Kentucky Law Journal

Volume 25 | Issue 4 Article 12

1937

Book Reviews

W. Lewis Roberts
University of Kentucky

A. H. Eblen
University of Kentucky

William H. Pittman

BOOK REVIEWS

CASES AND OTHER MATERIALS ON THE LAW OF MUNICIPAL CORPORATIONS. By E. Blythe Stason. American Casebook Series, St. Paul. West Publishing Company, 1935; pp. xxix, 761.

Professor Stason's outline for Municipal Corporations is the logical one in dealing with this subject: legislative control, municipal powers, municipal action to promote public welfare, licenses and franchises, appropriation of municipal funds, municipal contracts, municipal indebtedness, municipal torts and liability therefor, municipal property, and special assessments. It is hard to see how it can be improved.

The cases show careful selection and editing. In keeping with the editor's suggestion in his preface, the cases chosen were decided in comparatively recent years, almost all within fifty years. Furthermore, few are of very great length. The ten or fifteen-page decision is lacking. Selections from model charters and statutes are very suggestive and should prove a valuable addition. The footnotes show the present-day trend of opening to the student the wealth of law review articles, notes, and case comments that have been written in this field. These are also gathered under their chapter headings in an index in the front of the book.

If one were to look for faults, he might well complain of the excessive amount of space given the topic of zoning and city planning. Aside from this there is little to be criticised adversely.

W. LEWIS ROBERTS.

University of Kentucky,
College of Law.

BELIEVE IT NOT. By Stuart O. Landry. Pelican Publishing Company, New Orleans, 1936; pp. 1–319.

THE COMMONWEALTH OF INDUSTRY. By Benjamin A. Javits. Harper & Brothers, New York and London, 1936; pp. vii–229.

The economic depression and the proposed New Deal way out of it has caused much philosophizing about matters legal, moral and economic.

The first of these two books is avowedly a plea for the old *laissez faire* days. The author lists twenty-five so-called economic fallacies and ingeniously but briefly attacks them. Among these are "That Spending Creates Prosperity", "Restriction of Production is Economically Sound", and "Government Regulation of Business is Advantageous". The use of statistics is clear and the conclusions drawn from

them and from history are well stated. The book is not intended so much for the expert or the philosopher as for the lay reader.

The second book is a rationale of industrial civilization. The lawyer and the economist turns philosopher. The author also considers the relation of industry and the state, compares the old deal and the new and seeks the goal of an industrial commonwealth, with respect to the role of management, of labor, of the farmer, the consumer, and of women. In the last chapter he formulates a political platform of the principles of the industrial commonwealth. This book is submitted by the author as a result of twenty-five years of reflection.

NATIONAL TAXATION OF STATE INSTRUMENTALITIES. By Alden L. Powell. University of Illinois Bulletin. The University of Illinois, Urbana, Ill., 1936; pp. 166.

There are seven chapters in this monograph on the law of taxation, one and seven being devoted to an introduction and a summary and conclusion respectively. The five chapters in between cover the national taxation of state writs and other judicial documents, the salaries of state officers, employees, and independent contractors, the obligations of the states, counties, and cities, the proprietary agencies of the states and political subdivisions thereof, and state educational institutions.

The author goes back of the principle of tax immunity in each case and finds that it is based on the misused statement that "the power to tax involves the power to destroy". His conclusion that the reciprocal tax immunity is economically unsound, in that it creates a tax exempt class, and that the Supreme Court should consider the matter anew and without an adherence to *stare decisis* is certainly worthy of thought. Here is a source of revenue for state and nation that should not be overlooked.

Not only are all the leading cases cited and discussed but there are also the Treasury Decisions, Treasury Regulations, and the rulings of the Board of Tax Appeals. A bibliography contains all the leading periodical material. This work is well written and the cases are carefully analyzed. Anyone interested in the national taxation of state instrumentalities should not overlook this study.

A. H. EBLEN.

RESTATEMENT OF THE LAW OF TORTS. The American Law Institute. The American Law Institute Publishers, St. Paul, 1934. Volumes 1 and 2, pp. xxxii, xxxi, 1338.

The first volume of the Restatement is devoted to intentional harms to persons, lands, and chattels. Logically it starts with battery, and then follow assault, false imprisonment, consent, the defense of person, land, or chattel, the use of force in entering land or recapturing chattels, the arrest and prevention of crime, the enforcement

of military orders, family and school obedience, and the intentional interference with the possession of land and chattels.

Volume two is entitled negligence, and it consists of the standard by which negligence is determined, the effect of the violation of a statute, the factors to be considered in determining the standard, types of negligent acts, the liabilities of possessors, lessors, vendors of land, the liabilities of the suppliers of chattels, the liabilities of the employers of independent contractors, causation, and contributory negligence.

As will readily appear the Restatement of Torts is not complete, probably three or four volumes will be required for what remains. Assuming that the rest will receive the same excellent treatment as the part published then the Restatement of Torts will certainly be the most outstanding and comprehensive treatise on the law of torts. Indeed, with Professor Bohlen as the Reporter and such distinguished scholars as his advisors, this is to be expected.

While the purpose of the Restatement is just what the name implies, it also involves the matter of choosing which of conflicting rules are to be restated. For example, it was necessary to determine whether the humanitarian doctrine should be accepted. In making this choice of law numerical weight has and should not be decisive. It has called for and received a careful analysis of the conflicting claims in the light of present conditions.

Two problems which have always proved troublesome and which have been handled so well are proximate cause and the effect of the violation of a penal statute in determining negligence. In stating the elements of a cause of action for negligence the principle announced in the Palsgraf case[1] is accepted. That principle is that the conduct of the actor must be negligent with respect to the interest of the plaintiff, or any other similar interest, which is protected against negligent conduct. It might be felt by some that this of itself determines causation. But not so in the Restatement. It is still necessary for the plaintiff to show that the defendant's act is a substantial factor in causing the harm.[2] The most important contribution in this respect is a statement of four factors which are important considerations in determining what is a substantial factor.[3] These are the number of other factors which contribute in producing the harm, whether by hindsight the result appears extraordinary, whether the actor's conduct has created a series of forces which are in continuous and active operation to the time of the harm, and the lapse of time. As pointed out in the comment these considerations are important for the jury in determining whether a factor is substantial, they are important to the judge in framing his instructions so as to call attention to such as are relevant to the facts, and they are important to the court in determining whether from the evidence there is

[1] Palsgraf v. Long Island R. Co., 248 N. Y. 339, 162 N. E. 99 (1928).
[2] Secs. 281, 431.
[3] Sec. 433.

ground for a reasonable difference of opinion as to whether the defendant's act is a substantial factor. Six factors which are important in determining whether an intervening force breaks the chain of causation are stated in Section 442. These are the facts that the intervening force brings about a harm different in kind, that its operation appears to be extraordinary, that it operates independently, that it is due to the act of a third person, that the act of the third person is also wrongful so as to subject him to liability, and the degree of culpability of the act of the third person. Causation then becomes a conscious weighing of these important facts, rather than the application of hard and fast rules; causation, the same as negligence, involves the application of a standard rather than a rule.

Section 286 provides in part that the violation of a statute subjects the violator to a civil liability for injury caused to another thereby, if "the intent of the enactment is exclusively or in part to protect an interest of the other as an individual". Thus not every violation of a statute subjects one to a civil liability. At the same time it rejects that most unsatisfactory rule that violation of a statute is evidence of negligence. The rule as stated in the Restatement demonstrates its own soundness. Courts have said that certain acts are negligent as a matter of law because they involve an unreasonable risk of injury to others. The legislature has, in effect, said the same when it requires or prohibits an act for the benefit of persons as individuals.

The Restatement has one fault which is common to all restatements, the constant cross reference. And while the meat of it is to be found in the comments and illustrations (hypothetical cases), one is forced to lament the omission of the reported cases which were being considered. Then, too, it seems that in the comment to Section 480 which rejects the humanitarian doctrine, some mention might have been made of that doctrine by its familiar name.[4]

The Restatement is a big help to teacher and student. It should prove to be just as valuable to the practitioner and the judge.

A. H. EBLEN.

HANDBOOK OF EQUITY. By Henry L. McClintock, St. Paul: The West Publishing Co., 1936. Pp. xix, 421.

This is a well prepared and extraordinarily concise one volume treatise on substantially the entire field of equity. Its inclusiveness is apparent from the twenty-one chapter headings into which the book is divided: introduction, procedure, general principles governing equitable relief, equitable jurisdiction, specific performance, fraud and misrepresentation, mistake, reformation, equitable ownership conversion, liens and subrogation, servitudes, protection of interests in tangible property, in intangible property, of personality, of public inter-

[4] It is so listed in the index.

ests, injunctions against litigation, bills of peace, interpleader; quia time, quieting title and removal of cloud; adjustments between creditors and debtors, and auxiliary and ancillary relief. The selection of cases and materials for citation is genuinely purposive. It includes not only the leading cases which have developed the basic principles governing equitable relief, but also cases showing the current judicial authority on important questions. Standard treatises and articles and notes in current legal periodicals are cited throughout, and are conveniently brought together in tables for easy reference.

Obviously there are grave difficulties involved in attempting to treat even fairly adequately of so wide an area of the law within the limits of 364 text pages. Of these difficulties and the necessity of avoiding them so far as may be possible the author was fully cognizant;[1] and in the relatively even inclusion and objective treatment of the numerous topics he has been successful in his purpose of producing a book of value "in organizing the thinking of judges, lawyers, and students with reference to the principles of equity and their application in modern cases".[2]

WILLIAM H. PITTMAN.

AMERICAN FAMILY LAWS, Volume IV. By Chester G. Vernier, Stanford University Press, 1936. Pp. v–496.

This is the fourth volume in a series of five by this author. As in the other volumes, the author gives the common law background and also parallel statutory provisions. There are seventeen lists of tables, e. g., Inheritance by and from a Bastard, Civil and Criminal Liability for Seduction, Who May Adopt and Who May be Adopted, etc. The author has added such comment and criticism as seemed to him pertinent and has given a list of selected references, including many law review articles and notes. No library would be complete without this painstakingly written treatise.

THE SALE OF FOOD AND DRINK. By Harry C. W. Melick, Prentice-Hall, Inc., New York, 1936. Pp. v–346.

The author has devoted his entire effort to a running comment upon cases found in the various states. Some of the eleven chapters deal with Origin and Development of Implied Warranties of Quality, and the rules applied in the United States, at common law, under the Uniform Sales Act, "Reasonably Fit for the Purpose", Sales between Dealers, Retailer's Liability, Defective Containers, Privity in Implied Warranties, Manufacturer's Liability to Consumers, Liability of Restaurant Owners, etc.

---

[1] Review by McClintock (1931), 15 Minn. L. Rev. 844.
[2] McClintock, Handbook on Equity (1936), p. v.

The most recent case, *Cushman* v. *Rodman*, 82 Fed. (2d) 864 (D. C., 1936), involving the restaurant keeper's liability, is discussed at page 210. Stevens, J., after balancing the social interests in the safety and security of lunch counter patrons against the individual interest of the restauranteur, finds that the former overbalances the latter. He adopts Dean Pound's scheme of interests save that Pound would not balance a social against an individual interest, but rather a social against a social interest. The book is well worth having.

DEMOCRACY AND THE SUPREME COURT. By Robert K. Carr. University of Oklahoma Press, Norman, 1936. Pp. 1–142.

This is a cleverly written little book. Despite his effort to be unbiased, the writer pretty clearly is a New Dealer. He writes simply and for laymen. Most people will find the chapters on The Railway, Pension Case, the N. R. A., A. A. A., T. V. A., and the Guffey Coal Case the most interesting ones. The author may not be a lawyer, but he reasons like a lawyer.