

of English, Scottish and Irish reports, as well as a chronological list of English reports by courts.

Two other appendices warrant everyone's attention. One is a list of Anglo-American legal periodicals. Based on the one originally published in Hicks, it has been augmented by many hands and brought up to date. Particularly helpful are the publishing data, dates, number of volumes, statements concerning current publication, etc. The other is a convenient and very complete table of abbreviations.

The format of the book tends at times to confuse the reader, and makes the text occasionally repetitious. The authors call their work a reference book. But the text is arranged and printed with a design for use as a teaching tool. The mixture of large and small type, and variations in black-letter type may assist the student in cutting his reading to the irreducible minimum, but they do not help the conscientious user, who needs everything in the book. In some instances a note, separated considerably from the main text, clarifies the statement in the text, which makes the reading of the note imperative. One disconcerting omission from the index (and the table of contents) is any reference to the Bibliographical Reference Manual which is mentioned on page 129: this is made up of the appendices, which are so important a part of the book! Pagination for the various sections of the appendices, inserted on page 381, headed "Bibliographical Manual", would facilitate the location of these sections.

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Cases and Materials on Contracts, by Friedrich Kessler and Malcolm P. Sharp. New York, Prentice-Hall, 1953. pp. xvi, 807. (Prentice-Hall Law School Series) \$8.50.

The two principal characteristics of this casebook are described by the authors as a "pluralistic approach" and the division of the law into "two sectors governed by principles which are inconsistent with if not diametrically opposed to each other." The first of these opposing principles is "the principle of free volition"; the second is that "freedom of volition is limited if not suspended by an ever-expanding system of judicial and legislative control."

There is no doubt that the presentation of the law in these aspects is well done in this volume; and it is equally certain that the emphasis put upon them by the authors is not misplaced. Anyone who has made a thoughtful, comparative study of judicial decisions, from the time when they were first made available by the reporters, is aware that a system of law is an evolutionary growth and that the judges in litigated cases have played the primary role in its development. However, he may not be clearly aware that the "system" can not be reduced into a number of "principles", by the mechanical, or at least "logical", application of which "justice" in an individual case can infallibly be determined.

It is a necessity, in any society of numberless struggling individuals, that generalizations—guiding "principles"—shall be made available as aids in determining disputes and maintaining an endurable order of life. Any-

one drawing such a generalization or "discovering" such a principle is all too likely to believe that it is absolute and eternal, imposed by "nature" or by Divinity for the direction of mankind. In the long struggle against serfdom and for individual "freedom", a part of that desired objective was "freedom of contract"; and the new freedom appeared to men in the form of principles that were absolute. Rights were "inalienable"; law and justice were "natural". For more than a century, we were taught that "contract" could not exist without a "meeting of the minds", and that "an irrevocable offer is a legal impossibility". A promissory obligation could not be "conditional" unless made so by the words of the promisor.

The authors of this casebook emphasize in many ways the extent to which volition in the contract field is being limited by judicial and legislative control, and also the fact that the manner and extent of this control vary with the field of commerce and the type of transaction in which a contract is made. This is shown by their arrangement of cases, by their topical headings, by the reprints of juristic writings, and by their own textual notes and commentaries. It is shown also by their division of the work into two parts, saying "The emphasis in Part I is on volition; in Part II, it is on control." Part II, however, contains only about 100 pages, and deals with what are called "contracts of adhesion", particularly in the fields of automobile merchandising, labor and insurance. The difference between Part I and Part II is merely a difference in degree. There

is not a single contract, in any field, in which the legal relations that are created, are dependent solely upon the will and intention of either one or both of the parties. Legal construction is never mere interpretation. Both judicial action and economic results are largely determined by statutes and precedents, often wholly unknown to the parties, by prevailing business and social practices, and by beliefs as to what makes for human welfare—the mores of the time as known to the court.

No teacher of contract law need be deterred from using this book by the unfamiliar headings or by the unaccustomed arrangement. The cases that are included are in large measure those with which we are familiar in other collections. Their arrangement may not be one that a particular teacher prefers; but this is equally true of other casebooks. In any case the new arrangement is likely to suggest a new and useful idea. The doctrine of consideration is treated more critically than is usual and less in accordance with the tradition of the common law.

Some teachers may feel that this book plunges the beginning student too much and too soon into the general theories. Undoubtedly, the student should be given a chance to develop his own theories, beginning with the facts and problems of actual litigation, and gradually learning (with whatever help and dictation the teacher chooses to give him) the *what* and *how* and *why* of judicial and administrative action. Casebooks are no exception to the rule that the Introduction must always be the author's

last construction and should often be the student's last assignment. In the present volume, a teacher may readily make his first assignment begin at Chapter 5, *The Bargain*. The first four chapters and Introduction, covering 70 pages, deal with *Contract as a Principle of Order, From Status to Contract, The Domain of Contract, Free Choice and Free Competition, and Contract and Tort*. These are very suggestively and intelligently treated; and the treatment will certainly add appreciably to any teacher's education.

The volume has been prepared and printed and proof-read with meticulous care. The cases are accompanied by numerous critical notes, with many questions for the student's consideration, and with ample references to relevant articles and treatises. The addition of this volume to the existing number of excellent casebooks on the law of contracts is thoroughly justified by the quality of its research, the merit of the material collected, and by the originality of the analysis and arrangement.

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BOOK NOTES

Anglo-American Law on the Frontier: Thomas Rodney & His Territorial Cases, by William Baskerville Hamilton. Durham, N. C., Duke University Press, 1953. pp. x, 498. \$12.50.

It is not often that a diary will occupy two-thirds of a book while the biographical and historical sections cover a scant third; yet such is the case here. For Professor Hamilton has correctly assumed that Thomas Rodney's diary reveals more graphically the inexorable westward tread of the common law, and the vigorous growth of the Mississippi Territory, than could possibly be told vicariously.

This is not to say that the author has not himself provided an entertaining, well documented account of the man and of his time. Indeed, one regrets that there could not have been more of both biography and history. But the early life of Thomas Rodney defeats that end, cast though it was in the most momentous period of our history. Although as a business man, an office holder, a Congressman from Delaware, he was a dismal failure, let us be charitable enough to say that he contributed his bit to the building of this country. Zealous in seeking public office, success almost invariably eluded him.

And then, when an old, white-haired man, held in dubious respect by his family and fellow citizens, Rodney was rescued from oblivion by President Jefferson, who appointed him a land commissioner and judge in the Mississippi Territory centering about Natchez. There, in the sunset of his life, Thomas Rodney came into his own as an able, industrious, respected judge.

The task of deciding land claims of settlers with British or Spanish grants was to have taken less than a year, but for three and a half years after establishing himself in his new environment, Rodney gravitated between the land commission and the bench. "Industry and application," says the author, "to say nothing of decisiveness and willingness to take on heavy responsibility—virtues that almost seemed foreign to the Delaware Rodney—characterized Rodney the judge quite as much as they did Rodney the land commissioner."

The interesting problem of supplanting Spanish law with the common law in the Territory is well brought out in the chapters on *Territorial and Federal Courts and The Establishment of Law*. Says the author: "The conflict of laws in the Mississippi Territory aroused no conflict. The assumption