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Review of “Cases on Torts,” By Lyman Wilson

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Book Reviews

HANDBOOK OF THE LAW OF CODE PLEADING, by *Charles E. Clark*. St. Paul: West Publishing Co., 1928.

This is the latest volume in the so-called Hornbook Series, and in point of scholarship is distinctly above the average of that series. While designated a textbook on Code Pleading, it might well be designated a textbook on Pleading. Very properly Mr. Clark recognizes that there is such a thing as a science of pleading in general, and that what we call Code Pleading represents merely a stage in the procedural history of Anglo-American law. Every important feature in the prevailing code system is presented in the light of pre-existing common law and equity. Some features of the code are presented with the frank comment that they are defective when compared with modern practice in England. Careful attention is paid to the recent reforms in New Jersey and New York. Mr. Clark's method of approach may be indicated by quoting the first paragraph in his chapter on "Joinder of Parties," as follows:

"The subject of joinder of parties is peculiarly interesting in that it shows the growing tendency to develop procedural rules towards the end of prompt dispatch of litigation. At common law the rules of party-joinder depended entirely on what was conceived to be the substantive rights of the parties litigant; and the idea of employing the rules of joinder as a procedural device to save many trials by deciding at one time issues affecting several persons came later through the code adoption of the more liberal equity rules of joinder. Even under the code the idea was only imperfectly perceived or carried out and it is only in a few jurisdictions—notably England, New York, California and New Jersey—that the possibilities of thus somewhat relieving the press of cases upon the courts are being at all adequately realized. The subject can best be understood by tracing this course of development through the various systems of pleading."

The book contains 581 pages. The footnotes, while brief, are fairly representative of American case law on the subjects discussed, and are especially rich in detailed references to recent statute law and to legal periodical literature. Mr. Clark's volume is undoubtedly the best book for collateral reading in law school classes on Code Pleading. The book is not intended to satisfy practicing lawyers who are interested only in procedural rules of one particular jurisdiction.

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CASES ON TORTS, by *Lyman P. Wilson*. Chicago: Callaghan & Co., 1928. Pp. xxiii, 1088.

When a new case book comes to a teacher's desk his first interest is in the arrangement—the point of attack and sequential development of the subject. This book, in a major way, is divided into five parts. Part I, entitled "Introductory General Considerations," deals with the definitive factors and

persons responsible, e.g., infants, lunatics, drunkards, husbands or wife, parent or child, principal or master, partners, private corporations, charitable institutions, state or federal government, municipal corporations. It closes with "Injuries to Unborn Child," and "What Is an Act?" It is embraced in seventy-six pages. Part II is headed "Loss Shifted Because Incurred Through Defendant's Intentional Act." It covers quite naturally the familiar torts falling in the category of trespass and the defenses thereto. It also includes conversion. One notes the adoption of Ames' order, rather than Bohlen's, in placing assault, instead of battery, first and in postponing a consideration of *Weaver v. Ward*, *Brown v. Kendall*, and the Nitroglycerine Case and certain cases dealing with mistake to subdivisions entitled "Accident" and "Mistake," under the general title "Defenses." Part III is labelled "Loss Shifted Because Incurred Through Defendant's Failure to Use Proper Care to Avoid Harm to Others." More particularly the subject-matter is negligence, proximate cause, contributory negligence, assumption of risk, imputed negligence, duties owing from the occupant of land to various classes, the liability of one who provides chattels for the use of another, independent contractors, and master and servant (mutual duties—not *respondeat superior*). Part IV is entitled "Loss Shifted Because of Inherent Fault," the subdivisions of which are: Culpability—History; The Keeping of Animals; The Escape of Dangerous Substances; The Escape of Fire; Nuisances; Liability of Lessors and Vendors; Inherently Dangerous Undertakings; Workmen's Compensation; Other Statutory Liabilities. Part V, entitled "Specific Harms Produced Through Intangible Media or to Intangible Things," presents the nervous shock problem; Seduction; Deceit; Malicious Prosecution; Defamation; Slander of Title; The Right of Privacy; and Disturbance of Reasonable Expectancies, *i.e.*, the tort questions arising in the trade and labor field.

A reviewer need have no hesitation in speaking well of this work. In spite of individual differences among teachers, any teacher of torts can give a satisfactory and adequate course based thereon. With this book at hand, it is doubtful if any teacher would feel that the profession had suffered an irreparable loss, so far as mere class-room work is concerned, if all other case books on the subject were to vanish. It covers the essential subjects, and the cases seem well selected. Among the cases one finds many old friends, whose worth has been demonstrated and the new ones are satisfactory. This is the least that one can say in favor of Professor Wilson's work. The present reviewer is disposed, however, to say more in praise of the book. The arrangement, with the exception of Part I, practically all of which we would omit, meets our view of superior pedagogical order. This is saying much, for a case book is essentially a teaching tool, and pedagogical considerations should control. In particular we have in mind the placing of assault ahead of battery, the treatment of contributory negligence, *et cet.* immediately following negligence and proximate cause, and especially—with Professor Bohlen's arrangement in mind—the elimination of cases presenting the accident and mistake problems from the chapter on battery and trespass to real property. We are not certain that the chapter on defenses is the best place to take these problems up; perhaps they should immediately precede negligence or even be placed in the

beginning of the chapter dealing with liability without fault. In any event their placement by Professor Wilson is greatly superior to the order adopted by Professor Bohlen. They are much more teachable at the later point in the course.

We take minor exception to the title given to Part IV (see *supra*). It suggests a conception of the theory of liability to which many would not subscribe. It is believed that the title should either be non-suggestive as to the basis of liability or should convey the orthodox idea of liability irrespective of fault.

We do not quarrel with the author over the omission of case references in footnotes. The substitution of references to law review articles at the beginning of chapters is to be commended. This will be a great aid to the teacher who takes on the course as a new one and will place prominently before the student reference material which he should be strongly encouraged to read.

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CASES ON BANKRUPTCY, by *William Everett Britton*. St. Paul: West Publishing Company, 1928.

The above publication is the latest compilation of cases on the subject of bankruptcy. Its express purpose is to place in the hands of the student material that will feature the text of the statute in a prominent manner.

Mr. Collier, in his work on bankruptcy, follows the Act in sequence, while, on the other hand, Mr. Remington pursues another method in classifying the topics. Professor Britton follows more closely the arrangement of Mr. Remington and correlates the subjects, selecting his cases in accordance therewith.

In a work of this kind, especially on bankruptcy, the compiler must exercise the highest degree of good judgment so that no obsolete or valueless case will be used. In the study of bankruptcy, the subject being entirely statutory, and the Act itself of comparatively recent date, too much dependence cannot be placed upon a particular case cited in any publication. There being so many District and Circuit Courts, and the decisions not being uniform, the student in finding a case in point should not be satisfied until he has found that the particular decision has been approved or at least not overruled by the higher or highest court, as the case may be. This is one objection to teaching bankruptcy by the so-called case book method, unless the work be revised at the conclusion of each term of the Supreme Court of the United States. *Holt v. Crucible Steel Co.*, 224 U. S. 262, cited in the notes on p. 265, is in point. The principle of law, that bankruptcy courts must follow the law of the state, as pronounced by that case, is the same today as then (1912), yet under the same statement of facts the decision today would be different. See *In re Frost*, (C. C. A. 6), 12 F. (2d). However, at present the law on bankruptcy is becoming more settled, especially as the United States Supreme Court has had many cases covering various phases of the Act presented to it for decision.

The author has employed the greatest care in his selection of cases and