1934

Book Reviews

Roy Mitchell Moreland
University of Kentucky

W. Lewis Roberts
University of Kentucky

Forrest Revere Black
University of Kentucky

Amry Vandenbosch
University of Kentucky

James W. Martin
University of Kentucky

Follow this and additional works at: https://uknowledge.uky.edu/klj
Right click to open a feedback form in a new tab to let us know how this document benefits you.

Recommended Citation
Available at: https://uknowledge.uky.edu/klj/vol22/iss4/13

This Book Review is brought to you for free and open access by the Law Journals at UKnowledge. It has been accepted for inclusion in Kentucky Law Journal by an authorized editor of UKnowledge. For more information, please contact UKnowledge@lsv.uky.edu.
BOOK REVIEWS


The publication of the Restatement of Agency marks the completion of the Institute's work on a second subject. As in the Restatement of Contracts it has been the purpose of the Institute to state the principles and rules of the law in the light of the decisions. Unlike the Model Criminal Code of the Institute, the Agency Restatement presents in most instances the law as it exists in the majority of jurisdictions as determined by expert opinion; the Criminal Code is a "model code." At times the Institute has adopted the better though minority rule.

In May, 1923, the Council for the Institute appointed Floyd R. Mechem, professor of law in the University of Chicago and the leading living authority at that time on the subject, as Reporter. Mr. Mechem died December 11, 1928. Fortunately he lived long enough to see the completion of three tentative drafts dealing with the characteristics of Agency, the creation of the relationship, the creation and interpretation of authority and apparent authority, ratification, and termination, matters included in the first five chapters of the Restatement. On the death of Mr. Mechem, Warren A. Seavey, professor of law in the Harvard Law School, was appointed Reporter. He had been Mr. Mechem's principal adviser and is a leader in the field. Under his leadership the tentative drafts of the remaining parts of the subject, chapters six to fourteen, were completed and published, as well as the revision of the entire subject. Mr. Seavey in revising the first six chapters deleted several sections originally placed in the Restatement by Mr. Mechem.

Undoubtedly the restatement of the principal subjects of the common law is the most ambitious project ever undertaken by American lawyers. And the project has much to commend it. It is eminently worth while to gather the decided cases dealing with a particular matter and to set forth briefly but accurately the rule or principle which most nearly accords with the result reached by a majority of the cases.

All this is well and good. And perhaps it is too late for constructive criticism since the policy of the Institute has been adopted. But this reviewer and classes to whom he has assigned sections of the Restatement have found that the most valuable part of the labors
of the reporters have not been published in permanent form—namely the complete commentaries and explanatory notes. We are asked to accept the various rules as handed to us by those who made the choice. Personally, this reviewer is much more interested in the reasons back of the rules than he is in the rules. It has been our experience and the experience of our students that when one is confronted with a real problem in the law of Agency he turns not to the Restatement but to Mechem on Agency for aid. Here he finds the reasons back of the rules.

If lawyers, judges, teachers and students turn to texts instead of to the restatements, their permanent value, realistically speaking, is far from satisfactory.

Roy Moreland.

College of Law,
University of Kentucky.


Pond's fourth edition of Public Utilities carries over the method and arrangement of the earlier editions. It brings the work up to date and adds chapters on airport and radio law with the Radio Laws of the United States in the appendix. The treatise has expanded from one volume of a little over a thousand pages to three volumes of well over two thousand. This has been brought about by the copious use of excerpts from opinions, by resort to repetition, and by the addition of entirely new matter. The introduction of the topic of radio law and of the new material in the rapidly developing field of motor bus law, even, would hardly warrant so great an expansion.

The author's presentation of his subject matter is unique. A chapter consists first of several sections stating propositions of law with little reference to the decisions. Then follows citation of cases, grouped according to jurisdictions, covering from two to sixteen pages in small type. Finally comes the body of the chapter made up almost wholly of quotations from cases selected from those cited. The reader might easily imagine he were perusing an appellate court brief on the particular point of law under consideration. The method is that of the brief drawer rather than that of the legal critic. For this very reason the practicing lawyer should find the work of very great value.

The author makes it clear from the start that he is confining his subject matter to municipal public utilities, those public utilities which a municipality might be expected to own or to regulate. This embraces nearly all types of utilities except steam railways and transportation by water and at least in one instance a railroad is involved, the city
of Cincinnati and its railway line now leased to the Southern Railway System.

The author is fully aware of the important place the motor vehicle has come to play in our present day society. He points out that the motor bus has fairly earned its place in the sun. It is a popular means of travel. He would trust to commissions of experts, such as already exist in some of our states, for their proper regulation. He stresses the importance of the granting certificates of public convenience and necessity by these commissions and duly considers the gap made in such regulation by two United States Supreme Court decisions, *Buck v. Kuykendall* and *Bush v. Maloy*.

Mr. Pond has an excellent discussion on the relative merits of public and private ownership of municipal public utilities. He is fully convinced that if we cannot secure complete regulation of privately owned utilities, we must resort to public ownership. He believes that the publicly owned utility needs the guiding hand of the commission of experts fully as much as the privately owned utility. Decisions defining the limits on the powers of these commissions are of recent date and this treatise makes them available to the busy practitioner. The fact that this work has reached the fourth edition is evidence that it is meeting the needs of such practitioners. Further evidence of its value is the fact that it is the work on public utilities most frequently quoted in the opinions of the courts.

W. Lewis Roberts.

College of Law,
University of Kentucky.


This is a study made under the auspices of the University of Chicago Law School, with the aid of a grant from the Legal Research Committee of the Commonwealth Fund.

The insanity plea is becoming more and more common. And more and more difficult to handle. More difficult to handle because of an increased abuse. But also more difficult to handle because of an increased appreciation of the difficulties in the light of modern knowledge of making a legal test, or tests, to determine whether insanity exists in the particular case. In this connection it is interesting and discouraging to note how little the law has advanced beyond the rule in *M'Naghten's Case*.

This book is an intelligent and somewhat exhaustive study of what the law has been and is on the subject of insanity as a defense in Crimes. It contains a concise statement of the rules of law governing the defense and the exact number of states holding to each rule. In addition there are digests citing all the cases and statutes in each state on the tests of responsibility, burden of proof, pleading and pro-
procedure, stating exactly, as far as possible, the rule in each state on each of these questions. The book contains other matters of immense value to both student and practicing attorney including a summary of the reforms which have been proposed for the handling of insanity cases.

The reviewer considers it one of the most practical and valuable books that has appeared in recent months.

Roy Moreland.

College of Law,
University of Kentucky.


The new edition of this pioneer book is a thorough revision of the earlier casebook. The purpose of the cases and materials is, of course, to present the fundamental professional practices and moral problems which confront the practicing attorney of today. But in addition to this, the compiler has attempted to present something of the history and etiquette of the profession. In this he has succeeded admirably.

It is the opinion of the reviewer that this book fulfills the needs of such a course in a perfectly satisfactory manner. It is also his opinion that such a course has some merits. Certainly the ethics of some members of the profession are deplorable. The adjective is not strong enough; they are worse than that. The American Bar Association and the Association of American Law Schools consider that a course in Legal Ethics will better the situation. Perhaps it will to some extent. But the extent will not be appreciable unless other factors are brought into play. The ethics of some members of other professions have been just as poor as those of the legal profession during the past ten years.

Character is formed before the student enters law school. Shortcomings in home training, in our elementary and secondary school system, in the church, and societal indifference to moral wrong have all contributed to the general condition. The teaching of Legal Ethics in the law schools may help conditions some. But in the opinion of this reviewer such procedure is like painting a sore with iodine. It would be far more efficient to work at the roots.

Roy Moreland.

College of Law,
University of Kentucky.


Arthur B. Honnold, in presenting his three-volume work on "Supreme Court Law" has made a valuable contribution to the practi-
tioner and the teacher of law. The theory underlying this digest is novel. The author has attempted to state legal principles in the language of the Supreme Court of the United States. There is no involved index or table of contents but these principles are simply arranged in alphabetical order with cross references. The work is as easy to use as a dictionary. The case or cases from which the principle is taken are cited, and all the cases cited by the Supreme Court of the United States—state, federal and English—are given in the annotations to the principle. Such a digest is invaluable for the law teacher and the practitioner. It will be found especially valuable in writing up “Points and Authorities” as required by the rules of many appellate courts. It is the author’s idea that in a very large percentage of cases, points of law, based on fundamental principles are constantly used. It is on the fundamental principle that the lawyer builds his case and briefs it, and it is on the fundamental principle that the decision is rendered and written. The author who has had wide experience as a practitioner and writer gives the public this guarantee; that “he has personally searched every opinion of the Justices of the United States Supreme Court on which every statement in this work is based.” We are highly pleased with our copy and sincerely believe that this “shortest route to the highest authorities” should be in every lawyer’s office.

FORREST REVERE BLACK.

Professor of Law,
University of Kentucky.


This new casebook, a third edition, by one of the two reporters of the American Law Institute’s Code of Criminal Procedure, dedicated to the other reporter, differs from the previous editions principally in a re-arrangement of the subject matter.

Materials dealing with specific crimes have been placed before those dealing with matters of defense. It is suggested by the compiler that he has found this arrangement better in the classroom. In previous editions the student has studied matters of defense before he learned the elements of the crime itself; it is more realistic to reverse the process. In this, the reviewer agrees.

The table of crimes indicates that the subject of crimes has been well covered. In itself it is a good outline. The cases have been carefully selected. Footnotes are adequate; citations to leading law review articles would improve them.

The reviewer is in need of a collection of cases adequately covering both the substantive law of crimes and criminal procedure. He has discussed the need for such a casebook in his review of Dean Harno’s casebook. This collection is not intended to fill that need.

K. L. J.—13
Perhaps Mr. Mikell is contemplating such a casebook. No one in the field is better qualified. His casebook on the substantive law of crimes is in the third edition. He was a reporter for the A. L. I. Code of Criminal Procedure.

The present casebook, considering the compiler's purpose, is wholly satisfactory.

ROY MORELAND.

College of Law, University of Kentucky.


Advocates of automobile compensation plans propose to take from the courts all cases involving motor vehicle injuries and have them adjusted by administrative boards which shall give damages in accordance with a scale similar to that used in workmen's compensation cases. The major premise behind the scheme is that the courts are not able to handle this type of litigation. The author lays great stress upon the fact that the dockets of our courts are greatly crowded. He points out that over half of the negligence cases, which make up the bulk of the cases on these dockets, are automobile injury cases.

The fact there are many more cases on the court dockets than can be tried, does not worry the average trial lawyer as he knows a very great number of these cases are filed with no idea that they will ever be tried by the court. They are brought for the purpose of forcing settlements. Furthermore a great many of them are groundless suits and are ultimately dropped by the parties bringing them after they have failed to exact "tribute" money. The author takes it for granted that all plaintiffs have just causes of action. This is, of course, far from the fact. The delays help to weed out these groundless suits.

The author, to a large extent, builds his case for automobile compensation on the analogy of workmen's compensation acts. However, he fails to point out the important difference between the two plans, the fact that workmen's compensation acts are based upon the principle that injuries to workmen are part of the cost of production which can be passed on to the consumer. This is not true in the case of automobile compensation. His plan proposes to make a certain class—which happens to consist of the greater part of the public—bear the losses incurred in the use of automobiles regardless of the question of negligence. The whole scheme is in keeping with the suggestion that all losses thru accidents should be borne by the public as a whole, that one who suffers loss thru any misfortune can receive compensation therefor out of the public treasury. It is social legislation tending towards state accident insurance.
The case of automobile compensation has been well presented. All is here said that can be said for it. The book is not free from repetitions and much of the last chapter, which deals with the history and place of administrative law, might well have been omitted.

W. LEWIS ROBERTS.

College of Law,
University of Kentucky.


This casebook, one of a series of two volumes, represents an attempt to coordinate materials relating to all the principal forms of business organization. The greater part of the subject matter has traditionally been taught in courses on Agency, Partnership and Corporations.

The first volume is devoted to a separate treatment of Agency. A study of the cases and materials indicates a compilation well suited to teaching purposes. The abstracted case and explanatory materials have been freely used. Footnotes are not adequate and their lack detracts from the scholarship and helpfulness of the volume. A few of the leading law review articles on the subject would aid.

The most serious objection of the reviewer to this collection of cases lies in the fact that Agency problems as they relate to the individual enterpriser and his agents have been placed in the background in order that more complicated forms of organization problems may be studied. This results in the exclusion of many old familiar cases and of quite a few specific problems commonly covered in a course on Agency. The feasibility of this "studied emphasis" upon big business to the exclusion of the smaller enterprise may be doubted in the ordinary school of law.

ROY MORELAND.

College of Law,
University of Kentucky.


Now that the world has become covered with a vast network of treaties, whose number is steadily increasing, the legal interpretation of treaties becomes a matter of vital importance. Due to a number of influences conflicting and contradictory views are found in the decisions of judicial tribunals. In this book Dr. Yi-Ting Chang analyzes many of the important cases involving this problem which have come before national courts and international tribunals.

The cases are grouped under the following headings, each involving a rule or problem of interpretation: Respect for Clear Meaning,
Constructions, When the Text Appears Doubtful, Constructions Interfering with the Manifest Purposes of the Contracting Parties, Admissibility of Preparatory Work, Versions in Differing Languages, and the Rule of Liberal Construction. The primary rule is, of course, the manifest purposes of the contracting parties; the other rules serve only as aids in determining those purposes.

The United States Supreme Court in contrast with the Permanent Court of International Justice, frequently refers to the rule of liberal construction, leaving the impression that it feels itself bound by this supposed canon of interpretation. Dr. Chang, however, concludes after a close scrutiny of many of its adjudicated cases that it does not follow this canon of construction.

The Permanent Court of International Justice, according to the author, has made few, if any, new rules in treaty interpretation.

Dr. Chang concludes that "the function of treaty interpretation properly understood" is surprisingly simple. "The whole problem becomes a question of evidence, the presentation of which calls for and also permits the simplest methods of proof."

**Amy Vandenbosch.**

Professor of Political Science, University of Kentucky.


These three volumes, recently published by Commerce Clearing House, represent a relatively complete informed citizen's library on current American tax problems. The first is a general study and incorporates a satisfactory amount of material respecting European practices as well as furnishing a scholarly practitioner's reaction to American taxation, federal and state. Judge Green was for many years Chairman of the Ways and Means Committee of the House of Representatives and is now on the Court of Claims bench. If one must confine his reading to one volume, this would be the most useful of the three under review, unless the reader had had considerable training in the field of public finance.

The second and third volumes deal with specific problems of taxation and constitute perhaps the best collection of materials to be found.
in recently published volumes, aside from those in the nature of individual research reports on narrowly limited fields. The report of the New York University Symposium includes also certain materials dealing with other aspects of public finance: expenditures, financial administration, and public debts. These two volumes differ in that the essays in the New York Symposium are comparatively brief and pointed, whereas those in the Columbia collection are much more extensive and attempt more completely, in most cases at least, to exhaust the subject matter with which they deal. In both volumes there are some little masterpieces. In the latter, for example, Mr. Hope's study of the legal position of inheritance taxation and Professor Adams' discussion of double taxation represent masterful attacks on the respective problems.

All three of these books must appeal strongly to persons who would be informed on the important subject matter with which they deal. Since much of the material incorporated in each is written largely from the point of view of the lawyer, they ought to be of particular usefulness to those concerned with legal problems and especially to those who, as attorneys, are interested in maintaining positions of community leadership.

JAMES W. MARTIN.

Bureau of Business Research,
University of Kentucky.


The Federal Gift Tax is a handy little volume containing less than eighty pages of text, but giving all of the information, either directly in the text or in the appendixes, that the busy attorney or accountant dealing with gift taxes will require. The arrangement of the volume is such as to render it easily possible to find needed information. The book is written in direct and attractive style, which, however, lacks somewhat in imagination. Some unfortunate instances of repetition occur; for example, it seems that a distinction between the statutory and the common law definition of gifts is drawn in at least three different parts of the volume. The appendix includes the principal official documents relating to the act and its administration: the statute, forms, and other material.

JAMES W. MARTIN.

Bureau of Business Research,
University of Kentucky.

The author says of his book that in a sense it is like the play, Hamlet, would be without the Prince of Denmark. It supplies the historical background which is lacking in the well known treatises of Buckland. The author, therefore, devotes more than one-half of the pages to the law as found in the twelve tables and to the Republican Constitution showing the function of the various Roman magistrates, the rivalry of the classes, the position and influence of the provinces, family law and the law of succession, the various methods of acquiring ownership, and the law of obligations and procedure.

In the chapter on criminal law, the quæstiones perpetuae are discussed with some fullness but with scarcely a reference to their predecessor, the quæstiones extraordinariae, and no reference to them at all by name. He does not, in any distinct fashion, connect the senatus consultum ultimum with the quaestio by way of descent, though he does indicate that the right of provocatio was probably regarded as cut off by each. This does seem to have been Cicero's view of the consultum ultimum.

In the last fifty pages, a rapid but valuable account of the legislation of Justinian is found. A running narrative, of course, does not admit of the details of legislation.


One problem which legal training used not to provide for the student's equipment, was the problem how to go about finding the law. In comparatively recent years this lacuna is being filled. But all too many lawyers are still unable to find the right classification of their problem presented to them and are exposed without armor to the shafts of the enemy. Spelling's Briefer and Lawfinder is so designed that any capable lawyer may teach and perfect himself in the use of law books. To the lawyer who finds Shepard's Citators much like logarithmic tables, the book will prove a real boon. Moreover, the solving of the problems, fifty in number for each, the American Digest System, Corpus Juris, the A. L. R. system, and Shepard, ought to put one on the way toward efficiency in finding his law and in preparing briefs. A vast amount of information, both interesting and valuable, may be obtained by the study of the book.


The School of Law and the School of Commerce of New York University have recently performed a valuable service in organizing a symposium, at which lectures by various well-known authorities on
public finance and public administration are given. This volume re-
produces those addresses for the benefit of the public. In view of the
current governmental behavior at Washington, as well as activities
in the various state capitals and county seats, the discussion of these
problems is timely.

It is not possible in a brief review to call attention to the various
features shown in the table of contents. Naturally, in dealing with
public finance, the nature of governmental activity, both national, state,
and local, the matter of taxation, the use of public credit, debts, and
tariffs, are foremost. One matter that has been often neglected is dis-
cussed under the heading, "Problems of Educational Finance," to which
twenty pages are devoted. It is interesting to note that in public dis-
cussions of matters of this sort, educational finance has been almost
wholly neglected. It is by discussions such as these that both the
layman and the expert is given a bird's-eye view of what experts or
other experts are saying and thinking.