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BOOK REVIEWS

PENNSYLVANIA COMMON PLEAS PRACTICE — STATUTES, RULES, FORMS AND CASES

Fourth Edition, selected and annotated by David Werner Amram, revised and enlarged by Philip Werner Amram. \$7.50. Joseph M. Mitchell, 885 N. 22nd St., Philadelphia, Pa., exclusive sales agent to attorneys.

The first edition of this book contained only 126 pages. This edition contains 447 pages. None of the four editions contains a table of cases cited nor a table of statutes. The present edition, however, does contain a table of contents, an index of forms and a general index sufficiently detailed to enable one to quickly locate the discussion of any particular point. Obviously, a handbook such as this is, cannot be expected to contain an exhaustive citation of cases nor to cover all the points decided in the innumerable lower court decisions. The publishers of Standard Pennsylvania Practice have expanded this subject to fifteen volumes and the cost of the set is prohibitive to the law student and to the young practitioner. It is quite an accomplishment to have compressed into one small volume the text of all the important statutes relating to practice in the common pleas courts, all of the recent appellate court decisions construing these statutes, and many of the lower court decisions covering points not involved in any higher court decision. It is a great convenience to be able to ascertain the language of a statute without having to consult the pamphlet laws or a digest, and a sufficient number of forms is given to meet all ordinary requirements of the busy lawyer.

Patton's Common Pleas Practice contains compact discussions of practice before justices of the peace and proceedings on certiorari or on appeal to the common pleas, a chapter on mortgages and their foreclosure, others on ground rents, mechanics' liens, divorce, mandamus, etc. Amram omits these subjects, as most of them have been covered by recent publications devoted to these specific subjects. The object seems to have been to enable one to commence the usual action of assumpsit or trespass and follow it through to judgment, execution or appeal intelligently and with an up-to-date knowledge of the statutory and judicial changes in the rules of the game. There will always be a large demand for a book that does this and Mr. Amram has done it very well. There are occasional references to articles in the law reviews but apparently no effort has been made to make such references complete. May we not hope that this will be done in the fifth edition?

J. P. McKeegan

CASES ON PUBLIC UTILITIES

Second Edition, 1936. By Smith, Dowling, and Hale. West Publishing Company. Pp. xl, 1107. Price: \$6.00.

Since the publication of the first edition of this case book, in 1926, many important changes in the law of Public Utilities have taken place. Extremely important decisions, especially of the United States Supreme Court, have been handed down, effecting changes in the law or reflecting a new attitude or a changing emphasis particularly with reference to the serious and vexing problems of valuation, motor carrier regulation, the public utility concept, the holding company, and the inter-acting area of Federal and State regulatory powers. Further, it has been a period of prolific legislative output and numerous enactments, state and federal, have broadened the field of regulation and expanded the powers of the various regulatory agencies. This rapid and extensive growth of a decade rendered the original case book practically obsolete as an effective teaching tool and a new edition was imperative.

The new edition not only includes the more important recent cases and emphasizes the statutory and administrative material, but makes such substantial alterations in the arrangement of the material and in omissions from and additions to the old case book, that it would be more accurate to designate it as a new case book than as a mere second edition. A brief description of the make up of the 1936 edition will indicate the changes and the present content and arrangement. Roughly, the book can be divided into three main divisions. The first deals with the general problem of public utility regulation; the second, with the common law liability for injuries to the person or property of the utility patron, together with the statutory modifications thereof; the third, with the functions of the commissions and the courts in the regulatory process. As to the second division there have been no substantial changes in this branch of the law and hence the new edition has retained the original section headings, though there has been some rearrangement of the cases and quite a number have been deleted and five cases decided since 1926 added to the former collection. In those law schools where the topic of liability is treated in another course this division can, of course, be omitted entirely from the Public Utility course. Where the whole subject of liability and regulation is covered in one course it would be necessary to omit considerable of this case material, which to the reviewer's mind is much fuller than is necessary for a proper understanding of the not too difficult problems respecting liability. Since the course in Public Utilities is usually a one semester course and then often confined to two hours a week, it would be a herculean task to do justice to the extremely difficult and extremely important problems surrounding utility regulation, without also attempting to cover fully the some 290 pages of cases on liability. The third division is wholly new to this edition and contains ten cases and some text

material which call attention to the administrative law problems presented by commission regulation; particularly, to the doctrines of primary jurisdiction and negative orders, the requirement and nature of administrative hearings, and court revision of administrative action. This material, occupying 58 pages, would be included in a course on Administrative Law and hence could be omitted where the latter course is included in the curriculum.

These suggested omissions, of course, merely reflect the reviewer's opinion of what properly should be included in a course on Public Utilities. A particular instructor, due to the curriculum of his school, or simply because of his personal views on the matter, might prefer, for example, to make the course primarily one on the law of carriers; in which case he could confine himself to the material collected under the second division and to those chapters of the first division dealing with service. A valuable feature of this case book is this very flexibility. It contains such a full and diversified collection of materials that the individual instructor, by omissions or a rearrangement of chapters, can adapt it readily to his own needs; and there could be no real need for any material not included in this volume for any course that is entitled to be designated as Public Utilities.

It is with respect to the material contained in the first division that really substantial changes have been made. In the first chapter, which concerns the general scope of utility regulation, six pages of text are substituted for the 74 pages of cases of the first edition, to acquaint the student with the common law judicial control over utilities as a background for the modern regulation by statute and commission. The "public interest" concept, read into the Federal Constitution as a limitation upon legislative regulation, is traced from its birth in *Munn v. Illinois* through the cases to its virtual decease in *Nebbia v. New York*; and the second limiting requirement, the need of a public profession, is the subject of treatment in a new section. Also new to this chapter is the inclusion of text material on what is a confiscatory rate, which serves to provoke student interest and thought concerning the problem of valuation and rates, fully covered later in the book; and a few cases on the regulation of utilities by contract. The material on equality of service and discrimination in rates, treated in separate chapters in the earlier volume, are now combined in one chapter—an improved arrangement in that both involve the same underlying principle. The whole problem of valuation and rates has been completely rearranged and the material, text and case, brought within two main chapters; chapter four dealing with the rate base and the rate of return, and chapter five with the fixing of individual rates. A critical discussion of the arrangement and contents of these two chapters would require practically a discussion of the whole problem of rate fixing, which the confines of this review preclude. Suffice it to say that the arrangement is original; and presents a logical and mentally stimulating approach to the fundamental legal and economic premises and theories, articulate or vague, established or controversial,

underlying the constitutional guaranty of a fair return on the fair value of utility property. In addition to these major changes in this division there has been a general improvement in content, through the inclusion of recent cases, references to the latest statutory provisions and through the generous use of analytical, informative, and suggestive footnotes. On the whole, this new book is up-to-date and very carefully done and it should be an efficient medium for instruction in this difficult but highly interesting field of law.

F. Eugene Reader.

CASES ON FUTURE INTERESTS AND ILLEGAL CONDITIONS AND RESTRAINTS

By Albert M. Kales. Second edition by Horace E. Whiteside.
St. Paul, West Publishing Co., 1936. Pp. xvi, 781.

The present casebook is a revised edition of Mr. Kales' abridged edition issued in 1918. To those familiar with the general excellence of Mr. Kales' former editions, both the unabridged and abridged collections, little or nothing can be said of interest or value. To those not familiar with these earlier books, (and such persons with interest in the law of Future Interests must be rare indeed), the same statement can be made with equal truth, for information of value can be secured only by a detailed examination of the book itself. This purported review, therefore, is merely an announcement masquerading under the clothes of a review.

As might be expected, Mr. Whiteside has followed generally the arrangement and classification of the earlier edition. Both the text and footnotes have been enriched by the addition of a large amount of new material illustrating new developments in the law of future interests as well as modern variations from and applications of the basic principles. In the selection of new cases preference has been given to those presenting modern types of settlements and accordingly trusts and settlements of personal property have been emphasized. The notes are quite complete and adequate.

The editor makes frequent reference to the tentative drafts of the Restatement of Property. Fortunately it has not been found necessary to rewrite the law of future interests using the Hohfeldian terminology nor to discard the centuries-hallowed terms such as "rights of entry", "contingent remainders" and "determinable fees."

The present edition is an excellent casebook and one that may be adopted widely as a teaching instrument.

Harold S. Irwin