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Book Reviews

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BOOK REVIEWS


Five lectures delivered by a distinguished legal scholar at the University of Michigan Law School in April, 1949, being the second of a series established under the will of the late William W. Cook for the purpose of stimulating legal research, form the basis of this book, although two of the chapters are reprints of articles written years ago and originally printed elsewhere. It is characteristic of Professor Chafee, already renowned for knowledge and scholarship in many fields of law, that he should choose some seemingly unconnected problems of equity and, by combining them into one lecture series, should demonstrate the distinctiveness of equity as a system of its own while, at the same time, emphasizing the different approach which equity has toward the solution of various problems. The resulting product constitutes an effective answer to the now recognized ill-advised movement for the elimination of Equity as a separate course in the law school curriculum. The little band of those who still remain unconvinced should, by a reading of these lectures and the author's casebooks on the subject, be able to eliminate all doubts and join in the movement to restore Equity to the position it rightly deserves.

The book is divided into three parts, one dealing with the clean hands doctrine, another with representative suits, and the third with lack of power and mistaken use of power. Concerning the first, Professor Chafee sets out to pull the doctrine down to earth from the level of the lofty height of high-sounding phrases and cliches at which it has been placed by over-enthusiastic yet oftentimes superficial lawyers. Debunking the doctrine and questioning its status as a maxim, he asserts it is not peculiar to equity but more nearly consists of a bundle of rules relating to quite diverse subjects, the application of which have, at times, done more harm than good. In support of the argument that the clean hands doctrine is not a single equitable principle, the author discloses that an examination of the applicable cases reveals the existence of not a single but actually eighteen different classes of situations responding thereto, which eighteen he discusses and analyzes separately. Particularly impressive, in this


2 Recent growth of the doctrine, often a bone of bitter contention, is illustrated by Johnson v. Yellow Cab Transit Co., 321 U. S. 383, 64 S. Ct. 622, 88 L. Ed. 814 (1944), and other like cases.

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reviewer's opinion, is the treatment accorded to the classes which deal with suits to enforce illegal contracts, suits to protect copyright and literary property rights, and cases involving matrimonial litigation.

A tremendous growth in the use of the procedural device of the representative suit is noted in the part of the book devoted to that topic. The enactment of Rule 23 of the Rules of Civil Procedure for the District Courts, with its elaborate provision about class suits, and of the Fair Labor Standards, which authorizes the filing of suits for unpaid minimum wages or overtime compensation by one or more employees, or by a designated agent, "for and in behalf of all employees similarly situated," has undoubtedly contributed to that result. The author, while tracing the origin of the class suit to the earlier bill of peace with multiple parties, nevertheless stresses the distinction between these two procedural devices. Under a bill of peace, all interested parties unite as plaintiffs, although seeking individual relief, because the investigation of the respective claims would be, to a great extent, identical in the several cases. In the representative suit, however, the plaintiff becomes the self-elected representative of others who may have a common interest or a common grievance.

The ideal situation for a class suit will prevail, in the author's opinion, if "the members of the group are lost in the crowd and do not present individual claims or defenses which will require elaborate attention from the court." The author emphasizes that the expression of the ideal situation does not mean that courts should never go outside the suggested limits; more nearly, that if they do, they should proceed with caution.

Particular attention is paid, by Professor Chafee, to the question of the binding effect of the class-suit decree upon the unnamed and unserved represented parties. His discussion of a problem which is particularly difficult in view of due process requirements is both searching and enlightening. His demand that some sort of notice to them should be provided is just and laudable. He rightly points out that one of the biggest and most neglected of problems entailed in class suits is the formulation of machinery by which such persons may become informed. Formal service being inappropriate, informal notice, for example an advertisement on the financial page of a large newspaper, might satisfy.

5 Chafee, Some Problems of Equity, p. 220. The derivative suit by one, or a few, shareholders of stock in a corporation on behalf of all shareholders is typical. The object of such a suit is the redress of an injury inflicted on the corporation, as distinct from one which might have been directly inflicted on the shareholders. The right asserted is that of the corporation and any benefits obtained from the litigation inure to it. Aside from certain procedural requirements, one shareholder is interchangeable with any other and internal differences between shareholders are of no importance.
The third and final part of the book, one dealing with lack of power and mistaken use of power, might be entitled, as this reviewer would prefer it, "general jurisdiction as distinguished from 'equity' jurisdiction.' While general jurisdiction deals with the question as to whether the sovereign has entrusted the decision of a particular case to a particular court, equity jurisdiction addresses itself to the problem as to whether or not there is a proper basis for coming into equity at all or whether equitable relief ought to be granted. Theoretically, the line of demarcation between the two would seem rather clear and simple; in practice, however, grave difficulties have arisen, sometimes due to an unfortunate confusion in terminology while, on other occasions, produced by the confused thinking on the part of a few judges. To deal with all aspects of the problem so analyzed would unduly lengthen this review. Suffice it to say that the author's discussion and criticisms are masterful.

F. HERZOG


For many years, those who desired to use or possess a textual treatment of the law of mortgages of less elaborate character than such masterly treatises as those produced by Glenn, Jones or Wiltsie were forced to rely on the excellent but slender summary compiled by Walsh. There is now available, in customary Hornbook format, the more extensive, almost encyclopedic, analysis prepared by Professor Osborne. With a deprecating modesty reaching to almost unworthy lengths, the author has deplored the necessity for keeping the work to a reasonable compass. He should, by contrast, have demanded praise for making the book so comprehensive in so brief a space. No issue of law affecting the mortgage relationship, no judicial or statutory trend, however modern, has been overlooked. What lack there may be in failing to provide a digest of every recorded case in a field well known to be filled to overflowing is more than offset by suitable reference to leading and representative decisions and to collateral materials. More of interest, perhaps, is the fact that the work, while scholarly, is not just another dry treatise. Pungent comments and criticisms of existing doctrines as well as applause for well-turned views, scattered throughout the book, bring relief to pages that might otherwise force the mind to bog down under the sheer weight and intricacy of the material discussed. The author should rest assured that, except for change in the law itself, there will be no need for an "eventual second edition" in which to correct errors and failings in the present one.

An attempt has been made to compress many of the basic concepts of agency, corporation, and partnership law into the compass of a slim volume in order that a course in business associations, for which this book is evidently intended as a primer, might be treated as a springboard to the more abstruse concepts inherent in any one of these three fields of study. It is to be doubted, however, that the author has fully realized his goal. Unquestionably, in preference to a total absence of training in any one or more of these branches of law, a course predicated on a book such as this would be beneficial. Experience would indicate, nevertheless, that legal concepts are best comprehended when examined and developed separately. Confusion in the mind of the average student seems to be the order of the day whenever varying, although analogous, concepts are discussed together. To be sure, no field of law is independent of any other, but to begin study in the more complex areas of any branch of law on the assumption that basic concepts have been absorbed and understood is a mistake.

Aside from criticism of the basic theory underlying the instant volume, there is the further fact that much too much of the book is devoted to textual material rather than to cases. For example, of the twenty-six pages comprising the first chapter, only five are devoted to the four cases considered. A corresponding ratio may be observed in the other chapters. A happier medium could have been attained. A diligent student, unable because of scheduling difficulties to enroll in agency or partnership courses, would likely find this book invaluable just prior to bar examination time. It might also serve as a refresher course. It is, however, ill adapted for use in a full course devoted to either agency, corporation, or partnership law.


In response to the demand that the law school curriculum be enriched by the addition of newer topics in fields of recent development, considerable effort has been put forth in recent years to integrate older and related materials into more compact courses to permit the release of time for study in these newer fields. Separate courses in liens, pledges, mortgages and suretyship, for example, have been telescoped into a unit of Security Transactions. Agency, partnership and private corporations have been combined into a category of Business Organizations. Other illustrations could come readily to mind. With the publication of Professor Bittker's book, however, there may be some indication that the
pendulum has swung too far in the direction of consolidation and is now due to reverse itself in favor of a fragmented approach to the study of law. Acting on the premise that courses in taxation have been weighted heavily along the lines of income and similar taxes, with estate and gift taxation receiving only a few pages or chapters in casebook collections, he has broken off this small segment from the general field for more intensive treatment.

It is doubtful if a law school dean will welcome the thought that a crowded curriculum should be made even more crowded by the addition of yet another course on a single aspect of taxation, but he will no longer be able to utilize the excuse that suitable material is lacking for the present book, with its eighty-page supplement of specimen returns completely worked out for filing, nullifies any such alibi. He may now seek refuge in the claim that it would be ridiculous to spend perhaps from a third to a half of the time generally devoted to teaching taxation in an area which, as the author acknowledges, produces only from two to five per cent. of the governmental revenues. The question, however, is not one to be resolved in terms of percentages, for skill in long-range planning is something each law student should develop. If both the dean and the student would trouble themselves to read the author’s introduction, each might awaken to the fact that there is occasion to welcome a work of this sort if for no more than as a valuable adjunct to other tax casebooks. The lawyer, too, could learn that a collection of cases and materials on a specialized subject such as this one may often fill a substantial gap in his working library.


The compilation of an unbiased and objective history of labor relations in the United States over the past fifty years would be a worthwhile task for it could contribute much to an understanding of present-day labor conditions. It would serve its purpose, however, only if it were prepared by one possessed of unbiased judgment. It is unfortunate, therefore, that the author of this book, a lawyer who has battled organized labor throughout his career, should disclose a lack as to these needed qualities; for his book is nothing short of a constant and total accusation of unions and union leaders as being the epitome of everything evil. Perhaps this jaundiced attitude can be traced to the author’s early experiences, for he describes how he, the son of a union-battling hat manufacturer, grew up in Connecticut, and how his first activity, as a lawyer fresh from law school, was to fight the Hatters’ Union in the celebrated Danbury Hatters’ case. His
early characterization of the agents of that union as being "bloodhounds" may be symptomatic of his later attitude, albeit later pronouncements are not quite so vigorous, being mollified by an apparent sense of diplomacy.

The author's method for the compilation of his historical treatment of the subject is to take some well-known labor cases, chiefly those in which he has actively participated, to describe them, and then to append his own opinion concerning them. As these descriptions reflect a purely one-sided approach, being written by a man who has been passionately engaged on but one side of the industrial battle, it is not astonishing that the author should arrive at a completely distorted as well as a gloomy picture of American labor relations. Not that plenty of criticism cannot be levelled against unions in general, or against certain labor leaders in particular, for there is much to criticize. Valid criticism, however, would fall a long way short of the intimation that almost everything about unionism is bad. So negative an attitude most certainly would contribute nothing to industrial peace, particularly since it would neglect completely, as does the author, to take into consideration those causes which have provoked the development and growth of unionism in this country. Yet, without such consideration, it is difficult to fathom how fifty years of labor relations can be accurately appraised. From such scant preparation, a trip into the future must, of necessity, lead to a "destination unknown." As a consequence, many of the suggestions made by the author must be viewed with caution, although some of them would seem reasonable and just. One chapter, entitled "The Onward March of Collective Bargaining," should be excepted from the scope of this criticism for the author there basis his observations and conclusions upon his great experience in the field and on an obvious attempt to be impartial. It is probably the best part of the book.

For an antidote, this reviewer would suggest a re-reading of the objective description of labor relations in this country, with its sound criticism of the bad things in unionism, to be found in Professor Gregory's "Labor and the Law." Of like character is the article entitled "Labor, Legislation, and the Role of Government," written by Professors Feinsinger and Witte. The positive approach to the problem and the optimism to be there encountered should prove refreshing after the sordid picture painted in the book under review.

F. HERZOG

Ten years of experience under laws of the type of the Securities Exchange Act, the Public Utility Holding Company Act, the Trust Indenture Act, and the revision of the Bankruptcy Act should offer proof enough of the necessity for revising form books intended to aid corporate officials and their lawyers. Awareness of this fact has led the authors of this corporate secretary’s *vade mecum* to revise, up-date and release the third edition. A rapid glance at the cases cited in support of the textual material which precedes the specimen forms makes evident the inclusion of scores of new cases decided within the last decade.1 The forms themselves have likewise been subjected to much revision.

Perhaps more important than the timeliness of the book is the thoroughness with which the job has been done. Details have been worked out to the length where, for example, check lists have been provided concerning things to watch for or persons to notify in case a change occurs in so simple a matter as the corporate name. The corporate secretary is even warned, in relation to his duties, to have the correct amount of cash on hand, in proper denominations, to pay the directors for their services if prompt payment at the close of each meeting has been the practice in the past! The evident desire for efficient operation, as indicated by such advice, has been carried over to make this third edition of a popular work into a most usable publication. It provides the answers not only for the obvious but also for those abstruse2 questions which may arise in the matter of preparing corporate minutes or supervising the conduct of corporate meetings.

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1 It is not claimed that the list is complete. In the discussion of the right of a corporation to amend the articles, so as to deprive preferred shareholders of accrued but undeclared cumulative dividends, no mention is made of the holding in *The Western Foundry Co. v. Wicker*, 403 Ill. 260, 85 N. E. (2d) 722 (1949), noted in 27 *Chicago-Kent Law Review* 159, which produced a marked change in the Illinois law on the point. The presence of other recent Illinois cases is, however, noted.

2 What, for example, should the chairman do if persons not entitled to vote have been admitted to a stockholders' meeting and their continued presence might lead to potential objections or antagonisms? An ingenious and diplomatic answer is provided by the authors at page 15. Or try this one: Between a regular meeting and an adjourned session thereof, a registered shareholder has transferred his shares but still desires to vote the same on the theory he was a holder at the time the meeting commenced. Is he entitled to do so? A documented answer is given at page 22. These two samples should serve to indicate the completeness of the work in question.