. Professors Williston and Thompson have brought together many novel developments in contract law. Included are such things as contracts of agents and fiduciaries, contracts for the sale of land, sales, contracts of employment, contracts to marry, contracts of bailment and innkeepers, pledges, warehouse receipts, transportation contracts of carriers, and contracts of suretyship; surely a catholic collection. Of course, these are merely concise presentations of the law on that particular subject but will be of great help to the ordinary student or young lawyer who only wishes a cursory rule of law.

The Revised Edition of Selections from Williston on Contracts has presented to the law student a scholarly, systematic, and readable text which will be of material value to the legal profession.

David Allyn Gelber.

TRIAL TECHNIQUE. By Irving Goldstein. Chicago: Callaghan and Co. 1935.

Every lawyer, both young and old, has at some time in his career, run up against a problem in the trial of a case that demanded practical advice. Oftentimes, this problem was merely the correct way to enter some important piece of evidence, but yet the lawyer stumbled around because he did not know exactly what questions to ask, or perhaps what is more important, he did not know what questions not to ask. To solve these problems and to carry the lawyer over all parts of the trial, no more comprehensive and exhaustive book has been written than this new book by Mr. Goldstein.

Think of any step in trial procedure from the minute a client comes in the door of the lawyer's office until the time he leaves that office with the final disposition of the case, and this book has a readily available explanation of what to do and how to do it. The requirements of a book on trial procedure as set out by the author in his preface are: "(1) Question and answer illustrations covering the technique involved in making proof of all facts in all types of cases, (2) It should cover all phases of trial tactics and the psychology of the court-room, (3) Citations of authorities to sustain all illustrations and points of law set out, (4) Illustrations and points of law simply indexed for ready and quick reference, (5) It should be in one compact volume so as to be available for use in the court-room during the progress of the trial and (6) It should be plainly and simply written so as to be easily understandable." How ably these requirements are met can be fully appreciated only by reading this book that has the power to grasp and hold the reader's interest for the whole of its nearly seven hundred pages. The reason is that the book is packed with concrete illustrations, and deals with all the latest devices and inventions which trial lawyers are using. Each illustration puts forth an iron-bound and unassailable series of questions for the introduction of a bit of evidence, so that the lawyer need not depend on the good nature or ignorance of his opposing counsel to get his evidence before the jury. In late years the introduction of evidence has been more or less reduced to one form, and so when a lawyer deviates from that form, he lays himself open to objections that are very likely to be sustained. Hence the importance of getting that correct form on some unfamiliar point becomes apparent to the young lawyer. The lawyer is not so much interested in the general propositions of the trial, but he does want to know just exactly in what words he should put his questions so as not to leave himself open to any objection. It is this crying need that this unique book on trial procedure so adequately fulfills.

The arrangement of the chapters carries the lawyer step by step through his case. The first chapter on the preparations of facts opens with a plea for confidence and poise of manner on the part of the lawyer without which the drudgery of further preparation may be to no avail. Then the author goes into what the lawyer must do to find the true facts, using the latest scientific devices of the lie detector, X-ray, and blood test. The next chapter emphasizes how the preparation of law in the trial of a case differs from the student's conception of it. The student thinks of it in the terms of a good legal bibliography course, whereas the trial lawyer wants to know the law involved in the facts and also the law on the method of introducing the evidence plus favorable authorities for his side of the

case. The author gives many hints as to where to find cases that might ordinarily be missed, and then tells how to arrange a good brief after finding these cases.

The judicious use of preliminary motions is stressed in the third chapter, which is very informative to the young lawyer who usually has very few hazy notions about such pre-trial tactics, as the bill of discovery, depositions, interrogatories, and bills of particulars. The treatment of these motions will place in the young lawyer a new feeling of confidence and familiarity about when and how he should use each particular method of attack or defense. Following this chapter is a treatment of the selection of a jury, about which many a legal skirmish is fought and on the result of which the case may depend. A caution which is made about talking before the jury is that the lawyer should not create the impression of his own brilliance, but that he is merely an ordinary person just like the members of the jury. In his discussion of opening statements, the author stresses the importance of this first impression he makes on the jury and deprecates the failure of the trial lawyers to inform the jury adequately and take advantage of their opportunity to make certain necessary admissions and to give a "bird's eye-view" of the whole case. The copious illustrations which follow each bit of advice are what makes this part of the book invaluable, whether the case be in contract for damages for breach or in tort for wrongful death.

The chapter on direct examinations gives all manner of evidence and just what to do to bring each piece of evidence before the court and jury, be it a telephone conversation or a deposition. The presentation of witnesses in their most favorable order and their proper handling is pointed out in many examples. Closely connected with the direct examination is the discussion of exhibits. The many suggestions in this book may prevent the novice or even the experienced lawyer from seeing his case fail because he did not lay the correct foundation for the introduction of an exhibit. The law student hears much about the necessity of laying a proper foundation, but only in this practical book is he actually taken question by question through the pitfalls in introducing almost every conceivable exhibit that might be needed on the trial of a case. The reader is shown the sample questions to be asked to introduce a carbon copy of a letter, proof of mailing, a lost instrument, and photographs. These are things which the young lawyer has dealt with only in generalities before he tries his first case.

Up to this point in the book the author has built up the case for the lawyer, but in the section on objections he just as ably tears down the case of the opponent who has not had the benefit of this book in building up an airtight case. Each type of objection is taken up with special emphasis on the improper foundation for conversations. Thus the lawyer by a little reading can go into court with all the pertinent objections at his finger tips, or if he should forget, by having this volume within reach, he may quickly find out the proper objection, using the extremely workable index.

No phase of the trial is left out of the book. Expert witnesses are thoroughly discussed, both as to their qualifications and cross-examination. The hypothetical questions so necessary in examining an expert are treated in a special section. It is in the handling of just such intricate problems as these that this book makes itself indispensable to every trial lawyer however long experienced. The technique of cross-examination is minutely described, so as to enable the lawyer to go far enough, but not so far as to entrap and embarrass himself. The "alibi" witness and the witness who says "I don't remember" are discussed so that no lawyer with this book will need to worry about being hindered by these answers. But in case the lawyer is nevertheless entrapped by his own witness, there are sections on the impeaching of a witness and on the use of re-direct examination and rebuttal.

As the trial of a case closes with the arguments to the jury, so the book closes with a chapter on arguments to the jury. Mention is made of the shift in style

from the old time bombast to the fairly-presented, closely-reasoned, conversational tone of the present day closing argument to the jury. Typical of the whole book are the last pages which contain six model examples of closing arguments.

Whether the lawyer is experienced and wants to know the latest scientific evidence or is unskilled and wants to know the fundamentals, Mr. Goldstein's book, *Trial Technique,* will be an invaluable addition to those few books that the lawyer always keeps near at hand for ready consultation in the trial of a case.

Frank J. Lanigan.