

Book Reviews

CASES AND MATERIALS ON CONTRACTS II. By Edwin W. Patterson. Two Volumes. Chicago: The Foundation Press, Inc. pp. xv, 337; pp. xxii, 663.

THESE volumes are intended as practical teaching instruments, and practically shall they be reviewed. "They are planned," in the language of the preface, "to furnish the materials of study for a part of the general orientation course dealing with contracts and other transactions, that is, with 'legal relations based upon consent.'" The plan appears to be to teach mutual assent, consideration, sealed contracts, third party beneficiaries, assignments, the statute of frauds, and discharge from some one of the existing standard casebooks in a course called Contracts I. Contracts II then opens with the first of the present volumes covering (1) damages for breach either actual or anticipatory, (2) the effect of failure of "express conditions," "constructive conditions of cooperation or non-prevention" and (3) "impossibility of performance and frustration of purpose." The second volume contains chapters on the effect of (1) insanity and undue influence, (2) duress, "economic compulsion," and misrepresentation, (3) mistake—under which is included a thorough treatment of the parol evidence rule, reformation, and that part of quasi-contracts which deals with the recipient's liability to pay for benefits conferred upon him under mistake of fact or law, and (4) illegality. Some extracts from writings on psychiatry are appended. There are tables of cases, and of citations to leading articles and the Contracts Restatement.

The reader will perceive that Professor Patterson's first volume deals with matters already covered in Professor Costigan's¹ and Professor Corbin's² casebooks and—except for damages—in Professor Williston's³ casebook as well. Since the student on completing Contracts I probably owns one of these three casebooks it seems reasonable to cast on Professor Patterson's first volume the burden of demonstrating that he should own that besides. This burden of proof does not seem to me to be sustained. It would serve no useful purpose to elaborate the grounds of this opinion. The interested reader will examine the evidence for himself.

The second volume is of a different character, and claims a unique place on casebook shelves. "Defects in the formation of transactions," says the preface, "are the subject of Volume II. The conduct of the parties satisfies the minimum requirements necessary to create legal relations arising from consent . . . but the transaction is invalid . . . because of other circumstances, and relief against its legal consequences . . . will be given to one party, possibly to either. With but few exceptions the invalidating circumstances have to do with the motivation of consent by the party seeking relief. Thus the control theme of the volume is the inappropriate motivation of consent. . . . The relief sought may be by way of defense, or by way of a suit in equity for restitution, rescission or reformation, or by way of a quasi-contractual action for restitution. The remedial problems are subordinated to the main theme, motivation of consent." The theme thus stated is developed through six hundred pages with great skill and thoroughness by means of some two hundred knotty cases arranged under the chapter headings set forth above. Whether the learned reader will adopt this volume for use in his own classroom depends, I suppose, upon three factors:—*first*, his degree of sympathy with its philosophical conception;

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1. COSTIGAN, CASES ON THE LAW OF CONTRACTS (3d ed. 1934) 556-908.
 2. CORBIN, CASES ON THE LAW OF CONTRACTS (2d ed. 1933) 437-870.
 3. WILLISTON, CASES ON THE LAW OF CONTRACTS (3d ed. 1930) 471-767.

second, his view of the value of the material for classroom discussion; *third*, his judgment of the importance of the subject-matter as compared with others with which it must compete for time. The following thoughts upon these matters are submitted for what they may be worth:—

First:—The Philosophical Conception. The preface, and the arrangement of the cases, seem based upon the theory that "consent" creates "legal consequences" against which, in special circumstances, the law will give relief. A truer, simpler, and more useful theory, it is submitted, would be that the law attempts—and is interested in—no purpose except to reward each individual according to his contribution to the community; that the rights to security in fruitful enterprise and to compensation for value given do not qualify the law of contracts but underlie it; that the law cares for consent only because—and to the extent that—it provides a means of measuring these rights and making them practically effective; that where the alleged consent does not serve this purpose the court will proceed as if it did not exist.

Second:—Value of the Material for Class Discussion. The volume begins with several long opinions on the inferences with respect to sanity to be drawn from specific evidence, and ends with several extracts from psychiatrists. While these are no doubt instructive reading, one wonders how much is to be learned by a classroom discussion of them between teachers who are not psychiatrists and students who have no means or intention of becoming such. An analogous criticism—very much diluted—suggests itself with regard to the remainder of the book. The lawyer, it is true, must often meet with misunderstandings, falsehoods, and various kinds of shabby dealing; but a sense of honor and of the potentialities and limitations of trial evidence may perhaps be thought as useful preparation as the painful attempt to dissect past instances known only in the opinion of a court which read a record of what an unseen witness said. This, however, is less an objection to the book than to the attempt to discuss all the cases in it. Discussion might be centered on the really doctrinal decisions, leaving the others to be read.

Third:—Importance of the Subject-Matter. If the relative length of the first and second volumes is an index of the time expected to be devoted to them, it is suggested that this is disproportionate. A thorough grasp of the various remedies for breach of contract and of how far their administration is governed by legal policy and how far by the terms of the agreement is believed to be more vital to the budding lawyer than practice in discussing, on third-hand evidence, questions which are primarily of fact.

The foregoing observations are quite consistent with the opinion entertained by this reviewer that the subject-matter of Professor Patterson's second volume belongs in any comprehensive course on contracts and that this volume is a significant contribution to the problem of perfecting such a course. His differences, if any, with the author concern themselves with the approach to the subject and with the legal philosophy upon which instruction in it should be built.

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FORENSIC CHEMISTRY AND SCIENTIFIC CRIMINAL INVESTIGATION. (Third Edition.)
By A. Lucas. pp. 376. Longmans, Green and Company. New York City. 1935.

A VERY difficult task—one much more difficult than is ordinarily realized—confronts the attorney who is called upon to conduct the trial of a case involving scientific

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evidence. He must enter into the trial equipped with something in addition to a mere speaking knowledge of the rules of law governing the admissibility of such evidence; he must prepare himself, as well as time permits, with sufficient information concerning the branch of science involved, so as intelligently to examine or cross-examine the expert witness by means of whom the scientific evidence is being presented to the court. If this be neglected the attorney is very apt to miss many an opportunity to add to the effectiveness of the scientific evidence he is seeking to introduce, or, what is more likely to happen, he may, by unintelligent cross-examination, materially strengthen his opponent's case when attempting to discredit the testimony of an expert witness.

Far too few lawyers realize the importance of familiarizing themselves with the necessary technical literature pertaining to the scientific evidence constituting part of their case. In consequence, competent and honest experts frequently leave the witness stand with their tasks only partly performed, and in like manner many an incompetent and unscrupulous "expert" is permitted successfully to misinform an unsuspecting jury.

A number of good books have been written upon the various phases of scientific criminal investigation. Some are devoted to a specialized treatment of a single subject, such as finger-prints, firearms identification, or toxicology. Others contain a generalized discussion of these various types of evidence. Periodical literature also must be consulted. Hence the attorney who seeks to prepare himself for a case involving scientific evidence will encounter considerable difficulty in locating the desired material, unless he is apprised of the most valuable and reliable sources.

The recent edition of "Forensic Chemistry and Scientific Criminal Investigation" by A. Lucas, the eminent English authority in this field, is an excellent book for consultation by attorneys in search of general information upon the subject. It is also adequate as a guide to more detailed discussions upon any one particular topic. Written in a style which makes it easily understandable to the uninitiated, the book contains a very accurate, though epitomized, discussion of the following subjects, listed by the author as chapter headings: "Blood Stains," "Clothing," "Counterfeit Coins," "Documents," "Dust, Dirt, Glass Fragments, Stains and Marks," "Explosives and Explosions," "Fibres, Woven Fabrics, String and Rope," "Finger Prints, Foot-prints and Tracks of Vehicles," "Fires and Insurance Frauds," "Firearms, Cartridges and Projectiles," "Microscopy, Photography, X-Rays, Ultra-Violet Rays and Infra-Red Rays," "Poisons," "Preservation of the Human Body after Death," "Robbery from Letters and Parcels," and "Tobacco." Each chapter contains an excellent bibliography, and few of the many worthwhile references to the publications of other workers seem to have been omitted. This feature of the book is one that is most attractive to the scientific criminal investigator. The legal profession will find it equally valuable.

The present and third edition of "Forensic Chemistry and Scientific Criminal Investigation" is preceded by three of the author's works bearing practically the same title. The first, published in 1920, is not considered as an edition of the present publication, although the title is quite similar: "Legal Chemistry and Scientific Criminal Investigation." The second publication, known as "Forensic Chemistry" appeared in 1921. It represented a more complete contribution than the previous one. Then followed the second edition in 1931 under the title "Forensic Chemistry and Scientific Criminal Investigation." Both first and second editions are substantially the same, except for minor changes, and this is also true as between the second and the most recent edition. Each edition contains, however, certain revisions which bring the publication up to date; this is particularly true of the bibliography.

The honest and competent expert welcomes the use of such a book as this by the legal profession. He finds it to his advantage for his own examining attorney

to be well informed upon the technical aspects of the case, and he does not fear an opposing attorney's use of the material as "ammunition" against him; as a matter of fact, the better informed the latter is, the more intelligent and less annoying will be his questions on cross-examination. A different reaction may be expected from the dishonest and incompetent "expert." He would prefer that the legal profession remain in complete ignorance of such matters, and finds the use of such books to his decided disadvantage. The lawyer's use of such a guide as the instant volume thus accomplishes a twofold objective, promoting intelligent and fair cross-examination of experts, and uncovering dishonesty or incompetency of experts, where existent.

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THE LAW OF GUARDIAN AND WARD. By Hasseltine Byrd Taylor. Chicago: The University of Chicago Press. 1935. Pp. x, 194.

One would gladly bestow praise upon the execution of the monograph under review as well as upon its purpose and conclusions; but it is necessary to insist, with all due recognition of the right of other "social scientists" to venture into the legal field, that at least minimum standards of performance in presentation and in the handling of legal materials be adhered to. It is fair to say that these are sadly lacking in this little volume, despite the fact that it is Social Service Monograph 35, edited by the Faculty of the School of Social Service Administration of the University of Chicago.

The author deals with guardianship of minors and rightly insists upon appraising all aspects of her subject according to the functional standard of the human interests that are supposed to be served. Her emphasis upon the necessity for effective administration is obvious common sense and contrasts favorably with the uncritical acceptance of existing methods that would characterize an orthodox legal text upon the same subject. It is clear gain, too, to have it pointed out to lawyers and welfare workers alike that, while the state by means of guardianship is protecting the property of orphans who have substantial estates and is attempting through juvenile courts to rescue children who have been victimized by poverty or bad social conditions, it is doing next to nothing to secure the care of orphans who have little or no property. It sharpens one's perspective, moreover, to read the excellent historical summary in Chapter II, which brings together English feudal, equitable, and borough guardianship, testamentary guardianship, and the American legislative development of the eighteenth and early nineteenth centuries, from which have evolved the institutions and methods that prevail in the United States today.

The author's principal recommendations, which are foreshadowed in the introduction and elaborated in the conclusion, are that the functions of either juvenile courts or courts of probate be extended to the appointment of guardians of the person of minors whose need is brought to their attention by any means whatever, or that administrative agencies with similar duties be set up; that the selected tribunal be served by case workers who ferret out cases which are in need of attention and gather information regarding previously-authorized guardianships; that the selection and replacement of guardians, both of the person and of property, be made more

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largely a matter of magisterial discretion; that there be regular review of the periodical accountings and settlements of guardians of property, on the basis of checks and audits by a staff provided for that purpose; and that advance consultation concerning the needs of wards and the means of providing for them be regularly engaged in. In short, the provision of guardians should be as frequent as the need for them; the public supervisory agency should assume an active instead of merely a passive role; and adequate information upon which to base wise decisions should be gathered.

As a basis for such obviously sound recommendations the author should have supplied either a short, informative summary of the type of inadequate supervision of guardianships which now prevail in the United States, or else data to demonstrate the extent of the neglect, inefficiency, dishonesty, and loss in the care of minors and their property by guardians at the present time. The volume under review contains neither. Instead, more than 100 pages of the text are devoted to a tedious summary of the detailed provisions of the applicable statutes of the 48 states, accompanied by sparse case citations in support of occasional elaborations or supplementary rules. Such matters as the precise powers of guardians with respect to the management of the property of minors are minutely gone into. For ordinary legal purposes this material is largely worthless because what is needed is presented much better in other works. Much of the information so laboriously gathered is irrelevant to the author's thesis. Most of the remainder might have been set forth more clearly and precisely by means of tables of statutory provisions, rather than by the running text employed in the book. Some of it would have benefited greatly by being related to analogies in the law of trusts and in the law of decedents' estates.

The book contains legal errors and faults in presentation which go beyond the limits of tolerance. It saps one's confidence in the author's judgment to be told on the first page, naively, that by the change from the master-servant relationship to that of employer and employee "a relationship in status has been replaced by one in contract." On page 3 it is stated in one sentence that parents and guardians occupy positions which are "similar in rights, remedies, and responsibilities" and in the following two sentences that, whereas parents owe a duty of support out of their own means, guardians do not. On pages 25, 36, and 37 it is announced, each time as news, that testamentary guardianship is not authorized in Iowa. Statutory citations, although with occasional lapses into full citations, are by section alone, necessitating reference to a table of compiled statutes on page 179. The latter properly includes the California Probate Code of 1931 which, however, is entered also in a list of session acts and older compilations printed on page 180. The latter includes the New Jersey Compiled Statutes Supplement of 1925-30, omitted from the preceding page. Occasionally a citation is unidentifiable except by comparison with others (p. 61, note 9). On Page 83 the statement that "personalty can be exchanged for realty by the guardian without a court order unless one is specifically required by statute" is not supported by the single case which is miscited in the footnote (74 N. C. 549 instead of 368) and conflicts with a statement on page 87 that a court order is necessary. On pages 104-108 the courts having guardianship jurisdiction in the various states are classified according to names without other indication of the nature of their general jurisdiction. Typographical errors are frequent in the reproduced (and very legible) typewriter type.

On page 136 of the monograph reference is made to the information gathered by the Veterans' Administration Guardianship Division regarding laxity in guardianship administration, which indicates that an unholy mess prevails, as anyone familiar with normal trial-court inertia would naturally suppose. It is the sole bit of evidence adduced in the entire book, and one thirsts for more. Now that the author has

called attention to the requirements for improvement in administration, perhaps study of probate records can follow in order to supply data and argument for the effort to bring about change. At best, legislative inertia will be difficult to overcome in a matter which can hardly be raised to a prominent place in the public consciousness. If the monograph, despite its faults, can contribute to at least a professional appreciation of guardianship as an aspect of welfare administration rather than as a branch of private law, it will serve a useful purpose.

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CASES ON THE LAW OF BANKRUPTCY, INCLUDING THE LAW OF FRAUDULENT CONVEYANCES. By Evans Holbrook and Ralph W. Aigler. Chicago: Callaghan and Company. 3d edition by Thomas Clifford Billig. 1936, pp. xviii, 796.

IN his revision of *Holbrook and Aigler* Professor Billig announces the modest purpose of presenting teaching materials on the recent developments in bankruptcy law "against the background of a standard casebook . . . well known to law teachers." This precludes him from altering the structure of the book but not from effecting a thorough redecoration. The chapter and section headings of the earlier edition have been retained in their original sequence and a few new sections and one new chapter have been added. The six chapter headings in order of appearance are: Jurisdiction, Prerequisites to Adjudication, Administration, Compositions, Discharge, and The Amendments of 1933, 1934, 1935. The high abstraction to which this organization drives the editors is well illustrated in Chapter II (Prerequisites to Adjudication), Section II (Involuntary Proceedings), Subsection D (Acts of Bankruptcy), Arabic numeral 1 (Conveyances with Intent to Hinder, Delay, or Defraud). The materials reprinted here are subdivided by the present editor into three parts: (a) Independent of Bankruptcy, (b) As an Act of Bankruptcy, and (c) Voidable by the Trustee. The first part contains forty pages of none too enlightening text, the second part offers the single case of *American Surety Co. v. Marotta* (287 U. S. 513) and a footnote, and the third part yields for its first three cases *Benedict v. Ratner* (268 U. S. 353), *Dean v. Davis* (242 U. S. 438), and *Moore v. Bay* (284 U. S. 4). Even the ablest teachers are likely to find difficulty in making anything out of these cases in such a setting. (Professor Billig foresees this objection and suggests that some teachers may wish to postpone consideration of part (c) until a later chapter is reached.) Similar criticism could be made of the long subsection on preferences (Arabic numeral 2 of the same chapter). But to criticize the organization of this edition is to criticize that of the earlier editions, and in the case of a book so well known such an undertaking could be hardly other than superfluous.

In his redecoration of the earlier structure Professor Billig has done a workmanlike job. More than half of the opinions that he reprints at length are from cases decided since the publication date of the last edition. These cases are well selected and the opinions are presented without too much editing. They are supplemented by some text material and by annotation that is luxuriant in its reference to law review sources and other cases. The editor pays tribute to his wife for excellent work in the chapter on Discharge.

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To criticize the apportionment of space in a book so brief is perhaps unjust. But the single case of *Cumberland Glass Manufacturing Co. v. De Witt* (237 U. S. 447) and a lengthy note seem hardly adequate for "mutual debts and credits." And it is surprising to find an editor who has long been a champion of extra-judicial administration of insolvent estates disposing of assignments for benefit of creditors with a reference back to a case used in another connection and a single footnote. There are, of course, no materials in any part of the book that can be used to build up for students the background in extra-judicial methods of insolvency administration and in equity receiverships that seems almost indispensable to a thorough understanding of bankruptcy problems. The book is clearly designed for schools giving but brief attention to a separate subject of insolvency administration. In such schools it will undoubtedly achieve the same popularity as did its predecessor.

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CASES AND MATERIALS ON CREDITORS' RIGHTS. By John Hanna. Chicago: The Foundation Press Inc., Second Edition. 1935, pp. ix, 1369.

THIS second edition of Professor Hanna's casebook on CREDITORS' RIGHTS is in structure and content much like the first. Its chief contribution is not in its organization or in the way the cases are put together in particular sections, but in the amount, quality, and timeliness of the materials reprinted. The book is again built about two distinct sets of problems: (a) the remedies of individual creditors, and (b) the administration of debtors' estates by creditors' representatives. Yet to the first of these less than one-sixth of the total space of the book is devoted; and the author's major formal division of his materials merely marks off bankruptcy problems from non-bankruptcy problems. Part I, covering 479 pages, includes chapters on Enforcement of Judgments, Fraudulent Conveyances, General Assignments, Creditors' Agreements, and Receivership. Part II, covering 768 pages, presents six chapters on Bankruptcy: Introduction (historical summary, annotated reprint of the 1898 statute and its amendments, scope of bankruptcy jurisdiction, effect of national act upon state laws); Bankruptcy Administration; Acts of Bankruptcy; Assets of the Estate; Claims and Distribution; Extensions, Compositions and Reorganizations. There is little that is suggestive or "functional" in this seriatim presentation of remedies and methods of administration. For quick reference it may be convenient; but its adequacy for classroom instruction that purports to stress comparative study of remedies and methods is questionable. Some teachers will still prefer the more imaginative and intricate plans of Billig and Carey in their CASES ON ADMINISTRATION OF INSOLVENT ESTATES and of Sturges in his CASES ON ADMINISTRATION OF DEBTORS' ESTATES.

In Professor Hanna's first edition the cases were carefully selected and edited, stimulating annotation was abundant, and citation to collateral material was more than sufficient. This high standard is maintained in the new edition and the materials are extended to include the multitudinous problems created by the recent amendments to the Bankruptcy Act. More than seventy of the cases presented in extenso in the new edition date within the last five years; few, if any, of the recent "landmarks" escape some kind of notice. Considerable portions of the text and annotation have

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been rewritten. An entire new chapter is devoted to extensions, compositions, and reorganizations. From this chapter and from that on receiverships enough can be gleaned to give students a workable introduction to the complexities of corporate reorganization. The book should, in short, receive high praise from the many users of the first edition who advised the editor that his "outline should remain basically unchanged."

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