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Review of “Cases on Trade Regulation,” By S. Oppenheim

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CASES ON TRADE REGULATION. By S. Chesterfield Oppenheim. St. Paul: West Publishing Company, 1936. Pp. lii, 1518.

There are two quite distinct views as to the proper content of a course on Trade Regulation.

One view regards the subject as limited to the public regulation of business, excluding public utilities and labor cases. The Anti-Trust Laws are then the main meat of the course. The Robinson-Patman Act and the Fair Trade Acts of various states are included, and there are excursions into State Codes of Fair Competition and non-public utility price fixing (chiefly milk) where they exist. The emphasis is on public regulation, and the private cases are included only when they throw light on the public law, as in actions for treble damages for violation of the anti-trust laws.

The other view of the subject does not eliminate the public law material, but restricts its scope, and adds to it the private law of business competition. The subject then begins with unfair competition (in the sense of trade mark infringement and other passing off), continues with deceptive advertising and invasion of business reputation, gives attention to boycotts and other forms of obstruction of access to markets, may or may not include equitable protection of intangible business values (designs, news, advertising, etc.), considers resale price maintenance and price discrimination, and winds up with combination and monopoly. The emphasis throughout is as much on private rights as it is on public regulation.

Which view of the subject should be followed depends mostly on the other courses in the school in question, especially Equity and Torts. If in those two subjects adequate attention is given to the business cases, there is no point in treating them again. But if, as is believed to be quite often true, the private law of business competition has been more or less crowded out of Equity and Torts, then it ought to be included here. For the cases are important, and the problems that they deal with are at least as likely to be met in practice by young lawyers as the more abstruse phenomena of the anti-trust laws proper.

Mr. Oppenheim's new book adopts the second view. On that basis, it is a first rate job. The cases are by good courts and relate to modern facts, the arrangement is logical and clear, and the business backgrounds are well indicated. The law reviews are cited, and the selection of economic materials is pointed and discriminating. Altogether this seems to me the best case book in the field, provided only you decide that you want to treat the private law materials. If you prefer to stick to public law, and to treat it as exhaustively as possible, then you will no doubt use McLaughlin, or the new Milton Handler book when published. All three are fine books, and the choice among them will depend on what you want to cover.

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