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Cases and Materials on the Law of Suretyship and Guaranty (Book Review)

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the inclination to attempt the task, grows shorter daily. Most recently, Mr. Fowler Harper's seeming danger of becoming permanently interested in a career more public—and undoubtedly more important—than legal education removes another eligible from the list. Greater, then, the reason for Mr. Green to give us, at least as a companion book to these cases, a volume of other and critical materials.

DAVID S. EDGAR, JR.*

CASES AND MATERIALS ON THE LAW OF SURETYSHIP AND GUARANTY. By David S. Edgar, Jr.¹ Brooklyn: St. John's University School of Law (Temporary Edition), 1940, pp. 283.

More than twenty years ago, Dean Wigmore outlined six distinct processes of legal thinking and approaches to the study of law which deserve separate treatment in legal education.² He classified these mental processes as follows:

1. The analytic process—by which judicial decisions are analyzed to determine the rules of law; by tracing the logical implication of general principles revealed by specific cases.

2. The historic process—through which law is observed as a continuously moving, changing, developing phenomenon; whereby the shifting character of the content of law is exposed.

3. The legislative process—whereby law is viewed as an expression of social will that must be authoritatively formulated; the process necessary to legislative skill.

4. The synthetic process—wherein law is treated as a science and system of social control and which process underlies the skill necessary to fit new law well into the old.

5. The comparative process—whereby our system of jurisprudence may be evaluated in the light of other systems.

6. The operative process—by which "law in action", the effectiveness of law in operation, is determined.

The conventional law school curriculum twenty years ago was not designed to provide adequate training in each of these separate processes of law study but, indeed, laid stress only upon the analytical approach. The modern curriculum evidences a decided improvement. Today, required courses in legislative and administrative law, conflict of laws, history of legal institutions, and jurisprudence are common. The increasing popularity of courses in convey-

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² Wigmore, *Nova Methodus Discendae Docendaeque Jurisprudentiae* (1917) 30 HARV. L. REV. 812, 822-826.

ancing, practical office practice, trial practice, criminal procedure and the establishment of legal aid clinics in many law schools tends to provide necessary training in the operative process.

Teaching materials have also undergone considerable change in the last twenty years. The case method of instruction formerly tended to place disproportionate emphasis upon the analytic process of law study. The modern case and materials book for student use furnishes materials for training in other processes as well. Such a compilation is the workbook entitled "Cases and Materials in the Law of Suretyship and Guaranty", edited by David S. Edgar, Jr.

Designed primarily for use by students enrolled in the course in the law of guaranty and suretyship conducted at St. John's University School of Law, it is properly called a workbook. Being at present in the experimental stage, to facilitate future alteration, it has been issued in mimeographed form. Though Mr. Edgar contemplates a later publication in a permanent, printed edition, after submitting the present work to the classroom test, the compilation will remain a workbook, for it has been organized on the principle that all that may be as effectively written as spoken in the classroom should be expressed in a workbook placed in the hands of the student. Materials of every description are here furnished; leading cases, of course, and excerpts from pertinent statutes, extensive quotations from authorities on the subject taken from treatises and legal periodicals, as well as the editor's own notes, comments, criticisms and searching questions and problems for classroom discussion.

Students assigned portions of the workbook for reading are prepared to carry on intelligent classroom discussions on every phase of the subject. The editor's comments on the cases aid the student in his own analysis of these cases. Quotations from opposing authorities tend to clarify the issues which will be met in the classroom. Furnishing the student in advance with the problems to be discussed in class enables him to give them more considerate thought and tends therefore to increase the value of class discussion. For example, following the case of *Rindge v. Judson*, 24 N. Y. 64 (1861),³ appears this problem:⁴ "Are limitations conditions of the accessorial obligation? Prepare, with illustrations, to discuss how they operate, in order to support your answer to the question, having in mind limitations to time, limitations to amount, and the two in combination."

The usual overemphasis upon the analytical process placed by the conventional casebook is here lacking. Relatively few cases are reported in full, most of the material being textual in character. In fact, to this reviewer, an insufficient number of cases is provided, for, it is believed, too many examples of the legal technique demonstrated in the cases is not possible. But Mr. Edgar is of the opinion that adequate training in the analytic process has already been acquired by his students in other courses. Greater emphasis has been placed upon the historical approach by extensive quotations from articles on the history of the subject. The legislative process receives consideration by appropriate

³ EDGAR, CASES AND MATERIALS ON THE LAW OF SURETYSHIP AND GUARANTY (1940) 104.

⁴ *Id.* at 107.

references to pertinent legislation and by the editor's own references to the part legislation has and may play in solving specific problems. Comparisons of different solutions to specific problems furnished in different jurisdictions are generous. However, the operative process is not treated extensively though perhaps the subject does not lend itself as readily to such treatment as, say, the criminal law. But, above all, the synthetic process has received the most concentrated attention. Constantly, throughout the work, from the introductory chapter entitled "Kaleidoscope" to the conclusion called "The Prospect" the reader is called upon to consider each detail of the law of the subject in relation to the whole and to the function of law in the control of social behavior. An excerpt from the workbook, taken somewhat at random, typifies the spirit in which the materials have been compiled: "Already our materials have begun to give us some ideas of what is meant by suretyship and what is meant by guaranty, although as yet we have not had enough evidence to enable us to come to any conclusions about whether they are different, and if so, how they differ. But we have, by now, a little knowledge of the economic behavior out of which arise obligations called suretyship and guaranty, a little knowledge of the economic interests they serve and of how they serve them; a little knowledge of the genesis, evolution and present stages of the judicial policies governing those interests and that service, together with a bird's eye view of the environmental or conditioning factors in history (general and economic) which called forth and shaped both the underlying behavior and the law."

To one who has had no experience in teaching the law of guaranty and suretyship the juristic treatment of the subject furnished by the workbook would seem too mature for the undergraduate student but the instructors now using the compilation report satisfactory responses by the students to the intellectual challenge offered by these materials and method. Probably contributing to the facility with which students follow Mr. Edgar's lead is the unusually informal conversational style in which his own notes are written; an informality in harmony with the physical characteristics of the workbook. Any reissue of the present work will undoubtedly show an improvement in the mimeographing, the inferior quality of which is now its most serious defect, but even a printed edition should retain the blank pages in which the student may add his own notes and comments. Whatever alterations are deemed advisable in subsequent editions, to retain its most valuable characteristics, it must remain, what it is, a workbook.

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