

Missouri Law Review

Volume 3
Issue 2 April 1938

Article 6

1938

Book Reviews

Follow this and additional works at: <https://scholarship.law.missouri.edu/mlr>



Part of the [Law Commons](#)

Recommended Citation

Book Reviews, 3 MO. L. REV. (1938)

Available at: <https://scholarship.law.missouri.edu/mlr/vol3/iss2/6>

This Book Review is brought to you for free and open access by the Law Journals at University of Missouri School of Law Scholarship Repository. It has been accepted for inclusion in Missouri Law Review by an authorized editor of University of Missouri School of Law Scholarship Repository. For more information, please contact bassettcw@missouri.edu.

Book Reviews

MISSOURI PLEADING AND PRACTICE. By Hale Houts. Kansas City: Vernon Law Book Company, 1937-1938. 7 Volumes.

In an earlier issue of the *Missouri Law Review*, the writer considered the first two volumes of *Missouri Pleading and Practice* by Hale Houts of the Kansas City, Missouri, Bar.

The third and fourth volumes, covering judgments, executions, costs, and special types of proceedings, are written in the same manner as that in which the first two were compiled. The applicable constitutional and statutory material is quoted. Though the coverage of case material is comparatively thorough, it is to be regretted that the author does little more than give rules of law and cite cases. There is, of course, justification for this in many instances, since courts very often do this very thing. Occasionally the author gives his personal ideas. Examples of this are found in volume 3 on pages 53, 267, 275, 276, 379, 411 and in volume 4 on pages 38 and 77. Again, suggestions of what should be the preferred practice are made. Instances of this are discovered on pages 29 and 475 of volume 4. Moreover, valuable information as to what practice is in certain situations is found. Samples of this appear on pages 614 and 702 of volume four.

It is thought that the three volumes of forms compose the most valuable part of our author's work.

Several points concerning the forms should be noticed. In a short preface to the volumes of forms, Mr. Houts states that many of the forms are obtained or adopted from reported decisions or pleadings drawn and used by outstanding Missouri lawyers. In certain cases we are informed of the source of the forms. This should inspire confidence in their use.

The usual, and many unusual, situations are covered by the forms. The following chapter headings indicate the broad coverage of these volumes: Formal and Preliminary Matters and Allegations of General Use; Petitions in General and Ordinary Actions; Pleadings and Proceedings after Suit Filed and Prior to Verdicts and Judgments; Orders, Judgments, and Proceedings after Verdicts and Judgments; Particular and Special Actions; Miscellaneous Proceedings. The reviewer has checked samples of these forms and has found them well drawn.

Although the first seven volumes of the work being reviewed gave no indication that a general index was to follow, the reviewer is delighted to find a complete index in the eighth volume. Although it may have been better to have indexed the forms separately, that is not certainly so. The Tables of Statutes and corresponding references to Mr. Hout's work should be valuable.

Another feature of the work being discussed is an inclusion in volume seven of Court Rules. They cover the federal Supreme Court, Circuit Court of Appeals, Eighth Circuit, and District Court, Eastern Judicial District. General orders in bankruptcy and bankruptcy forms are likewise embraced in the last volume of this work. Rules of the Missouri Supreme Court and Courts of Appeals also appear.

The printing and binding of these volumes is well done.

To summarize, the reviewer is disappointed in not finding more reasoning in the text material of Mr. Houts' work, but the reviewer believes that our author has made many useful suggestions as to local procedure and that he has given practitioners in Missouri courts a splendid selection of usable forms.

St. Louis University School of Law

CARL C. WHEATON.

STATE AND NATIONAL POWER OVER COMMERCE. By F. D. G. Ribble, New York: Columbia University Press, 1937. Pp. 266.

I started to read Professor Ribble's book, which is one of the Columbia Legal Studies, one night after a usual day at the office. I made very slow progress. I went to sleep a time or two and came to a tentative conclusion that Ribble had written something that was tough reading. The next time I started to read the book was on a Sunday morning after a good night's sleep. I had a very pleasant surprise. The book was interesting. There was no desire to stop reading. My tentative conclusion was fundamentally in error.

To be certain there are passages in this book, as in any scholarly book dealing with law, that require one to pause and think. That, however, is a compliment to the book. So, if time is available the next time that the Commerce Clause of the United States Constitution is up for class work, Ribble's book will be on the desk for the purpose of a detailed study of it in connection with the cases that will be discussed in class.

In one respect it is unfortunate that the book went to press in February, 1937. Thus that series of opinions involving the National Labor Relations Board had not been decided by the United States Supreme Court and consequently they are not considered in this study by Professor Ribble. These decisions seem to be very significant at the present time and it is hardly possible that they would not have influenced Professor Ribble's ideas. It is even likely that some passages in the book would have been modified in view of these later decisions.

Professor Ribble's work appealed to one reader at least as being scholarship in the best sense of the word. He is no excited reformer who is trying to fit the cases into pre-conceived theories for the salvation of the United States. Too frequently, it appears, writers in the public law field in this country are individuals whose intelligence is much more keen than their judgment is calm.

So it is valuable to have a reasonably short treatise of the Commerce Clause by a scholar who is objective in his consideration of the problems that have been presented. Professor Ribble has his convictions but this reviewer at least failed to discover any deep passion that warped his scholarly judgment. Accordingly it is believed that all teachers of constitutional law will find this book to be of great value. The same should be said for lawyers who are particularly concerned with the Commerce Clause. But as for laymen it is not believed that the average of them will be able to comprehend the book in a significant way.

It does not seem necessary to summarize Professor Ribble's views upon the various problems. Most of his chapters have either a formal or an informal conclusion and the last chapter is a "Conclusion" of the previous material.

University of Chicago Law School.

KENNETH C. SEARS.

CASES AND MATERIALS ON THE CONFLICT OF LAWS. By Ernest G. Lorenzen.
Fourth Edition. St. Paul: West Publishing Co., 1937. Pp. xxxvi, 1138.

A fourth edition of a casebook, issued only five years after the appearance of the third edition, seems to require some justification. The reason for this new edition lies in the publication of the Restatement and a considerable mass of other material (including casebooks) on Conflict of Laws during the last five years, and the decision of several important cases, plus some development in teaching methods. That is probably an adequate justification. Still, users of the book may be excused for wishing that this were only a third edition, issued perhaps a year or two sooner than the present fourth, and taking substantially the form this edition now takes.

The first thing that the reviewer noticed about the new book was that a splendid collection of cases on Domicile appears in Chapter One. In the preface, Professor Lorenzen states that this is "at the request of the users of the book", faintly implying that this return to the style of the second edition was forced upon him against the better judgment of his own functional mind. At any rate there is little doubt that users of the book believe that a section on Domicile to be studied at the beginning of the course will aid them substantially in their function of teaching law.¹ An eleven-page introductory survey of the subject of Conflict of Laws opens the volume, and introductory notes of textbook character appear at the openings of most of the chapters and sections. These are like so-called introductory matter in many books, in that the student will do well to read them not only at the beginning but also at the end of his reading of the

1. See book reviews of the third edition, (1932) 46 HARV. L. REV. 353; (1933) 81 U. of PA. L. REV. 498; (1933) 6 SO. CALIF. L. REV. 358; (1933) 12 TEX. L. REV. 528.

section, chapter or volume. Certainly they will make it possible not only to cover more ground in the course taught from the casebook, but also to go more deeply into what is taught, since they afford the student quick access to a basic knowledge which otherwise would be acquired more expensively from classroom discussion. Frequent abstracts of cases and excerpts from law review articles and the Restatement (printed in the text and not hidden in the footnotes) serve the same highly useful purpose. It must not be thought, however, that the text matter dominates the volume. It definitely does not. The book is a casebook, by every accepted standard, and a casebook of the most usable type. The choice of cases is as excellent as in previous editions, which is high praise. A high proportion of recent cases is used, but this is almost a matter of necessity in a subject whose growth is as new as that of the law of Conflict of Laws. These recent cases are the only ones which make reference to and sometimes base their results upon the pronouncements of the American Law Institute. The extent to which the Conflict of Laws is becoming a branch of Constitutional Law is to be guessed at from recent cases also. And unlike the cases in many other fields of the law, the recent ones here are often more "teachable" than the old ones, because to some extent at least the judges are just beginning to know what they are talking about when they employ the traditional Conflict of Laws words. If there be any field of common law in which adult education is currently in process this is it.

It can scarcely be said any longer that Lorenzen's is the best casebook available for teaching Conflict of Laws, but it can still be said that there are none appreciably better.

Law School, University of Arkansas.

ROBERT A. LEFLAR.

CASES AND OTHER MATERIALS ON ADMINISTRATIVE TRIBUNALS. By E. Blythe Stason. Chicago: Callaghan & Co., 1937, pp. xxxiii, 757.

There is but one thing more unpleasant than to feel and express disagreement with one of Professor Stason's reputation and stature. That is to feel the disagreement and conceal it. So circumstanced, your reviewer finds himself under the necessity of avowing a sense of disappointment with reference to the work under consideration.

There are here and there inaccuracies or omissions in connection with various particulars, which one regrets to see; but these are neither so many nor so serious as to afford any solid ground of objection to the book. Thus, to state that "the conclusions of the *Arlidge* case¹ seem to have been somewhat modified"²

1. *Local Government Board v. Arlidge*, [1915] A. C. 120.

2. P. 247.

by *Errington v. Minister of Health*³ is to create confusion as to the English judicial hierarchy much as would be involved in speaking of a Circuit Court of Appeals decision as modifying a Supreme Court holding; and to omit from the discussion of Publication of Administrative Rules⁴ any consideration of the little that has been done and the great deal that ought to be done in making information as to regulations and determinations of state administrative bodies generally accessible in some orderly form is to neglect a practical matter already too much neglected. However, insistence on objections to such matters of detail would be mere senseless carping. To demand complete elimination of such petty defects would be to require perfection; and that is something which one is not justified in expecting of any casebook.

What one is justified in expecting is a selection of significant materials in the field and their significant organization. In these fundamental requisites,⁴ or rather in the second one mentioned, the reviewer feels that this casebook falls short of what is required for imparting an understanding of the law concerning administrative action.

In the selection of materials, the book is adequate in most respects and in some even admirable. Of course, the task of the compiler is measurably aided in the field of administrative law by the exceptionally large number of "landmark cases;" and Professor Stason appears to have neglected none of these. Further, he has performed a good service in including a generous number of state cases; and thereby has avoided the dangerous tendency to overstress federal cases and so to create the impression that the administrative law of the states is relatively unimportant, which has marred many casebooks and law review discussions. Even more gratifying is the liberal use of statutory materials, approximately seventy pages of which appear; and most of all the reprinting of excerpts from the reported rules and decisions of administrative agencies, of which an even greater use would have been welcome. The treatise and periodical references, while not exhaustive, are tolerably full and include citations to most of the more important discussions. Less satisfactory, to the reviewer's mind, are the short textual discussions or summations which appear so frequently. The device itself is unobjectionable and potentially very helpful; but some of the summations, as well as many of the footnotes, appear underfocussed or oversimplified. Perhaps, however, this represents a deliberate adaptation by the author to the observed classroom level. In two respects the constituent materials of the book are more seriously open to question. The omission of British and British Dominion decisions, except as they are incidentally cited, is to be deplored; this appears to have been deliberate⁵ but the reason assigned is not convincing. Secondly the facts are too generally condensed and generally too condensed, with the result that the cases often seem mere speci-

3. [1935] 1 K. B. 249.

4. Pp. 420 *et seq.*

5. See p. viii in the preface.

mens of judicial rhetoric whirling *in vacuo*; the noted *Ben Avon* case⁶ is one conspicuous instance where this practise has made a decision seem not only senseless but meaningless.

It is not, however, in the materials used (or omitted) that the true ground for dissatisfaction with the book lies. Rather it is in the use which is made of the materials. They are not, it is respectfully submitted, significantly organized and arranged, i. e., so organized and arranged as to make for consideration and understanding of those problems in connection with administrative law which are of moment to the community and so to the student.

There are, it is conceived, two characteristics of administrative law which are basic and so should determine the approaches to be taken in teaching it. (1) Administrative law is a branch of public law and as such to be viewed in the light of the doctrines of governmental organization, and particularly of the real or asserted constitutional compulsions, applicable to the subject matter. (2) Administrative law is law about a heterogeneous group of governmental agencies newly arisen to deal with problems of recent origin,⁷ each such agency evolving in response to the complex necessities of its own special field of action. Except for the fact that all seem to be influenced by the newer juristic approach of the twentieth century, called "sociological,"⁸ they are as diverse in structure and behavior as the problems they are called upon to solve and consequently can at present best be studied vertically as so many evolving organisms.

Under the first head, that which deals with the position of administrative bodies generally in the constitutional framework, the issues peculiar to administrative law are those raised by the doctrines of separation of powers and delegation of (legislative) power. Here it is probable that the editor and the reviewer are at odds only on the matter of proportion and emphasis. The former, while not expressly using the terms "separation of powers" and "delegation of power" does seem to have had the treatment of those concepts in mind, in Chapters II and III, respectively; and so has given at least a point of departure for discussion of these phases of administrative law. However, the two chapters together occupy only 151 pages, or a little over one-fourth of the book; and in Chapter II, dealing with separation of powers, only six cases are used, comprising 42 pages or a little less than half of the chapter. In view of the tenacity

6. *Ohio Valley Water Co. v. Ben Avon Borough*, 253 U. S. 287 (1920), appearing on p. 462 of the casebook.

7. That is to say, it is only within comparatively recent times that instances of administrative control have become so numerous and so various as to call for separate treatment. It is of course conceded that the administrative performance of some particular functions has a remote origin and an extensive continuous history.

8. See Pound, *Fifty Years of Jurisprudence* (1937) 50 HARV. L. REV. 557, 51 HARV. L. REV. 444 (1938), for an account of the emergence of the social approach in juristic thought in recent years. And in connection with its influence on administrative law, see Radin, *The Courts and Administrative Agencies* (1935) 23 CALIF. L. REV. 469; Pillsbury, *Administrative Tribunals* (1923) 36 HARV. L. REV. 405; Smith, *Administrative Justice* (1923) 18 ILL. L. REV. 211, 9 VA. L. REG. (N. S.) 649.

of the misconceptions relating to these matters and of the dogmatic absurdities about them which have crept into public thinking, it would seem that a somewhat greater allowance of time and material should be given for the student to appraise the true scope of the doctrines, so that he may approach the remainder of the course freed of the notions derived from half-remembered civics textbooks, newspaper editorials, political speeches, and what not.

The really serious flaw in organization comes, however, after the constitutional doctrines have been disposed of, and consists in the arrangement whereby the activities of the various agencies, and the restrictions thereon, are studied horizontally rather than vertically. It would perhaps be unfair and unsafe to assert that Professor Stason believes that all the various administrative agencies are subject to the same rules without variations corresponding to variations in the agencies themselves or in the work which they are doing. In many of the footnotes, as well as in the sub-classifications under Chapter X, entitled Extent of Control of Administrative Action by the Courts, and elsewhere, he does disclose differences in treatment for the different administrative bodies. But in its broad framework, the book recognizes no such factors. The main headings read ordinarily as if the subject were closely akin, say, to Trial and Appellate Practice, with the same uniformity between administrative bodies as exists between courts. When it is considered that Chapters IV to IX inclusive, comprising over half the materials, are organized in this manner, the effect which such an approach is likely to have on students using the book becomes apparent.

Any casebook which is so arranged as to convey the impression that the law is otherwise than it is necessarily loses much of its value as an instructional tool. Even in the private law, if a casebook, say on Contracts, were organized along the lines of the civil, rather than those of the common law, it would result in infecting the students with a confusion which they would carry along with them to the bar and upon the bench. It would be adapted for training neither the advocate who must predict accurately nor the judge who should adjudicate correctly. In an emergent subject like administrative law, the danger is even greater, since misconceptions there may hamper not only the processes of prediction and adjudication but also the very evolution of the agencies with which the subject deals. An illusion of false certainty here may well result in creating terrifically certain falsities in the future. This is only to be avoided by teaching administrative law for what it is—a congeries of evolving organisms, each with its own powers and limitations, not yet presenting sufficient common features to make it useful to treat them horizontally. Some apprehension of this fact lurks in the advice which practising attorneys have been known to give law students that they should not register for administrative law because, practically, what they have to know if they have a commission practise are the rules of and pertaining to the particular commission, "and they'll be changed anyway before you get to practising."

In its underemphasis on the constitutional position of administrative agencies, in its constant suggestion of procedural rigidities and regularity where there

is at present elasticity and luxuriant irregularity, Professor Stason's analysis seems to the reviewer to constitute an approach of more than doubtful utility to the student in either the narrower or the broader aspect of his future life as a lawyer. The competence displayed in execution does not mitigate the lurking fallacies in conception; it may indeed be said to aggravate them.

Washington University School of Law.

ALBERT SALISBURY ABEL.