

The Judicial Process in Tort Cases (Book Review)

David S. Edgar Jr.

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appeal in a bankruptcy case. At pages 910 to 918 is a reprint of the Rules of Civil Procedure governing the proper method of perfecting an appeal from the District Court to the Circuit Court of Appeals.

The concluding chapter covers the cases involving the original jurisdiction of the United States Supreme Court, including cases where the state, ambassadors or ministers, is a party.

In conclusion, your reviewer is of the opinion that the distinguished jurist, Armistead M. Dobie, and Dean Mason Ladd have presented an excellent selection of cases, relevant statutory material, valuable editorial notes and well-chosen law review references so as to make their case book one of the outstanding volumes of the American Casebook series.

HAROLD M. KENNEDY.*

THE JUDICIAL PROCESS IN TORT CASES. By Leon Green. St. Paul: West Publishing Co., 1939, pp. xxvi, 1356.

In 1931 the first edition of this book appeared, and although its editor was not the first scholar to conceive a law book which would do more than teach the cant of the legalists, he was certainly the earliest to bring out, through the medium of the West Publishing Company, a workbook designed to stimulate the law student to read between the lines of a judicial opinion as part of the technique of learning what unexpressed thought and feeling on the part of the judges is the real basis of the decisions to which they come.

The imposing title, the Foreword, the Preface to the First Edition, and the opening chapter of four pages stirred this reviewer to enthusiasm, which was gradually dissipated as he plowed through the remaining 1338 pages of hardly more than cases, which, however, go far toward carrying the design into effect. The book contains little else which does so, although Mr. Green was undoubtedly inhibited by the still prevailing convention of law book form and content rather than by lack of space or want of inclination to perform his task completely. Except for a very few pages of topic introduction, here and there, written by Mr. Green, one discovers in the book an absence of materials other than cases and notes so orthodox as to be altogether inadequate and too legalistic for a workbook in the law's function. An exception to the foregoing is seen when the reader arrives at page 1301 of the text. There commences a thirty-nine page textual outline of relational interests, followed by twenty-one lines of comment upon abuses of governmental power and process. Even here, so one judges by what Mr. Green says, cases rather than his summary essay would have been used if space had permitted.

Except where exists that unhappily rare combination—the student mind which blends extraordinary native ability with disciplined critical technique, and another mind, fit to be the teacher of the former—the book will fulfill its function less well than if there were fewer cases and more of other materials including stimuli to critical evaluation.

* United States Attorney, Eastern District of New York.

Toward the end of the Preface to the First Edition Mr. Green recommends that the student read references made in spots throughout the book to important items in legal letters, chiefly collected essays and articles in legal periodicals, and sees fit to mention some of them in that preface itself, though he does not reproduce any in the book. There one finds the names of Holmes, Llewellyn, Wigmore, Bohlen, Pound, Frank and Cardozo, together, and very properly, with that of Mr. Green himself. In 1342 large pages, it would seem that at least enough of excellent materials other than cases could have been reproduced in the effort to help the student more explicitly to bridge the gap between college and law school, and to understand the relation between law and life, and, in the field of torts itself, between topic and topic, and between the past, the present and the future of law's evolution. Express information about these relations is not necessary, but materials chosen to stimulate thinking about the relations are essential. How else is a student helped to get a picture of society in which there is a technique of settling disputes which is called "the law of torts"?

Of course, in such statements as the one on page 1342, where Mr. Green indicates that he has "set forth most of the problems and difficulties found in this group of cases in a brief analysis entitled 'Malicious Prosecution,' ch. 12, Judge and Jury," the reader is made aware that the book under review is companion to other materials used by Mr. Green in his course. Close examination of the volume, however, fails to disclose mention of enough materials to constitute a completely rounded approach in the opinion of this reviewer. Even if the sum total *be* considered complete and well rounded, the absence of continuity and relation, mentioned above, constitutes a major defect.

One searches in vain for evidence that the book alone will bring to those who use it much influence from the thinking of the scholars mentioned in the Preface to the First Edition.

Upon the whole, this selection of cases leaves the impression that it is the work of a sincere scholar striving toward modernity in his product because he personally has achieved it, but circumscribed by the limitations tradition imposes. This reviewer has the feeling that the tradition which accomplishes the limitation does not operate through a reluctance by Mr. Green to depart from the orthodox method of stimulating the student to acquire an attitude toward law. Rather, Mr. Green seems to have feared that a publisher would disapprove as great a departure from conventional form and orthodoxy in note content as Mr. Green himself would like to make.

Though taken in the right direction, the compilation is too short a step to please those whose teaching is dedicated to the proposition that the law schools must be graduate schools in which social scientists are trained for advocacy, through the medium of a picturization of society, past, present and to come, by a continuance of their collegiate examination of the evolution of institutions with the inclusion of the one—law and its administration—which collegiate education leaves to us.

This reviewer would like to have a book of Mr. Green's which would include more of Mr. Green, much of other non-judicial writers, something of the historians and lay sociologists, together with sufficient but fewer cases as excellently chosen as those Mr. Green now has, all in one volume. We need it. The list of those with the gift and training to do it, the credentials to prove them, and

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-

* Professor of Law, St. John's University School of Law.

¹ Professor of Law, St. John's University School of Law.

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