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Book Reviews

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Book Reviews

"BUILDING AND USE RESTRICTIONS IN PENNSYLVANIA"

By Spencer Erwin. Clark Boardman Company, Ltd., 1928.

This book was written "with the hope of aiding" the "due development" of the law. Time will tell whether this hope will be realized. In the meantime the author may comfort himself with the thought that he has written a very interesting and useful book.

The subject discussed is a comparatively narrow one, and the discussion is confined almost exclusively to Pennsylvania cases. A reading of the book will convince one that, despite the efforts of the American Law Institute and the pretensions of some of the so-called national law schools, the law is becoming essentially local, and may profitably be so studied.

Restrictions on building and use are great in number and importance, but the literature upon them is scanty and the best somewhat unavailable. The author complains that the courts have not made use of the literature contained in legal periodicals, but have relied principally upon the "horn book" encyclopedias. He particularly deprecates this practice on the part of the Pennsylvania courts and states, "No decision in Pennsylvania has been found in which the question of the nature of equitable servitudes has been considered."

The author shows that the expressions of hostility to building and use restrictions so frequently found in Pennsylvania decisions are without justification and that such hostility is not at present frequently manifested.

The creation of building and use restrictions may be accomplished by the use of base fees, conditions subsequent, covenants running with land, and equitable servitudes. Base fees are seldom or never used for this purpose, and courts view conditions subsequent with a hostile eye and endeavor to construe them as simple covenants. Covenants running with the land, easements and equitable servitudes are distinct legal categories, but because restrictive agreements are enforceable in equity irrespective of their technical character, the courts are apt to use the terms loosely and without precision, and, as a consequence, it is difficult to determine what restrictions are covenants, easements or equitable servitudes, respectively. "All that can be done is to treat equity decisions upon restrictions as establishing principles valid for equitable servitudes and valid also for easements and covenants, except when a distinction based on technical differences among these three categories is expressly taken in the opinion."

Adopting this method of treatment the author discusses the creation of restrictions, the term and incident of the burden, the availability of the benefit, interpretation, enforcement and defences.

Especially commendable features of the book are the carefulness with which the author distinguishes decisions of the courts, dicta of the courts and the opinions of the author; the excellent summaries of the law with which the book abounds; the frequent references to various law reviews; and the suggestions and forms for drafting restrictions.

The book is a scholarly book of great practical value, and sets a standard which writers of Pennsylvania law books should strive mightily to attain.

W. H. Hitchler

"HOW TO PROVE A PRIMA FACIE CASE"

By Deutsch and Balicer. Prentice-Hall, Inc., 1928. 604 Pages.

There are few successful attorneys who have not chuckled over the plight of the young law graduate, willing and well equipped to cross swords with the highest court in the land on advanced legal theory, who yet must turn ignominiously to some lowly clerk to learn how to make out a praecipe and start an action. And with the greater number, the humor is sharpened by personal recollection of a similar experience, or perhaps a number of them, for the pitfalls besetting the path of inexperience, guided only by the staff of theory, are far more numerous than the friendly beacons.

The book under discussion does not, unfortunately, eliminate all of the pitfalls, and convert the neophyte's path into a broad highway or a royal road to success; no book could achieve such a result. It well may, however, smooth over many a spot which is now grieviously rough, and act as a friend and guide to point the way at the crossroads.

The book is exactly what its title indicates, an outline, in the question and answer form, showing the proper questions to ask in order to elicit the facts necessary to establish a prima facie case in a typical example of the subject treated. The authors have used care to select ordinary subjects, of the kind that are most likely to confront the average attorney in the course of the day's work, not attempting to treat of the more unusual actions, which in almost every instance require a special method of development peculiar to their own facts. In part II, no less than eighty-eight subjects are treated, and an outline given for the expeditious development of a prima facie case in each subject. The list includes such subjects as: Account Stated; Automobile—Property damage; Bailment; various Breach of

Contract actions; Death Resulting From Personal Injuries; Divorce; Foreign Judgment; Hold-over Tenant; Loss of Services; Negotiable Instruments; various actions by Passengers and Pedestrians; Probate of a Will; Rent; Replevin; Slander; Specific Performance for the Sale of Real Estate; Use and Occupation; Work, Labor, and Services —Materials Furnished.

In this part of the book, no attempt is made to go further than such direct examination as will serve to bring out the facts essential to make out a cause of action, yet how many cases have been won and lost in this stage of the action, and how gratefully will the young practitioner cling to this rung of the ladder, on which he is safe unless his adversary can dislodge him.

It is safe to assume that a book of this nature will find extended favor with busy practicing attorneys, and with courts as well, for the attorney can turn quickly to his subject and find a framework around which to build his own examination in chief, which may save hours of valuable time in preparation. And anything which assists in bringing out the essential facts of a case in the most direct and concise form will be welcomed as a time-saver by the judiciary.

While the principles and requirements of New York practice are the ones most closely followed by the question outline, yet authorities from other states are frequently cited, and there is so little difference in the elements necessary to establish a prima facie case in any jurisdiction that the book is of universal merit.

In Part III a complete trial is set forth, with all of the questions, answers, motions, rulings, etc., that might come up in an actual case, furnishing many valuable hints on what to expect.

Part IV sets forth in convenient and accessible form the grounds for divorce in the various States and Territories of the United States. The value of a ready reference of this sort is too apparent to need comment.

The list price is $10.00.

J. F. Ingham

"THE LAW of BILLS, NOTES and CHECKS"

By Melville M. Bigelow. Third Edition. By William Minor Lile. Little, Brown and Company, 1928.

The reviewer must at once enter a plea in abatement for misnomer. Mr. Bigelow's book, which was written in 1893 and last re-edited in 1909, has "been rewritten from the first chapter to the last", by the present editor, and has been considerably enlarged by the addition of a number of new chapters. The present book should

therefore be entitled, "The Law of Bills, Notes, and Checks by William Minor Lile".

The "chief purpose" of the editor in preparing the present volume was to provide a book suitable for use by law students. For the accomplishment of this purpose, Dean Lile was admirably fitted by a large and successful career as a teacher. The result of his effort fulfills the expectations of those who, like the reviewer, have had the great good fortune to study the law of negotiable instruments under the guidance of Dean Lile. The editor has, however, endeavored to prepare a book which would be useful to the "busy practitioner", and the practical common sense which contributed so much to his success as a teacher has been useful here. The reviewer knows from actual experience that the practicing lawyer will find much, not only of interest, but of value, in the book.

The book is based upon the Negotiable Instruments Law, now prevailing in every State, but is not, like most recent books, simply an annotation of that law. The Law is printed in an appendix, is constantly cited in the notes, and is discussed section by section in the text; but the law prevailing before the Law is also stated and the changes, if any, wrought by the Law, fully explained.

Conflicting views on various points, which the Law has not entirely eliminated and to some of which the Law has given rise, are fully stated and compared, and the editor's opinion is then stated as the "better doctrine" or the "true rule".

The first chapter of the book discussed non-negotiable securities, an understanding of the law of which is assumed to be essential to an understanding of the law of negotiable instruments. As a consequence of its preliminary character, the chapter is somewhat summary and dogmatic. For example, in discussing "competing assignments of the same fund", the editor states propositions which, in his opinion "accord with the results of the better considered cases as a whole".

In his discussion of "The Several Instruments of the Law Merchant", the editor calls attention to the fact that the term "draft" is not used in the Negotiable Instruments Law, and states that "'it is scarcely a term of the Law Merchant"; but surely a law which purports to be based on the custom of merchants cannot consistently continue to ignore the terms which merchants customarily use.

Valuable consideration is said to consist of "some legal right, by way of interest, profit or benefit or the expectation thereof, accruing to one party, or in some loss or surrender of a legal right, by way of act done or forborne, or detriment suffered or risked by the other". Perhaps, if Prof. Hohfield were living he could tell us what this definition means or does not mean. Defenses are classified as absolute or real defenses and personal defenses or equities.

The appropriateness or inappropriateness of the terms "real defenses" and "equities" is not demonstrated.

The editor states that section 25 of the Negotiable Instruments Law has gone far toward settling the law in favor of the view that a transfer of negotiable paper as security for a pre-existing debt is a transfer for value. Perhaps the Law has gone far. It would have been better, however, if, like the Bill of Lading Act or the Warehouse Receipt Act, it had gone further.

Abundant citations to the various sets of annotated cases and law reviews increase greatly the usefulness of the book. An occasional omission of official state citations is to be deplored.

The need for a thorough revision and restatement of the Negotiable Instruments Law has of late been frequently and ably asserted. Dean Lile's discussion and criticism of the various sections of the Law seem to demonstrate the correctness of this view.

Occasional references to Daniel on Negotiable Instruments call attention to the fact that Dean Lile, from the same State and school and town, has profited by successes as well as the failures of his illustrious predecessor.

To law student, lawyer, and reformed or restated, the book is recommended as being sound in doctrine, and perspicuous and interesting in expression. To law teachers it is recommended as a great help in a time of trouble. W. H. Hitchler