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Book Reviews

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BOOK REVIEWS

THE POWER TO PLEASE. By J. W. Donovan. Edited by H. L. Herschberg of United News Company.

For nearly half a century Judge Donovan's *Modern Jury Trials* has been read by the lawyers of America. It has been an invaluable aid to the trial lawyer. Who has not been thrilled by the great eloquence and convincing arguments of such advocates as Carpenter, Webster, Graham, Evarts, Ryan, and Daniel Voorhees? The revised edition of *Modern Jury Trials* was reviewed in the January (1931) number of the *Notre Dame Lawyer*. As the profession welcomed this revision, so it will receive and welcome Judge Donovan's recent work entitled "Power to Please." This little book of sixty pages edited by H. L. Herschberg and dedicated to Henry Ford contains more meat than volumes many times its size. It contains quotations from the best and many interesting experiences and stories of this grand old lawyer. It is full of suggestions to lawyers and speakers and professional men in general. Friends of Judge Donovan, and they are legion, will be pleased to know that the Judge is still hale and hearty at ninety-two. The Judge celebrated his ninety-second birthday on March 2nd, at 4765 Fullerton Avenue, Detroit, Michigan, and I am sure all who have read his works will join in congratulations and wish him many more birthdays.

Thomas F. Konop.

University of Notre Dame, College of Law.

CASES ON THE LAW OF INSURANCE. Second Edition. By William R. Vance. St. Paul: West Publishing Co. 1931.

In the selection of cases for the second edition of his *Casebook on Insurance Law*, Professor Vance has been guided by two considerations. The first is a shifting of emphasis from the historical background and development of the law of insurance to its economic aspects. The second consideration is a recognition of the fact that because American insurance law, aside from marine insurance law, has as far changed and diverged from the course of its English sources, that, except for historical interest, many English cases have lost their value for American students. Many such cases have been eliminated from the second edition, and in their stead the editor has used more modern American cases which are illustrative of the trend of American insurance law.

The editor has made frequent use of non-case material in the form of excerpts from texts, law journals, and statutes. In the second edition, as in the first, the footnotes are both numerous and enlightening.

The newer developments of insurance law as applied to group insurance, credit insurance, liability insurance, etc., are allotted space more in keeping with their ever-growing importance than that which they were accorded in the first edition.

By using carefully revised statements of facts in many of the cases printed, and by elision of considerable portions of opinions, not relevant to the questions under consideration, the editor has succeeded in collecting a greater volume of material within the space of his book, and at the same time has made it possible for the student to comprehend the problems presented with greater facility.

Homer Q. Earl.

University of Notre Dame, College of Law.

A SURVEY OF THE LEGAL STATUS OF WOMEN IN THE FORTY-EIGHT STATES. Revised by Savilla Millis Simons. Washington, D. C.: National League of Women Voters. 1930.

In January 1923, the Committee on Uniform Laws Concerning Women, of the National League of Women Voters, made a survey covering the contractual and property rights of married women, the guardianship of children, certain features of the marriage and divorce laws, the eligibility of women for jury service, the relationship of women to public office, and the political status occupied by women. This material, gathered primarily for the enlightenment and direction of State Officers of the League of Women Voters in preparing the legislative programs to be advanced before the legislative bodies of the several states, was published in pamphlet form in March 1924 under the direction of Esther E. Dunshee, Chairman, Committee on Legal Status of Women. That pamphlet, by revision in 1926, was made to include legislative enactments of 1925.

The pamphlet under consideration is a revision of the former publication. It includes legislative changes made prior to 1930 and is the work of Savilla Millis Simons.

The pamphlet contains a summary statement in which a general prospectus of the laws in force in all of the states is set out. There are also forty-eight sections in which the same questions of law, asked and answered generally in the summary statement with regard to the United States as a whole, are asked and answered more specifically with regard to each of the states of the union.

The topics covered by the questions and answers are contractual rights, property rights, domicil, guardianship of children, marriage and divorce. The answers are supported generally by citations of the several statutes of the state the law of which is under consideration. Citations of cases are very rare.

This pamphlet, it is quite frankly admitted, attempts primarily to point out instances in which there is a discrimination against women. It does not, therefore, have the value for a practicing attorney that it would have if it included also those instances in which women share with men the same rights. It is, however, a very helpful book to the student of Domestic Relations or Persons, whose object it is to secure a comparative view of the position of women in the different states.

Homer Q. Earl.

University of Notre Dame, College of Law.

CASES ON CONSTITUTIONAL LAW. By Dudley O. McGovney. Indianapolis: Bobbs-Merrill Co. 1930.

This is an up-to-date case book sufficiently condensed to make it serviceable with certain discriminating eliminations for semester courses in Constitutional Law. The author has perhaps overemphasized the historical phase of the subject in his selection of the cases, especially with reference to the years preceding the establishment of the Federal Constitution. This feature need not impair the value of the work, however, for those to whom this historical phase does not appear to be important.

Every experienced teacher of Constitutional Law has his own ideas with reference to formula and system; it is inconceivable that any case book should exactly meet these. This being true, the most decided advantage that a case book on Constitutional Law can have is flexibility of outline. Professor McGovney's text has this feature, and this along with its inclusion of practically all of the important cases up to and including 1930 entitles it to recommendation.

Clarence Manion.

University of Notre Dame, College of Law.

THE CONSTITUTION AND WHAT IT MEANS TODAY. By Edward S. Corwin. New Jersey: Princeton University Press. 1930.

This is the fourth edition of a small and practical volume intended not so much for law students as for the information of the general public. Professor Corwin has made no attempt to exhaust the interpretation of the sections of the Federal Constitution, he has rather given a readable and workable annotation of that document beginning with Article 1 and following through to the end of the amendments.

Students of Constitutional Law will find this book helpful in pursuing the study of the Constitution in its natural sequence, a procedure that is well-nigh impossible in the ordinary law courses dealing with the subject of Constitutional Law. The book is interesting to those who are not familiar with the fact that the Federal Constitution today is very largely what the Supreme Court throughout the history of the United States has construed it to be. The language of the document itself cannot any longer be taken at its face value, and it is necessary therefore, even for the average man, to have some concept of what "the supreme law of the land" has been construed to be. Professor Corwin's little book does this very effectively.

Clarence Manion.

University of Notre Dame, College of Law.

CASES ON TORTS. By Francis H. Bohlen. Third Edition. Indianapolis: The Bobbs-Merrill Co. 1930.

Seldom has any field of instruction so definite a need for a new case book as that which has awaited Professor Bohlen's third edition of "Cases on Torts." The overwhelming number of case books on Torts bore witness to the general dissatisfaction on the part of the teaching profession with the selection and arrangement of the material on this subject.

The subjects of "negligence" and "legal cause" have given rise to the most difficulty. Then there has been the question as to whether there should be the historical approach. In his new edition Professor Bohlen has achieved outstanding success in the arrangement of the material on these subjects. On the subject of "negligence" the Editor has rearranged the cases which he retained from the second edition and has included several more recent cases including the important decision, prepared by Chief Justice Cardozo, in the *Palsgraf* case. A new method of approach, one more in keeping with that in the Restatement of the Law of Torts, is used. Likewise, the subject of "legal cause" has undergone the deleting, the inclusion, and the rearrangement processes. The subject has been outlined in a manner different from that in the second edition. The new arrangement is more in accord with modern juristic thinking than with judicial terminology.

A few cases previously scattered have been brought together with the new case of *Filippone v. Reisenburger* to constitute an opening chapter on "Volition."

Several recent cases have been included in order to present more adequately the development of the subject since the preparation of the second edition. Professor Bohlen seems to have placed more emphasis on the historical development of the law of Torts than he did in the second edition. There is a separate chapter dealing with the "Transition from Liability without Fault to Liability Based on Moral or Social Misconduct." The question of liability without fault has thus been removed from the chapter on Battery. Reference might also be made to the case of *Davies v. Mann* at the beginning of the chapter devoted to the "Last Clear Chance Doctrine."

There has been a rearrangement of the material on the subject of duties of "Vendors, Manufacturers, and Contractors." The recent decision of *Flies v. Fox Bros. Buick Co.*, a decision dealing with the development of the law, has been added. The new arrangement is more satisfactory than that in the second edition, and it follows closely the analysis of this subject in the Tentative Restatement.

A new chapter has been added dealing with the liabilities incurred by those "who fail to go to the assistance of others or who gratuitously render aid to them."

The chapter dealing with "duties created by legislative enactments has been greatly expanded and brought forward to follow the chapter dealing with common-law negligence." This seems to be the most logical arrangement of these two topics.

More material might profitably have been added, either in the form of cases or footnotes, dealing more extensively with the so-called "joint enterprise" doctrine, a doctrine of more recent significance. The same might be said with reference to the recent importance that is exemplified in the decisions of the duty which a driver or owner of an automobile owes to his guest. The trend of legislation might have been indicated at least in the footnotes. But here, of course, questions of policy and individual opinion enter into any selection of cases.

The rearrangement of the old cases and the selection of the new cases show the influence of the Editor's work as Reporter of the Law of Torts in the American Law Institute. The footnotes contain many references to the Tentative Restatement, but they are not as copious as they could have been made. It is doubtful as to whether the space saved outweighs the benefit that would have been derived from more extensive references to the Tentative Restatement and to statutes.

W. D. Rollison.

University of Notre Dame, College of Law.

CRIMINOLOGY. By Fred E. Haynes. New York: McGraw-Hill. 1930.

Before commenting on the author's work a few reflections are in order. First of all, the subject of Criminology is of sufficiently modern origin and its findings of such unsettled character that it still deserves the classification of an experimental science. Being chiefly the study of human emotions, complexes, and anti-social impulses, it is inevitably involved in many difficult problems. Consequently, any one who attempts to reduce these problems to some degree of scientific certainty is deserving of unstinted praise and encouragement and surely his results should not be viewed too critically. Moreover, the human element necessarily involved in crime gives the facts such varied meanings that they seemingly defy classification. Nevertheless a scientific study of crime is not impossible.

From his twenty years of teaching Criminology and from his many personal investigations of penal institutions and convicts Mr. Haynes has gathered a wealth of valuable information which he has assembled in this book in an interesting and well-ordered arrangement. The book opens with a study of the criminal, continues with a review of the various modes of punishment and concludes with a discussion of the means for the reform of the criminal and the prevention of crime. As a textbook this volume is excellent, for the great number of review questions, suggested topics for investigation, and selected references following each paragraph, together with a complete table of contents and a comprehensive index, makes it readily adaptable to class-room use.

Chapter five, entitled *Crime and Social Control—the Police*, is particularly interesting for its caustic criticisms of the present police systems and some timely suggestions for reform and increased efficiency. In the chapters dealing with the punishment of crime there is presented a comprehensive view of the history and development of the modern penal institutions and the different modes of punishment.

In criticism it might be said that the author has minimized the value of corporal punishment as a deterrent to crime. While criminal punishment in the early nineteenth century was unquestionably cruel and unjustifiable, the present tendency to coddle criminals is equally deplorable. As ever, the golden mean still remains

the elusive ideal to be achieved. Furthermore, the automobile and the revolver, the two greatest instrumentalities of crime, have been given very little consideration in proportion to their importance as crime factors. Finally, the chapter on *Types of Criminals* would probably be more complete if it contained a separate discussion of woman as a distinct criminal type.

As a whole the book is well written, illustrated with many examples and replete with the observations of the country's leading criminologists. The outstanding impression conveyed is the fact that "crime is a sociological phenomenon." According to the words of Mr. Haynes, "the sociological, as well as the individual, approach must be used if there is to be any real hope for the solution of the crime problem."

Joseph L. Wetli.

A HANDBOOK ON HANGING. By Charles Duff. Boston: Hale, Cushman & Flint. 1929.

To the morbidly curious the brutal charm of this gruesome title must be well-nigh irresistible. It immediately suggests DeQuincey's great classic, "Murder As A Fine Art," but with that the comparison ceases. However, the morbid ones need not be discouraged, for, when they realize that "Dislocation of the neck is the ideal to be aimed at" and that Execution is a fine art, their gloomy inhibitions must be immeasurably relieved. Then too, the wealth of "much useful information on Neck-breaking, Throttling, Strangling, Asphyxiation, Decapitation and Electrocutation" must fill their hearts with fiendish glee. And to make their happiness supreme the author has very considerably included some choice stories of snappy hangings and complete data on the arrangement of the "drop," a matter of vital importance in all successful rope parties.

To better give an idea of the book's fatal charm a few topics of interesting import are here presented: *Fashions in Methods of Executions, The Beauty of Hanging, British Hangmen Poor but Honest, Hangmen Make Mistakes, Charming Personality of Hangmen, A Uniform for Hangmen, Fun for the Hangman, Romance in a Butcher's Shop, A Sneeze on the Scaffold, Honours for Hangmen, Hangmen Born not Made, Why Hanging Kills, Note on Scaffolds.*

As a satire on capital punishment, which the book purports to be, it lacks appeal. However, one reviewer has said that "Any supporter of capital punishment whose belief in the death penalty could survive *this* volume would indeed be beyond hope." To that statement I must register an emphatic dissent. There are times when ridicule has the effect of strong argument but in the case against capital punishment the approach must be made by more serious comments. To this reviewer the only matter worthy of commendation is the peculiar attractiveness of the title.

Joseph L. Wetli.

HOW TO FIND THE LAW. By Fred A. Eldean. St. Paul: West Publishing Company. 1931.

This volume contains an ample amount of important bibliographical matter to constitute, in less than eight hundred pages, an adequate course in legal bibliography. Beginning with a general outline of the legal reference materials, Mr. Eldean proceeds to describe how the materials have come into being. Then he continues with an excellent discussion, considerably in detail, of the lawyer's situation when he is confronted with a certain set of facts for which he must endeavor to find a solution. Two chapters are devoted to a study of the search for judicial precedents, which is followed by instructions and explanations for supplementing and evaluating such precedents. Facsimiles of pages from digests, encyclopedias,

citators and indexes are illustrative of the points to be established throughout these discussions. It may be desirable to mention the observation that the book is much more comprehensive than its title purports it to be. In addition to showing how to find the law, this book contains numerous discussions by law professors and prominent writers of legal articles, in chapters on *Business Data for the Lawyer*, *Use of Decisions and Statutes*, *The Trial Brief*, *The Brief on Appeal*. This additional feature furnishes information of an inestimable nature. For instance, it is important that a student of law be able to distinguish the doctrine of *stare decisis* from the principle of *res judicata*; or, it is a matter of consequence that both the student and the lawyer be properly trained for the preparation of briefs. In the last part of the book a bibliography of some of the outstanding American legal reference materials is presented. In a separate section may be found a bibliography of the English materials. A general study of this book establishes itself as an indispensable tool in any lawyer's workshop. There is no doubt that there exists an inexcusable deficiency in acquiring the fundamentals of research work. Mr. Eldean has contributed a new volume which renders this problem comparatively simple.

J. P. Guadnola.

BOOKS RECEIVED

- Adventures of Ephraim Tutt, The.* By Arthur Train. New York: Charles Scribner's Sons. 1930.
- Cases on the Law of Insurance.* Second Edition. By William R. Vance. St. Paul: West Publishing Co. 1931.
- Corporate Directors.* By Spellman. New York: Prentice Hall, Inc. 1930.
- Essays in Jurisprudence and the Common Law.* By A. L. Goodhart. Cambridge: at the University Press; New York: The MacMillan Co. 1930.
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