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Book Reviews

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BOOK REVIEWS


Callaghan and Company's series of Leading Law School Text Books has been enriched by the addition of an A-1 treatise on corporations by Professor Ballantine. The author has modestly presented the book as a revision of Marshall on Private Corporations, probably the most popular short work on the subject that has been published in recent years. Ballantine on Corporations, however, is really a new work, evidently founded in part, at least, on the author's notes compiled for classroom use.

When the author in his preface states his purpose to be "to present in comprehensive, clear and concise form the underlying principles and theory of the law of private corporations" he describes his book to the letter for he has succeeded in writing a book that does just that. His clear, concise style adds greatly to the pleasure of reading his exposition of the subject. In fact this conciseness of statement has enabled him to stow away a mass of principles on the law of corporations within the nine hundred pages allotted to it.

That the work is up-to-date is shown in the discussion on the topic of separating the right to elect directors from the ownership of common stock, for instance; a subject that was given prominence last year by the publication of Professor Ripley's two articles in the Atlantic Monthly, "Stop, Look and Listen," and "From Main Street to Wall Street." Here, as on other disputed points, Professor Ballantine gives the arguments on both sides in a fair-minded way and then presents his own conclusions. His full treatment of the newer phases on corporation law is further seen in the consideration of the validity of voting trusts, non-par stock, and Blue Sky Laws.

The footnotes seem to contain all the recent cases. These are made available by a very carefully prepared index. This index makes the book especially helpful to both student and teacher when seeking the author's evaluation of any case under consideration. The growing practice of giving references to articles in the leading law reviews has been followed by the
author. This makes available parallel readings from the pens of the leading authorities.

The book is of such merit that one finds little to complain about unless he cares to search for such "slips of the pen" as that on page 106 where the author speaks of selling stock to raise the needed capital. He might also criticize the excessive use of Minnesota cases by way of illustration in certain sections of the book.

It is safe to say that Ballantine on Corporations will be found to be even more popular among law teachers and students than its predecessor, Marshall on Private Corporations.

W. Lewis Roberts.


The importance of the subject of oil and gas is emphasized by the fact that three excellent treatises have appeared on the subject during the past year and a half. The last of these is Professor Summers' scholarly work.

An idea of the scope of this treatise can be gleaned from the chapter heads. Chapter one presents the physical and economic facts of oil and gas; chapter two, the nature of the landowner's legal interest; three, the landowner's rights in oil and gas; four, his privileges; five, his duties; six, his powers and liabilities; seven contains a summary and criticism as to the nature of the landowner's interest; and the following twelve chapters dealing with oil and gas leases, treat of covenants, assignments, rents and royalties, remedies and termination of leases. The remaining chapters of the book cover such subjects as taxation of oil and gas interests; mechanics' liens; operator's liability for torts; drilling contracts; mining partnerships; production of oil and gas from federal, state and Indian lands, and forms.

Professor Summers' treatment of these topics is thorough. His general propositions of law are fully supported by citations. His researches as evidenced by cases cited in the footnotes have been exhaustive. These citations make the book of especial value to the practitioner. Instead of padding the text with long excerpts from cases, a practice many writers of the present day are guilty of, the author has almost without exception placed
his quotations from decisions in his footnotes. This method makes the book of more value to the person who desires to run over the general principles of law of oil and gas rapidly. At the same time the person who is looking for statements from the courts’ opinions, can find what he wants in the notes.

Professor Summers has laid stress upon the definition of terms used and has made use of Dean Hohfeld’s nomenclature. While this may be of help to the student, it is rather doubtful about its meeting with the approval of the practicing lawyer.

The author’s consideration of the important question of the ownership of oil and gas in place, is excellent and timely. His treatment of the subject is thorough and his arguments to the effect that there cannot be such ownership should convince those courts that seem to be waiving on the subject. His position is sound and his logic is clear and convincing.

The author has also given a clear exposition of the development of the oil and gas leases. This should help in reconciling many seemingly conflicting cases. He has, in addition, devoted considerable space to a discussion of the nature of lessee’s interest and to licenses coupled with an interest. Much of what he has to say on these points is of interest to those concerned with the law of property generally.

Professor Summers’ book is a real contribution to the literature on the subject.

W. Lewis Roberts.


The courses in business administration and finance now offered in the recently established colleges of commerce in our universities have created a demand for casebooks on business law based on the same plan as the regular casebooks used in law schools. Students fitting for business careers are no longer content with a few brief lectures on the general principles of business law nor with the use of a text book confined to an elementary statement of the law of contracts, sales, and negotiable instruments. They desire to go to the court decisions and search for legal principles in the same way that one looking forward to the practice of law does. To meet this demand Professor Ayer has prepared his casebook and has based his selection of cases
upon his fifteen years' experience teaching in law schools and universities.

The course is prefaced with a chapter on the general principles of law and equity. He has called the student's attention to the difference between law and equity; has pointed out the part pleading and practice play in winning law suits; and has contrasted crimes, torts, and contracts so that the student may gain a clearer idea of the field of business law so called. The greater part of his book, however, has been properly devoted to the subject of contracts. He has followed the more or less conventional arrangement, mutual assent, offer, acceptance, etc. He had added a chapter on the subject of remedies.

The editor has wisely confined the work largely to the field of contracts and has refrained from trying to do the impossible by including a little of every branch of law. His material is well arranged and carefully selected. The greater part of his cases are of very recent date. Very few have been selected that were decided prior to 1890. The case material has been supplemented by definitions and extracts from leading writers in the field of contracts and by extensive notes. This material has been put in the same sized type as the cases and is therefore much more likely to receive the attention of the student than the usual notes in smaller type.

The editor's aim has been to select material and so arrange it that the student will be led to draw his own conclusions as to what the law is and to develop an independent way of thinking—the aim of every real teacher. The book should meet with success.


Law quizzers are usually not constructive. They are mere cramming devices of no lasting value. But Ballantine's Problems in Law is something more than a cramming device.

Thirty-four subjects and subject-divisions of the law have been treated by representative, competent teachers of law in leading national law schools. The method has been to present the fundamental principles of the various subjects by means of an intelligent selection of problems in law, such as are commonly given to students in semester examinations in the law schools.
Each problem is followed by an answer in the form of a short, general discussion of the points involved with citations to cases and a reference to the Key-Number of the Decennial Digests. Often, there are references to law review articles and notes, where extended discussion may be found.

Considering the plan and purpose of the book, the various discussions are about what should be desired. Although brief and general in nature, they are informing and should stimulate reflection and research on the part of the student, who is preparing for law school or bar examinations. The reviewer has found some of the problems, or a modification of them, useful in student tests and the discussions are suggestive and helpful to the teacher as well as to the student.

ROY MORELAND.


The third number of the new series of law school casebooks now coming from the press of Prentice-Hall Company is a compilation of cases on partnership by Professor Scott Rowley. The book is well printed, of convenient size, and neat in appearance. The cases are carefully selected. The aim of the editor has apparently been to include cases of as many jurisdictions as possible—only four states are not represented. Ten or more cases have been taken from the reports of each of the following jurisdictions: England, Massachusetts, New York, Indiana, Illinois, Michigan, Iowa, and Texas. As one might naturally expect, twice as many have been taken from the decisions of the leading commercial state of the country, New York, as from any other jurisdiction. While a great many of the cases are of recent date, two-thirds of them were decided prior to 1890. As the principles of partnership law were early developed a resort to the earlier cases for the study of the subject is to be expected. One finds among the collection such familiar cases as Waugh v. Carver and Cox v. Hickman.

The outline and arrangement of the book seem excellent. Its value has been increased by the inclusion of a chapter on the Massachusetts or business trust.

The absence of citations of cases in footnotes will doubtless meet with serious objection on the part of some teachers. The
editor in his preface has questioned the value of citing additional cases on the ground that such citations discourage the industrious student and do the lazy student no good. The admirers of Dean Ames' casebooks will object at once to this view of citing cases in the footnotes and will testify to the very great value of such citations in determining the position of any particular jurisdiction where there is a division of authorities. Furthermore they will urge the fact that Dean Ames' casebooks have been of great value to practicing lawyers because of the careful selection of cases cited in the footnotes.

Instead of citing cases, the editor has substituted references to his own text on the subject and to articles in leading law reviews. These references are given at the beginning of the various chapters and seem to invite the student to peep at the answer to his problems before wrestling with their solution.

The book as a whole gives evidence of an excellent series of casebooks forthcoming from this well-known publishing house.


The growth of the corporate form of business organization; the concurrent need of amassing large amounts of capital; and the growth of the corporate mortgage as a blanket security for the bond issues of business have created one of the most important services of our modern financial organizations. That service is the administration of the corporate trust to secure the credit of business. Another important service of the financial world is meeting the requirements prescribed by the great stock exchanges so as to eliminate those practices which destroy the confidence of the investing public in corporate securities.

The manipulation of certain railway securities many years ago, and the gross violation of the provisions of corporate charters limiting the amount of stock which the corporations might issue induced the New York Stock Exchange to require that all shares listed should be registered with an independent agency. In keeping with the general tendency of economic society toward the division of labor and specialization in industry, the performance of these banking functions has developed in a very clearly defined and scientific manner.
"The Work of Corporate Trust Departments" gives a rather thorough and comprehensive treatment of these two phases of modern banking, e.g., of the administration of the corporate trust under the mortgage of property to secure bond issues and the corporate agency services. As an introduction to the administration of the corporate trust this book gives a historical development of business organization in the United States with many interesting comparisons which vividly set forth the capital requirements of business and its growth. Here also a full description of the internal organization of a typical banking institution and the nature of the duties performed by each department is presented. Interesting suggestions are given as to the sources of appointments as trustees, and the methods of solicitation; together with some very timely cautions to the trustee in accepting the trust. Guides, adopted by the larger trust companies, are presented for the examination of the mortgage instrument. Among the supporting papers required by these companies are the certified charter of the borrowing corporation; its by-laws; a certified copy of the resolution of the directors, and if required by statute, the action of the stockholders, authorizing the loan; and the appointment of the executive officers of the borrowing corporation. In the analysis of the corporate mortgage those parts that are essential to a good conveyance of the property offered as security are set forth, and many covenants that afford the fullest protection to the trustee and the beneficiaries, who are the purchasers of the securities are suggested. The recommendations of the Corporate Fiduciary Association of New York City to protect the right of the trustee and the mortgagor in case of lost, stolen, or mutilated bonds are quoted with approval. They include conditions in the duplicate bond to be issued, or the certificate of indebtedness by which the trustee and the mortgagor are protected in case that the stolen or lost bond should pass into the hands of a bona fide purchaser for value without notice.

The authors recognize the value of a general and broad background in the economics of banking and finance, but state that their purpose here is to limit their discussion to and to treat in detail these highly important and comparatively recent functions of the banking business. They afford those vested with the administration of corporate trust duties and students of com-
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merce many valuable suggestions and a comprehensive source of information that can be readily used.

Colvin P. Rouse.


As a single summary statement Professor Jordon’s Forms of Individuality may be said to be a subjective criticism of subjectivism. The author covers the gamut of philosophy, sociology, psychology and law in his effort to analyse the “prevalent and serious” “disorder in human relations.”

It would appear that the discussion is open to criticism from at least three angles. First, there is the constant use of ambiguous and at times almost indefinable terminology. For example, one finds divers cases of “a will,” “a consciousness,” “will-life,” “super-human corporate individual,” “isolable homogeneous entity—the simple,” “mental stuff,” and the like. Also, the use of words such as “mind” and “individuality” without careful delimitations leaves the reader groping to find the fundamental meaning which would be conveyed. Second, the handling of the objective facts or findings connected with the problems presented, limited in number tho these facts may be, seems entirely inadequate. Individual deductions and subjectively derived data are the only facts which are given a hearing. The bibliography would indicate that there was no apparent interest in objectifying the considerations. Third, the form of expression is so involved that one is frequently lost in a maze of verbiage. Easily understood ideas are frequently embedded in abstruse rhetorical constructions and needlessly uncommon words. Simplicity of expression would greatly increase the value of the book.

The book is not without its value. It raises several problems of interest to those who find enjoyment in theoretical considerations. Furthermore, it should serve as a stimulus to those who are interested in the place and function of personality, individuality, etc., in the social and socio-legal order.

Paul L. Boynton,
Associate Professor of Psychology,
University of Kentucky.

Holbrook & Aigler's Cases on Bankruptcy, which was first published in 1915, now appears in an enlarged and revised form. The recent amendments to the Bankruptcy Act of 1898 have rendered necessary such a revision. About one-third of the case material is new. These later decisions which the editors have selected cover the recent developments on the subject and greatly add to the value of the book from the teaching point of view.

More attention and space have been given to the footnotes than were given in the first edition. The references to articles published in the leading law reviews are in keeping with the present practice of editors of casebooks and law treatises. These references are of great value to the teacher as well as to the student.

The inclusion of typical statutes on fraudulent conveyances should serve to emphasize in the student's mind the importance of studying his local statute on the subject.

The workmanship of the book from the point of view of its printing and its binding is excellent. Much better paper is used than is found in most of our casebooks. As a consequence the type stands out clear and easily readable. The publishers as well as the editors have done a good piece of work.


Professor Magill has a somewhat novel order of subject matter, as given in his table of contents, in that he begins in Part 1 with the appellate record. In Part 2 he takes up pleadings, in which part he discusses the formed actions. In Part 3 he deals with the parties, and in Part 4 he goes back to the pleadings again, dealing here with pleas and replications; and finally, in Part 5 he discusses the enforcement of judgment.

This set of cases is denominated Civil Procedure. One would anticipate that a course in Civil Procedure would cover in general the more important topics of civil procedure, and yet
we find no cases at all, and no discussion of the subject of venue, nor of appearance whether general or special; nor is there anything to indicate the distinction between actions *in rem* and actions *in personam* with respect to the basis for a judgment. Nothing is said about process nor the service of process. The subject of local and transitory causes of action seems to merit more than two cases.

Again, altho Professor Magill discusses enforcement of judgments, he has no section dealing with the nature of a judgment, or the record of a judgment or the vacation, amending or modifying a judgment or the effect of a judgment. It may well be that we cannot expect all this in a single book on civil procedure, but it seems as important at least to have material on these aspects of civil procedure in such a book, as material on the enforcement of a judgment. The reasons for these omissions will appear when the second casebook is considered.

Professor Magill gives his own reasons for beginning his casebook with the appellate record as the subject matter of Part I. He finds that the student who begins contracts is likely to find cases where the decision rests upon a motion to set aside a nonsuit, or upon a motion for arrest of judgment, or upon a motion for new trial, and therefore concludes that it is desirable to begin with motions. It is probably true that in most law schools students begin their civil procedure, their contracts, their torts and their property at the same time. Instead of examining the cases on contracts alone, it might be desirable to examine the cases in the torts book as well, and also those in the property casebook. The latter is likely to begin with a problem involving trespass or case. A casebook on torts is likely to begin with trespass or case or trover, and all thru the casebook on property we are required to know and deal specifically with trespass, trover, detinue, replevin, etc; and in the casebook on contracts we find cases dealing with debt, assumpsit, case, covenant, etc. From the standpoint of all these courses, it seems exceedingly important that the student should learn clearly the distinctions between the formed actions and as nearly at the outset of his student career as possible.

All this means, of course, that instructors will disagree as to the order in which subjects should be taken up, and it is worth while to notice that Professor Magill’s book is so arranged
that one would have no difficulty in beginning with the forms of the action instead of with what he puts first. It is observed also that an excellent selection of cases has been made, including some very late cases decided in the Supreme Court of the United States and in various of the states as late as 1925 and 1926, and they cover a wide range of jurisdictions.

One also in going over the casebook, looks in vain for any ease dealing with the problems of trial practice, such as for example challenges, examination of jurymen on their *voir dire*; with instructions to the jury, and the deliberations of a jury, and with the rendition of verdict. It may be that we cannot expect to cover judgment and proceedings after judgment, and the enforcement of a judgment and the effect of judgments in a general course in Procedure. However, if a casebook is entitled Civil Procedure and lacks them, is it not misleading? Why this is lacking is again explained by the concurrent appearance of the second book.

If the book is intended to cover an entire year's work it would seem that a larger selection of cases would be advisable, so that a larger choice might be had by the instructor; but it contains abundant material for a one semester, two credits course.

Despite these observations, however, so far as this reviewer has examined the cases, they are so well selected that they cover the ground thoroughly on the topics selected. Various problems are treated incidentally, such as variance, pages 71, 75, 192, 245, 246 and 287. Occasionally also the editor suggests certain problems, as in the footnotes on pages 57, 61, 249 and 445. This is a commendable feature and might be further extended. Again, another case gives views which were once so commonly held respecting the "theory of the pleadings," as for example, the case beginning on page 247. It would have been helpful if some of the articles of the legal periodicals had been cited which deal with the theory of the pleadings. The editor does cite, now and then, articles in the periodicals and other reference material. This could have been done more fully to advantage. He skillfully follows cases in common law pleading with cases which come up under code pleading, thus connecting and showing the relationship of the two. The appendix presenting a "case on appeal" gives the student a concrete notion of the form and
procedure and has undoubted value. He does not and perhaps we cannot expect him to deal under "parties plaintiffs" with the interesting question that arises in community property states as to whether husband and wife should join in certain types of action. See 9 California Law Review, 156, 169.

Inasmuch as the first book is published by the same publishers which published a casebook on Trial Practice of the same date by Dean McBaine of the University of Missouri, it was probably intended to be a companion volume to the latter book. The latter book begins with the subjects of venue and jurisdiction. It then deals with process, with default judgments, judgments by confession and consent, with change of venue, continuance, the selection of a jury, the evidence, opening statements, instructions to the jury, the argument of counsel, verdicts, trials without a jury, new trials, bills of exception and the rendition and entry of judgments. Probably it was intended that the first book should be used by first year students and that Dean McBaine's book should be used by second year students. Perhaps we should not quarrel with this arrangement. While the term "Civil Procedure" would seem to be sufficient to include the material in both books, still as a practical matter, there is perhaps sufficient reason why this material should be divided as has been done here. It would seem, however, that there is no sufficient reason for dealing with the enforcement of judgments in the first book, and with rendition and entry of judgment, res adjudicata, etc., in the second book, but that the material on judgments ought to be all brought together as far as possible.

Dean McBaine's book likewise has an excellent selection of cases, many of them recent, and they cover the ground. Naturally, the two books have a broader scope than the single book by Professor Scott of the Harvard Law School whose book in general covers the material of these two, but is much more sketchily done. Taken together, these two books should prove to be a real contribution. For teachers of procedure there is now a goodly number of books from which to make a selection, as this field is also covered by the books of Scott, Sunderland, Loyd and in part by the older and excellent book edited by Rood now out of print.

One misses such leading cases as Roller v. Holly, 176 U. S. 398, and the Duchess of Kingston's case, Ambler 756.
These two books taken together cover the field better than any casebook hitherto published.

Alvin E. Evans.