Book Reviews

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BOOK REVIEWS


Renewal of the annual Burkan Memorial competition, following its unfortunate interruption by World War II, has now been marked by the publication of the fourth in the series of symposia dealing with aspects of the law of copyright. As, by the terms of the competition, the law students of the United States are left free to write on any topic of the general subject which may interest them, the several publications in no way constitute a text on the copyright law nor even an intensive investigation into a segment thereof, but the materials reproduced do reflect some of the more crucial issues therein. In keeping with the spirit which led to the establishment of annual awards in honor of the first general counsel, and co-founder with Victor Herbert and others, of the American Society of Composers, Authors and Publishers, the papers here presented reveal a degree of impartial and original thinking on the part of the several student authors which redounds to the credit of the writers, their schools, and to the Society.

The current issue contains four papers, with reference to a fifth which was printed elsewhere. The first, chosen to receive the highest award, stresses the extreme difficulty experienced in drawing the line between the legitimate reproduction of ideas expressed elsewhere on the one hand and legally reprehensible plagiarism on the other. It tests existing judicial decisions falling within that area of the law in an effort to fix the line separating "his from thine" with accuracy. Two of the papers deal with the wisdom, as well as the justification for, a provision in the American copyright law requiring a compulsory mechanical reproduction of protected material in this country as the price for insuring further protection. Still another, contrasting Anglo-American experience with that found in other civilized countries, discusses the moral right of the creator of copyrightable material to protect his intellectual effort, or the product of his creative genius, beyond the limit of the exclusive copyright franchise. It forms an excellent, if narrow, treatise in the realm of comparative law derogating against American provincialism. The last paper treats with the intensely practical subject of income tax consequences attending upon the issue of licenses or grants of reproduction rights. Taken together, they display not only an extremely creditable performance but full and adequate reason for the resumption of the competition.

Notable in the series of books on the court structure of the United States, each looking toward improvement in present methods of judicial administration, is this exhaustive and detailed comparison, made by a distinguished emeritus professor of Northwestern University's School of Law and one-time collaborator on the present Illinois Civil Practice Act, of the procedural systems currently extant in the federal courts, the several states, and in England. Limited to the work of trial courts in civil matters, since companion volumes deal with appellate procedure and with practice in criminal cases, the book is devoted to a complete analysis, historical and otherwise, of the applicable principles and pertinent steps controlling civil litigation from the introduction of the cause to enforcement of the judgment, examined both from the general and the specific aspects thereof. It provides a chart of the course of accomplished reform on the one hand while it serves as a beacon light to guide still further reforms on the other.

It has been the fortune of Anglo-American civil procedure, says the author, to exemplify the truth of certain generalizations regarding procedure at large, particularly those relating to the development and shaping of substantive law through the use of procedural methods; the steady progress from rigidity to flexibility in judicial formulas; the invention, utilization, and eventual rejection of fictions as a means to an end; and the expansion of the procedural mechanism to the point where singleness of issue, regarded essential in a period of immaturity, has yielded to the fullest possible investigation of all aspects of those disputes which are the concern of litigants today. But progress in these matters having been neither constant nor uniform, a degree of diversity presently exists, in those areas following the Anglo-American scheme in general, which should be remedied to the end that all might enjoy the benefits of the most effective procedural devices which human ingenuity can develop.

By providing the contrasts, Professor Millar points the way to changes yet to be effectuated. He offers no ideal code, as he apparently does not believe any of the existing procedural systems to be perfect in every detail. The penetrating analysis he has made, however, reveals the

perfections and imperfections of each variation, making it possible to formulate a wise choice for each of the points covered. Armed with this book, any commission for procedural reform, any bar association committee, should be able to formulate intelligent proposals to bring the local system more closely into line with the ideal that justice should not be delayed nor denied to any man.


The enveloping nature of administration and administrative law, in deep contrast to the service rendered by the judicial department in settling the disputes of individuals, has provoked the publication of a steady stream of books and articles intended either to explain the justification for, or growth in, the administrative process or else to belabor the proponents thereof for undermining the tri-partite system of government. Professor Redford, while obviously inclined in favor of the first of these groups, has here written a detached and completely unbiased commentary on, and explanation of, the administrative process in action taken in its overall aspects rather than in the form of a concentrated study of any particular administrative agency. His analysis of the development of an administrative program, from the establishment of a top-level policy down through the utilization of varied administrative techniques, tools, and organization, both within and without the agency, is searching and detailed.

While not a text-book on Administrative Law, the work would form an excellent corollary to a publication of that character since its emphasis is on operation rather than on legal doctrine or, stated differently, on the effect of law in practice rather than on law in theory. It should not be supposed that this study is merely descriptive in character for each point covered is also dealt with in a critical fashion, leading to the formulation of many important, but presently unresolved, questions concerning the effectiveness of the techniques discussed or the measures which have been adopted, or proposed, to make them so.

That administrative law is here to stay cannot be gainsaid, any more than it would be possible to expect that a twentieth-century civilization would be able to operate along governmental lines laid down in an eighteenth-century atmosphere. It is, however, the belief of all thinking persons, as with the author, that the "real hope for government in a democratic society is that it may find ways of attaining broad and enduring objectives . . . without overextension of the coercive authority of the state over individuals." Works of the character here under consideration should go a long way toward producing a realization of that hope.

That little fragment of tax law which was taught as recently as twenty-five years ago dealt either with the federal income tax statute and its application or else revolved around the constitutional aspects of the taxing power. The then lack of emphasis on state and local taxation should not generate surprise, for it took almost a century and a half of taxation with representation before annual state tax totals reached the billion-dollar level. By the middle of the present century, however, state tax collections increased to the point where the annual receipts by state treasuries alone exceeded nine billions, with correspondingly larger and larger bites into the consumer dollar at the local level. Not only has the tax "take" expanded but multiple forms of taxation have been developed to make further inroads on the spending power of taxpayers. Demands of this character have naturally excited interest in the legal aspects of taxation, hence few law schools today fail to instruct in the subject of tax law and boards of law examiners have also become tax-question conscious.

The demand for teaching materials has, in turn, generated a response of the character to be expected. Some of the newer books have tended to specialize,¹ others have provided introductory treatment to the subject,² but it remained for Professor Hellerstein to project a comprehensive work covering all forms of state and local taxation. Although real and personal property taxes form the backbone of non-federal levies, considerable attention has been given herein to the newer forms of taxing devices, as well as to tax procedures and tax exemptions. The book contains enough economic data to supply background deficiencies but, with its prime emphasis on law, it could be read with profit by lawyers in practice as well as by students in class. While national in scope, it fits the local scene perfectly.


While most attorneys, as a part of their daily law practice, have occasion to draft contracts covering a wide variety of subject matter, few outside of those staffing municipal law offices will be called upon to prepare, or approve, the specialized contracts which cover the billions of

¹ See, for example, Bittker, Estate and Gift Taxation (Prentice-Hall, Inc., New York, 1951), reviewed in 29 CHICAGO-KENT LAW REVIEW 367.

dollars spent annually by federal, state or local governments for the purchase of supplies, materials, and equipment or the construction of public buildings. The details of such contracts are rarely to be found in standard form books, nor has any comprehensive attention been given to the cases which have passed upon the legal problems inherent therein. The need for a practical handbook of the character such as this one becomes the more evident with the tremendous increase in municipal functions.

It is gratifying, therefore, to know that an authoritative set of model forms has been prepared, with annotations to assist in clarifying the technical language therein, covering such points as bids and proposals, general contract conditions, specialized provisions for particular difficulties, as well as model performance, payment and maintenance bonds. These instruments are presented in the framework of an accompanying short text on the law of municipal contracts in general. While of maximum utility to municipal attorneys and purchasing officials, the book is one of peculiar value for the attorney who may be asked to pass on a rare and isolated transaction. It should operate to save him from hours of labor in the process of evaluation and draftsmanship.


Somewhere about mid-point between Professor Redden's "So You Want to Be a Lawyer"1 on the one hand, and Dean Gavit's "Introduction to the Study of Law"2 on the other, would be the place to assign to the third of these recently published books intended to benefit the college student who has yet to determine his life's goal or the beginning student who has already entered the law school. The first mentioned work was designed to provide useful vocational guidance information but said nothing on specific study methods. The second, after some preliminary materials, was intended to guide the student through the maze, some would say the "rat race," of the first year of law study. To that end, it leaned heavily on helpful but rather technical information. This little handbook by Tulane University's Professor Stone, passing beyond the point of the first but stopping short of the ambitious program of the second, does so in a manner sufficient to make it a useful key for the

1 The Bobbs-Merrill Company, Indianapolis, 1951.
2 The Foundation Press, Inc., Brooklyn, 1951, reviewed in 30 CHICAGO-KENT LAW REVIEW 203-4. For a related, yet different, approach for the beginner's introduction to law study, see Shartel, Our Legal System and How It Operates (University of Michigan Law School, Ann Arbor, 1951).
opening up of Dean Gavit's more elaborate study while serving to resolve
the doubts of one uncertain on the question of whether or not to study
law. Being brief, it may be rapidly yet profitably read. Being sound,
it offers much excellent advice and instruction. Being worthily written,
full of "wise saws and modern instances," it is entertaining. Being
sincere, it will impress the untrained mind of the ethics and responsibilities
of an honored profession. All three books should be in the library of the
law student. The lessons of this book, however, are ones he should also
take to his heart.

CASES AND OTHER MATERIALS ON MODERN PROCEDURE AND JUDICIAL ADMIN-
ISTRATION. Arthur T. Vanderbilt. New York: Washington Square Pub-

No more forceful living crusader for the promotion of judicial effi-
ciency and for the development of a sound, realistic and modern judicial
system in America can be found outside of the person of the author of
this collection of materials bearing on judicial administration. As prac-
ticing lawyer, law school professor, college administrator, judge, bar asso-
ciation president, and prolific author, he has displayed a dynamic energy,
an unbounded zeal, which tends to put smaller men and smaller ideas
deeply in the shade. One could well expect, therefore, that when he
turned to the preparation of a work for the use of law students, designed
to introduce them to legal methods of procedure, he would strike at all
that was pedantic, out-moded, or to be deplored in the mechanics of
conducting litigation and stress the best, the most effective, developments
achieved to date. In Judge Vanderbilt's view, and not simply because he
had a hand therein, the best yet simplest system of procedure so far
developed is that utilized in the federal courts, hence it becomes the
framework around which these materials have been assembled. All who will
agree with him that there should be but one, and only one, set of rules to
follow in seeking the attainment of justice before the courts, whether state
or federal, will applaud the choice, for the standard could not have been
more happily devised, particularly with its emphasis on the power of the
judicial department to regulate procedure before it by rule rather than by
statute. With the growing tendency to align state procedural systems to
conform to the federal model,¹ the time may yet come when law students
everywhere will be obliged to learn only one way of handling litigation,

¹ The author notes, at page 9, that Arizona, Colorado and New Mexico have
copied the federal rules for their own complete systems; that Delaware, Minnesota,
New Jersey and Utah have done so practically in toto; and that twelve others have
replaced many of their own procedural doctrines with substantial portions of the
federal rules of practice.
leaving them free to spend more time on an ever-increasing load of substantive courses.

Much as one would approve Judge Vanderbilt's plan, however, there is occasion to note that the effect of this monumental collection of material, well in advance of the point of utility for most states, tends to bring about collapse under its own sheer weight, for the scope of the project would appear to transcend student comprehension at the beginner level and, by reason of its extreme breadth, is spread far too thin for the degree of knowledge expected of more advanced students. From the former, it would require too much; from the latter, it would require supplementation by special courses in pleading, evidence, trial procedure and the like. In his effort to spare the neophyte from having to undergo the rigorous training to which he was subjected, the worthy judge has reproduced sections of the classic writings of Maitland on the forms of action at common law and of Langdell's summary of equity pleading, but it is doubtful if the mere reading thereof would inform as well as would the perusal of some simpler version thereof. He is, without doubt, correct in his thesis that older methods of instruction, resulting in severe compartmentalization of the subject, furnished a disjointed and often incomplete picture, with some of the gaps never supplied to the student anywhere in school. These deficiencies he has cured, for nothing has been omitted in this effort to furnish a comprehensive work. Its full utilization, however, must await the day when diverse state systems of procedure yield to the federal model.


There has been unquestionable occasion for concern over the increase in the divorce rate and the fragility of modern marriage, but most panaceas proposed to date have looked in the direction of further legislative tinkering with what is not solely or essentially a legal problem nor one capable of resolution by customary legal methods. Divorce, whether liberally administered on a national basis pursuant to some uniform code or made increasingly difficult to obtain by reason of a tightening up of local laws, is not a cure although it may provide incidental relief for those involved in deeper and more fundamental emotional problems. Divorce has, therefore, and properly so, become the concern of the psychiatrist, the sociologist, and others specially trained in human ills and human welfare.

2 See, for example, the non-technical presentation of common law, equitable, extraordinary, and statutory remedies in Kinnane, Anglo-American Law (Bobbs-Merrill Co., Indianapolis, 1952), 2d Ed., pp. 608-89.
But as is usually the case with other developing sciences, any new approach to a given field of activity is likely to attract the attention, and invite the writing, of those who may not be eminently qualified therein. Not that the author is not qualified to discuss his subject from the standpoint of a lawyer for, by his own admission, he has acted as attorney for one side or the other in each of the cases he describes in this his newest work. The reviewer wonders, however, as he reads the text, whether the author's interest in marriage counseling is that of the professionally-trained psychiatrist or is that of a therapist who has developed a modicum of skill but one which falls short of professional attainment. As to the work itself, it could be said that one who would seek authoritative information on the subject would do better perusing Professor Fowler's latest work,¹ for there is little more here than a veritable hodge-podge of miscellaneous illustrations, viewed from varying angles, mingled with some legal and psychotherapeutic information. The book would be of doubtful value to the lawyer and would seem to be of even less worth to the layman.


With the publication of the concluding volumes of this up-to-date, comprehensive, and reliable treatise on an important segment of Illinois law, it is now possible for the local lawyer to appreciate fully the aid that a work of this magnitude can provide in resolving the tasks connected with daily practice. Prepared by a former Chairman of the Section on Probate and Trust Law of the Illinois State Bar Association, one largely responsible for the enactment of the present Probate Act, the set may be regarded as being as authoritative a publication in its field as could be found anywhere, for the author has been in a strategic position to plumb past decisions, compare new statutory provisions with old, and to forecast decisions bound to be written under interpretations not, as yet, clearly defined. The preparation of earlier materials on the subject undoubtedly sharpened the discernment and skill of the author to handle the voluminous detail involved in the present work. The extensive subject matter has, therefore, been capably broken down, arranged, and classified into an exhaustive treatise of the type seldom seen today. Although the central theme of the work turns around the Probate Act, and practices thereunder which control the administration of estates, it nevertheless treats with matters which

might be regarded as collateral thereto for the author has endeavored to provide a permanent guide to the subject. The set, then, is of such value and importance that it ought to be on the library shelves of every Illinois lawyer.


The initial edition of this brief and simple commentary on the federal income tax statute, with its accompanying regulations, was noted by the statement, among others, that the book "has balance." It might be observed, in a discussion of the second edition thereof, that nothing has been done to disturb that judgment for, in the main, the new edition is identical with the earlier volume both as to format and content. Justification for some slight revision does lie in the fact that certain changes have been made in the law by Congress, requiring the addition of new sections to the book to provide a place for the discussion thereof, as in the case of the "spin-off" and "split-up" types of corporate reorganization or the tax consequences of employee stock options to mention but two instances. There has also been the development of a degree of clarification in the tax law provided through a few recent judicial decisions, each herein noted.

As the first edition was declared to be a worthy guide to any study of income tax law, there is no reason to withhold the same comment regarding the new one. It is doubtful, however, whether a complete reprinting should have become necessary for the changes noted, while significant, are not of revolutionary character and might well have been disseminated, as is true for those occurring in 1952, through the use of cumulative pocket-part supplementation. The practice of reprinting, carried to extremes, could well evoke horror over the staggering financial burden which could be imposed if entire sets of annotated statutes, or encyclopedias for that matter, had to be replaced whenever a new law was enacted or a new judicial decision was announced. The same thing is true, to a lesser degree, in the case of a new edition of a good work not clearly out of date.