

BOOK REVIEWS

THE ESSENTIALS OF INTERNATIONAL PUBLIC LAW AND ORGANIZATION. By Amos S. Hershey. (Revised Edition.) The Macmillan Co., New York, 1927. Pp. xxii, 784.

If Professor Hershey's treatise were judged solely on its text, it could only be described as an elementary manual on international relations. The main rules of the law of nations and the usages of international intercourse are indeed stated, but the statement is mingled with a strong dash of ethical and sociological material. This extra-legal commentary is carried out with an admirable impartiality—no book could be more completely free from any distortion by national prejudice—but a work which sets out to be a scientific disquisition on law is hardly the place for it. Some of the most striking irrelevancies occur in the discussion of the causes of war. What, for example, has the jurist to do with birth control as a remedy for those economic necessities which may culminate in hostilities?

The book opens with a reproduction of the most widely accepted doctrines of the 19th century as to the nature and sources of international law. Professor Hershey does not concern himself with the fundamental re-examination and criticism of these doctrines so actively in progress at this moment in Europe. There is no reference, in the rich bibliography furnished by the notes, to the work of the Viennese School, if we may so describe Kelsen, Verdross and their disciples. This is the more regrettable in that Professor Hershey shows greater familiarity than is usual in Anglo-Saxon treatises with the theories of earlier Germanic publicists, and might have been expected to interpret to his public the philosophy of their successors.

After a sketch of the history of international relations—an able and instructive synthesis of far more substance than is commonly offered the student—the book proceeds to the analysis of the existing international system. The treatment here is again conventional and for the most part thoroughly sound. One or two rather startling illogicalities meet the eye, however. After deciding with scanty attention to the difficult question as to the position of pirates, inhabitants of occupied territory, neutral shippers, etc., that individuals are objects, not subjects, of the law of nations, the author announces, on page 267, that "we shall consider the *rights and duties of individuals as objects*¹ of international law. . . ." Again, we are told on page 175 that the Sovereign State is "fully autonomous and independent, *i. e., relatively*² free from higher or outside control." This sort of lapse, easy as it is to avoid, mars the most convincing presentation.

Professor Hershey's voluminous notes serve a triple purpose. They provide an invaluable bibliography, illustrate the rules set out in the text and bring the book up to date. If the text is that of an elementary manual, the notes will

¹ Italics mine.

² Italics mine.

repay the attention of the most advanced student. Unfortunately, the misprints are legion, and there are two errors in regard to the mandate system which cannot escape notice. It is not accurate to say (p. 191, note 37) that the League has delegated its supervisory powers to the Mandates Commission. That body is purely advisory, without power to make decisions binding on the mandatories or even to make direct recommendations. Nor are the countries under C mandate "recognised as integral portions of the territory of the mandatories" (p. 190, note 36). That would be a recognition of annexation, a very different thing from the right to administer "under the laws of the Mandatory as integral portions of its territory." (Article 22 of the Covenant.) It is no more than just to add that to condense so great a mass of material into such limited space without some minor inaccuracies would savour of the miraculous.

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COMMUNITY PROPERTY LAW IN CONTACT WITH FEDERAL ESTATE TAXATION.

By Richard C. Burnett. Published by the author, San Francisco, 1927.
Pp. v, 43.

This little book is a monograph in the form of an attorney's brief which challenges the view that the husband in California is the owner of the community property and that the wife is an heir to one-half thereof when she survives her husband and so must pay a federal inheritance tax.

It is unfortunate that the book is in the form of a brief because: it will not be read in the same way that a book without this ulterior purpose would be; if the writer were not under the necessity of making out his case he would have given a more accurate and detailed discussion of some of the difficulties in his way; he would not feel constrained to cite "Cyc." and Ruling Case Law as authorities but rather would use them for what they are—glorified digests.

The book is valuable as well for its discussion of inheritance taxation as for its treatment of the nature of community property. The reviewer, however, sees no advantage in classifying inheritance taxation into strict inheritance taxation and quasi inheritance taxation. Why not just say that in the case of wills, the presence of a consideration does not prevent the imposition of such a tax? One misses a citation in Part V to the well-known case *United States v. Perkins*¹ where the distinction is made between the privilege of transmitting property after death and the privilege of receiving property on the death of another. But in that case the state tax was called a transfer tax.

As respects the onerous character of the wife's acquisition of an interest in community property, the author might have found some comfort in *In re Schmoll*² which he does not cite. There the succession to property in New York was governed by the community law of a canton of Switzerland. By antenuptial agreement of the spouses, two-thirds of the financial gains were to

¹ 163 U. S. 625 (1896).

² 191 App. Div. 435, 181 N. Y. Supp. 542 (1920).

go to the survivor and the other one-third to their issue. Marriage in California should accomplish a similar result as to the spouses.

This reviewer believes that the author makes his case when he argues that the wife takes by onerous title rather than gratuitously. But the California doctrine, despite that fact, is no more unfair than the common law doctrine that the wife's earnings belong to the husband. The arguments advanced by the learned author should have led the California Supreme Court long ago to the adoption of a theory different than the one adopted whereby the husband owns the community property during the continuance of the marriage. It disagrees with the views of the courts in probably all of the other community property states. But the California court has spoken and what can you do about it?

The reviewer does not feel convinced by the author's arguments that dower and community rights may coexist and that they are not inconsistent with each other. Neither does it seem to him that the community interests of the spouses, whatever they may be, are severable during the marriage as he thinks the learned author implies. Neither the husband nor the wife has any particular one-half interest during the marriage.

Neither does it seem that the author has had much success in working out five different theories as to the nature of the wife's interest in California. How does a vested future interest differ from a vested present interest? In neither case does the wife have possession or management except in the limited situation where, while living apart from her husband, she may manage her own and her children's earnings. Nor does the learned author seem justified in dignifying with the word "theories" the variations in expression, and call them the "Contingent Future Interest Theory," the "Non-Interest—Plain Theory," and the "Non-Interest—Heirship Theory." A present non-interest may be consistent with a future contingent interest.

The author presents a good case for the widow to the effect that she should not be regarded as an heir. Her interest in California, however, is apparently not unlike the forced-heir in Louisiana. She must take and the husband cannot prevent it. This argument ought to have appealed long ago to the California court, but it did not.

If, in fact, the community property belongs to the husband during marriage, and she survives him, she takes as a forced heir. If the marriage is dissolved by divorce, at common law so to speak, the husband must pay alimony. So here he divides the acquisitions because the law so requires. That probably does not prevent him from being the owner during the marriage though it seems true that the power of control has been confused with the right of ownership. The author's thesis would be sound if the court had not already held differently. Her interest was acquired onerously and not gratuitously.

On the whole this is a useful little book both for the discussion of inheritance taxation and for the added light it throws on the nature of community property. It probably will not be persuasive so far as California is concerned because of the doctrine of *stare decisis* in that State. It is unlikely that the federal courts will change their views until the California Supreme Court holds that the wife has a present vested interest in the community gains.

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THE LAW OF CRIMES. By Clark and Marshall. 3d Ed. by Judson A. Crane. Callaghan & Co., Chicago, 1927. Pp. lxxix, 794.

This work was originally published in two volumes in 1900. A second edition in one volume by H. B. Lazell appeared in 1905. The purpose of the present editor is to bring the second edition down to date. Some changes are indicated generally in the preface to this edition but to discover them in the text requires a comparison of the editions as no method of indicating changes is used.

The plan of the book is to deal first with the problems common to crimes generally and then take up the treatment of the specific offenses. The concluding chapter deals with jurisdiction.

The cases in the notes are arranged alphabetically by states and parallel citations are given including citations to the first edition of Beale's Cases on Criminal Law and the second edition of Mikell's Cases on Criminal Law.

The classification of crimes in the original edition was based on Blackstone and divided crimes into those against individuals, property and habitation, and those especially affecting the commonwealth. In the present edition the classification has been made according to the interest immediately involved. Crimes against individuals are classified as to those against the individual's interest in the integrity of his person; interest in freedom of locomotion; interest in the domestic relation, etc. The effectiveness of any classification must be measured by its purpose. No reasons are given for the changes made and since the treatment of the crimes involved follows the outline used in the old edition, one can only presume that the new classification was made because the word interest—public, social, economic, or what not—is not much in vogue.

In discussing criminal intent in statutory crimes the usual statement is made that in certain cases "criminal intent is conclusively presumed," when all that is meant is that no intent is necessary. It is to be regretted that a text-book would continue to use the "let's play like" phrase of "conclusive presumption" when the cases cited in support of it clearly state that no intent is necessary. For example, *State v. Southern Ry. Co.*,¹ cited in § 42 n. 21, says: "If there is anything well settled by the decisions of this Court, it is that, wherever an act is denounced as unlawful by statute, the doing of that act constitutes the offense, and the intent with which the act is done is immaterial."

In going over rather full notes made in reading the book, the reviewer finds most of them merely indicate a desire for fuller treatment. For instance, insanity is given a conventional treatment without much consideration of the adequacy of the tests used or whether they agree with modern medical knowledge. The treatment of consent is meager with no discussion of whether it is looked on subjectively or objectively. There is very little discussion of the nature of possession, whether it has any mental characteristics and whether custody can thus be logically distinguished from possession.

The physical make-up and printing are good. There are some errors in proof-reading which, however, is not unusual. In several places one note refers to another by number and the reference number will be the one used in the earlier edition; since the note numbers in the present edition have been changed,

¹ 122 N. C. 1052 (1898).

the note referred to will be found to have nothing to do with the matter under discussion. For example, § 359 (c) note 451, refers to note 441 *post* which should read 452; § 396 note 721, refers to note 704 *infra* which should read 725.

As a whole this book has an advantage over the encyclopedia since all of the matter is treated together. Any one desiring a concise statement of the law of crimes would make no mistake in purchasing this volume.

It is seldom one sits down and deliberately reads a general text on crimes from cover to cover but it is a good experience. All of the senseless technicalities and quibbles are brought home in a short space of time. One can but hope that the proposed investigation by the Legal Research Committee of the Commonwealth Fund into "the socio-psychological implications underlying criminal law . . . and a comparison of these concepts with the modern view in the fields of sociology, psychiatry, and psychology" will be the forerunner of a work on Criminal Law comparable to Dean Wigmore's work on Evidence.

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CASES ON BUSINESS LAW. By Leslie J. Ayer. Prentice-Hall, Inc., New York, 1927. Pp. 480.

Professor Ayer's most recent edition of his "Cases on Business Law" is a reaffirmation of his allegiance to the theory that law is taught most successfully through the case system. Not only does he hold to this belief in regard to the instruction of future members of the bar, but also in regard to the undergraduate business student. In his former contention, Professor Ayer is in accord with the theories and practices of the leading legal pedagogues and institutions of this country. In the latter, the proponents of the text and lecture systems are more numerous, and since armed with more impressive arguments, more formidable.

Although there is no occasion for entering into an extended examination of the arguments on either side of this moot point, it is interesting to consider this case-book in the light cast by two fundamental criticisms of the case system. Proponents of the text system admit that studying cases acquaints the future barrister with the sources of the law to which he will have occasion to refer again and again during his legal career. In addition, it necessitates clear, synthetic legal reasoning, a practice invaluable to an attorney. On the other hand, it is contended that the need of the student of business methods is a deeply imbedded and sharply defined conception of the few elementary principles of the law that the average business man is likely to utilize in his everyday commercial transactions. Texts achieve this result, while case-books, with their opposing arguments, dissenting opinions and confusing dicta, produce only a blurred and indistinct impression.

The author anticipates the objection that the purposes and needs of the law and business students differ, for he says in the preface that "It may be remarked briefly that the same law exists for both." Even his opponents would not deny the truth of such a statement while, however, pointing out that it considers the problem objectively only, that the factor of the student himself is completely ignored. A far stronger position is taken in the statements that

the case-book "develops his (the student's) capacity for grasping and analyzing important legal problems" and that "an introductory course . . . should be so adapted that every student in the college or university could profitably take the same." Professor Ayer seems to suggest that a primary purpose of the introductory law course is the training of the student in such legal reasoning as has been termed invaluable to the practitioner. If this be his position, has he not, by such counter-attack, when defense was expected, imposed on his adversaries a considerable task of remarrying their arguments before they may re-enter the contest?

The second objection to the use of case-books in business law courses loses much of its force when directed at collections like the one under examination. Stated metaphorically, the dissenters contend that a text is a line drawing, so smoothly portraying the subject matter that the youngest may comprehend and say "It is a horse." The case-book, on the other hand, is a mosaic, the irregularities of which leave so much to the imagination that only one who is devoting his life to the subject, having attained the proper perspective, may discern the equine resemblance. Professor Ayer has been notably successful in selecting and shaping his cases, to the end that matter extraneous and confusing is avoided. In addition, he has placed between the cases short excerpts from texts, notes concerning sources for more extensive study, suggestive questions and hypothetical cases. As a result, the book presents to the student a pattern decidedly less difficult to follow than does the average case-book.

As is true of most books designed for introductory courses in business law, the subject-matter infringes on many other fields than the primary one—contracts. So imposing is the list of associated topics dealt with, including parts of agency, sales, negotiable instruments, property, evidence, damages, quasi-contracts, torts, bankruptcy and decedents' estates, that it strongly resembles the statement of a law school curriculum. As examples of the exhaustive nature of Professor Ayer's book, a chapter has been devoted to remedies for interference with contractual relationships and nineteen pages are occupied with the parol evidence rule. Such a treatment, while eminently satisfactory from an academic point of view, would seemingly require rather drastic deletion to bring it within the temporal confines of the average undergraduate course.

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STATEMENT OF OWNERSHIP, MANAGEMENT, CIRCULATION, ETC.

Pursuant to the regulation of the Federal Post Office, revised by the Act of August 24, 1912, herewith is published a Statement of the Ownership, Management, etc., of the UNIVERSITY OF PENNSYLVANIA LAW REVIEW, published at Philadelphia, Pa.:

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