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Book Reviews

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THE CONFLICT OF LAWS: A Comparative Study, Vol. II. Ernst Rabel. Ann Arbor: University of Michigan Law School (Michigan Legal Studies series). Chicago: Callaghan & Company, 1947. Pp. xli, 705.

The advent of the first volume of this work was marked by unstinted praise not only for the excellence of the author's plan but also for the execution of its initial phases.[1] The second volume, now released, advances the study of comparative private international law through the fields of corporations, torts, and contracts in general, without diminishing in the slightest the reputation earned by that initial performance. Again it may be said that, if American provincialism concerning concepts of world-wide significance is ever to yield in the interest of common understanding, here is the place to begin. A window is now provided through which the American jurist, while giving regard to his own performance, may observe his foreign counterpart at work as he deals with the knotty problem of choice of law to be applied to the migrant actor, whether corporate or individual, who deals, causes harm, or contracts in other lands. That such a view should prove helpful goes without saying.[2]

Taking the second volume apart on a critical basis would be no easy task. The first section, dealing with corporations and kindred organizations, emphasizes the difficulty caused by the common-law concept that the personal law of the enterprise must be that of the place of organization regardless where the principal volume of business is done.[3] Fictions

[1] Some indication of the importance of this publication may be gathered from the fact that Volume I thereof was reviewed in 31 Am. Bar Asso. J. 657, 39 Am. Pol. Sci. Rev. 1194, 35 Cal. L. Rev. 611, 25 Can. Bar Rev. 318, 46 Col. L. Rev. 337, 7 Fed. Bar. J. 211, 59 Harv. L. Rev. 1335, 79 Ir. L. T. 302, 12 Ir. Jur. 39, 63 Law Quart. 112, 6 La. L. Rev. 735, 44 Mich. L. Rev. 443, 4 Nat. Bar J. 72, 26 Neb. L. Rev. 137, 21 N. Y. U. L. Q. 563, 67 Scot. L. Rev. 64, 21 Temp. L. Q. 73, 24 Tex. L. Rev. 524, 20 Tulane L. Q. 674, 14 U. of Chi. L. Rev. 124, 9 U. of Det. L. J. 225, 32 Va. L. Rev. 684, 54 Yale L. J. 886, as well as in 24 CHICAGO-KENT LAW REVIEW 101.

[2] The author himself points to the "powerful lesson to be learned from comparative research." That there is hope for desirable uniformity, at least in the field of international commerce, is also warranted. He notes: "The various legal systems operate with different terminologies and techniques, but in the hands of fair judges they usually work out all right and to strikingly similar ends." See Rabel, The Conflict of Laws, Vol. II, p. 484.

[3] Common sense lies behind the dictate of the Chandler Act, 11 U. S. C. A. § 528, which fixes the place for the filing of reorganization proceedings at the place where the corporation had its "principal place of business or its principal assets." See Watters v. Hamilton Gas Co., 10 F. Supp. 323 (1935), affirmed in 79 F. (2d) 438 (1935). In contrast, state law is irrational to the extreme when it demands that proceedings to wind up the affairs of a foreign corporation doing business within the state, particularly when its only office, its officers, and all of its assets are there, must be referred to the state of incorporation because its own courts lack jurisdiction for that purpose: Wheeler v. Pullman Iron & Steel Co., 143 Ill. 197, 32 N. E. 420, 17 L. R. A. 818 (1892).

developed to offset that doctrine, as well as theories under which the "foreign" corporation is accepted into the community, receive sharp criticism,[4] but there is no such devastating attack upon the Restatement of the Law of Conflict of Laws as is developed in the sections dealing with torts and contracts. There the charge is made that the Restatement is vague and obscure, is antiquated, is replete with bizarre illustrations, and is actually inconsistent in its parts. In the comparison drawn between the Restatement on the one hand and the law applied in foreign countries on the other, the former suffers immeasurably. Others have remarked upon its unfortunate vocabulary; here the acid test is applied to its substance.

Yet the author does not find fault with every American development, for he notes, with true philosophic impersonality, that some progress made here must be preserved against dark "currents of nationalism" coming from Europe, especially in matters of public policy. There is much then that marks this work not only as the product of prodigious research but also of scholarly competence.

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CROSS-EXAMINATION AND SUMMATION, Second Edition. Jules H. Baer and Simon Balicer. New York: Fallon Law Book Company, 1948. Pp. x, 576.

Although the second edition of this extremely useful work has been prepared with an eye toward assisting the New York practitioner, as evidenced by the copious references to New York decisions and statutes, there is much therein which can assist the lawyer who might be obliged to try cases in any part of the country for it reiterates fundamental principles of trial practice which would be true anywhere. While primarily concerned with cross-examination of witnesses and closing arguments to juries, the work does not neglect other aspects of a standard trial for it contains significant sections bearing on such related matters as jury selection, opening arguments, order and burden of proof, instructions, and post-trial motions. The emphasis, however, is on the subjects referred to in the title.

[4] An occasional lapse in a work of this magnitude is not surprising. Two little points as to Illinois views might bear attention. (1) The unlicensed foreign corporation doing business without permission is not entirely free to sue in the local courts: Ill. Rev. Stat. 1947, Ch. 32, § 157.125. Compare with Rabel, op. cit., Vol. II, pp. 143-4, particularly note 98. (2) Permission to do business may be denied if the foreign corporation has a name deceptively similar to one locally organized: Investors Syndicate of America v. Hughes, 378 Ill. 413, 38 N. E. (2d) 754 (1942). But see General Industries Co. v. 20 Wacker Drive Bldg. Corp., 156 F. (2d) 474 (1946), cert. den. 329 U. S. 833, 67 S. Ct. 370, 91 L. Ed. (adv.) 241 (1946).

It is fairly easy to state, in short compass, the objectives which should underly skilfull cross-examination as well as those concerned in the making of forceful closing arguments. For that matter, any experienced trial lawyer would quickly recognize the soundness of the advice given by the authors regarding the points to be stressed or avoided in the conduct of either of these aspects of a trial. But advice may often prove hollow unless it can be translated into action. Here, then, lies one primary significance of this work for it demonstrates the way by which such advice can be put to work by showing its application to concrete samples of cross-examination. In copious quotations taken from actual records, reproduced in question and answer form, the reader may see how the skilfull and the unskilfull trial lawyer can attain or fall short of his objectives.

Many works have been published in which have appeared outstanding examples of jury addresses given by prominent members of the bar. They serve their purpose merely by preserving these classical arguments for the edification of other ages. The second portion of this book, dealing with summation and closing argument, is not of that character. It seeks, rather, as its other prime function, to furnish models whereby an average trial attorney, one not bursting with the eloquence of a Rufus Choate or a Daniel Webster, may effectively conclude the effort he has spent in the trial of a run-of-the-mine case. The specimens presented, based on hypothetical but frequently recurring situations, should serve such a practitioner in good stead. To say the least, the authors have displayed considerable ingenuity in thus preparing and presenting plausible arguments for use on either side of the same case.

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