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Book Reviews

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BOOK REVIEWS


Too much tribute in a general book review cannot be rendered to the purposes of the Practicing Law Institute, a New York non-profit educational corporation, which published the Section of Legal Education of the American Bar Association and the Association of the American Law Schools, which sponsored, and the editors and individual authors including recognized practitioners, law school professors and judges who, without financial reward, assembled these five series of monographs dealing with legal trends and developments during the past five years.

Lawyers returning from the armed forces in need of refresher material, civilian lawyers occupied wholly with the war effort as well as those who remained with civilian practice, beginning lawyers without extended practical experience, specialists and jurists who do not have the time for extensive reading, law school students who are entangled in mastering the theory of substantive and procedural law and even the laity including social scientists—all can well profit by this pioneering effort to summarize in straight-forward and non-technical language the recent trends of law. The war challenged the bases of our legal system so as to warrant, if not to create an exacting need, a fresh non-technical examination of what our law is about and its methods of operation. In a profession as competitive as the law, a four or five year lapse can be almost fatal to professional competency. It is to be hoped that as changing conditions warrant, a repeat performance may be obtained of such collections of literally hundreds of noteworthy decisions and legislative laws with scholarly analyses by such an array of master craftsmen. A convenient means is afforded of keeping abreast of legal developments.

The variety of important subjects covered in Significant Developments in the Law During the War Years precludes any exhaustive individual comment beyond typical sampling. New starting points are indicated by such developments as Erie R. R. v. Tompkins holding federal courts in diversity of citizenship cases must apply state law, the further evolution of court doctrines and formulae in real
property law to achieve desired social effects, further applications of the new Federal rules of civil procedure, active labor litigation, the increasing confusion in the law of evidence, extensions of tort liability with and without fault, new factual situations in constitutional law indicative of what the Supreme Court may do, further assimilation of administrative agencies into the juristic system, the effects on domestic relations by the two Williams cases, etc. It is only too evident the law is on the move.

The two series on General and Trial Practice, under the general editorship of Roscoe Pound, give as unique and extensive discussion of the practice of law as will be found anywhere in legal literature. Their chief defect is a too great reliance on New York decisions and statute law. Which legal weapons or strategies to utilize in a law suit depend on adaptability to the exigencies of the issues and facts as governed by the applicable law of the jurisdiction and forum that one might question, if inclined to be critical, the universality of such observations and experiences of individual practitioners of a particular jurisdiction. The fact is, legal artistry is attained only in the fray of a law suit. However, the attempt to impart what might be described as the overtones of the practice of the law results in a pedagogical demonstration of the better understanding of substantive and procedural rules of law than if limited to direct study of the law and such dress-rehearsal study of other practitioners' arts tends to force a consideration of the entire panorama of a law case from its beginning to its final closing aspects. These are gains despite individual monographs digesting thinly the procedural rules at places.

In editing a collection of monographs, two criteria should be met: (1) One or a few related fields should be delimitied, and (2) duplications should be avoided by integration. All of the series except Fundamentals of Federal Taxation and Current Problems in Federal Taxation fail to meet both criteria in being edited in shot-gun fashion and pointing the way to duplications with cross-referencing. The two tax series of individual monographs should be required reading for all lawyers since tax consequences cut across many legal problems today.

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The author, General Counsel of the National Institute of Municipal Law Officers, attempts in this study of labor unions involving municipalities to compile all the available law and experience since the NIMLO's initial study of 1941.

The general conclusions as to what the current status of the
law is are presented further for consideration of what the law should be. *Inter alia,* it is stated municipal employees may form labor unions except where prohibited as incompatible with particular public duties. The majority view is given that of the few collective bargaining agreements signed with unions of municipal employees the industrial area cannot be transplanted readily into governmental sanction and acceptance. Delegations of municipal powers must be eliminated or illegality will result if undue preferences are granted the union. The minority view is agreements covering conditions of public employment will be recognized if the specific terms are not illegal *per se.* While good public policy to discuss city regulations or ordinances with union representatives, the agreements are rendered illegal if in conflict with civil service or other special laws applicable to cities. The right to strike is not conceded. The closed shop is condemned as an unlawful preference to union employees. Picketing is illegal if interfering with the city's functioning. The check-off (deduction of union dues by the city from the employees' wages for benefit of the union) is an unlawful preference to accomplish a closed shop if compulsory, but is within the lawful discretionary power of city government if voluntary (initiable and terminable by the employee) although a minority view holds contrary to public policy *ipso facto.* The present majority view is stated that there is no distinguishing between the city acting in a governmental and proprietary capacity although the minority view concedes legality if within the frame of legal powers of the city and proprietary functions are involved.

The paucity of present legal decisions, several of inferior courts and in widely scattered geographical areas, the too-ready reliance on opinions of state attorneys general and city attorneys which might be considered one-sided to some extent, the suspension of many law suits or repression of potential aggressiveness of labor during the war and the tendency to minimize the underlying economic and social driving power of labor subject the findings of the author to reservations as to how far public policy as presently defined with some analogies drawn from related legal principles will finally compete with the present apparent lack of direct legal precedent in any future definitive determination of the position of labor unions and city government by the courts. Hardly enough time has elapsed to assess definitely labor's attempted invasion of the precincts of city government. Although the author collects some of the pertinent authorities and references with some indication of possible distinctions, his contribution lacks desired persuasive legal analytical reasoning to support the conclusions of law presented.

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