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## Book Reviews

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## BOOK REVIEWS

ANNUAL SURVEY OF AMERICAN LAW 1945; pp. xxiv-1375; New York University School of Law.

This volume is divided into five parts, each of which is subdivided into the various subjects which fall under these headings:

Public Law· In general

Public Law· Social, Business and Labor Regulation

Private Law

Adjective Law

Legal Philosophy, history and reform

There is an excellent and detailed table of contents. The table of cases discussed is also helpful to the reader interested only in specific cases. Another useful feature is the table of all statutes, rules and orders, both federal and state.

In addition to discussions of the usual subjects—contracts, torts, equity constitutional law, property and procedure courses, and so on—some fifty-odd additional subjects not usually taught in law schools are treated. This latter group includes such subjects as “War Powers and Their Administration—The Movement toward Reconversion,” “Civil Service,” “Social Security and Welfare,” “Public Housing, Planning and Conservation,” and “Wartime Price Control.”

Most of the articles in this book were written by professors on the staff of New York University, others by various members of the bar, all of whom are experts in the subjects which they discuss. While all sections of the volume are useful in bringing together in one reference work all of the outstanding or unusual cases and literature upon the given subject published during 1945, perhaps the most useful to the practicing attorney are those which deal with the newer and less solidly formulated subjects of the law, as is exemplified in their giving not only the cases, legislative enactments, and legal literature, but also more editorial comment and discussion than do the articles on the other subjects.

To comment on certain of the articles:

INTERNATIONAL LAW· Clyde Eagleton, page 3.

This article is readable, understandable. The cases concerning the law of peace decided in American courts are discussed and their effect, as seen by the writer, is given. The law of war, the United Nations, the Security Council, with numerous problems and ramifications, are clearly and concisely set forth. Significant books, articles and legislation upon the subject in 1945 are listed.

CONTRACTS: Laurence P Simpson, page 675.

New books and articles are named in the opening paragraph. The remainder of the article is devoted to a general statement of the law

pertaining to various subdivisions of contract law—and to the facts and holdings of current cases pertaining to it. There is little or no rationalization, but the cases and law are very clearly given.

AVIATION LAW: Arnold W Knouth, page 871.

An extremely smooth style is exhibited. This is a good discussion of the problems involved and attempted solutions, both by congressional enactment in this country and internationally by treaties with foreign powers, are suggested. Also, there is a discussion of the leading United States cases, of facts and holdings as well as of state legislation and legal literature upon the subject.

LEGAL EDUCATION, BAR ACTIVITIES AND ECONOMICS: Arthur T. Vanderbilt, page 1317.

Here is a worthwhile and entertaining article affording a sound discussion of enrollment in law colleges, prelegal training, problems of returning veterans, bar examinations and standards of law colleges. Also there is a comment on the size of the Bar and its activities. Mention is made of legal literature for lawyers such as "Mr. Tutt Finds a Way" a biography and a work from India on professional conduct and advocacy are included.

This reviewer comments more fully upon three chapters which were of special interest to him.

TRUSTS AND ADMINISTRATION: Russell D. Niles, page 993.

This essay on Trusts and Administration should be read by students in the Trusts course at the completion of it. It is valuable for bringing the materials down to date. The reviewer noted in particular the discussion of investments, and the development by statute of the prudent man rule in Illinois, Maine and Texas. Probably the present high cost of living will further develop this practice. The observation on page 1004 that a Pennsylvania court sustained the trustee who accepted new stock in a corporation formed by the merger of the trust company with another trust company in lieu of the original stock because the new stock was the substantial equivalent of the old, is valuable. It suggests a method of solving the general problem of ademption where a testator has specifically bequeathed stocks and thereafter the corporation has passed through mergers or consolidations.

The discussion also seems to indicate greater consideration is being given to the life tenant where there are successive beneficiaries (page 1010) Thus there is the discussion of representation of unborn lives, which is useful. The writer makes some observations on discretionary trusts *v.* powers of appointment. The reviewer is not quite clear whether the writer thinks that a wife or child should have the same right of support out of a discretionary trust as she should have out of a trust for support.

This is a worthwhile study.

THE LAW OF SUCCESSION: Thomas E. Atkinson, page 1022.

The discussion by Professor Atkinson of Succession is most interesting and valuable. He starts out by observing the importance of the Model Probate Code, then passes on to show the unreasonableness of the application of inheritance *per stirpes* in a reviewed case. Then follows comment on pretermission and adoption of children, the plight of illegitimates, and theories respecting the slayer's bounty.

This reviewer was glad to observe the reaction—for virtually it amounts to that—to the Restatement of the Law of Property at Section 316, Illustration 6. The statement is that an only child, the sole expectant distributee, who relinquishes his interest to the source, is bound thereby so that in spite of the statute of descent and distribution, remote relatives would inherit. This conflicts with the only case (one from Georgia) directly in point. Professor Atkinson calls attention to a case from Florida which is in effect identical with the Georgia case. Here a widow, having waived her right of sole inheritance by a prenuptial agreement, was held to be entitled nevertheless to her statutory share, she being the only statutory heir. The reviewer has always believed that the Restatement's position on this matter was so unnatural that courts would refuse to follow it.

At page 1061, Professor Atkinson discusses a case in which a state bank had been named executor under a will and continued such service after it had been consolidated with a national bank. Was it then an executor *de son tort*? Should it be appointed administrator after the transformation, so that its authority would relate back? More consideration in such cases could well be given to the fact that the new corporation is identical with the old for most purposes, and has most of the powers of the former one. It operates under the same officers, has the same place of business and much the same shareholders, and so continues substantially the former entity. It is functionally the equivalent of the executor named by the testator.

CRIMINAL LAW: J. Walter McKenna, page 1142.

A survey of several hundred cases involving substantive criminal law reveals no new trends or startling development in this field, to the surveyor, Professor J. Walter McKenna. He calls attention to the fact that too little attention has been paid to the problem of revising the criminal law which goes back four or five hundred years for most of its fundamental principles. Especial consideration is given to advances in the field of mental disorders, to changed medical views as to the effect of intoxication, and to new social concepts concerning family relations which thus far fail to find reflection in the substantive criminal law. The most encouraging sign during the period is the new revision of the *federal* substantive criminal law. This revision of Title 18 of the United States Code is the first comprehensive one since 1909.

Attention is called to several interesting cases which were decided during the year. In a Louisiana case a drunken police officer was prosecuted for assault with a dangerous weapon. His extreme intoxicated condition was set up as a defense. It was held, however, that the crime of aggravated assault required no specific intent, only a general intent. While the language of the opinion is unhappy, the result is probably correct, since the aggravating feature of statutory assault may be the specific intent with which the act is done or the type of weapon used in making the assault. The case is also interesting in that it held that an unloaded revolver was a dangerous weapon, when pointed and clicked in a hostile manner.

A Pennsylvania case which follows the present trend toward limiting the right to kill one who is committing a felony to prevent his escape to major or atrocious felonies only is cited. The accused fired at agents of a finance company who had come to repossess her automobile. She admitted the shooting but claimed she thought they were stealing the car. In denying her right to use her gun as she did, the appellate court stressed the point that the preservation of human life is of more importance to society than the protection of property. It was declared that there is no right to kill to prevent "any" felony; it must be a felony which is either an atrocious crime or one attempted to be committed by force such as murder, burglary, rape, sodomy, and the like. Three judges dissented.

The surveyor calls attention to two interesting notes which appeared in the Kentucky Law Journal during the year. These were: *Mens Rea in the Early Law of Homicide* and *Is a Criminal Assault a Separate Substantive Crime or Is it an Attempted Battery?*

This series of surveys will undoubtedly continue, and the profession is deeply indebted to the New York University School of Law and its able contributors.

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CASES AND MATERIALS ON COMMUNITY PROPERTY, by William Quinby de Funiak. Bobbs-Merrill Company, Indianapolis, 1947, pp. iii-482.

For many years the American system of Community Property was confined to eight western and southern states. Most of them inherited the Spanish system of *Bienes Gananciales*. Idaho and Washington adopted the system under the influence of California. After all the years it is a real phenomenon to note that the system has now been adopted in Oklahoma (1939), in Oregon (1943), and in Michigan, Nebraska, and Pennsylvania (1947).

This sudden growth has probably been influenced by the rising tide of taxation and gives timeliness not merely to Professor de Funiak's new treatise on Community Property but also to his case-

book, just off the press. It may be noted that the editor first qualified himself for presenting the topics to be studied and the selection of cases and periodical citations by first producing his excellent treatise. This is after all the natural order.

In his preface the editor indicates that he has had little precedent to guide him in the selection of cases. This reviewer knows of but one other published casebook, that by Professor Burby (1933). There were two mimeographed sets prior to this, one compiled by Professor Bissett of the University of Washington and a still earlier one by this reviewer, to which the editor undoubtedly had no access.

The contents are divided into nine chapters: Introduction, Existence of the Marital Community, Ownership, Community and Separate Property, Management, Transactions between Spouses, Community and Separate Obligations, Dissolution of the Community, and Taxation. The reviewer has read the cases and believes that the selection is well made. A number of them were decided as late as 1945.

Since it is probable that the five additional states adopted the system largely because of tax advantages, it may be desirable to supplement the chapter on Taxation with comparative materials showing the extent of the advantages of this system.

For the states recently adopting this system, de Funiak's casebook sets out the problems which their courts and lawyers will face and they can follow profitably precedents here shown.

To those who may have the task of drafting a community property statute in the future, a study of these cases would suggest many matters to be considered.

This sudden conversion to community property seems passing strange. If the national Congress can change constitutionally the law both of estate and of income taxation so as to remove the preference afforded to community property states, isn't it likely to do so? Is there a genuine feeling of regard for the system apart from the problem of taxes? Do the legislatures realize the burdens that will be thrown suddenly upon the courts who are without previous training and experience in this field?

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THE SUCCESSFUL PRACTICE OF LAW. By John Evarts Tracy. New York: Prentice-Hall, Inc., 1947. pp. ix, 470 (Incl. index). \$4.30.

This intensely practical book will be a very real help to any lawyer from the moment he is admitted to the bar. Indeed, for the law student who plans to "hang out a shingle" and embark on his own, it affords genuine assistance in considering, and resolving

wisely, the many important problems that are to confront him at the outset, problems which he would do well to consider even before his final admission.

For both the lone wolf and the young lawyer or student who expects to be or is associated with an established firm, the advice and counsel of Professor Tracy, who practised some twenty-six years before joining the faculty of the University of Michigan Law School, is sound and, we repeat, intensely practical.

Even for the experienced lawyer, several of the chapters will be found to contain valuable suggestions and an excellent standard for comparison, as for instance those chapters entitled, "How to Handle a Conference with a Client," "How to Prepare a Case for Trial," "How to Try a Jury Case," and "The Drafting of Legal Instruments."

Some good book of this kind should be available to every young lawyer, even if he has the advantage of close friendship with an older and exemplary leader of his local bar. Professor Tracy not only covers a great deal of ground, treating such varied topics as opening an office, obtaining and holding clients, fixing fees, looking up law, examining abstracts of title, selecting a library, deciding borderline questions of ethics, etc., but he does it in a friendly yet (once again) practical way. The book is the newest of its kind, and at the same time draws to some extent on older works and on the experience of a number of successful practitioners.

"The Successful Practice of Law" will of course not make a good lawyer out of a bad one, but it can help a good lawyer become a better one, and it can help the new lawyer become a good lawyer. And, for any lawyer, it is refreshingly readable.

ELVIS J. STAHR, JR.

*Lives of the Judges of the Supreme Court of Tennessee*, by John W Green, of the Knoxville Bar, Archer & Smith Co., 1947 \$3.50.

Judge John W Green, author of the *Lives of the Judges of the Supreme Court of Tennessee*, has been practicing law in Tennessee for many years and has known personally thirty of the seventy-four judges who have served on the Supreme bench from the foundation of the State in 1796 through the year 1947. The book is a valuable contribution to history and will interest not only Tennessee lawyers, but lawyers from other states as well, due especially to the fact that a number of these Tennessee judges were natives of other states. Five of the outstanding jurists whose careers are described in the book were born in Kentucky. One of the five was elected Governor of Tennessee, three of the five served as Chief Justices of the Supreme Court of the state of their adoption, and two of them were promoted to the Supreme bench of the United States. Seven of the other judges were born in Virginia; seven in North Carolina; four

in South Carolina; three in Mississippi. Two were born in Scotland and one in Ireland. It is also interesting to note that one of them served two terms as president of the United States, eight of them became United States Senators, five including the Kentucky born judge above referred to, were governors of different states and others represented the United States as cabinet officers and in the diplomatic service. One of the most colorful of them all, William C. C. Claiborne, who was appointed to the Supreme bench of Tennessee by Governor John Sevier when he was only twenty-one years old, subsequently served as Governor of the territory of Mississippi by the appointment of Thomas Jefferson, and later governor of Louisiana, and still later was elected to the United States Senate, but died at the age of forty-two before he took his seat.

Judge Green, who is also the author of the Bench and Bar of Knox County, Tennessee, traces the history of the Supreme Court of Tennessee in regular chronological order, and tells how in the early days, in the absence of statutes, the Supreme judges having few precedents to guide them in their rulings, either followed the common law of England or worked out their conclusions by reasoning from fundamental principles, and how as a result, they often made laws which are followed as precedents by later generations. He brings out in an interesting manner the character, characteristics and qualifications of these distinguished men whose learning and ability enabled them to reach the top of their profession and the goal of their ambition.