



1933

Book Reviews

W. Lewis Roberts
University of Kentucky

Martin R. Glenn

Roy Mitchell Moreland
University of Kentucky

James W. Martin
University of Kentucky

Charles Summers

See next page for additional authors

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

Roberts, W. Lewis; Glenn, Martin R.; Moreland, Roy Mitchell; Martin, James W.; Summers, Charles; and Evans, Alvin E. (1933)
"Book Reviews," *Kentucky Law Journal*: Vol. 21 : Iss. 2 , Article 12.
Available at: <https://uknowledge.uky.edu/klj/vol21/iss2/12>

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@sv.uky.edu.

Book Reviews

Authors

W. Lewis Roberts, Martin R. Glenn, Roy Mitchell Moreland, James W. Martin, Charles Summers, and Alvin E. Evans

BOOK REVIEWS

CASES ON BILLS AND NOTES BY SMITH AND MOORE. Third Edition. By Underhill Moore. American Casebook Series. St. Paul: West Publishing Co. 1932, pp. xiii, 967.

The third edition of Smith and Moore's Cases on Bills and Notes follows the same arrangement of material as the first and second editions. The only change in chapter and section headings is the substitution of the word "Defenses" for "Equities" as the title for the third section of chapter two of part two. There has also been a shift in emphasis in some sections. More space has been allotted to the subjects of Acceptance, Transfer, Holder in Due Course, Maker and Acceptor, Drawer and Indorser, Transferor, and Discharge; and less to Transfer.

In all there has been an addition of one hundred eighteen pages of new material. Some ninety cases of the earlier edition have been discarded and a hundred and twenty odd recent cases added. The cases decided by the courts of Massachusetts and New York, two commercial states, are most numerous. Next come cases adjudicated in the central western states. Not many long opinions are made use of. The editor has wisely exercised his privilege of eliminating parts of the opinions which are irrelevant to the point under consideration. The use of cases of two or three pages in length is of advantage in this particular subject. It presents a greater number of principles for discussion at a session of a class. It is discouraging to a student to have to read thru several pages of an opinion which present no added light on the problem before him.

The footnotes of the new edition are more numerous than those of the second edition and are rendered especially valuable to both student and teacher by many referenees to law review articles.

Possibly the addition of a list showing the dates on which the Negotiable Instruments Law was adopted in the various jurisdictions, would have been advantageous as it is often a help to know when a particular jurisdiction adopted the act when considering a decision that turns upon a change in the law effected by the Act.

The green fabrikoid binding of the new editions of the American Casebook Series makes the book very attractive. The paper of the new edition and the printing is much better than the old. It is an excellent piece of work on the part of the publishers. This is an exceptionally good casebook.

W LEWIS ROBERTS.

University of Kentucky,
College of Law.

MARRIAGE AND THE CIVIC RIGHTS OF WOMEN. By Sophonsiba P Breckinridge. 1931. Chicago: University of Chicago Press. pp xi, 153.

This book is another chapter in the women's emancipation movement. Certainly the trend of social opinion is in favor of bestowing upon women more civic rights than in former years. The common law rule that marriage wiped out for all practical purposes the legal existence of the wife has been greatly modified by legislation in a number of states by the so-called "married women's acts." The question propounded in this book is whether or not marriage and citizenship should be recognized as two separate institutions, i. e., should the citizenship of the husband determine the citizenship of the wife? To this interrogation the author emphatically answers in the negative.

In 1855 the United States Congress passed an act (U. S. Revised Statutes, Sec. 1994) providing that "Any woman who is now or who may hereafter be married to a citizen of the United States and who might herself be lawfully naturalized, shall be deemed a citizen." And in 1907 Congress passed an act. (34 U. S. Statutes at Large, Sec. 1288) providing that "Any American woman who married a foreigner shall take the nationality of the husband." Because of these statutes many American-born women were, during the world war, classified as "alien enemies." The passage of the Nineteenth Amendment added impetus to a project sponsored by various women's clubs that advocated repeal of these statutes. This movement led to the passage of the Cable Acts of 1922 and 1930 which provided that women who marry citizens of the United States, or whose husbands are subsequently naturalized, shall not become citizens of the United States by reason of such marriage or naturalization; but if eligible to citizenship she may be naturalized after the expiration of one year if she has resided in the United States, Hawaii, Alaska, or Porto Rico during that time. The Acts also provide that women citizens of the United States shall not cease to be citizens thereof by reason of marriage, unless they make a formal renunciation of citizenship or marry an alien ineligible to citizenship.

There can be no doubt but that the principle of independent citizenship is, in fact, a severance of marriage from nationality. It is contended that the abandonment of the family as a legal unit is not objectionable because the family as a legal unit has never had any legal rights, and the State is interested in maintaining the integrity of the family only when the family functions as it should. "If the interests of the state and of the wife indicate that the married woman should be given a domicile of her own, the law will grant her a separate domicile for all purposes."

The author explains how, by reason of the great diversity of laws of other nations, some women find themselves without any nationality whatever while others are the proud possessors of two nationalities. The book is especially valuable to those members of the legal pro-

fession who are internationally-minded, or those who are interested in watching the expansion of the "equal rights for women" movement.

MARTIN R. GLENN.

Attorney at Law.

CASES ON PARTNERSHIP. By Charles E. Clark and William O. Douglas. West Publishing Co., 1932. Pp. xv, 725.

Although the corporation occupies the place of prominence in modern business, one cannot escape the fact that partnerships are still important business devices. For that reason it is essential that the student understand the law of partnership and that a course be given for that purpose.

This book presents a new alignment of cases, the principal object being to bring together types of cases where the factual connections are closest. Problems as to what a partnership is and how it is formed are subordinated.

Footnotes are sufficient although no attempt has been made to make them exhaustive. The printing and binding are excellent.

ROY MORELAND.

REAL ESTATE VALUATION. By Frederick M. Babcock. Michigan Business Studies, Volume IV, Number 1. (Ann Arbor: University of Michigan. P 80. \$1.00).

This work, unlike the author's earlier work on the same general subject, is not a general treatise on the subject of real estate appraisal. Land valuation, the author realizes, is necessary in the formulation of business policy toward a particular transaction or program, for the description of property pledged as security; and for numerous legal procedures, such as condemnation, assignment of damages, and administration of taxes on property, income, and estates. To meet this need, Mr. Babcock believes it is essential to re-work the fundamental bases of appraisal. In the process of doing this, he outlines seven methods of dealing with as many kinds of appraisal problems. He is convinced that checking or averaging the results of the application of two or more methods does not promote accuracy.

The work is competent, and it will be useful to attorneys, who must deal with legal problems of the kinds mentioned above. It will not, of course, provide a substitute for the trained appraiser but rather will assist in preparing for his examination before a jury.

JAMES W MARTIN.

Bureau of Business Research,
University of Kentucky.

COURTS AND DOCTORS. By Lloyd Paul Stryker. New York. The MacMillan Co. Pp. xxv, pp 236.

This small volume, written by one whose assurance and certainty indicate years of personal experience in handling the subject, consti-

tutes another example of the fact that quality often comes in small parcels. While designed primarily as a means of informing the medical profession of their elementary rights and duties in the eyes of the law, the legal profession should give the volume more than cursory attention, since the author's treatment of the vital problems of a lawsuit goes far beyond mere fundamentals. Points of law are supported by citations to a number of leading cases, while notes to other accepted authorities are not infrequent.

The task of explaining the law to those who have not made a study thereof is a difficult matter at best. Altho this work may be slightly too technical for the average layman, it is not so esoteric that the physician will not be able to clearly and easily understand the results of the operation of certain legal principles in spite of the fact that reasons for the principles remain obscure. Doctors should not read the book with the hope of seeing the logic of the law. Those of the medical profession who are firm in their belief that the courts of law are not the cradles of social justice should read this book with an open mind. If so approached, the reader cannot fail to realize that lawsuits amount to more than the progeny of trial by combat and more than instruments of oppression.

As a whole the book is a distinct step in bringing the legal and medical professions to a better understanding of the problems faced by each of the orders. Special mention should be made of the discussion of malpractice suits, which no doubt will allay fear of such difficulties in the minds of those doctors who consider the chapter.

The arrangement of material is somewhat unique, but facilitates reading. From a dramatic overture to the medical profession in the introduction the author dives into the labyrinth of the legal relations between physician and patient. Drama is then forgotten, and actual cases are forcibly set out. All the notes and cited cases are collected in the last pages, which is highly commendable. The civil liabilities of the doctor are contained in the first chapters, while the last five are reserved for the criminal features of the practice of medicine.

CHARLES SUMMERS.

Pewee Valley, Ky.

THE MAIN INSTITUTIONS OF ROMAN PRIVATE LAW. W W Buckland. Cambridge University Press. 1931.

It is nineteen years since Professor Buckland published his "Elementary Principles of Roman Private Law." That book was well received. See Dean Pound's review of it.¹ Dean Pound observed that that treatise was a new type of elementary book, in that it was not a compendium nor one which was to be consulted for the purpose of passing a conventional examination but rather one prepared by a master which raises issues and attacks problems.

¹ 27 Harvard Law Review 501.

The present book while it deals necessarily with the same material in a somewhat similar manner is in no sense a second edition but is a new book. It is even better done than the former book and even more available for the student-lawyer who must study the subject by himself.

ALVIN E. EVANS.

PATENT RIGHTS FOR SCIENTIFIC DISCOVERIES. By C. J. Hamson, of Gray's Inn, London, 1930. Indianapolis: The Bobbs-Merrill Company, pp. xv. 286.

There is a sharp distinction in patent law between so-called inventions and so-called discoveries. It has been said that "Discovery adds to the amount of human knowledge but it does so only by lifting the veil and disclosing something which before had been unseen or dimly seen. Invention also adds to human knowledge, but not merely by disclosing something. Invention necessarily involves also the suggestion of an act to be done, and it must be an act which results in a new product or a new process, or a new combination for producing an old product or an old result." The composer of a song can secure a copyright; the inventor of some trivial article can secure a patent; but a scientist who discovers a physical phenomena has no protection whatsoever. He cannot secure a patent and to him a copyright is valueless, since his composition is not a work of art in which the sequence of words is important.

Science has been utilized for pragmatic purposes. Progress in industry depends upon the further publication of new scientific knowledge. To effectively do this it is necessary to liberate science from the shackles of a none too liberal patronage and place it on a financial parity with industry. Certainly it is only just to remunerate a person for the products of his labor.

To remedy this situation the author proposes a statute which would create a property right in scientific discoveries if published within a reasonable time. By the terms of the statute a corporation would be created and would act as trustee to the individual scientists who, after registering their discoveries, would hand their discoveries to the corporation which would negotiate with manufacturers who desire to use the scientific discovery. The corporation would be allowed to retain a percentage of any sum held to the beneficiaries' purposes, in order to provide for the cost of its upkeep.

Clause 8, Section 8 of the United States Constitution provides that Congress may secure to "authors and inventors the exclusive right of their respective writings and discoveries." But the decisions interpreting this clause define "discoveries" as meaning inventions. A statute recognizing such scientific property may be enacted only by Constitutional Amendment or by the treaty-making power. Already in France, official action has been taken by the government and a bill securing the right will very likely be passed in the near future. The League

of Nations has been considering the question with the help of experts for more than seven years.

Scientific property occupies the interstice between copyright and patent. It is unreasonable to suppose that compensating a scientist for his work, labor and knowledge would alter the life or occupation of those engaged in research work. Although its rewards would not be large enough to attract those materialists who look solely for financial gain, it would nevertheless provide a stimulus for genuine scientists. The encouragement of scientific research is of inestimable benefit to mankind, the progressive development of civilization depends upon its growth.

MARTIN R. GLENN.

Attorney at Law.

REORGANIZATIONS AND OTHER EXCHANGES IN INCOME TAXATION. By Miller, Robert N., Hendricks, Homer and Everett, Ewing. (New York: The Ronald Press Company. 1931. Pp. 448. \$10.00.)

Many of the most difficult problems in connection with income taxation hinge around reorganizations and other exchanges. Messrs. Miller, Hendricks and Everett, members of the District of Columbia and New York bars, all of whom have had generous experience in handling income tax questions, have prepared this exhaustive treatise. The work is divided for convenience into (a) fundamental principles concerning income, a brief preliminary discussion, (b) recognition of gain or loss, which is the most essential part of the book, and (c) basis for gain or loss, in which an application is made to numerous specific problems which have arisen in connection with administration of the income tax. Some of the important problems dealt with are corporate mergers, consolidations, recapitalizations and other reorganizations; organization of controlled corporations; exchanges of stock for stock in the same corporation; exchanges of property held for productive use or investment for property of a like kind or use; involuntary conversions of property in case of fire, condemnation, etc., and losses on "wash sales."

The only adverse criticism of the work which occurs to the reviewer arises from unnecessarily numerous repetitions. Concrete illustrations should perhaps be offered. The Gregg statement (pp. 394 to 406) and pertinent sections of the statutes (pp. 387 to 393), all of which are to be found conveniently quoted in the appendix, are frequently repeated in the text. There is also irritating repetitions of other significant provisions (for example, Secs. 43, 47) and opinions (for example, Secs. 16, 25). Finally, chapter headings are almost invariably followed immediately by an extended repetition of the substance of the descriptive captions.

JAMES W. MARTIN.

Bureau of Business Research,
University of Kentucky.

THE JUDICIAL PROCESS IN TORT CASES. By Leon Green. West Publishing Co., St. Paul. Pp. xx, 1900. 1931.

This new casebook is a timely and worthwhile contribution to the field of torts. A study of the Table of Contents reveals that the compiler has arranged his material in an altogether new and interesting classification. Part 1 contains cases on Interests of Personality and Property; part 2 on Interests In Relations With Others; part 3 on Interests of Personality, Property, And In Relations With Others. These parts are further divided in detail.

In addition to a new arrangement the book presents the subject of torts as a growing and expanding one. One of the most arresting sections of the book in this respect occurs in Part 2, Topic 1. Here are chapters containing cases involving family relations, social relations, professional relations, and political relations. The modern outlook of the book is again illustrated in the treatment of the right of privacy. Thirty or more pages and seven principal cases are devoted to its development.

Footnotes are sufficiently full and suggestive. They include quite a number of citations to law review articles. The printing and binding are unusually attractive.

ROY MORELAND.

College of Law,
University of Kentucky.