

Washington University Law Review

Volume 1961 | Issue 4

January 1961

Review of “College Law: A Guide for University Administrators,” By Thomas Edward Blackwell

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Recommended Citation

Wendell Carnahan, *Review of “College Law: A Guide for University Administrators,” By Thomas Edward Blackwell*, 1961 WASH. U. L. Q. 450 (1961).

Available at: https://openscholarship.wustl.edu/law_lawreview/vol1961/iss4/8

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BOOK REVIEWS

COLLEGE LAW: A GUIDE FOR UNIVERSITY ADMINISTRATORS. Thomas Edward Blackwell. Washington, D.C.: American Council on Education. 1961. Pp. 347. \$6.00.

It is a characteristic of law that it continuously grows and adapts to the needs of changing society. In our changing society, Americans are becoming increasingly aware of the ways and extent to which law affects their legal relationships. But very few are even aware of the areas in which legal rules impinge upon activities of American universities.

These impacts expand in frequency and in extent as institutions of higher education further develop. Their development will be accelerated by various factors, including the following. Barring the cataclysm of war, the population explosion, coupled with economic expansions, will impose tremendous pressures upon existing universities which even the formation of new ones may not meet. With both former and newly established institutions of education it is inevitable that problems may arise in connection with their charters and exercise of corporate functions as well as a host of administrative procedures. Securing revenue will become an even greater problem than at present. Revenue may come from several sources: student tuition fees; private gifts; local taxes; investments; and federal taxes. Once the institution is "running," new problems arise as to its taxability; a variety of relationships between the university, its faculty, its students, donors of funds (including charitable trusts) and, of course, more taxes and tax problems. These are only a few of the broadest formulations and do not even suggest details.

These and other problems, with their many facets and details, constitute an important part of the environment within which a university administrator moves.

What factors bear upon the conduct of a university administrator in relation to the subject matter of this book? First is an awareness of the general types of legal problems which have come up or may arise. Without benefit of statistics, which no doubt would be difficult to procure, this reviewer would guess that many administrators have had little occasion to have experienced many of the potential difficulties.

It is not enough that an administrator be aware of difficulties; he must be given a guide to action by way of presentation of legal principles. In this volume, written for laymen, this is done.

The book consists of eight chapters and in each are narrow subdivisions which deal with a precise issue. Although in a book of this sort the presentation must be brief, the style is unusually clear. In relatively short space, the problem is presented and (to the extent that divergencies in state laws permit) a general answer is given. Frequently this is accompanied by tracing the evolution of a rule, by giving the facts of a specific case with a short excerpt from the opinion of the court, and by references to other material. The book constantly admonishes the administrator of the need for consultation with an attorney. But the background furnished by the book not only makes the administrator aware of potential difficulties, as well as indicating a probably proper approach, but it enables him to discuss the matter intelligently with his attorney. Its extensive bibliographical references to both legal and non-legal materials is very helpful to both administrators and lawyers who may use the book. Frequently suggestions are made for development of manuals of operating procedures to secure uniform administrative efficiency and avoidance of possible legal problems.

Although there are other important aspects, attention is now particularly directed to three treated in the book.

The first relates to the nature of the institution as a "public" or "private" institution. As indicated by a variety of subheadings throughout the book, important consequences attach to this distinction. In addition to historically separate development, there are these: the creation, modification or termination of corporate powers; taxation (or grants) on behalf of the educational institution; taxation of its property or the income of its staff; the extent to which public officials can direct or regulate its administration.

Another relates to the issues of taxation. They are of such diverse types that they cannot effectively be grouped, but are discussed in the various parts of the book to which they relate. Their varieties and importance is indicated by the fact that the index has about sixty references under the heading of "Taxation." In addition, an Appendix is entitled: "State constitutional and statutory provisions on the tax status of the property of privately controlled institutions of higher education, with commentary on specific cases."

The third aspect concerns the charitable aspects of universities. This includes not only possible tort immunity but also the whole gamut of solicitation and administration of funds. These, in turn, range in part from public regulation of the solicitation of funds, the status of pledges, restrictions on gifts to charities, investment or misappropriation of restricted funds and public supervision of charitable trusts. Inevitably, tax aspects impinge upon this area also.

As the author pointed out as early as 1938,¹ much of the law of charitable trusts, as related to educational institutions, was based upon misconceptions of history. Modern—but relatively recent—research has revealed the error and occasioned a change in judicial attitudes in respect to many important problems. Many of these problems are not only acute but also recurring, due largely to pressures upon administrators to give what they consider maximum utility to college funds, even though some have been ear-marked by the donor for restrictive purposes.

For example, in that connection, the materials note such questions as these. When is a donation considered restrictive in an absolute sense, rather than precatory? May restricted funds be diverted to another purpose upon consent by the donor or his heirs? May endowment funds be “invested” by the university to build a new dormitory, interest being paid on the fund? May capital gains in the sale of endowment securities be syphoned off for unrestricted purposes? May a charge be imposed upon principal or income of an endowment fund to cover the necessary and inevitable expenses of its administration? As the book points out, even involved financial statements of a university do not reveal the details in the diversions of funds. Where there is a real doubt, it can be resolved by application to a court for interpretation of the trust and for permission to act. In addition, the possible adverse effect upon public relations of the misappropriation of trust funds is discussed. The author points out that it is possible, through statutes, to increase the efficiency of the office of state Attorney General in protecting interest of the public.

As has been indicated, the book presents the legal aspects of a wide range of practical problems encountered by university administrations and gives many practical suggestions of administrative procedures by which to deal with them. The book includes a Table of Cases cited, and also an extensive Bibliography of References to both legal and non-legal source materials.

The author has had unusual experience qualifying him for this task. Among others, he holds a graduate degree in law from Washington University. For many years he was Vice-Chancellor of Washington University. He is editor of the two volume *College and University Administration* and author of a series of articles on the current legal problems of the colleges in *College and University Business*.

A Foreword to the book written by Dr. Arthur S. Adams, former president of the American Council on Education, states:

1. Blackwell, *The Charitable Corporation and the Charitable Trust*, 1938 Wash. U. L. Q. 1.

This book does not attempt to make every college administrator his own lawyer. Its primary purpose is to give the college administrator an awareness and understanding of basic law and legal concepts as they relate to the colleges. It is intended to assist him in planning procedures in order to avoid the possibility of litigation. By calling attention to the importance of reviewing day-to-day procedures to make sure they include sound legal safeguards, it is intended to encourage the recognition of incipient legal difficulties that require the services of an attorney.

The book not only fulfills that purpose and does it well—but also goes much further. It is a guide-book with which all college administrators should be familiar.

WENDELL CARNAHAN†

THE TEST OF FACTUAL CAUSATION IN NEGLIGENCE AND STRICT LIABILITY CASES, Arno C. Becht and Frank W. Miller. St. Louis: Washington University Committee on Publications. 1961. Pp. 223. \$4.50.

Dissatisfied with the traditional but-for and Restatement of Torts tests of factual causation, Professors Becht and Miller, the authors of this philosophical treatise, propose an entirely new method of approach to the question of causation in negligence and strict liability cases. By the term, "factual causation," the authors refer to cause-in-fact, or, as it is sometimes called, legal cause. No consideration is given to the problem of proximate causation, and the narrow question examined is whether defendant's conduct actually caused plaintiff's harm. That this somewhat narrow inquiry takes 223 pages to examine is indicative of the book's detail and completeness.

The usual method of determining factual causation is the but-for test; that is, but for the negligence of A, would B have been harmed; or, to put it another way, B's harm is not caused by A's negligence if B would have been harmed without A's negligence. The authors find inadequate this test and also the Restatement test, which is basically the but-for test with an additional standard to cover a narrow group of cases which do not come within the but-for rule.¹ The question

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1. Section 432 of the Restatement of Torts provides:

(1) Except as stated in Subsection (2), the actor's negligent conduct is not a substantial factor in bringing about harm to another if it would have been sustained even if the actor had not been negligent.

(2) If two forces are actively operating, one because of the actor's negligence, the other not because of any misconduct on his part, and each of itself is sufficient to bring about harm to another, the actor's negligence may be held by the jury to be a substantial factor in bringing it about.