

Missouri Law Review

Volume 18
Issue 1 *January 1953*

Article 10

1953

Book Reviews

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Recommended Citation

Book Reviews, 18 MO. L. REV. (1953)

Available at: <https://scholarship.law.missouri.edu/mlr/vol18/iss1/10>

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Book Reviews

CASES AND OTHER MATERIALS ON MODERN PROCEDURE AND JUDICIAL ADMINISTRATION.
Arthur T. Vanderbilt. New York: Washington Square Publishing Corporation,
1952. Pp. xx, 1400. \$8.50.

Should the first course in procedure for beginning law students be about the best modern procedure that has been developed in the United States, the Federal Rules? Or should it continue to be about the procedure of medieval England, common law pleading, which was discarded in England long before it was in some parts of this country? Out of the experience of thirty-four years of active practice including many years as a law teacher and law school Dean, and five years as Chief Justice of his state, Arthur T. Vanderbilt concludes: "In the overcrowded law school curriculum there is no time or place—nor should there be—for the study of any system of procedure but the best. The most effective and at the same time the simplest system of procedure thus far developed in our law is that set forth in the 86 Federal Rules of Civil Procedure and the 60 Federal Rules of Criminal Procedure." It is submitted that the most experienced members of the Bench and Bar will now agree.

Chief Justice Vanderbilt has also shown how it can be done. He has prepared and published a case book on modern procedure and judicial administration which is based on the new Federal Rules of Civil and Criminal Procedure. A unique feature of this book is that it deals with civil and criminal procedure together, as component parts of a single procedural system. It is made clear that in these Federal Rules the two subjects overlap in more than one-third of their content and neither is complete without the other. After all, why should not civil and criminal procedure be the same in every possible respect? Requiring different procedure, only increases the opportunity for technical pitfalls which may prevent the disposition of cases on the merits. Of course, there must be some differences; for example, in the way civil and criminal cases are commenced. Nevertheless, as this book demonstrates, the area of difference can be greatly narrowed.

Chief Justice Vanderbilt emphasizes the importance of procedure. He points out that "it will do a lawyer little good to know all the substantive law in the books, if he does not know how it is actually applied in practice;" and that "any member of the bar who cannot give his client expert and realistic counsel on matters of procedure is not worthy of being called a lawyer." Thus the procedure that must be used today is the real "bread and butter" course of the law school; and "it is intolerable that law students should be allowed to graduate from law school or to be admitted to the bar without having learned the fundamentals of taking a civil and criminal case through the courts." Have lawyers and law teachers fully realized what has happened in the field of procedure? Chief Justice Vanderbilt says: "there has been more progress in this country in the law of procedure, and especially in the spirit in which it has been administered, in the last

fifteen years than in the whole preceding century." This progress, 1933 best
Published by University of Missouri School of Law, 1953

be understood by reading in this book Dean Pound's 1906 address on "The Causes of Popular Dissatisfaction With the Administration of Justice" and Dean Wigmore's account of how it was received at the American Bar Association meeting of that year. These and other materials in the book highlight the conditions that brought about the recent improvement of procedure which culminated in the present Federal Rules.

The extent to which the Federal Rules have brought about improvements in state procedure is illustrated in this book by maps, which have been taken from the previous work of Chief Justice Vanderbilt entitled "Minimum Standards of Judicial Administration" published by the National Conference of Judicial Councils in 1949. Thus the situation as to procedure is presented from a comparative point of view on a nationwide scale. An important feature of the new case book is that it takes up the various steps in court procedure in the order in which they naturally occur, namely:

1. In what court may suit be brought—jurisdiction.
2. Who may sue whom—parties.
3. Where suit may be brought—venue and transfer of cases.
4. How to get the defendant or his property into court—process.
5. What relief is sought—remedies.
6. How to state the controversy—the pleadings.
7. How to prepare for trial—pre-trial procedures.
8. How to litigate the controversy—the trial.
9. How to correct trial errors—judicial review.
10. How to enforce a judgment—execution.

The ten chapters with these headings are the heart of the book. Other material related to the subject-matter of the ten chapters but lending itself advantageously to separate treatment, has been put in the four concluding chapters:

1. Judicial selection and related problems.
2. Jury selection and service.
3. The legal profession.
4. Judicial administration.

These matters included under these four headings are sadly neglected in most law schools, not so much from outright intention as from the fact that they do not fit conveniently into any existing courses, they are not bread and butter courses, and there seems to be no room in the crowded three-year curriculum for another course especially devoted to them. (See *Journal of the American Judicature Society*, Vol. 36, No. 2, p. 62.) Chief Justice Vanderbilt has put them in an appropriate place in the course on procedure, but so arranged that they can be studied separately, taken up in connection with the appropriate chapters of the study of procedure, or even assigned only as collateral reading in connection therewith. Thus he suggests: "Chapter XIII on judges and chapter XVI on judicial administration might profitably be read with chapter III on jurisdiction; chapter XIV on juries with chapter X on trials; and chapter XV on attorneys with chapter IX on pre-trial procedure, for it is at that point in a case that an attorney's qualifications

are first subjected to serious test. Indeed it would serve to increase the student's interest in the entire course if he were to voluntarily read these four chapters as soon as he has studied chapters I and II."

Chief Justice Vanderbilt recognizes the importance to an understanding of our common law system of a knowledge of the essentials of the ancient forms of action. However, he suggests that they are now important not as procedure but as substantive law. He advocates that "the discussion of debt, covenant and assumpsit should be primarily the responsibility of the instructor in contracts, while trespass, case, trover, detinue and replevin should be left to the course in torts, and ejectment should be a charge on real property." However, the book does contain Maitland's Lectures on "The Forms Action at Common Law," with Select Writs; and these will give the student a view of the common law system.

New generations of lawyers coming out of our law schools will determine the future of practice and procedure and the effectiveness of our judicial system to serve public needs. Would it not mean much to the profession if they were taught the best "live procedure," and the responsibility of the Bar for good judicial administration, from the beginning of their law school instruction? For example, how much time could be saved for the courts, and thus time and expense saved for litigants, if lawyers came into the practice with an understanding of the use of pre-trial conferences? And more important, how much could the administration of justice be improved if new lawyers could be imbued with the spirit of the new procedure that a trial should be a search for the truth and not a game to be won by concealment and surprise? These are questions that challenge the best the law schools can produce in good instruction and in service to the public. This case book on procedure suggests a new approach for the attainment of these desirable objectives.

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HANDBOOK OF THE LAW OF EVIDENCE. By John Evarts Tracy. New York: Prentice-Hall, Inc., 1952. Pp. 382. \$5.35.

Having read the various treatises and handbooks on the law of evidence which have heretofore been published in the United States, this reviewer looked forward with much interest to reading Professor Tracy's book for his own enlightenment and to see whether he could recommend the reading of this book to his students.

The result of a careful perusal of this book has convinced him that it is one of the best of the handbooks available today on the law of evidence, if not the best one. The book is well written and covers the topics in the field of evidence as well as could be expected in a handbook. There are a number of additional features of this book which the reviewer wishes to point out which, to him, make it an outstanding piece of work. The author presents his choice of various conclusions of different courts on many topics, often giving his reasons for his conclusions. The only fault that the writer would find in this connection is that the author fails in a number of cases of that kind to state his reasons for his decisions. This omission could have been obviated within another 50 pages and would have added

Published by University of Missouri School of Law Scholarship Repository, 1953

much to the value of an already fine book. Another feature of the book which is helpful are the many practical suggestions to lawyers as to how they should proceed in various situations. A further feature of the book is that it contains certain suggestions for improvements in the law of evidence. There are some unfortunate failures to discuss certain features of subjects which to the writer seem to be important points and which again could have been cared for in a very few extra pages.

This reviewer has not gone into detail in connection with the various points discussed, because to do so would extend this book review into an article and because only by reading this book can one fully appreciate the work and ability that have gone into it.

The reviewer is not inclined to laud books which he does not think are worthy of praise. He hopes that this book will be widely read by students and lawyers, for he feels certain that such a reading will be of great value to the readers.

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TAX PLANNING FOR ESTATES (Revised). By William J. Bowe. Nashville: The Vanderbilt University Press, 1952. Pp. 100. \$2.10.

This book was first published in 1949 and has been revised to reflect changes made by the Technical Changes Act of 1949, the Revenue Act of 1950 and the Powers of Appointment Act of 1951. It is divided into twelve short chapters.

In Chapter I, the author considers a typical estate plan for a person with a moderate sized estate and shows how it is possible to accomplish the desires of the owner with respect to disposition of the property and still effect tax savings by means, for example, of a simple trust. Chapter II contains a concise explanation of the types of death taxes, while Chapter III considers the matter of avoiding such taxes by *intervivos* gifts. The next four chapters (IV-VII) then deal in order with the gift tax, the owner's reasons for making *intervivos* gifts, the form of the gift and the type of property to be given, the latter including a consideration of stock in a closely held business, jointly owned property and insurance. It being contemplated that readers of the book will include laymen, Chapter VIII contains an excellent statement on the need for competent advice. Chapter IX, on testamentary gifts, includes a discussion of specific, general and residuary gifts in wills and of the marital deduction. "Charitable Gifts and Bequests" and "Estate Liquidity—The Problem Presented by the Family-Owned Business" are the subjects of Chapters X and XI. In the final chapter the author takes a look into the future and predicts that a single cumulative transfer tax eventually will be adopted.

Professor Bowe is an experienced tax and estate planner, and this little book is a clear and concise, but not over-simplified, exposition of the more basic problems of that field, illustrated with well chosen examples. A good text for the beginner, it could also be read with profit by the expert.

HIRAM H. LESAR*