



1938

Book Reviews

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Recommended Citation

Traylor, Orba F. and Seasongood, Murray (1938) "Book Reviews," *Kentucky Law Journal*: Vol. 27 : Iss. 1 , Article 10.

Available at: <https://uknowledge.uky.edu/klj/vol27/iss1/10>

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BOOK REVIEWS

CASES ON THE LAW OF PUBLIC UTILITIES, Smith, Dowling, and Hale, Second Edition, 1936, American Casebook Series, West Publishing Co., St. Paul, Minn.

CASES AND AUTHORITIES ON PUBLIC UTILITIES, Robinson, Second Edition, 1935, National Case Book Series, Callaghan and Company, Chicago, Ill.

When the first editions of these two casebooks appeared in 1926, Charles E. Clark questioned whether a functional approach eventually would not supplant the historical shipper-carrier trial of Beale, Wyman and others which Smith and Dowling followed.¹ The probable future treatment, to Clark, would be analytical and economic from the point of view of trade regulation. On the other hand, Robert M. Hutchins, *inter alia*, pointed out that Robinson's new arrangement and virgin collection of cases were novel in throwing the student at once into the public utility concept in *lieu* of a long historical treatment.² These two apparent contradictory methods of approach are continued in the second editions and are so expanded and refined as to outmode the original alleged contradiction. As a matter of fact, both casebooks use both approaches, Smith *et al.* perhaps emphasizing the historical cases and Robinson the immediate public utility concept.

With Hale now a full-fledged author with Smith and Dowling, one wonders why Hale's practice of selecting cases from the whole engineering, economic and legal fields and putting them together in an illuminating fashion could not have been extended to the other topics. In the public utility field, the materials cannot be too much legal, economic and political. If quantity of case material is required to give an adequate treatment of public utility problems, then the possibility of not attaining incisive and stimulating results on the part of both the teacher and student should not be allowed to prevent realization of the fact that today training in capacity is the one effective means of comprehending the utility problem. If it is had pedagogically to plunge a beginning class into a highly controversial matter such as "what is a public utility" as Robinson does, how is it that Hale handles the rate question so effectively? The answer is nothing takes the mystery and controversy out of a discussion so much as does a fact. One might conceive of Messrs. Smith, Dowling, Hale and Robinson joining forces and giving credit where credit was due, but until present day haphazard methods of producing casebooks and text materials on public utilities are extinct, a choral effect without losing the position of any

¹ 27 *Colum. L. Rev.* 340, 341 (1927).

² 36 *Yale L. Jr.* 432 (1927).

one of the contributors will be only a pipe-dream. In the meantime, those of us who do not have the ability and the time to prepare our own materials are the losers.

Another suggestion, were the reviewer preparing case materials, would be to stop stressing the fact (except as an historical incident) that a new category in the common law system is being formed analogous to the formation of common callings in Year Book England, *i. e.*, from carriers and bailments to public utilities.³ Smith *et al.* appear too devoted to the departure. This history of what makes a public utility is traced chronologically from 1877 in the *Munn* case to what has been alleged to be its virtual decease in *Nebbia v. New York*. Robinson makes the jump and then commits the historical error he so studiously started out to avoid by looking backwards. In the opinion of the reviewer, collectivism is an accomplished fact except in the mental imagery of the law. The issue today is not whether we shall or shall not have collectivism in public utility regulation. The issue is as to the kind of collectivism. For all the judicial enlargement from *Munn v. Illinois*, there may be only an application of common law principles to situations new only in fact.

The material on rates in the Smith *et al.* casebook is the best the reviewer knows. The material is well done and fairly well covered. The arrangement shows logical and original thinking despite the characterization of Justice Stone that the rate problem is the most speculative undertaking the court has ever had imposed upon it.⁴ Professor Hale shows quite clearly the matter is one of sound judgment and fairness. While the subject matter is minutely divided, it will be incomprehensible only to those students who are not interested in the analysis of the problem. Robinson's section on rates appears to be a partial concession to the theory that rate issues are an over-emphasized, if not a political question. Collateral reading will certainly be required if rates are developed, although not to the same extent as was required in the first edition. Robinson's notes appear longer than required for immediate student consumption although they constitute good bibliographies.

The Smith *et al.* casebook gives little insight into everyday administrative questions of the commissions although this second edition has ten cases and some text material. No cases appear determining the meaning of the Johnson Act of 1937 before original jurisdiction of rate orders may be taken by federal district courts. All of Robinson's principal cases are court opinions. The modern specialist must master commission decisions and get a feel for commission psychology if he is to function effectively. Either method of treating commission decisions will obviously have to depend upon the extent to which administrative law is to be taught as a separate discipline in the curriculum.

³ Justice Holmes in *Tyson v. Banton*, 273 U. S. 418, 446, 47 Sup. Ct. 426 (1927) expressed the view that the idea was undefinable (fiction).

⁴ *West v. Chesapeake and Potomac Tel. Co. of Baltimore*, 295 U. S. 662, 689, 55 Sup. Ct. 894 (1934).

In chapter two on monopoly and competition, Smith *et al.* have the beginning of what in the opinion of the reviewer may turn out to be the subject matter of public utility law in the future. Legal minds on public utilities have never thought it worthwhile to correlate the public utility concept with the recent economic works of Keynes, Chamberlain, Robinson, *etc.*, on monopolistic-competition.⁵ From a practical point of view, restraint of trade and certificates of convenience and necessity may be a more important means of protecting the public interests than all the theoretical legal claptrap that has been written on the public utility concept, the question of rates, *etc.* Witness the effectiveness of prosecution or threat thereof of monopolies in restraint of trade by Assistant Attorney General Thurman Arnold at the present time. Whether Mr. Arnold has any grasp of the theoretical positions of Keynes *et al.* is not as important as the more effective practical control which is being exercised actually. Robinson's casebook does not give the least indication of what straws in the wind in this direction may open up in the future, and is therefore more orthodox in this respect.

The high general quality of the recent American cases in the casebook of Smith *et al.* suggest the advantages of collaboration. Articles and textual matter to eliminate difficult parts of public utility law are interspersed. The particularist will like the tendency to cite passages in their entirety although two or more topics may be covered. Also materials which while not the law, but may be, are wisely included. Robinson's annotations frequently bring out the economic and social connotations in comparison with Smith *et al.*'s terse legal emphasis. Robinson's habit of numbering consecutively his cases will facilitate reference. There are many excisions without one knowing when the reprint is full or partial. Also Robinson does not point out dissenting and concurring opinions consistently. Some continuity and perspective are lost when cases are scattered without reference to date and unity of subject matter (*E. g.*, Illinois Bell Telephone Case is to be found on pp. 361, 375, 417, and 433). The advantage of concentration on some particular topics is quite evident however.

A capable teacher can achieve the same results with either casebook if he is so minded. All will desire to own both casebooks. Selection of one casebook will depend upon one's preference with regard to the factors isolated above.

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⁵ Keynes, *The General Theory of Employment, Interest and Money*; Chamberlain, *Theory of Monopolistic Competition*; Robinson, *The Economics of Imperfect Competition*.

HANDBOOK OF THE LAW OF PARTNERSHIP AND OTHER UNINCORPORATED ASSOCIATIONS. By Judson A. Crane (Professor of Law, University of Pittsburg Law School). St. Paul: West Publishing Company, 1938, pp. x, 535. \$5.00.

The modern widespread use of the corporation, with its great advantages, as a means of business organization has relegated the law of partnership to a less important place in the practice of the ordinary lawyer. In 1937 there were but 114 cases involving partnerships noted in the American Digest. Many law schools no longer offer separate courses in the law of partnership. Recently, however, it has become increasingly evident that, in numerous situations, substantial tax savings may be effected by businesses as partnerships rather than as corporations. Frequently such savings are sufficient to offset the advantages of corporate organization, particularly where insurance may be taken against the serious risks of the business, and the partners are insurable so as to safeguard the continuity of the business. Professor Crane's treatise is, therefore, a timely and valuable work in a neglected field of law which is again becoming increasingly important.

Although following the familiar pattern of the publisher's "Hornbook Series", Professor Crane has not limited himself to the sterile method of laying down "general principles" in bold face and explanatory text and examples in ordinary type, as if a generous use of printer's ink could establish a series of dogma from which all decisions flow. Instead, the author has treated the subject realistically from the point of view of recurring factual situations. Thus, in Chapter 2 on the "Nature and Formation of Partnership", in considering the possibilities of various types of ventures not ordinarily regarded as partnerships being labelled and treated as such by the courts, the subject is approached from such familiar situations as profit sharing between employer and employee, landlord and tenant, creditor and debtor, and seller and buyer. In a similar vein, the powers of individual partners to act for the firm are discussed from the viewpoint of specific problems incurred in the day by day management of an active business and in unusual circumstances. The question of separate creditors' rights in partnership property, which has vexed the courts for a very long time, is presented and analyzed with unusual clarity. Even the "charging order" procedure of the Uniform Partnership Act, which was designed to solve this troublesome problem, is, in Professor Crane's opinion, "inadequate as a remedy" in some situations. The entire book is annotated not only with well selected American and English cases, but also with numerous references to notes and articles in legal periodicals.

Although the order of the Uniform Partnership Act is not followed, its provisions and the decisions under it are fully discussed in relation to each subject. The Act has now been adopted in nearly half the states of the Union. The Act purports to be a codification of the common law, and common law decisions have an important bearing on its interpretation. The bringing together of the statutory provisions and

the common law decisions in one volume is of itself an important and valuable contribution.

In addition to the law of ordinary partnerships, there is an excellent chapter on such variations as limited partnerships, joint stock companies, business trusts and joint adventures. There is also a brief survey of the as yet undeveloped subject of unincorporated associations not for profit, particularly with reference to trade unions. These, because of their functional differences, would not seem properly included at any greater length in a book of this type and size.

It may be regretted that the confines of the work did not permit Professor Crane to bring his fund of knowledge of business organization to a searching analysis of the relative advantages and disadvantages of incorporated and unincorporated business. Yet the book furnishes in a well organized and clear cut form the materials out of which the practitioner may readily make his own analysis as to the most desirable form of organization for a particular enterprise. The work will also serve as a convenient and dependable handbook for students and for lawyers confronted with specific partnership problems.

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HOW TO DEAL WITH ORGANIZED LABOR. By Alexander Feller and Jacob E. Hurwitz. The Alexander Publishing Co., Inc., New York. Pp. vii-664.

The preface informs us that the authors of this book have had extensive practice in labor disputes and that due to their first-hand knowledge, they have made a wide study of the court decisions bearing upon labor relations. The book, however, is built very largely around the National Labor Relations Act. It is true there is something of a historical study of the earlier objectives and methods of organization and procedure, of labor, the strike, etc. The main body of the work deals with the substantive provisions of the National Labor Relations Act and indicates how difficult it is for an employer to know where "he is at" most of the time.

The remainder of the book is taken up with the program for management, in which the authors seek to set forth the defensive strategy of employers and how some of the many difficulties in bargaining and in collective agreements may be avoided. The editors evidently believe that the power of the N. L. R. B. is rather larger than it should be.

THE BANKRUPTCY ACT OF 1938—CHANDLER ACT. By Jacob I. Weinstein. New York: National Association of Credit Men, pp. x, 497.

The thorough revision of the federal bankruptcy laws last session of Congress has necessitated the revision of our casebooks and texts on the subject of bankruptcy and has also called forth many new publications on the subject.

The text having the backing of the National Association of Credit Men contains the text of the Act and comments on the new sections and sections that have been in any way changed. This material is arranged in parallel columns, the text of the Act itself filling the left hand column on a page and the comments thereon in the right hand column. This arrangement makes it easy to follow the changes in the act. It is a very handy book to have on one's desk for immediate use.

The sponsor of the new bankruptcy law, Congressman Chandler, has written a foreword for the book.

AMERICAN FAMILY LAWS, Vol. V. By Chester G. Vernier. Stanford University Press, Stanford University, California, 1938, pp. v-707.

This fifth book of the series on Family Law publications, on incompetents and delinquents, sustains the reputation of the earlier volumes.

The series constitutes a new Stimson on familial relations. The particular classes are infants, aliens, drunkards, and insane persons. The general plan of each volume is a resume of the common and statutory law, followed by the state statutes themselves in comparative tables. The author, at each appropriate place, gives his own reactions to the resulting legal situation. The chapter on infants deals with the age of majority, effect of marriage, suits by and against infants, contracts of infants, their ratifications and disaffirmances, their conveyances and torts, the statute of limitations, juvenile delinquents, crimes injurious to infants, wills, infants as witnesses, their domicile and emancipation, and the almost forgotten law of apprenticeship, child labor laws, service of process on them, and certain miscellaneous provisions. After a similar fashion, the other chapters are developed. At the end of each section a bibliography of books, articles, notes and annotations has been appended. Public libraries, social welfare agencies and many private libraries can scarcely afford to be without this volume or its predecessors.

THE PROTECTION AND MARKETING OF LITERARY PROPERTY. By Philip Wittenberg. Julian Messner, Inc., New York, 1937. Pp. 3-395.

The author of this book seems pretty clearly to "know his stuff". The most interesting chapters are: "The Nature of Literary Property", "History of Statutory Copyright", "Motion Picture Contracts", "Provisions for Radio Use", and "Theft of Names and Titles", although all the other titles are interesting. Two appendices will be useful for writers also. The first one consists of rules and regulations for registration of claims to copyright, and the second is entitled, "Minimum Basic Agreement Negotiated by The Dramatists' Guild". The writer has an interesting style and the reading is anything but dull.

