

# Missouri Law Review

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## Book Reviews

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## Book Reviews

JURISDICTION OF THE SUPREME COURT OF THE UNITED STATES. BY REYNOLDS ROBERTSON AND FRANCIS R. KIRKHAM. KANSAS CITY: VERNON LAW BOOK CO., 1936. pp. vii, 1048.

This is another of the rapidly growing list of law books designed for use in the conduct of particular litigation. The major effort, as the authors announce in the preface, is "to state the rules as they exist and are applied."

The book is not scholarly in the sense of treating abstractly with the processes of thought which resulted in the fixed jurisdiction of the Supreme Court of the United States or with the underlying reasoning by which the Court has developed and limited the exercise of its power in the field of discretionary jurisdiction. Taking the rules as they exist today, the authors state them clearly and give enough of history to explain their application. The quotations from decided cases, which are used frequently through the book, are particularly well chosen and add much, not alone to the pleasure of reading, but to further clarify the principles discussed. To that preponderantly large portion of the bar who although reasonably well informed on the fundamentals of the jurisdiction of the Supreme Court of the United States, have, nevertheless, little knowledge of the exercise of jurisdiction in particular cases and of the rules of practice and procedure before that Court, this book will be useful.

To say that the work is to some substantial extent dogmatic, that it deals largely with what may be referred to as mechanical problems and that it will probably find its greatest use as a reference book and as a guide to authorities, is not in this instance necessarily critical. There is a rather obvious reason for the decline of the type of legal writing which undertakes to analyze, compare and criticize and to develop by analogy new principles or new view points on established propositions. The great wealth of decided cases provides authority on almost every state of facts. The development of legal education, by the case study method, has resulted in a preference by the modern lawyer to find the cases and to analyze and apply the principles disclosed by them for himself in the light of the details of the particular problem with which he is confronted. Assistance in interpreting a difficult case is most likely to be found through the indexes to legal periodicals. Thus, particularly on subjects such as this, the need of the bar is for a book of concise statements which will suggest points involved and which will provide citations to the direct authority. After reading what is here written it is not surprising to learn that the authors are familiar, from practical experience, with the subject on which they write.

The material is organized in such a way as to make it readily available for reference upon specific points. It is divided into five parts and comprises in all forty-seven chapters. In addition, there is an appendix which contains the acts of Congress delimiting the jurisdiction of the Supreme Court to review the judgments and decrees of State Courts, a table of cases cited, and an index. The index is

complete and accurately arranged. A substantial portion of the 850 pages of the book proper is filled with citations of authority. Examination of some of the authorities cited, selected at random, demonstrate a thoroughness of research and accuracy of application which will be of substantial value to those who seek a lead to the decided cases on subjects covered. The authors have generally succeeded in collecting, in one place, all of the material upon the particular point under discussion. However, in those instances in which related points are discussed in different chapters there is a regrettable lack of connecting references.

Lawyers not accustomed to practice before the Supreme Court of the United States will, when they find themselves confronted with a case which is likely to bring them before that distinguished, and to many of us awesome, tribunal will be glad this book has been written. It may not completely solve the problems of jurisdiction and procedure, but it will furnish many useful suggestions and will provide a beginning for the search which is successful only when it leads to the controlling opinion.

St. Louis, Missouri

J. W. McAFEE

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PRINCIPLES OF CONFLICT OF LAWS. BY GEORGE WILFRED STUMBERG. CHICAGO: THE FOUNDATION PRESS, INC., 1937. pp. xl, 441.

This is the first full-length book to present the non-conformist point of view concerning the law of Conflict of Laws which hitherto has been represented in legal writing only by law review articles, though by no dearth of those. It is a competent and convincing presentation of that point of view, and at the same time an able summarization of the law of Conflict of Laws.

The author refuses to accept the theory of Beale and the Restatement that rights and no-rights become vested once and for all, if at all, under some single properly governing law, and that other states should without question recognize their existence or non-existence thus authoritatively determined. His are rather the theories publicized by Cook and Lorenzen, to the effect that "a full realization . . . that the forum applies to a conflicts case its own rules of law and creates under that law a right upon taking into consideration all the facts of the case, including in the facts foreign law, would enable a court to balance from the point of view of expediency and convenience by weighing the comparative desirability of reaching a result on one of a number of grounds" (p. 14). He rejects all ideas of exclusive "legislative jurisdiction" to create rights and defenses, except as such jurisdiction is discoverable in various clauses of the federal Constitution, and concludes that courts have deliberately allowed considerations of expediency and local social policy to control their choice of governing law. To the extent that Professors Cook and Lorenzen employ different approaches to Conflict of Laws problems, it appears that he inclines toward the latter's attitude in that he writes considerably more about what the law is than what it is not.

Professor Stumberg does not insist upon his own views and analyses at the expense of clear presentation of the views of courts as developed in the cases. Frequently he devotes the major part of a chapter to wholly impartial analysis of the cases as such, then presents his own attitude separately. Thus in the chapter on Torts, 22 pages of careful analysis of the decisions are followed by six pages of criticism based on meager authority but presenting fundamental principles as the author sees them. And in dealing with the validity of contracts he states separately the four divergent views principally taken by courts and writers, the authorities supporting each and the standard criticisms of each, then concludes with a brief statement of reasons for preferring Lorenzen's view by which the law usually to be selected as governing is that which would treat the questioned contract as valid.

Usefulness of the book to students will be heightened by the fact that the discussion in the text is generally not in abstract form, but rather centers around particular cases, which are for the most part the cases printed in the leading current casebooks on Conflict of Laws. There is complete citation of law review materials, including student notes and case comments. Current developments in the law, as they appear in law review articles and law review discussion of recent cases, are perhaps more important in Conflict of Laws than in any other field in the law, and the author has clearly appreciated that fact. Black letter summaries followed by text in lighter type—the style popularized by the hornbooks—are used to apparent advantage.

Furthermore, the volume will satisfy a much-felt need among law students to be shown affirmatively what the anti-Bealian doctrines, taught more or less negatively in many classrooms, look like after undergoing the constructive process of being stated as a system of positive law. All in all, it should be more useful than any other book now available to law school students in Conflict of Laws.

University of Missouri School of Law

ROBERT A. LEFLAR

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AMERICAN FAMILY LAWS: HUSBAND AND WIFE, VOL. III, pp. XXIX, 684; PARENT AND CHILD, VOL. IV, pp. xxi, 496. BY CHESTER G. VERNIER. STANFORD UNIVERSITY: STANFORD UNIVERSITY PRESS, 1935, 1936.

When one stands in the presence of a masterpiece, the slight cracks in the canvas detract little from the inherent beauty and richness of such a work of art. Vernier's ambitious work on American Family Laws is a masterpiece. The complete work comprises five volumes: Volume One, Marriage; Volume Two, Divorce; Volume Three, Husband and Wife; Volume Four, Parent and Child; Volume Five, Incompetents and Dependents. Volume Five is still in the process of preparation. The scope and aim of this five-volume study is set forth clearly in one of the paragraphs of the preface:

"In this work an effort has been made to present in comparative form a portion of the family law of the forty-eight states, Alaska, the District of Columbia, and Hawaii. While the method of treatment varies somewhat from section to section, dependent upon the kind and amount of material, it has been the purpose, wherever possible, to do four things: (1) make a brief

summary of the common law; (2) state the statutory law, first in summary form, second in detail, showing variations, resemblances, and omissions; (3) add such comment and criticism as seems pertinent; (4) collect under each head a selected list of references, including texts, case books, annotations, reports, articles, and case notes from law magazines. Wherever it seemed helpful, comparative tables have been used; and wherever possible, the key words of the statute have been reproduced. The work partakes, therefore, somewhat of the nature of a commentary, a digest, an annotation, and a work of reference."

The reviewer has taught the law of domestic relations with special emphasis on the law of Oregon for several years past and in reviewing Volumes Three and Four a very careful check was made of the sections dealing with Oregon material. Not a mistake was found.

Teachers of family law will find the work of inestimable value in the preparation of class material. Legislators and legislative drafting departments will find the study indispensable. It will be of unquestionable value as a reference work for students, but it can not be used satisfactorily as a text on the rules of common law pertaining to the law of persons and domestic relations. The digests and summaries of the common law are too brief and the documentations too inadequate for a satisfactory use of the work is a classroom text. However, it should be stated that apparently it was not the intention of the author to include within the work a complete treatise on the rules of the common law of persons. As a comparative analysis of the family law of the forty-eight states, Alaska, the District of Columbia and Hawaii it is an outstanding contribution to legal literature.

University of Oregon Law School

WAYNE L. MORSE

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THE INSTITUTION OF PROPERTY. BY C. REINOLD NOYES. NEW YORK: LONGMANS, GREEN & Co., 1936. pp. xiv, 645.

This very substantial book is stated on the title page to be a "study of the development, substance and arrangement of the system of property in modern Anglo-American Law." But this sufficiently large field is prefaced by an historical introduction of 250 pages in which the Roman and feudal concepts are discussed as fully as in many special treatises on Roman law, and there is added an appendix on the "etymology of early terminology," pp. 539-583, which is the obvious result of an enormous deal of historical and philological research. The general impression of fullness of detail created by the first glimpse of the book is confirmed upon later examination. There is so much information in it and so much careful and minute analysis of words and ideas in their general and in their special applications, that, whether we do or do not agree with Mr. Noyes' conclusions, we can scarcely help finding both stimulation and a great deal of highly valuable data in his work.

The subject is extremely difficult—the most difficult indeed in law, a fact of which Mr. Noyes is quite aware. A part of his book that will repay close study is

Chapter IV, pp. 285-350, on the modern juristic analysis of property, in which Mr. Noyes subjects the successive schematizations of property rights to a rigid criticism.

The difficulty is largely one of terminology. And for that reason, Mr. Noyes, who attacks the terminological problem with energy and quite exceptional learning, deserves special attention. I am not quite convinced that he has been successful in his efforts. One of the great *cruces* is the famous distinction between *in rem* and *in personam* on which an exhaustive bibliography is, of course, impossible. Indeed, it would fill a book by itself. Mr. Noyes' history of these terms is in the main right enough but not as novel as he apparently supposes. I wish he had more emphatically declared that it has little or no theoretical value and much less practical value than is often supposed.

In fact the whole of *persona* rears its stuffed head in this as in all other legal discussions, and until we persuade jurists that the term, the idea and the doctrine are as waxen, hollow and distorted as the stage contrivance which the word *persona* first denoted, we shall make no great progress in understanding law.

Another insufficiently emphasized matter is the fact that property rights vary enormously in respect of the purposes for which legal machinery is set in motion. What is property for taxation may not be property for an injunction. We need seek no better statement of the shimmering iridescence of a legal concept when one attempts to treat the concept as a reality, than that of Mr. Justice Cardozo in *Burnet v. Wells*, 289 U. S. 672 (1932). Perhaps we shall speak a language more understandable of our generation, if we say that Mr. Cardozo took the concept of property for a ride. The question is always—or should be—whether the obvious purpose of a legal device can be satisfied by one act or by another without violating justice or good sense or order. If it is so satisfied, the fact that the term "property" has no fixed boundaries *per genus et differentiam* is supremely irrelevant.

Mr. Noyes is bold and iconoclastic in his etymologies, which is quite to his credit. None the less, a cautious skepticism will be the inevitable reaction of all those who have themselves attempted a way out of these thickets. The word *manus* which he discusses so fully, pp. 55-76, and again in his appendix, pp. 578-580, is undoubtedly a key-word for both Germanic and Roman notions, if *manus* and *munt* are to be connected, as seems plausible enough. But how treacherous a ground we are on may be illustrated by a casual reference in his notes (p. 57, n. 106) where *manus* and *mando* are connected—not without authority, to be sure, "Pliny" he says "(Men. 783) gives *mandare*=*manum dare*." "Pliny" is a rather disconcerting slip for "Plautus," and the passage, if we took it literally would make *mandare* the equivalent of *in manum dare*, not *manum dare*. But as a matter of fact, it may be a mere Plautine pun, a trick of speech to which this comic writer is much addicted. *Mandare* may be a version of some Greek word. The *Menaechmi* is Greek in substance as in title. And finally a woman might speak of her father having "entrusted her to her husband," without the least reference to the technical *manus*.

All this is merely to enforce the rule of wariness which we must always impose on ourselves when we make too rapid and too extensive inferences from the history of words. The mouth of man is a precarious foundation for legal history.

Mr. Noyes' bibliography on pp. 617-628 is plainly selective. There are many articles and books in his notes not mentioned here. I should like to add to what he gives, chiefly Manigk's excellent article on *manus* in the Pauly-Wissowa-Kroll, *Realenzyklopadie d. klassischen Alt*, and the indices in Liebermann's *Gesetze der Angelsachsen*. The collection of essays on Property edited long ago by Bishop Gore might well be cited. And it seems to me strange that anyone should attempt a study of our property conceptions without a thorough study of Joüon de Longrais' *Conception Anglaise de la saisine*. I should add Craig's *Jus Feudale*, now available in Lord Clyde's translation.

But evidently Mr. Noyes makes no pretense at exhaustiveness. Nor can anyone afford to omit his collections and analyses if he wishes to examine this fundamental concept.

University of California School of Jurisprudence

MAX RADIN

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ROMAN LAW AND COMMON LAW. BY W. W. BUCKLAND AND ARNOLD D. McNAIR.  
CAMBRIDGE: AT THE UNIVERSITY PRESS; NEW YORK: THE MACMILLAN  
COMPANY, 1936. pp. xv iii, 353.

Most books written abroad having to do with Roman law or the civil law need an American translation in order to be easily usable by the ordinary American reader. This volume is an exception. It is written in a simple, interesting style, and the use of Latin words and phrases is minimized.

The book does not purport to be exhaustive. It presents a very lucid comparison of the leading rules and institutions of the Roman law, principally as embodied in the *Corpus Juris*, with those of the common law as developed in England. The English law is not used in such a way as to create difficulties for the American reader. It rather brings in sidelights which add to his interest. The authors are adept at showing how the Romans looked at the various matters. The comparative method of treatment brings out very clearly to the modern reader the outstanding features of the Roman law. The book impresses the reviewer as the best medium he has yet seen for the instruction of American students in the developed principles of that system.<sup>1</sup>

The interesting points which could be referred to are myriad. The striking statement is made that there is "more affinity between the Roman jurist and the common lawyer than there is between the Roman jurist and his modern civilian successor."<sup>2</sup> A good illustration in support of this is the fact that in the Roman law, as in the common law, the creation of a juristic personality was based upon

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1. The historical development of the Roman law is touched upon only incidentally. The present standard work in the English language upon that branch of the subject is JOLOWICZ, *HISTORICAL INTRODUCTION TO THE STUDY OF ROMAN LAW* (1932).

2. P. xi.

the theory of a grant by the state,<sup>3</sup> whereas in the modern civil law it is founded upon the contract of the individuals concerned. The Roman use of the conception was very weak.<sup>4</sup> Apart from slave law limited liability was almost unknown.<sup>5</sup> The use of slaves also caused an almost entire absence of any law of agency.<sup>6</sup>

In dealing with the limitation of actions, the Romans were more interested than we are in the rights of individuals, and less concerned with the public policy of ending litigation.<sup>7</sup> The same viewpoint caused them never to develop any system of discharge of debts through bankruptcy proceedings.<sup>8</sup> The Romans had little family law, because of the great power of the *paterfamilias*.<sup>9</sup> Adoption was a very ancient institution with them, having its roots in the necessity of continuing the line of heirs in order to perpetuate the worship of ancestors.<sup>10</sup>

The Roman distinction between real and personal property was relatively unimportant.<sup>11</sup> The title to provincial land, at least in the Empire, remained in the State, although those to whom the possession was granted were practically owners.<sup>12</sup> The Romans distinguished ownership and possession more sharply than we do, having a hierarchy of actions relating to them.<sup>13</sup> Apart from cases of overriding necessity there was almost no law of eminent domain.<sup>14</sup> Rights could not be exercised merely to injure another.<sup>15</sup> Trespass to land was not actionable,<sup>16</sup> nor was the taking of goods in good faith.<sup>17</sup> There was no distinction between easements and profits *à prendre*.<sup>18</sup>

The *causa* of the civilians, which is so puzzling to the common lawyer, is described as "a sophisticated medieval attempt to generalise the various reasons which led the Roman law to recognize as binding various types of agreement."<sup>19</sup> The Romans had no general theory of contracts, only a list of agreements which the law had made enforceable.<sup>20</sup> Personal security was preferred to real.<sup>21</sup> The Roman theory of quasi-contracts was broader than ours.<sup>22</sup>

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3. P. 52.
  4. Pp. 50-55.
  5. P. 25.
  6. Pp. 24-25, 168-171, 322-324.
  7. P. xiv.
  8. P. xiv.
  9. P. 35.
  10. P. 39.
  11. Pp. 56, 220.
  12. P. 60.
  13. P. 62.
  14. Pp. 72-73.
  15. P. 75.
  16. P. 78.
  17. P. 79.
  18. P. 104.
  19. P. 177.
  20. P. 204.
  21. P. 249.
  22. P. 258.



The primary idea of the Romans in awarding damages for torts was not compensation but vengeance.<sup>23</sup> There was no general rule that injury through negligence was actionable,<sup>24</sup> although the standard of care when relevant was stated as higher than ours.<sup>25</sup> Contributory negligence was taken into consideration only from the standpoint of causation.<sup>26</sup> Because of the great Roman sense of pride, insult was very important in the law of torts.<sup>27</sup> Intent to give affront was required, and it was necessary that the injured party manifest anger as soon as the facts were known.<sup>28</sup> It was a tort to bring a civil action without reasonable grounds.<sup>29</sup> There were a number of quasi-torts, essentially involving liability without fault.<sup>30</sup>

The authors feel that English lawyers are inclined to exaggerate the extent of the differences between the two legal systems.<sup>31</sup> Most American lawyers have not had any basis for an opinion. This readable and instructive volume should do a great deal to correct that condition. The book is an outstanding contribution to the literature of comparative jurisprudence.

University of Southern California School of Law      JOSEPH M. CORMACK

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CASES AND MATERIALS ON THE LAW OF CREDIT TRANSACTIONS. SECOND EDITION. BY  
WESLEY A. STURGES. ST. PAUL: WEST PUBLISHING COMPANY, 1936. pp. xiii, 1082.

The first edition of this book, published in 1930, brought to the teaching of commercial law subjects not only a new arrangement of materials, but a new point of view. Professor Sturges proposed to deal with commercial law in terms of commercial doings, and to emphasize the effects of decisions and legal rules upon commercial practices. The cases were drawn from the fields theretofore covered in the courses on Mortgages, Suretyship, and Bankruptcy, and also from such related fields as Commercial Letters of Credit, Trust Receipts, Pledges, and Conditional Sales.

Cases were not grouped around the traditional legal concepts, but were arranged in terms of a business transaction. Beginning with a consideration of the technical contract, the materials led on to a consideration of the execution of the documents, relations and dealings of the parties during the periods of credit extension, the discharge of the obligation, renewals, outlaw of the obligation through

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23. Pp. 267-270.  
24. P. 285.  
25. P. 287.  
26. P. 291.  
27. Pp. 295-300.  
28. P. 296.  
29. Pp. 307-308.  
30. P. 311.  
31. P. xvii.

the statutes of limitation, and finally to insolvency and bankruptcy. The emphasis, throughout, was not upon the symmetry or logical consistency of the legal rules and definitions involved, but upon the effects which those definitions and rules have upon the business expectations of the parties. In fact, the cases selected, supplemented by searching footnote questions, served to build up a wholesome caution against placing too much reliance upon distinctions such as those between "primary and secondary obligations," "independent and accessorial obligations," and between "title and lien theories" of mortgage.

The Sturges point of view encountered some little skepticism. Might it not make it more difficult for the student to use existing legal literature—particularly its indexes? Would it not result in a hodge-podge of legal points rather than the development of fundamental principles? Time and experience have demonstrated that whatever merit there might have been in these objections, they are outweighed by an increased realism concerning the law and its relation to society. At any rate, the book was widely accepted, and the course has found its place in the curriculum of many of the leading law schools.

The new edition follows substantially the same outline as that used in the original. A short section dealing with appointment of a receiver in mortgage foreclosures has been added. A rather extensive substitution of cases has been made, not always for the purpose of presenting new problems, but often for the purpose of a better presentation of problems treated in the older edition. One of the most desirable features of the book, retained in the new edition, is the inclusion as text material of extracts from law review notes and comments which serve to supplement the informational background given by the cases, and also to stimulate critical analysis of the problems presented.

One of the most substantial improvements in the present edition is the inclusion of a number of forms in current use by private and governmental financial agencies. In the past the reviewer has procured for his classes a number of such forms, and has found that they often give to the classroom discussion a surprisingly practical point of view and, on occasion, have led to extensive independent investigations of the local decisions and statutes. The inclusion of forms in the text should facilitate such technique.

The size of the volume has been considerably reduced, and that circumstance should bring renewed courage to those of us who have been forced, by curricular limitations, to attempt a presentation of the course in approximately one-half the time devoted to it by Professor Sturges. The reduction in size, however, was accomplished by a closer integration of the materials rather than by elimination of problems covered, and the hope may prove illusory when it comes to the actual business of presenting the course in three semester hours. I suspect we shall continue to treat lightly some, and eliminate other, important problems presented by the materials.

Finally, one circumstance alone would justify a new edition of the casebook at this time. Since 1930 the depression has brought much that is new to the field of Credit Transactions, not only through debtor relief legislation such as mortgage

moratoria, but, what is even more significant, a vast increase in governmental financing and governmental financing agencies. This circumstance presents new problems—legal, economic, and political—which should find consideration in any study of short term credit devices.

One may anticipate that this new edition, retaining, as it does, the stimulating scholarship exhibited in its predecessor, will receive the hearty approval of the teaching profession.

University of Idaho College of Law

BERT HOPKINS

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CASES ON TRADE REGULATION. BY S. CHESTERFIELD OPPENHEIM. ST. PAUL: WEST PUBLISHING COMPANY, 1936. pp. lii, 1518.

Professor Oppenheim has compiled far more than a law-school teaching tool, although the field which his work embraces is marked off according to the traditional bounds of courses in Trade Regulation. Within that field, he has amassed a source book for practitioners and advanced students who are concerned with the problems of legal maintenance and policing of competition, as well as a collection of material which instructors and students may use in surveying an unfamiliar branch of the law.

The merits and demerits of the book spring largely from its encyclopedic character. For research purposes, no other single volume contains such a wealth of statutes, cases, documentary material, excerpts from the legal economic literature, and bibliographical references as Professor Oppenheim's work. It belongs on the shelf of every lawyer and student who has occasion to deal with trade marks, unfair competition in all its aspects, or combinations and monopolies. It will furnish a good beginning for work on virtually any problem that can arise, together with a means of access to practically all of the pertinent literature that has appeared down to the present time. Because of the book's concentration upon contemporary developments, it contains a maximum of immediately useful material, in the light of which excursions into historical and doctrinal backgrounds can be made.

By the same token, the teacher can use the book to excellent advantage in leading his class into those topics which seem to him most important. He can arrange the topics according to his own thought, with little disadvantage from altering the order of the case-book; and he can draw upon the material and the references upon each topic with a wide range of choice. He can emphasize the law of combinations and monopolies, which embraces the last 386 pages of the book and a 200-page section on boycotts, exclusive arrangements, and contracts not to complete in chapter 2 of part I, or he can concentrate more largely upon unfair competition and marketing practices, to which the first 960 pages, with the exception noted, are largely given over. The editor will contribute to the thinking of the class by quoted or editorially-written commentaries on many of the topics, which usually develop the economic significance of the subject in hand and review the modern efforts to deal with it.

One does not find in the book, any more than in contemporary statesmanship, a consistent thesis regarding the legal answer to economic problems. Nor is there an integrated account of the swing of public policy from the controlled economy of the Middle Ages, through a largely-unmitigated *laissez faire*, to the regulated capitalism of the present day. These broader currents are suggested, to be sure; but they are not made the basis of the book's organization. In the 87-page introduction, indeed, where the editor might at least have advanced a tentative thesis regarding the sweep of events, he contents himself with a rather curious miscellany of discussion about law school methods; the relation of law to the social sciences; the development of legal and economic conceptions of competition, monopoly, and fair trade; and, interjected into the latter, a section devoted to the tort theories of liability for unfair competition and conspiracy. Some of this discussion can only be drawn upon as it becomes pertinent to the body of the case-book. The remainder must be joined to an argument or analysis in order to be useful.

As will be apparent from the foregoing, Professor Oppenheim has departed radically from Oliphant's *Cases on Trade Regulation*, which it supplants in the American Casebook Series. Gone are the lengthy references to the history of English regulation of monopolies and related phenomena, as well as the numerous American state cases on combinations in restraint of trade, which were present in the earlier work. In their place are the copious treatment of competitive practices which is mentioned above and much modern material relating to Federal and state legislation, including the N. I. R. A., the fair-practice acts, and the Robinson-Patman Law. Much water has gone over the dam in thirteen years.

No doubt the time has not yet come when teaching in regard to government and business can again make use of unifying conceptions or stimulating prophecy. In the present situation, a book such as Professor Oppenheim's, which remains within an arbitrarily defined field and treats its material intensively, fairly, and yet suggestively, is a boon both to research and to the fostering of that open-minded attitude toward controversial problems from which wisdom may ultimately spring.

Washington University School of Law

RALPH F. FUCHS

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CASES AND MATERIALS ON THE LAW OF SALES. BY GEORGE GLEASON BOGERT AND WILLIAM EVERETT BRITTON. CHICAGO: THE FOUNDATION PRESS, INC., 1936. pp. xxvi, 1171.

The editors of this most recent casebook on the law of Sales are men of unquestioned ability and long teaching experience. They have collected 1082 closely printed pages of cases which certainly present the subject in most adequate fashion. The order of presentation is at very little variance from that of other standard casebooks on Sales. The first chapter deals with the Formation of the Contract, and the Statute of Frauds, the latter material usually being relegated to the tail-end of casebooks. This first chapter of 119 pages might well be very

greatly shortened. If a large part were reduced to the form of text, accompanied by fewer cases, little would be lost and much time gained for the student. This reviewer, although admiring the completeness of the selection of cases, firmly believes the casebook is much too long.

The crowding of the curriculum of many of our schools in recent years demands a shortening rather than an expansion of many courses long thought to be indispensable and standard. Sales may well be one of those courses. At the present time Sales has been reduced to a two hour course for one semester in this reviewer's school. Some of the material has gone over to Creditor's Rights and Security, whereas some has simply gone. The meeting of the same problems in different courses and with different instructors may be stimulating, but it is also time consuming. There is much in the way of administrative law which must be presented to the students today, either at the expense of lengthening the period of study or at the expense of shortening the time devoted to some of our time-honored courses. The old answer that any instructor may select any parts of a casebook he desires is not the answer to the objection. Careful selection, annotation, and condensation of material is essentially the work of the casebook editor. The editors have sent with the instant book a list of suggested omissions,—all of Chapter I, and parts of Chapters II, III, IV, V, X,—totalling 299 pages. Thus a matter of some 783 pages remains, rather an ample amount for less than a four hour course.

The inclusion of material dealing with Bulk Sales Acts in Chapter III, and with Financing Methods such as Conditional Sales and Trust Receipts in Chapter V, is particularly to be commended. The Uniform Conditional Sales Act, with the drafting of which Professor Bogert had so much to do, calls for quite different treatment from the general phraseology of the Uniform Sales Act, which leans so heavily upon its English antecedents, both common law and statutory. Much space has rightly been devoted to Warranties, a subject many lawyers will meet rather soon in practice.

The footnotes might have been more informational in character and used to explain historical data in some instances. Examples of very helpful footnotes are those on pages 122-124, and page 167, although at the latter page there appears to be a mistake as to the identity of the Mansfield who wrote an opinion in *Austen v. Craven*.<sup>1</sup>

Over sixty *per centum* of the cases appearing in the book have been decided since 1920. Thus many of the old familiar faces are gone. Even *Whitehouse v. Frost*,<sup>2</sup> with its idea of a tenancy in common in fungible goods, has been relegated to a footnote at page 167. However, the reviewer notes with glee that such an overstuffed case as *Lickbarrow v. Mason* appears only in an introductory note

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1. This has already been pointed out in a review by Professor Vernon X. Miller in 31 ILL. L. REV. 843.

2. 12 East 614 (1810).

on page 387. This attempt to make a casebook up-to-date at its publication has great merit where the newer cases represent new departures in the law, or important statutory construction; but where no new ideas are presented, where is the advantage in replacing the older well-known cases with ones which themselves are soon destined to become old and probably much more obscure than the ones displaced?

In addition to the materials usually included in an appendix, the editors are to be commended for printing the Uniform Bills of Lading Act, the Uniform Warehouse Receipts Act, and the newer Uniform Trust Receipts Act. Why not add a few examples of the standard forms of documents of title? At least it might save much wear and tear on the few form books contained in the average law library. Most students in law school will have but little time to make use of the Bibliography of Standard Books on the Business and Economic Aspects of Marketing, appearing at page xxv.

As to the publishers, this reviewer has two criticisms: (1) he insists that the failure to print the names of cases cited in the text in italics is a time-waster when one is searching quickly for a cited case; (2) printing the cases closely together and covering so much of the page with printed matter leaves too little space for very helpful penciled notations, especially at the beginning or end of each case. The typographical mistakes in the book might well be corrected in the next printing without waiting for a new edition. If a casebook requires an index, this one is not adequately refined as to subject matter.

What complaint has been made by this reviewer might just as well be directed against many another casebook in other fields. Was it Cicero, or one of the other Greats, who reputedly ended a letter in some such manner as, "If I had had more time, I would have written you a shorter letter." The bulky casebooks today, with their suggestive, rather than carefully worked out annotations, somehow call that to mind.

University of Wisconsin Law School

HOWARD L. HALL

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HANDBOOK OF EQUITY. BY HENRY L. McCLINTOCK. ST. PAUL: WEST PUBLISHING COMPANY, 1936. pp. xix, 421.

Professor McClintock has, in this book, strengthened one of the weaker links in the Hornbook Series of the publisher. The author deals, in order, with historical material; equitable procedure; general principles governing equitable relief; equity jurisdiction; specific performance of contract; relief against and reformation of contracts induced by fraud and mistake; equitable conversion by contract; equitable liens and subrogation; equitable servitudes; protection of interests in tangible and intangible property, including interests of personality and public interests; injunctions against judicial proceedings; bills of peace; interpleader; bills *quia timet* and removal of clouds upon title; adjustment of rights and duties of creditors and debtors, and auxiliary and ancillary relief. An index and tables of cases, abbreviations of texts and law review articles cited, round out the book.

The author states, and writes, his belief that a study of Equity as a distinct branch of our legal system is valuable. I not only go along with him, but believe that such a study is necessary. The much debated "merger" or "fusion" of Law and Equity may be in progress, but it has certainly not, as yet, been fully accomplished. Inasmuch as the author is stating principles as they are and not as they, perhaps, should be, he must take them as they are. Professor McClintock gives us, in many places, liberalizing decisions and thoughts from many fields of his subject. He does not inject too much of his own argument against things as they are, but contents himself with indicating what seem to him to be tendencies.

In such a short compass of space as is allotted to the author of a hornbook, one expects to find much ground covered without much attention being paid to detail. For the ground covered in this book, the detail taken care of is remarkable. Trusts and Mortgages are omitted from consideration, as seems proper. Professor McClintock hits the high spots in accordance with expectations, and only occasionally does his foot slip. (Whose doesn't on a hard road?) One error, involving a Missouri case, has been pointed out in an earlier review of the book.<sup>1</sup> *Buckmaster v. Harrop*<sup>2</sup> is cited by the author<sup>3</sup> as presenting the case of a suit by the heirs of the *vendor*, when, in fact, the heirs of the *purchaser* were the plaintiffs in that case. Judging by the accuracy of Professor McClintock's other citations, I am convinced that the word "vendor" in the passage in question, appearing in the fifth line on page 183, must have been intended by him to be either "vendee" or "purchaser", and that the error is typographical, rather than mental.

All in all, the task of compression necessitated by the limited space available has been done in an accurate and scholarly manner. There is no "hack work" to be found in this book. There is a neatness of presentation and an avoidance of cumbersome phraseology that makes it easily readable. Old problems are restated in an understandable form so that many of their mysteries disappear. With both Walsh<sup>4</sup> and this book available, law students, in or out of school, have two excellent short texts on Equity upon which they may depend.

University of Missouri School of Law

LEE-CARL OVERSTREET

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THE SALE OF FOOD AND DRINK AT COMMON LAW AND UNDER THE UNIFORM SALES ACT. BY HARRY C. W. MELICK. NEW YORK: PRENTICE-HALL, INC., 1936. pp. xlii, 346.

This book, according to its preface, has for its object the conserving of the practitioner's time in his search for the law relating to food and drink. Insofar as the case law and statutory and law review materials are concerned, the reader of this book will find the object well accomplished.

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1. Book Review by Treiman (1936) 22 Wash. U. Law Q. 149.
  2. 7 Ves. 341.
  3. P. 183, note 6.
  4. Walsh on Equity (1930).

It may, or may not, be true that the treatment of sales of food and drink should not be separate and apart from the general law of sales and torts, but it cannot be denied that Mr. Melick, in this book, has dealt with his self-assigned and limited task in a skillful, learned and practical manner. The mouse in the Coca-Cola, the fly in the salmon and the worm in the spinach are all present and accounted for, either in the flesh or spirit.

After starting with a chapter dealing with the Origin and Development of Implied Warranties, the author considers the law of implied warranties of quality, both at common law and under the Uniform Sales Act, in all its constituent parts and aspects. He treats with disputes between manufacturer and dealer, manufacturer and consumer, dealer and dealer, and restaurateurs, hotel and inn keepers and consumers. Lastly, comes Negligence and the matter of Damages. An excellent index and tables of cases, statutes and texts add much to the usability of the book.

Throughout the book, the author considers, case by case, the case law of those jurisdictions, in this country and England, which have passed upon the matters under discussion. This feature of the book should make it invaluable to the practitioner who is primarily interested in the state of the authorities in his own state. Mr. Melick's analyses of the cases are precise and accurate and his discussions of the reasons for and backgrounds of the cases are keen and penetrating. His treatment of the origin and development of the law of implied warranty of quality is scholarly and historically sound, particularly in his use of the medieval statutes found in the Appendices and the early cases based thereon.

For my part, I am sorry that Mr. Melick didn't devote some of his splendid capabilities to a consideration of what the case law should be or become in many of the situations discussed in the book. With proponents of absolute liability battling both those who fear trumped-up claims and those who are concerned about the welfare of the corner-grocer, and with increasing attempts being made, specifically in the sealed container cases, to sanction the exemption from liability of the retailer from implied warranty obligations, it would be helpful to have Mr. Melick's observations on these and kindred matters. I, for one, regret that he didn't let us have the benefit of them.

I must say, however, that whatever Mr. Melick didn't write, he has done a good piece of work in what he did write in his self-selected corner of the law. For the practitioner who deals with cases involving injuries resulting from the sale of food and drink, this book will be more often on his desk and in use on his library table than it will be on his shelf.

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