



3-1-1935

Book Reviews

Donald F. Wise

W. D. Rollison

Follow this and additional works at: <http://scholarship.law.nd.edu/ndlr>



Part of the [Law Commons](#)

Recommended Citation

Donald F. Wise & W. D. Rollison, *Book Reviews*, 10 Notre Dame L. Rev. 336 (1935).

Available at: <http://scholarship.law.nd.edu/ndlr/vol10/iss3/8>

This Book Review is brought to you for free and open access by NDLScholarship. It has been accepted for inclusion in Notre Dame Law Review by an authorized administrator of NDLScholarship. For more information, please contact lawdr@nd.edu.

in 80 U. OF PA. L. REV. 189, entitled "The Social Vice of Accident Indemnity." In this article Professor Laube vigorously attacks the old rule which would not allow an injured party to directly sue the insurer of his tort-feasor. "Nothing would seem more clear," he says in one place, "than the fact that indemnity in case of injuries from accident is the most vicious form of gambling unless the assets of the policy or their equivalent are appropriated to the claim of the injured victim." And again, after citing adverse cases, he says: "To the extent that the assets of the policy or their equivalent were not made available to the injured employees it was 'graveyard insurance.'" The author had in mind cases where the tort-feasor, after losing the decision in the lower court would appeal, and then, during the period of time before trial in the appellate court would settle with his insurer for a sum below that in the contract and leave the jurisdiction, taking all his property with him. This, Professor Laube contends, is "to traffic in the miseries of their victim."

It seems that Professor Laube has been idealistic. It is entirely probable that we need much more idealism in the construction and the construing of our laws. But until such time comes when the law will impose altruistic motives upon all contracts, Professor Laube's view is mere pioneering. For it is stretching the facts a little to say that contracts such as these are made for the benefit of a third person, and until this becomes an accredited policy of the law it will hardly hold water. Certainly this is true in contracts of insurance against loss; the insured and the insurer are providing against loss on the part of the insured, not the injured. However, it must be admitted that there is more room for Professor Laube's contention when the contract involved is one of indemnity against liability. For in this case the insurer's liability arises immediately upon liability attaching to the insured. *Klotzbach v. Bull Dog Auto Fire Ins. Ass'n.*, 267 S. W. 39 (Mo. App. 1924).

Undoubtedly the ruling in the principal case is a beneficial one, and it is an interpretation widely needed, As to whether it will be widely followed, it is hard to say; but it is to be hoped for. Perhaps this decision is the forerunner of a line of judicial interpretation based more upon the wider doctrines of social needs than upon the strict following of legal precedent.

Joseph A. McCabe.

BOOK REVIEWS

CASES ON BUSINESS ORGANIZATION. Volume II. By Roswell Magill and Robert P. Hamilton. St. Paul: West Publishing Co. 1935.

The first volume of this two volume work on Business Organization was reviewed in a previous issue of the Lawyer,¹ and, therefore, this discussion will be confined to the material involved in this volume only.

The coauthors of this work have endeavored to coordinate the materials relating to all the principal forms of business organization. Through seven years of research and practical experience through teaching the authors have arrived at the conclusion that to include the general principles of Agency, Partnership, and Corporations in one work leads to a more practical understanding of the various business organizations. The essential purposes are stated in the preface as being, (1) to present a connected series of materials, so organized as to bring realistically

before the student the relative advantages and disadvantages of the various forms of business association; and (2) to avoid, as far as possible, the repetition necessarily involved in the disjointed treatment of the several branches of the one entire subject matter. With these aims in mind the authors have gone ahead and developed them in a manner which clearly indicate that they have at least realized the end for which they were striving. Whether or not their views as to the practical worth of this case book will be substantiated or not can only be evidenced by the usage of this book by professors throughout the country and by their reactions to it.

The first volume dealt with Agency entirely, since the problems of Agency are a necessary part of the entire field of business organization, and this volume (volume two) deals with Partnerships, Corporations, Limited Partnerships, Joint Stock Associations, and Business Trusts. The subjects are treated individually under various topic heads as: Nature and Formations, The Going Concern, and Solvent Dissolution. Thus the danger of running the divers subjects together is avoided by a well-defined classification.

The Appendix contains the Uniform Acts applicable to each branch of business organization, and this adds to the general scheme of conciseness of materials.

Just what will be the reaction to this book we cannot say, but we feel that from a monetary standpoint it ought to be pleasing to the student, for it will relieve him from the necessity of buying many books by the combination of the courses stated in this two volume work.

Donald F. Wise.

CASES ON OIL AND GAS. Second Edition. By Victor H. Kulp. St. Paul: West Publishing Company. 1935.

The rapid development, in the past few years, of the prominence of oil and gas in the everyday life of the American people has led to a necessary proportionate amount of litigation on that phase of property law. Professor Kulp, of the University of Oklahoma, has, therefore, revised and rewritten his first edition of Cases on Oil and Gas, and has combined the features of his original work with the newest developments in the field.

The greater part of the law involving oil and gas is necessarily bound up with property since these products are taken from the land. It is easily seen, therefore, how this all important subject of today has been lost, in the past, in the maze of real property law. So it is with a view toward simplification and specialization that the cases on this branch of law have been isolated from their genus and combined into a new topic.

Leases play the most important part in the topic under consideration, and with this view in mind Professor Kulp has devoted the greater part of his case book to a consideration of the cases on that point. The ways these leases concur and differ from the ordinary lease and contract are specifically pointed out not only in the cases, but also in the footnotes and by the citations given. An insight into the theory of oil and gas leases is given by a study of the earlier cases on the subject and a comparison of them with the newer cases, thus showing how the modern leases avoid the unfavorable provisions in the earlier leases.

Since the advent of the government into the field of oil and gas much litigation has taken place. Hence, Professor Kulp has incorporated a chapter dealing exclusively with governmental control of production in his case book. The practical importance of this topic becomes daily more and more prominent, and a reading of the cases under this subject is bound to give anyone a better insight into many of the present day activities of the government in not only the field

of gas and oil, but also into its operations in dealing with all our natural resources.

The development of pipe line and transportation companies is also becoming more and more important, and the interstate commerce angle of pipe lines is a wide subject in itself. The rights of interstate shippers, and governmental regulation and control of interstate commerce in relation to the Federal Constitution is sure to create much controversy and therefore many law suits. This subject is also dealt with in a separate chapter in Professor Kulp's case-book.

An invaluable asset of the book is the list of forms which appear in the Appendix of the book. Herein is set out types of leases, assignments, releases, deeds, etc., and these forms give one a practical application of the legal principles involved in the cases.

The citations are exhaustive, and while, as we have previously stated, this is a new branch of the law, its importance is not thereby diminished. Of course much of the litigation on oil and gas will be done in a few states; still the very nature of the subject and the universal use of gas and oil brings a particular interest to all of us.

The use of this case book is to play an important part in the present day law school, and we feel sure that it will prove to be a valuable and worthy book upon the subject.

Donald F. Wise.

PRINCIPLES OF THE LAW OF EVIDENCE. By Henry Wilbur Humble. Chicago: Callaghan & Co. 1934.

This little book is essentially a manual, a text stating briefly and clearly the general fundamental principles rather than a treatise or reference book. Minor exceptions, limitations and matters of local interest are not considered. The author has prepared this text primarily for the aid of law students rather than practitioners; and as to what it purports to be, it must be said of it that it is to be commended both as to its plan and form of treatment.

The text material is supplemented by "Cases for Discussion," which add to the principles stated in each chapter. Many of these cases are recent and so they show the modern developments in the law. The author's main purpose in including them, however, is to have them used for the purpose of provoking discussion in classroom in an endeavor to apply the principles stated in the text proper.

An "Appendix" of fifty pages contains some important and interesting material. A part of it is in the form of extracts from cases illustrating and considering such matters as Leading Questions, General Question, Hypothetical Question, Question Containing an Assumption of Fact, etc. The purpose of this is to give a greater degree of concreteness to the rules of admissibility. A part is in the form of extracts from such works as Wigmore's Principles of Judicial Proof, Moore's Treatise on Facts, and the three works by Wellman, The Art of Cross-Examination, Day in Court, and Gentlemen of the Jury. The author draws mainly from Professor Wigmore's book. The latter excerpts consider, *inter alia*, Various Kinds of Witnesses (such as The Rambling Witness, The Dull and Stupid Witness, The Hostile Witness, The Cunning Witness, etc.), Testimony of Boys Compared With That of Girls, Women as Witnesses, Badgering the Witness, Cross-Examining the Expert, etc.

Due to the composition and the clearness with which the principles are stated, this book may earn for itself the right to be called a "*vade mecum*" on this branch of the law.

W. D. Rollison.

RESTATEMENT OF THE LAW OF CONFLICT OF LAWS. St. Paul: American Law Institute. 1934.

The American Law Institute has taken another step forward in its task of presenting a unified and thorough treatment of the common law on various subjects. The Restatement of the Law of Conflict of Laws is now obtainable in its complete form! From a close contact with this group of legal minds through the medium of their various works I for one cannot but feel more and more indebted to this association for their help to students of the law. Anyone who is acquainted with the previous works of the American Law Institute cannot help but decide that a sufficient precedent has been set for a ready acceptance of this their latest text. The work on the Restatement of the Law of Conflict of Laws was begun in 1923, and after eleven years of extensive study, research, and conference it was ready for the final draft. The amount of work involved in this publication is truly evidenced by the period it has taken to develop the Restatement as it is today. Much of the difficulty encountered in the drafting of this Restatement was due to the fact that until rather recently the subject of Conflict of Laws has been somewhat neglected. It has not been sufficiently isolated from other subjects which are to a great extent its component parts. A comprehensive study of Conflict of Laws necessarily involves every branch of the law, and because of the dearth of individual treatments of the subject the authors of the Restatement of the Law of Conflicts found it necessary to ferret out the divers rules by more detailed study than they would have in the treatment of a subject like Contracts or Torts. But the Restatement has not suffered even to a minute degree because of this fact.

No one can doubt but that the study of a textbook as a supplement to the case system of the study of law is not only advisable but essential. A good textbook cannot help but clarify many points in the mind of the student, for often the cases will result in confusion upon a particular point and it is then that a thorough perusal of a text will alleviate the difficulty. A clear and concise statement of the common law on a given topic is a boon to an understanding of the topic in question. The Restatement of the Law of Conflict of Laws in this regard solves a difficulty which otherwise would often beset the student. The make-up of the Restatement invites study, for even one reluctant to reading page after page of small print in order to arrive at a definite conclusion will solve his problem, usually, by a reading of the bold type that heads each topic. The horn-book has long been a favorite of the student, and the American Law Institute has seen fit to incorporate this feature in all its works. This feature alone is enough to invite a purchase. After the general statements made in the large black type a comment is made upon the particular question involved. This comment not only helps to clarify what has already been said, but emphasizes any exceptions to the rule stated. Then, following the comment, illustrations of type situations are given. These illustrations are extremely valuable for they give one an example of what is being discussed and thereby do much toward a deeper insight and understanding of the subject. The general outline of the Restatement seems to me to be without a peer. The one thing that is lacking in this work, and the same can be said for the other Restatements, is citations. The failure to supply citations is the only thing that detracts from this book, but this will be compensated for by the Annotations for the various states which will follow the publication of the general treatise under consideration. These State Annotations will make the treatment complete.

We have, in the review of the Restatement of Torts,¹ shown the importance which the courts have and are likely to place upon the various Restatements of

¹ See 10 NOTRE DAME LAWY. 215-216.

the American Law Institute. It follows as a necessary conclusion that the same judicial sanction will be given to the Restatement of the Law of Conflict of Laws.

The reporter, Joseph H. Beale, who, as Professor in the Harvard Law School, has devoted more than thirty years to the study and exposition of the subject of Conflict of Laws, and his co-workers, advisors, and counselors, have performed a great task in a truly fine way. The Restatement of the Law of Conflict of Laws must be held to stand on a par with the other works of the American Law Institute.

Donald F. Wise.