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Review of “Cases and Materials on Trials, Judgments, and Appeals,” By Thurman Arnold and Fleming James, Jr.

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CASES AND MATERIALS ON TRIALS, JUDGMENTS, AND APPEALS. By Thurman W. Arnold & Fleming James, Jr. St. Paul: West Publishing Co., 1936. Pp. xxvii, 869.

Cases and Materials on Trials, Judgments, and Appeals by Professors Arnold and James is not just another book on trial procedure. It creates an interest from the beginning. It draws attention not only because of its authorship but because of its contents.

As every author properly wants his readers to do, the reviewer started his investigation by perusing the preface, for there one will usually find the author's purpose in sending his brain-child out into the critical world, and the reviewer's field consists largely in determining whether that purpose is a proper one and whether it has been fulfilled. In this preface, one is told that students become proficient in the nice analysis of legal dialectic and in talking about the law in terms of its larger social aspects, but that they are not sufficiently trained "in the ability to use convenient legal analogies as a method of forwarding some particular trial objective or as a method of answering some argument which has been suddenly made against them in the course of litigation." The main object of this book, it is said, is to give that training which the authors say is usually not given. Now, this is a splendid and an attractively phrased aim.

The thing in which the reader of the review should be most interested is whether or not the authors have accomplished their undertaking at least fairly well.

If the table of contents is a true prophecy of what is to come, it indicates that, in many instances, our authors have attained no small measure of success in carrying out their purpose. Thus, we have such phrases as the following: "Use of the So-Called Prerogative Writs to Modify Judgments and the Attendant Logical Difficulties," "Logical and Statutory Escapes from Procedural Errors in Process," "Statutory or Common Law Escapes from the Logical Implication of Venue Statutes." Under this last phrase are such sub-heads as "By Analogy of Common Law Plea in Abatement" and "By Analogy of Special Demurrer." These are but a few samplings from the table of contents. They clearly deal with methods of meeting practical situations as they arise in the work of a lawyer.

And, believe it or not, the cases and other materials carry out the plan suggested by the table of contents. Although many of the cases indicate how lawyers and others connected with legal proceedings have successfully met difficult situations, the reviewer thinks many comments and notes are even more successful in doing this. Examples of such notes and comments are found on pages 47, 76, 77, and 251. One should add that training in dialectic is not wholly ignored.

Law review articles are cited in many instances, but the references to most of them and to many of the cases are not ideal in the humble estimation of the writer. In too many instances students are given no real idea of the contents of these references. Now, theoretically this may be splendid. The students should have enough interest and energy to read these cases and articles, but teachers should know that students do not usually have

the time to do this. The result is that they will lose the benefit of the research of the authors.

The order in which the subject matter is placed makes little difference, for a teacher can use it out of order, but it seems strange to the reviewer that "Pre-Trial Devices for Preparation of a Case and Clarification of Issues," and "Methods of Controlling Jury" are considered after "Executions."

Of much more importance than this matter of improper placing of material is the lack of a discussion of the drawing of juries and the scant attention paid to the procedure in trying a case.

Of practical importance to the instructor are the number and length of cases and suggestions as to choice of cases if they cannot all be covered. It is said that the book is prepared to be covered in four hours a week for one term. There are about 235 cases and comments covering 843 pages. By counting four (4) lectures per week for sixteen (16) weeks one can readily see that the work can be covered without any necessity for undue haste. A feature not often found in casebooks is a set of suggestions for omission of cases if a two or three hour course is offered. The suggestions are of value as far as they deal with the three hour course, for about one quarter of the material is omitted, but the authors propose a further reduction of only a seventh of the book's contents, if a two hour course is to be given. That suggestion is impractical.

As the writer leaves his pleasant task of reviewing this volume, he wishes to compliment its authors on their success in having written a thought-provoking book.

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BOOK NOTE

CASES ON THE LAW OF PUBLIC UTILITIES (Second Edition). By Young B. Smith, Noel T. Dowling, and Robert L. Hale. St. Paul: West Publishing Co., 1936. Pp. xl, 1107.

A marked change in treatment is to be found in this second edition from that given the material in the first edition in 1926. This edition opens with a summary of the common law situation in order to attack as soon as possible the problems of public interest from *Munn v. Illinois* down to *Nebbia v. New York*. The treatment of Rates has been overhauled and dealt with where it logically touches some other topics. Problems involving the rate base and the fair return are substantially presented both in text and with case material. An increase in text presentation and similar materials is a modern approach incorporated in this edition. The excerpts from cases and articles under "articulate discussions of the premises" in rate problems is an innovation worth while. The materials gathered by the distinguished editors should be sufficient to furnish a very satisfactory foundation for class work in this field.

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