

## BOOK REVIEWS

TRADE REGULATION SERVICE, 9th Ed. (4 Vols.). By Commerce Clearing House, Inc., Chicago, 1942. Pp. xv—Loose Leaf to 53,210. Price: \$45 for one year; \$80 for two years.

Administrative Law is still groping to find its place in our jurisprudence. In the field of Trade Regulation, Administrative Law has been operating for nearly 30 years and yet there is a real question concerning the types of cases in which it is a help and those where it merely confuses the problems and adds to the burdens of administering justice. Much of this uncertainty results from the natural human desire of every administrator to try to broaden the field of his work and so to increase his importance. This criticism of Administrative Law is more than the simple jest that equity courts do not always do equity for here we have a process once called a simple, speedy panacea for all our social and economic ills which has turned out in many cases to be neither simple nor speedy. Too many administrative hearings have proven to be more intricate, long-winded and less productive of substantial justice than court proceedings.

An examination of the Service makes inescapable the conclusion that it is this expansion of administrative proceedings in the Trade Regulation field that has compelled the publication by Commerce Clearing House of its 9th edition of the Trade Regulation Service. This edition is larger than its predecessors. Volume One of the Service contains the Sherman Act, Clayton Act and other basic laws with extensive and well-indexed annotations. Volume Four contains new court decisions and comments thereon. It is in Volumes Two and Three that the expansion has taken place.

More than half of Volume Two (the remainder contains state anti-trust laws) and all of Volume Three are filled with matters relating to the Federal Trade Commission Act. That the work of that Commission should require nearly two volumes of detailed analysis and treatment is due to two causes. The first of these causes is the complexity caused by the Commission's detailed inquiry into business problems. Thus, careful treatment in the service requires not only an annotated analysis of the law, but like treatment of the actual proceedings brought by the Commission. The Commission's rules, practice, procedure, docket, orders, stipulations and trade practice conference rules, all need treatment. Sections for each of these fill Volume Three with material to serve as guides to the laborious, lengthy labyrinth of Commission procedure. This Volume is small compared with the sea to which it serves as a chart. When compared to a Federal Trade Commission proceeding having a record of 50,000 pages of oral testimony and containing an equal number of pages of exhibits as well, this Volume is indeed tiny. With such expansion in Commission extra-judicial inquisition, we may soon expect to find a Trade Regulation Service of still greater volume.

Secondly, on the substantive side, expansion is caused by the Federal Trade Commission's apparent quest for enlarged power. Its attempt to make the Sherman Act its own is more than a harmless opportunism. Originally, this Act was regarded as highly penal and not lightly to be violated. Legal proof was needed to establish violation in court, and in the case of criminal prosecution such proof had to be beyond a reasonable doubt. Under the guise of suppressing unfair methods of competition,

the Federal Trade Commission has argued itself into a measure of jurisdiction over acts characterized as unfair because they allegedly violate public policy as laid down by the Sherman Act. Thus, five decades of judicial legislation are thrust into the pigeon hole of administrative fiat, with scant attention to where the courts have drawn the line between illegal restraint and permitted practice. Yet it seems that if administrative tribunals are called into being because of the inadequacy of legal courts to deal with certain problems, their jurisdiction should not encompass situations where the legislature has created an adequate legal remedy. Our law makers may well have thought the courts best fitted for the judicial legislative task of interpreting the phrase "restraint of trade". They may have felt that Commission proceedings would be a useless step with a legal standard which must in any event be finally determined by the courts. Perhaps, on the other hand, it might be argued that Congress intended to give the Federal Trade Commission an implied jurisdiction to enforce the Sherman Act. Nevertheless, an examination of the Commission's work will convince anyone that it is in this field that the Commission's procedure has proved inadequate. It is these Federal Trade Commission hearings dealing with alleged Sherman Act violations that are lengthy, inconclusive and without legal safeguards to which business feels entitled.

Lawyers beset with antitrust problems now have to determine not only what a court will call an undue restraint of trade, but what the Commission with its conclusive findings of fact will find unfair within one act because it causes undue restraint within its idea of the meaning of another. Fortunately, the final determination of what constitutes unfair methods of competition is for the court and not for the Commission. However, the Commission's action comes before that of the court and as a practical matter is oftentimes final.

Thus the section of the Service "Detailed Table of Unfair Methods and Practices" includes at length a sub-topic "Combinations and Monopolies". This fringe occupied by both the Department of Justice and the Federal Trade Commission is necessarily treated by the Service under both the legal and the administrative headings.

Given time and perseverance, the digests and annotated statutes can perform the functions of the legal sections of the Service; even the discussion can be equalled by careful selection of material in legal periodicals. On the other hand, the classification and analysis of Federal Trade Commission material is to be found nowhere else. The source material, the Federal Trade Commission Decisions, are indexed by volume, but there is no general index or digest to the material contained therein. Thus, as a time saver in the legal field and an essential tool in the administrative, the Trade Regulation Service is of great value to the profession.

James R. Withrow, Jr.†  
Stanley Law Sabel.‡

SELECTED CASES ON THE LAW OF AGENCY. By Floyd R. Mechem (Third Edition by Philip Mechem). Callaghan & Company, Chicago, 1942. Pp. vi, 608. Price: \$5.50.

Sometimes later editions are only earlier editions in a slightly different binding. This is not true of the Third Edition of *Mechem's Cases on Agency*, which is a new book, as a comparison of the Second and the Third Editions will prove.

---

† Member of the New York Bar.

‡ Member of the New York Bar.

Appearing in 1925, the Second Edition, by Professor Warren A. Seavey, consists of 845 pages, with 317 cases. About fifty per cent. of these cases were decided between 1900 and 1925, twenty-five per cent. between 1875 and 1900, twenty-five per cent. before 1875. English cases constitute the most numerous group, followed in number by cases from New York, Massachusetts and the Federal Courts.

The Third Edition, by Professor Philip Mechem, appearing in 1942, has 608 pages, and 188 cases. Nearly fifty per cent. of these cases were decided from 1925 (the date of the Second Edition) to 1942 (the date of the Third Edition), about twenty-five per cent. from 1900 to 1925, about fifteen per cent. from 1875 to 1900, and about ten per cent. before 1875. New York and Massachusetts cases are the most numerous, the proportionate number of cases from the English and from the Federal courts being greatly reduced, as compared with the Second Edition. This casebook is so constructed that, for a course of thirty sessions, the total number of cases may be readily broken down into thirty groups of five or six related cases each—the usual assignment for one session of class. Fifty-six cases, found in the Second Edition, have been carried forward into the Third Edition. Gazing into the familiar faces of this group—including, among others, *Hunt v. Rousmanier*, *Dempsey v. Chambers*, *Joel v. Morison*, *Laugher v. Pointer*, *Higgins v. Senior*, *Bolton Partners v. Lambert*, *Heath v. Nutter*, *Mayor of Salford v. Lever*, *Standard Oil Company v. Anderson*, *Hexamer v. Webb*, *LeRoy v. Beard*—all law students, possibly some teachers of Agency, will recognize old friends. A new casebook on Agency could not set sail without these names on the passenger list.

The subject is presented in the following order: Respondeat Superior (140 pages), Contracts through an agent (151 pages), Ratification (56 pages), Termination (11 pages), Individual Rights and Liabilities of Agents (52 pages), Loyalty and Compensation (111 pages). Statements of Agents as Evidence, a chapter of 15 pages in the Second Edition, is omitted from the Third. To include or not to include Workmen's Compensation in a casebook on Agency is a controversial question.<sup>1</sup> In this book the final chapter is devoted to this topic, introduced by eleven pages of text from Professor Walter F. Dodd's book, *The Administration of Workmen's Compensation* (1936), followed by 57 pages of cases and notes. Professor Philip Mechem enlists under the banner of those who believe, with an unflinching faith, that Agency is best taught in a separate, First Year course, treating, as he says in his Preface, ". . . the fundamental aspects of the representative relation." This is the thesis of Keedy, Wambaugh, Magill and Hamilton, Huffcut, Whiteside, Powell, and Goddard; opposed: Mathews, Steffen, Stecher. Agency, in other words, may be geographically near, but it is not biologically akin to Partnership or Private Corporations.

Each of the 188 cases in the book, with the exception of a comparatively small number (21), is followed by a "Note", not the traditional footnote, in which the principal case is expanded and broadly annotated by references to other cases and law review articles. The cases in these "Notes"

---

1. ". . . the topic of the master's liability to the servant for injuries received in the employment has not been covered, as this depends on principles which are considered foreign to the law of agency." KEEDY, CASES ON THE LAW OF AGENCY (1924) Preface.

". . . the decisional law has been modified by statutes, for example, by Workmen's Compensation Acts, and these statutes, in turn, have received judicial interpretation." WAMBAUGH, CASES ON AGENCY (2d ed. 1925) Preface. The latter casebook contains a selection of cases on Workmen's Compensation.

are recent, well considered, actually in point. Instead of an irritating list of mere citations, we are furnished with valuable points regarding the cases cited—brief quotations from the opinions, from pertinent law review articles, and from the Restatement, and the editor's comment and stimulating questions.

Here is a modern casebook, compact in form, based on recent American decisions, conveniently organized for class room use, enriched with good notes. The new book maintains the scholarly traditions, as it also perpetuates the name of Mecham in connection with Agency.

*Hugh J. Fegan.†*

THE JOURNAL OF SIR SIMONDS D'EWES FROM THE FIRST RECESS OF THE LONG PARLIAMENT TO THE WITHDRAWAL OF KING CHARLES FROM LONDON. Edited by Willson Havelock Coates. Yale University Press, New Haven, 1942. Pp. 459. Price: \$6.00.

If Gardiner had not made such excellent use of D'Ewes' great diary of the Long Parliament, we should doubtless have had an edition of D'Ewes much sooner; but it would certainly have been a much less valuable edition than the splendid undertaking of which this will be the third volume. For D'Ewes' manuscript is rich in understanding, and equally rich in uncertainties. Even a conscientious editor, who proceeded by a method less elaborately painstaking than that established by Professor Notestein in the first volume and followed by Mr. Coates in the present one, might have mangled or left obscure many passages. On the whole, we must be thankful that D'Ewes has remained in manuscript till a method was available for handling him adequately.

D'Ewes' diary is in fact no more than the basic text of the present edition. Wherever possible, it has been supplemented from D'Ewes' rough notes, from other diaries, from newsletters, printed separates, diurnals, pamphlets, and the Commons Journal itself. The result is a patchwork autobiography of a parliament, sometimes a little inelegant typographically in terms of the proportion of footnotes to text, but wonderfully complete and accurate within the limitations imposed by the sources themselves.

Those limitations, it must be admitted, are often considerable. D'Ewes shared fully the puritan genius for self-analysis, self-revelation, and self-absorption; and a man of such intrusive egotism, even though he has a passion for the trivial, is a poor observer. Sir Simonds loved the common law with a pure and holy love, second only to his love of God's truly reformed church; but he had the mothlike habit of fixing his dazzled eyes upon these two ideals, till they obscured the mundane scene where Pym and Hyde struggled with crotchety human beings and creaky political machines. Sitting day after day in a House which had almost come to blows over the Grand Remonstrance and would soon be split irrevocably, D'Ewes never saw the irony of jailing Chillingworth for only talking of "divisions" within the membership. When he speaks of "our side" and the "other side" he refers to nothing more highly organized than the enemies and friends of bishops. Only rarely does he recognize the deeper currents which impelled Pym and Hyde into a situation inevitably destructive of the institution both men revered. Indeed, all the helpers in Mr. Coates' footnotes scarcely begin to clarify the political motivations which were a crucial element of the Long Parliament.

---

† Professor of Law and Assistant Dean of Law, Georgetown University School of Law.

Comparisons, though odious, are sometimes inevitable. Mr. Coates is not the editor his predecessor was. His prose is less than lucid, and on occasion downright ungainly; he sometimes uses DNB and NED with a heavy hand, or when better information is available elsewhere. But faults like these are mere flyspecks. Mr. Coates' footnote concordance is precise and full; his introduction is scholarly, his index clear and complete, his proofreading next to impeccable.

The phrase "monument of scholarship" is sepulchral and trite. On both counts, this magnificent project of the Yale Press deserves a better epithet. If subsequent editors do not fall behind Mr. Coates, the result will be an exact and elegant performance.

*Robert Martin Krapp.†*

HANDBOOK OF THE LAW OF TRUSTS. Second edition. By George Gleason Bogert. West Publishing Co., St. Paul, 1942. Pp. xviii, 738.

In preparing the second edition of this book in order to reflect the numerous developments which have taken place since the publication of the first edition in 1921, the author has retained the original object of the book, namely to present "a compact summary of the fundamental principles of the American law relating to trusteeships".

In his review of the first edition, William Draper Lewis<sup>1</sup> took issue with the author's statement that the law student "will find in the book sufficient material to furnish him with the ground-work which is the maximum possible of attainment in his preliminary studies" and pointed out that, while the book will provide a great deal of correct information, the only worth while ground work for the law student is one which is acquired by a study of cases. This observation is equally applicable to the second edition which, however, will prove helpful to the student for purposes of review and to the lawyer as a means of refreshing his knowledge of the subject.

It is a difficult task to distill so much material into such a compact form and at the same time to do it so clearly and in general so accurately. In appraising the author's accomplishment of his main object of presenting a concise summary of general principles, this reviewer can only repeat with Dr. Lewis that the book is well written; its style excellent. The author knows his subject thoroughly and his statements of legal principles show the results of painstaking care.

Of the author's hope that the book will provide the lawyer with "starting points for research into the more recondite and complicated questions", Dr. Lewis said that this "will of course depend on the lawyer". This reviewer might add that it will also depend on the jurisdiction in which the lawyer happens to be interested. While nobody should be so unreasonable as to expect that a one volume book in such a large field should provide a key to the law of every jurisdiction, the abundance of New York citations suggests a special effort to provide a key to the law of that state.

However, in some instances where the law of a particular jurisdiction is discussed, the selection of cases could be improved. For example, in discussing the Pennsylvania decisions relating to the apportionment, be-

---

† Professor of English at the University of Wisconsin.

1. (1921) 70 U. OF PA. L. REV. 67.

tween income and principal, of extraordinary stock and cash dividends, profits on the sale of stock, rights to subscribe and the like,<sup>2</sup> the decision in *Waterhouse's Estate*<sup>3</sup> is not cited although the Supreme Court in that case attempted to summarize the effect of its own prior decisions.

In some other instances, it seems to this reviewer, perhaps unreasonably, that it would have been better not to cite any cases from a particular jurisdiction rather than the ones selected for citation. For example, the following statement is made in the text:<sup>4</sup>

"If the trustee makes an improper investment at the request or direction or with the consent of the cestui que trust, the trustee will not be liable for losses ensuing as a result of such improper investment."

This is, of course, a correct statement of a well settled proposition which, however, is of immediate practical importance in this day of surcharges and attempted surcharges. For it the author cites, as Pennsylvania authority, only *Clermontel's Estate*,<sup>5</sup> a sixty-year-old decision of a lower court. How much better it would have been either to cite no Pennsylvania case at all or else to cite one of the recent decisions of the Supreme Court on the same point.<sup>6</sup> Although the lawyer should not expect that a book of this kind will cite a case in his state for every settled principle of law, he cannot help feeling disappointed when he encounters instances of this kind.

However, the criticism must not be carried too far. Apparently the author believed that certain principles were so elementary and well settled that the footnotes needed no revision. Others require and have received careful revision. For example:<sup>7</sup>

"It should be noted, however, that an attempt by a spendthrift beneficiary to assign his right to future income may be treated by the trustee as an order to pay the income to the assignee, and that until such order is revoked by the beneficiary the trustee will be protected in paying income to the assignee, although he need not do so."

For this the author cites the most recent decision of the Supreme Court of Pennsylvania<sup>8</sup> which, however, indicates that the proposition is stated somewhat too broadly, being true in this state only as to certain kinds of spendthrift trusts. Nevertheless, in this instance and many others, the book has indeed provided the lawyer with a starting point for research and the qualification which the reader will find when he examines the case is not, of itself, a criticism of the book. The author has done all that can be reasonably expected when he states a general principle and provides the means for determining its precise application.

This he has done particularly well with respect to statutory changes in the law. Even though the book does not purport to be all-inclusive, it will provide many a short cut for the lawyer who has occasion to examine the statute law of a jurisdiction other than his own. It will also furnish a

2. Sections 137, 140, 141, 142.

3. 308 Pa. 413, 162 Atl. 295 (1932).

4. Section 110, page 369.

5. 12 Phila. 139 (1878).

6. For example, *Perkins Trust Estate*, 314 Pa. 49, 170 Atl. 255 (1934).

7. Section 45, page 166.

8. *Keeler's Estate*, 334 Pa. 225, 3 A. (2d) 413 (1939).

ready summary of the more important legislative modifications of general principles.

The nineteen chapters cover the entire field, commencing with the history of trusts and continuing with their creation and purposes, the powers and duties of trustees, the administration of trusts and their enforcement and concluding with their alteration and termination. The classification and development of the material is admirable, resulting in a logical treatment of the trust relation, giving ease in finding the discussion of any particular problem and aiding the reader in grasping its fundamental principles.

The book should be particularly valuable to officers and responsible employees of corporate fiduciaries who require a broad knowledge of fundamental principles. Indeed, it may even be recommended as required reading for them.

*Robert Brigham.†*

CASES AND MATERIALS ON CORPORATION FINANCE. By Adolf A. Berle, Jr., and Roswell Magill. West Publishing Company, St. Paul, 1942. Pp. xviii, 912.

The writer of this review approached his task with the mental attitude of one who, having conducted graduate seminars on Corporation Finance for several years, had not yet found a casebook on the subject which seemed to afford the appropriate skeleton-work on which a professor could erect a satisfactory undergraduate course. He did not expect to find this book a perfect compendium of what he considered the most desirable material on the subject and in truth, he did not find it to be such. He was, nevertheless, pleasantly surprised to discover how closely the materials presented did fit into his own concept of a proper course on Corporation Finance. For this reason he believes that the book accomplishes the purpose for which it was prepared and that it should satisfy the hope of its compilers "that the material will at least be suggestive and at best adequate for the avowed purpose of introducing law students to a complex field."<sup>1</sup>

The book differs from the earlier edition by Berle alone in that the material contained in the earlier book dealing with the corporate charter and corporate management has been eliminated, the section dealing with promotion and an explanation of the various types of securities has been revised, and a new section based upon public regulation of securities has been added.

When one considers how conglomerate the mass of materials on this subject has been until quite recent years, he must admit that the cases, textual excerpts and notes contained in the book have been expertly handled. There is a slight tendency towards unnecessary repetitiousness in the first three hundred pages and a noticeable failure to delete irrelevant passages in the verbose and ungrammatical effusions of the Securities and Exchange Commission, but these defects are more than overcome by the inclusion of notes which either introduce a subject or give a brief summary at the end of a group of cases.

It is obvious that limitations of space required the omission of much material which might profitably have been included. Regardless of what

---

† Member of the Philadelphia Bar.

1. Page vi, Preface by Roswell Magill.

may be taught in a course on Business Organizations, it is believed that students of Corporation Finance should be trained in the mechanics of drafting charters, corporate mortgages and indentures, should be made aware, at least in a general sort of way, of the tax problems which frequently determine which form a given security issue will take, and should certainly be taught something about the substantive and procedural laws of corporate reorganization. It would also seem that more attention should be given to the peculiar problems of the smaller "close" or "one-man" corporations with which law students who do not become apprenticed to large metropolitan law firms are more likely to have early contact.

I believe however that the individual professors can supplement the materials presented in this book in such particulars as their own needs or desires may dictate and thereby make it a very practical instrumentality for teaching this subject. I intend to use it with my own class in this manner.

*Al. Philip Kane.†*

---

† Professor of Law, Georgetown Law School.