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Smith and Prosser: Cases and Materials on Torts

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REVIEWS

CASES AND MATERIALS ON TORTS. By Young B. Smith and William L. Prosser. Brooklyn: The Foundation Press, 1952. Pp. xix, 1239. \$9.00.

From two such distinguished scholars and law teachers we would expect a top notch casebook on torts. And that is what we have. This pair of deans has been teaching, studying, thinking, and writing in the field for a good many years. From their experience and learning they have put together an admirable teaching tool which no torts teacher could make a mistake in using. This reviewer, for reasons of his own, is not trying to sell Smith and Prosser, but he certainly would not discourage its adoption on the ground that it is an inferior book.

There is nothing particularly unique about this volume—not even its excellence, since there are some other pretty good torts casebooks in the field. But it is an even-handed job. The editors have not let their pet torts carry them into disproportionate allocations of space. For example, anyone knowing Dean Smith might expect a couple of hundred pages on conversion instead of a modest forty-one. And as for Dean Prosser, two or three sections on emotional disturbances would not have been surprising.

So too, the editors have reached a good balance in the selection of cases for study and analysis, text material in the form of running text notes, (sometimes with, sometimes without documentation) and the use of questions for discussion with the citation of cases for answers. Old and new cases have been selected with care. One finds most of the old favorites: *Armory v. Delamirie*; *Weaver v. Ward*; *Brown v. Kendall*; *The Nitro-Glycerine Case*; *Cole v. Turner*; *Vosburg v. Putney*; *I de S v. W de S*; *Tuberville v. Savage*; *Bird v. Jones*; *Herring v. Boyle*; *Thorn v. Deas*; *Whittaker v. Sanford*; *Wintringham v. Lafoy*; *Gordon v. Harper*; *Vaughan v. Menlove*; *Byrne v. Boadle*; *Rylands v. Fletcher*; *Lumley v. Gye* and many others. (One misses an occasional old stand-by such as *Heaven v. Pender* or *Gill v. Middleton*, but not many). These cases are included, it is to be assumed, for more than mere sentiment. They are classic. Not only do they give the beginning law student a sense of history but, in many instances, they cannot be replaced with cases which serve the purpose as well. It is also gratifying to find many of the newer favorites. *Palsgraf*, of course, heads any such list. There are others: *Wagner v. International Ry.*; *Charbonneau v. MacRury*; *Brown v. Shyne*; *Tedla v. Ellman*; *Carr v. Maine Central*; *Cullings v. Goetz*; *Moch Co. v. Rensselaer Water Co.*; and *MacPherson v. Buick Motor Co.*

In arrangement, the book, for the most part, follows current orthodox analysis. After the introductory chapter dealing with the development of liability based on fault, there follow the common intentional torts (assault,

battery, false imprisonment, trespass, etc.), privileges, negligence, strict liability, misrepresentation, defamation, and other odds and ends, and finally, interference with contractual and other advantageous relations. Several minor innovations might be mentioned. In connection with the intentional wrongs, there is a chapter on punitive damages; in the part dealing with negligence, there is a chapter on compensatory damages and one on survival and wrongful death. Cases involving these problems are to be found in every torts casebook, to be sure, but in this one they are given more emphasis and more orderly attention. The same may be said for the chapter on tort and contract where one finds the cases on liability of manufacturers for defective chattels.

This book is plagued by the same evil that all other torts casebooks suffer from—it is too long. The editors boast that they have omitted this and that “in order to keep the book within reasonable limits.” They admit that the book contains 415 principal cases “which is as many as can adequately be discussed in class.” This is a ridiculous statement. If a teacher can have 415 principal cases adequately discussed in class, he can have 4015 discussed. There are 1239 pages in this book. The editors are to be congratulated, however, on avoiding one bad feature of all casebooks—a poor index. Smith and Prosser has no index at all.

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FEDERAL ADMINISTRATIVE LAW: ITS PRACTICE AND APPLICATION. By Urban A. Lavery. St. Paul: West Publishing Co., 1952. Pp. xi, 518. \$12.00.

FROM full-page advertisements in every National Reporter as well as from correspondence with the publisher we understand that this book is intended for “the practitioner” rather than school use. Of course, there can be no book which is useful for the theoretician but not the practitioner. The more “theory” the latter can get, the better for his practice as a lawyer or judge. On the other hand, there are undoubtedly works that are more immediately helpful to bench and bar than to university study and teaching in view of their exhaustive treatment of details destined to aid precedent-hunting advocates.

Be this as it may, I can readily verify that the present volume is of no use to students or teachers. This, however, does not mean that it could be of any value to the practitioner. Indeed, it is not.

The book consists of three parts: I. “The Administrative Procedure Act”; II. “The 100 Major Federal Agencies”; III. “Administrative Rule-Making.” There is, however, no integration of these parts with one another. Thus the first one, in discussing Section 4 of the Administrative Procedure Act, deals with rule-making without utilizing corresponding sections of Part III; and the agencies listed in Part II are discussed without regard to their procedures.

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