

BOOK REVIEWS

THE CASE METHOD OF STUDYING LAW. By Jacob Henry Landman. G. A. Jennings Company, New York, 1930. Pp. 108.

Those who still regard the case method of law study as a dangerous innovation and want a return to the good old days when law students were taught "principles" will be disappointed in Dr. Landman's book. For while the volume is called a critique of the case method, the basis of the criticism is not that the case method goes too far from the other dogmatic type of instruction, but that it does not go far enough.

The first chapter is a rather unfriendly sketch of "Langdell and the Langdellian Method of Studying Law," followed by an interesting and non-contentious discussion in Chapter II called "The Scientific Method and Logic". The substance of the criticism of the case method is stated in Chapter III, followed by the author's suggested alternative, the "problem method" in Chapter IV and a definition of the law in Chapter V.

Dr. Landman makes a valid point when he suggests for the beginning law student some help in furnishing him "with a sufficient apperceptive mass of the law to tackle intelligently its further study". The first weeks are hard for the best intentioned and industrious novitiate. One may be suspicious of an attempted orientation course to accomplish the initiation, not for fear the student may learn too much but that he may learn too much that is not true. The need can be met with the greatest economy of time by the teacher in the opening hours of the course, and generally in connection with concrete problems raised by the facts of cases in the day's assignment. There seems no good reason in logic or pedagogy why he must swallow the whole "apperceptive mass" before he begins strictly legal study.

The author asserts that a case is not an experiment or inductive exercise. The Langdellian error, he says, is that it mistakes the court's opinion about the juristic facts for the real case—the real case being "the jural facts in their proper social, economic, ethical, philosophical and political setting". The truth of that statement depends upon what is meant by the "real case". What a court decides upon the facts presented to it in a dispute between two parties before it is certainly the law, so far as it settles their rights and obligations in that litigation. It is also a precedent in that state until a court decides an indistinguishable fact situation the opposite way. If enough courts agree with the conclusion we can safely say it represents the law generally, whether or not the result is good economics, philosophy or politics.

The examination of various states of fact to see what results courts reach, and discussion of these results and the reasons therefor are the materials and methods of the case method of law study. This is the material the student studies, and properly so. There is no reason why both student and teacher should not, in a critical discussion of a decision, draw upon any relevant information in other fields of learning. Good students do, and good teachers do, in spite of the author's assertion that the student is denied this. We need not

share Dr. Landman's fear that law students will almost universally accept a court's opinion uncritically. Some do, just as some newspaper readers accept everything they see in the paper. But many do not, especially when they have acquired enough of the subject matter in any branch of the law to have the material for an independent judgment. Nor need we take seriously the extraordinary statement that "cases are selected by casebook editors because of the correctness and soundness of the tribunal's opinion". Some cases are, no doubt, but others are selected for the reason that they are thought unsound and incorrect. Good casebook editing involves the presentation through the cases of a series of problems. In some of these the opinions afford great help, in others little or none. Either way they are valuable material for the student's consideration.

Except for the suggestion of the extra-legal material, there is nothing novel in the so-called problem method which the author would substitute for the case method. Cases present problems: the teacher constantly presents others to a class for study and discussion. The extra-legal material must be used with caution. It is a good thing for the law student and the law professor to know some economics and business practice and many other things. The student is supposed to acquire some of these in school and college before he comes to law. Three years is not at best a very long time to spend in legal study. In the "Extra-legal Bibliography" suggested by Dr. Landman under the heading "Contracts Not Intended to Benefit Third Persons" are eleven references, ranging from two chapters in Veblen's "Absentee Ownership" to Duguit's "Law in the Modern State". If the student and his teacher follow along similar and interesting by-paths in every problem, the three years will be gone before the class gets as far as the Statute of Frauds. The law student's first and most important job is to study law. Evolution of legal rules in the light of knowledge gained from other sources is valuable, but it has a very limited usefulness to the student in his first years of professional study. After all he has got to know what the law is before he can evaluate it.

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CASES ON AIR LAW. By Carl Zollmann. West Publishing Company, St. Paul, 1930. Pp. xii, 530.

Students of air law have long recognized the obligation that they owe to Professor Zollmann for his earlier work on the *Law of the Air*, published in 1927. Indeed, anyone wishing to grasp the essential questions and such answers as exist, coupled with careful consideration of the bases and analogies on which unanswered questions must turn, would do well to consult this work and that of Professor Hazeltine whose treatise on *Law of the Air* was published in 1911.

Professor Zollmann has now added a collection of cases on Air Law. In doing so he states in his preface that he anticipates that the general subject will soon find its place in the curricula of the law schools. It is, therefore, primarily as a text-book for students that this latter collection has been pre-

pared. The work itself includes the cases that he has referred to in his earlier treatise on the *Law of the Air* with other cases that have been decided since the date of its publication. The divisions of the book are easily and naturally made so that a student or practitioner would have little difficulty in turning to any existing authority on any particular subject.

The connection between radio law and aviation law has never seemed other than superficially apparent. The points of theory that are common to both are few and the practical questions that arise are fewer still. The connection between the two is as close and no closer than that between patents and copyrights which have been linked together by the makers of indices though separate in practice.

It is inevitable that in so new a subject any collection of cases will fail to include decisions occurring after publication which, in many instances, are of great importance. Thus, since the book has appeared the Supreme Court of Massachusetts has handed down an opinion of far-reaching effect in the case of *Smith v. The New England Aircraft Company*,¹ and this has been followed by a decision by Judge Hahn of the District Court for the Northern District of Ohio, Eastern Division, entitled *Sweetland v. Curtiss Airports Corporation, et al.*² During the past few months a number of accident cases have been decided and although none of them have reached the higher courts, still the charges of the judges and the decision of the jury thereon are important and illuminating contributions to the still unsettled question of the liability of an aircraft operator. In the same way the interesting opinion in the anonymous case decided in Emden, Germany, in 1925 and appearing on page 179, has been materially affected by the so-called Warsaw Convention.

At the same time the collection of cases that has been given by Professor Zollmann furnishes an excellent starting point for students or practitioners. No one who has had occasion to search the authorities but realizes the difficulty encountered due to the scarcity of decisions and the obscurity of their indexing. Here then is a real aid and a welcome one.

In such a collection of cases which reflects the mature study of an expert on the subject, it seems to the writer that a far more liberal use of footnotes would have been in order. In particular the footnotes might crystallize the underlying questions in each section or division and while suggesting the application of the cases cited, point out the area still untouched by judicial decision or legislation, with such suggested answers as the author may deem it wise to make. The conflicting rights of the land owner and the airman might properly be set out as well as the varying theories as to the liability of the owner and operator of aircraft. Such a statement of underlying questions would do much to clarify in the mind of the reader the essential problems that the new arts present and it would also divide those problems that are unique from those where existing rules furnish evidently sound analogies.

The collections that were made by Professor Ames have for years been regarded as constituting authoritative criticisms by a past master of the subject, their only fault being an absence of adequate indices and occasionally a

¹ 170 N. E. 385 (Mass. 1930).

² 41 F. (2d) 929 (N. D. Ohio 1930).

too cryptic style in the comments themselves. Professor Zollmann has the index and the necessary learning to add copiously to the footnotes that he already has contributed, and it is the hope of the writer that in future editions of his work he will follow the example of Professor Ames.

New York.

Henry G. Hotchkiss.

MANUAL TO UNITED STATES BOARD OF TAX APPEALS REPORTS. By Charles A. Roberts. Harper & Brothers, New York, 1930. 2 Vol.

The amount of labor which goes into such a work as this is appalling to the general practitioner of the law. The work is not primarily a subject matter index or encyclopædia of the Board of Tax Appeals Reports, but is rather a Citor. In two large permanently-bound volumes is contained the genealogical history of every decision of the Board which has been cited either by it or by the Bureau of Internal Revenue or by a Court. The offspring of some of the earlier of these cases has already been numerous. Into the Manual are brought also those Court cases which cite or are cited in Board decisions.

But this work is more than a bare list of citations. The heading of each principal case is not merely the reference to its volume and page, but contains as well the name of the case and the official headnote describing the holding of the Board in it, so that once a starting place is found, the principal case and its successors may be followed down to date, without the necessity in the first instance of breaking into the use of the book by looking up elsewhere each subsequent citation to determine its applicability to the particular problem at issue. Especially in the earlier cases, the editor has added significant comment (clearly distinguishable from official material). To aid the user in making his start in the work, the author has included a 27-page subject-matter index to those cited cases deemed by him to be the most important and a Table of Cases by name covering decisions which have already been cited and such other "important" decisions rendered "too recently to have been cited as yet" (there being no statement of the exact date here used).

It is apparent that, except in pursuing the mechanical task of securing a list of those cases which have referred to the principal decision, the user is largely dependent upon the sound judgment of the author in his work of selection and analysis, as in all other such reference works. Tested at random in various matters, that work seems here to have been wisely done in this Manual. But does it not give the lawyer cause for disturbing thought that to the already engulfing flood of case law in this country has been added in the six years since the establishment of the Board, such a mass of cases in this subject so vitally touching most of the practitioner's clients, that to present this citation and index service alone is required a work of over 3200 pages?

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A TEXTBOOK ON LAW AND BUSINESS. By William H. Spencer. The University of Chicago Press, Chicago, 1929. Pp. 1115.

This text closely follows and is supplementary to Dean Spencer's three-volume compilation of cases *Law and Business* published in 1921. As stated by the author it is to fill a place in those schools where the time allotted to the study of law in business is limited, and where text material is more adaptable. The author in his preface states that the text follows the same method of approach as that used in his case books and emphasizes the significance of a new method in presenting law to business students from a standpoint of "the modern view." With Schaub and Isaac's book on *The Law in Business Problems*, this text and Dean Spencer's case work on *Law in Business* may be said to be pioneers in departing from the traditional method and paving the way for ushering in what is here called "the functional approach." The criticisms of the standard methods and texts used in teaching business law by authors and teachers who are seeking another approach are (1) "There is a large gap between the law in books and the law in business"; (2) "We must teach less and less law after the traditional order, and more and more business"; (3) "We must deal with legal rules from the business standpoint"; (4) "We must work out the law in terms of the functions, relations or problems of business men."

Dean Spencer in "bridging the gap between the law of the books and the law of business" and in preparing a text wherein the law will be submerged and business accentuated, has made the following groupings:

PART I, Chapter I: Sixteen pages on the "economic order"; Chapter II: "Law an agency of social control." This is an historical development of law covering the origins of law, classification of rules of law, a discussion of the systems of the common law and equity, and an history of the law merchant.

PART II, Chapter III: "Enforcement of Rights." This covers the judicial organization in the United States and the classifications of courts, with a discussion on the common law jury, forms of actions, pleadings, the trial and its conduct, and a section on appellate review.

Chapter IV: "Law of Persons," including infants and insane persons.

Chapter V: "Forms of Civil Liability," 85 pages on the law of torts, and 123 pages on the law of contracts. The law of agency is covered separately under Chapter VI, followed by Chapter VII covering 111 pages on the law of private property, including both real and personal property.

PART III, Chapter VIII: "Application of Legal Principles to Business Activities" introduces the law to the student under the heading of "Law in Relation to the Market" which includes the law of bailments and sales, and unfair market practices.

Chapter IX: "The Law in Relation to Finances," after three and a half pages of introduction, presents the law of negotiable instruments, followed by suretyship, liens, executions, conditional sales, mortgages, and bankruptcy.

Chapter X: "The Law in Relation to Risk and Risk Bearing" includes speculative contracts, the law of insurance, followed by a chapter on the law

in relation to labor, including workmen's compensation acts, with a closing chapter on "The Law and the Form of Business Unit" which includes partnerships and corporations.

The author states that the book is worked out in terms of the various relations and forms which seem typically characteristic of all forms of business, *i. e.*, the business man's relation to his market, his finances, risk bearing, labor, and the business unit. But, it is submitted, after the student has been introduced to and sees the "relationships" or "functions" which are typical with respect to his means of getting money and credit, he will find himself grappling with the law of negotiable instruments, suretyship, etc. Eventually, the law of the books is the law which controls and regulates the business man in the conduct and administration of his business, and it is this law which must be taught or introduced to the business student. True it is that the business student must understand how legal rules are applied, but such rules are applied because they are legal rules and their application has no more peculiar standpoint from a business man's position than from that of any other person in society. To ornament the show window of the house of law with business terminology as an introduction of law to the business students in no way changes the basic principles with which the business student must become familiar, although it may make the first contacts more enticing and less distasteful.

To the reviewer, "the functional approach" does not mean introducing "the law" to the business students in a garb of commercial phraseology, but rather a scientific and statistical collection of materials which gives objective evidence of business practices which may or may not be beneficial to "the social interest," and which may or may not be inconsistent with fixed rules of law; also evidence that the law as pronounced by the courts may or may not be in harmony with what is in fact the present need. If fact-finding proves that stock-dividends are income measured in light of economics and what the owner may do with his increase, then functionally stock-dividends should be considered by courts as income. Law determines "legal responsibility" by means of certain categorical and speculative tests, whereas a psychiatrist by a scientific or "functional" method, may reach a different and more plausible result.

For the graduate student in business and the professional student in law, it is hoped that the ultimate result of the "functional approach" to the study of the law will stimulate a quickening of the common law process and produce more intelligent legislation, but an undergraduate in a collegiate school of business is hardly ready for such a program. A study of what the law in the books is, should precede a study of what the law ought to be. Just what is the proper method of presenting the law to a non-professional student, is open to question. The most that can be expected is to extend his experience, so that as a business man he will understand some of the rules of control then known, within the limits of which he must administer his business. Close correlation and integration of business law courses with economics, sociology, and business management, will aid materially in giving the student a perspective of how the law works or ought to work.

This text is a scholarly work, its arrangement is novel, but more accurately it is an occupational approach rather than a functional one. For a doctor we

might say, "The law in relation to the patient," "The law in relation to the public," and likewise in other professions and fields. This orientation has merit in it, but after such introduction it is *The Law* that must be taught, and it is *The Law* we find in Dean Spencer's text, although by the preface we are led to believe we might find something different.

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LEX AQUILIA; ON GIFTS BETWEEN HUSBAND AND WIFE. By James B. Thayer. Harvard University Press, Cambridge, 1929. Pp. 226.

In view of the variety of ways in which authors and editors cite the Corpus Juris Civilis, it is interesting to observe that Mr. Thayer recognizes the modern tendency towards simplification, preferring "D. 39, 2, 18, 14" to "Justinian Dig. Lib. xxxix, tit. 2, etc.," and has abbreviated "Institutes of Justinian" to the letter "J". The first part of this work discusses the Justinian compilation of opinions which grew around the text of Lex Aquilia, a plebiscite superseding earlier portions of the Twelve Tables, enacted for the purpose of providing a remedy for wilful and negligent damage to corporeal property. Very rapidly the extensive interpretations of the statute by the jurist-consults covered many analogous situations within the spirit though not within the letter of the law, and selections from these opinions appear in title 2 of Book 9 of the Digest of Justinian. Romanists (and by Romanists the present reviewer means those who lean towards ascribing common-law doctrines to Roman law sources), will find many parallelisms, almost amounting to identity, between many doctrines in the Aquilian Law and its interpretations as set forth in the Digest, and legal principles of the Anglo-American system of law such as contributory negligence (IX, 2, 11), and the *res ipsa loquitur* doctrine (IX, 2, 27, 33). It will be noticed that this scholarly work has no index, but any reader would probably take notes as he dips into this interesting book, especially the citations of American and English cases which agree with the points discussed or dissent from them. Practitioners will find useful suggestions about concurrent negligence (IX, 2, 27, 9), negligence in non-contractual relations (n. p. 64), conjectural damages (IX, 2, 29, 3), sentimental damages (IX, 2, 33 pr.), and the doctrine of election (n. p. 57). Compilers of casebooks on damages and torts, and writers of leading articles for legal periodicals will have little difficulty in finding material to serve by way of illustration or embellishment. The translation makes it very easy to follow the excerpts of opinions of the jurist-consults which have been woven into the compilation and see how the provisions have been expanded by jurists and by the prætor's practice of granting an *actio utilis* or *in factum*, where a case comes within the spirit of the law; and students will be interested to see what Ulpian has to say about fixtures (IX, 2, 50), Julian's opinion on a question of consequential damages (IX, 2, 51, 2), and the discussion of a right of privacy (IX, 2, 41), sales on approval (IX, 2, 52, 3), and liability for damage by fire (IX, 2, 30, 3).

The second part of Mr. Thayer's book contains no translation of the Roman law on gifts between husband and wife; but it is to be observed that the author's commentaries show a thorough acquaintance with the views of the classical

jurists, mediæval glossators, and mediæval commentators upon textual as well as juridical questions; and, as is the case in the discussion of the Aquilian Law, the work contains frequent references to cognate passages in other parts of the *Corpus Juris Civilis*.

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THE LAW OF PERSONS AND DOMESTIC RELATIONS. By Epaphroditus Peck. Callaghan & Co., Chicago, 1930. Pp. lxxii, 481.

The review of the third edition of a text that has manifested its usefulness over a period of nearly twenty years demands only a brief statement of the field covered and an explanation of any changes made in the new edition.

The first edition, of 1913, presented a three-fold division dealing with the Law of Marriage, the Law of Infancy, and the Law of Master and Servant. The text presented the subject-matter briefly, but lucidly, and was intended for class study rather than as a book of reference. To supplement the discussion, certain cases were set in boldface type to be read by the student.

The second edition, of 1920, saw a re-grouping of subjects into what is believed to be a more satisfactory division: the Law of Persons and the Law of Domestic Relations. Under the first head was treated the subjects of Infants, Insane and Incompetent Persons, and Aliens, while Husband and Wife, Parent and Child, and Guardian and Ward were grouped under the general topic of Husband and Wife.

The third edition has followed this outline as to organization and has seen some few changes in text and footnotes as required by the later cases. The author has clearly stated the extent of his search for case authority by indicating the latest volumes consulted. The present edition, now brought up to date, assures the continuing usefulness of a text which has already found for itself a place of importance.

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LEGISLATIVE PRINCIPLES. By Robert Luce. Houghton Mifflin Co., Boston, 1930. Pp. vi, 667.

This is the third of four volumes by Mr. Luce dealing with the science of legislation. A further volume is to be issued upon the subject of Legislative Problems. The three volumes already issued constitute a distinct contribution to the scientific study of legislative problems. Mr. Luce's wide legislative experience in Massachusetts and in Congress and his sound common sense give weight to his conclusions, which in most cases commend themselves to the reviewer. The author avoids the position of the visionary reformer, but seeks a result that is both constructive and practical. His point of view is well illustrated by the sane discussion of proportional representation in Chapter XI of the present volume.

The numerous illustrations employed throughout this volume and the prior volumes are almost uniformly correct. The author occasionally falls into error, as where he refers to a New Hampshire constitution of 1902. And where he discusses requirements of a majority vote, it would have been of value to indicate the experience of Connecticut.

Perhaps the severest criticism of the volume on Legislative Principles is that it attempts too much. The introductory chapters on "What is Law?" and "Monarchs and Sovereignty" are too brief to be of much value, and are not closely correlated with the other portions of the book. The same statement largely applies to chapters VI, VII and VIII, dealing with methods of framing, revising and amending constitutions. Except for these chapters, and for chapters XXIV and XXV, dealing with the initiative and referendum, the contents of the volume are adequately described in the sub-title. In a series of chapters the author discusses the history of delegated authority, and the bulk of the volume is devoted to the operation of the representative system. Problems of apportionment are adequately discussed, as are proportional representation and proposals for occupational representation. Qualifications for voting are not so adequately discussed, and the reviewer was disappointed by the author's failure to present constructive criticisms in his chapter on corrupt practices in elections. In attempting to do too much, the author has not always maintained the high standard of his better chapters.

But in spite of the criticisms indicated above, the present volume is a valuable contribution to an important series, and the final volume of the series will be awaited with interest by those concerned with legislative problems. It is to be regretted that the volumes do not appeal to a larger audience, for they deal with problems vital to our representative system. Only those specially interested can be expected to read the more than six hundred closely packed pages of this volume, or the series of which it constitutes a part.

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CASES AND MATERIALS ON THE LAW OF CREDIT TRANSACTIONS. By Wesley A. Sturges. West Publishing Co., St. Paul, 1930. Pp. xi, 1228.

This new book by Professor Sturges is intended to displace the traditional separate courses in Bankruptcy, Mortgages and Suretyship. Apparently it is not intended to reduce the time spent in the study of the subject-matter ordinarily covered in those courses inasmuch as the author announces in the Preface that the materials submitted have formed the basis for a course given at Yale Law School three hours per week throughout the year. The plan is rather to present the matter in such a way that the student will inquire into the legal aspects of a particular business problem as a unit in order that he may grasp more readily the several principles involved irrespective of whether those principles ordinarily occur under the headings of Mortgages, Suretyship, Bankruptcy, etc. The plan further appears to contemplate placing emphasis on the practical effects which the decisions may have on the actual conduct of business affairs and on the policies and practices which may develop as a result thereof.

The theory back of the plan seems fundamentally sound to the reviewer, but, of course, only time will tell how it will work out in the classroom.

The materials are grouped into six chapters, together with an appendix giving the texts of the *Negotiable Instruments Law*, the *National Bankruptcy Act*, the *Uniform Real Estate Mortgage Act*, the *Uniform Chattel Mortgage Act*, and the *Uniform Conditional Sales Act*. As suggested by the list of Acts cited, the book includes a considerable amount of material not ordinarily covered in standard courses, which this volume is to supplant. There is a noticeable and pleasant lack of voluminous small-print notes, while there is a substantial body of comment, and citation of law review, and other materials in the same size type employed in the cases themselves.

The arrangement of the subject-matter is distinctly commendable. Chapter I covers the principal features of Suretyship, not overlooking the effects of insolvency and bankruptcy. Chapter II does a similar service for Mortgages, except that foreclosure is reserved for Chapter VI; it likewise includes a section dealing with insolvency and bankruptcy. Chapter III brings out the problems involved in financing by dealers; Chapter IV is concerned with Security Holders' Use of the Credit and Security Documents; Chapter V, Security Holders' Protection and Priorities; Chapter VI, as indicated above, covers enforcement proceedings and rights to redeem.

The cases themselves show a decent respect for the past, but at the same time there is a freshness of material which shows that Professor Sturges has not neglected to illustrate prevailing modern methods and devices for transacting business on a far larger and more complex basis than was the case prior to the turn of the present century.

As a whole, the work represents something of a departure from routine teaching practice, but it may well be that before long the idea of emphasizing the economic problem more and the abstract legal principle less will cause further realignment in the classifications under which law school subjects of instruction are now being presented to the future members of the bar and the bench.

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