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# Cases on Damages (Book Review)

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them possess the desirable attribute of brevity; they are richly suggestive rather than exhaustive.

To this reviewer, the author of this volume seems to have been ever aware of student and classroom requirements. It possesses those qualities which are calculated to make an effective vehicle of instruction. It is a notable contribution in this field of the law.

GEORGE F. KEENAN.*

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CASES ON DAMAGES. By Judson A. Crane. St. Paul: West Publishing Co., 1940, pp. xx, 521.

Once more this reviewer is asked to comment on the good book of an excellent workman with whose views of law, the approach and attitude toward it, the technique of it, and the methods of teaching it, he is in general accord. Disagreements about details, however, can involve matters of considerable importance, for it is upon his choice of the details that the efficiency of every teacher depends. However, where there is agreement about essentials, even serious disagreement about details can mean only that the critic of the workbook of a fellow teacher would feel himself circumscribed in his use of the book by the editor's choices of content, content-form and layout.

Mr. Crane's workbook in Damages would better serve your reviewer and those—very few, perhaps—who think as he does if there were more stimulation by way of materials permitting an approach through lessons of history and particularly the history of the law of damages under the writs, which, for practical purposes, we take as an historical starting point. *Trustees of Dartmouth College* v. *International Paper Co.*,[1] Mr. Crane's first case, would, in a book to please this reviewer more, be followed by others which would aid in an understanding of modern principles of damages on the basis of historical descent from the days and the purposes of the writs. At various places throughout the book the chosen cases make this approach possible,[2] but your reviewer likes more of the stimuli to historical thinking to appear earlier in a volume in order that it may operate upon the student mind throughout. What is done with history's influence, of course, depends upon the resourcefulness of the teacher and hence, so far as the historical process is concerned, this reviewer refrains from criticism on the basis of the editor's failure to include historical materials other than cases.

As for the other processes, the analytic is well served by the sufficiency of the number of cases;[3] the others are left to the teacher who uses the book.

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[1] 132 F. 92 (N. H. 1904).

[2] Ashby v. White, 2 Ld. Raym. 938, 92 Eng. Rep. 126 (Q. B. 1703), the first case in Mr. Crane's Chapter 2, and Forsyth v. Wells, 41 Pa. 291, 80 Am. Dec. 617 (1862), to mention but two.

[3] There are 130 cases in the book. The editor has not seen fit to number them, so that the figure must be arrived at by counting in the Table of Cases the items which are stated as being case opinions.

The synthetic, of course, may well so be left, although in connection with historical materials it is possible by appropriate devices in a book to stimulate the student user to thinking in terms of the process of fitting new law into old. It is wide practice, as everyone knows, to avoid the legislative process in national books whose hoped-for market includes forty-eight states with widely differing enacted law, but your reviewer has always felt that this is a poor excuse. The process is too important not to have note taken of it at many places in a workbook's pages. The law of damages, it is true, does not present outstanding opportunities therefor, but it does afford enough. The comparative process (not the most important, of course) may be treated with considerable profit in a course on the law of damages, particularly in connection with materials which enable an approach through history. The comparisons, in such cases, will thus be comparisons between the legal and other social institutions in various periods of Anglo-American society rather than between the law and other institutions of Anglo-American society and other societies, unless the editor wants to go the greater distance. The editor omitted materials to stimulate the thinking which is the comparative process, or at least neglected to indicate that available materials were to be used in that process. This, of course, is not too great a loss. However, the editor's failure to use his opportunity to begin student stimulation into the operative process in the book itself is its glaring defect. As he read, this reviewer was not directly asked one question nor did he have any problem expressly posed for him, and he did not receive even indirect stimulation to his curiosity on a scale wide enough to enable him to call the book a piece of scientific editing. Problems, problems, problems are the order of the modern teaching day if a student is to learn that law is *not* written and *is* a technique.

Two statements of the editor, one in the Preface to his second and current edition, deserve consideration. In the Preface to the earlier edition the editor says that he has endeavored to show the law of damages as it functions in the present by his selection of cases and footnote references. This he does and does well. Yet an understanding of the future functioning of the law of damages cannot be had except by comparison of past and present functioning, and its functioning in the past has been neglected by the editor, as this reviewer has pointed out above.

In the later Preface the editor directs attention to the fact that he has made frequent reference to the pertinent sections of the Restatements rather than attempted "to list authorities pro and con on controverted questions." One cannot learn the legal technique from reading Restatements. One can do so by diligent and practiced thought upon the literature of controversial matters. Hence this reviewer feels that inclusion of Restatement pronouncements is useless, and contends, as he has long contended, that *compelling* examination of the literature on both sides of controversies is a necessary part of instruction in the legal technique. Listing, which is omitted, would not be enough if included. Nor does the editor's justification of his reproduction of Restatement sections ("that they furnish a key to state annotations") satisfy a critic who is aware of the hopeless near-dearth of state annotations to the Restatements and of the utterly insufficient documentation of Restatements in commentaries and explanatory notes.

As is unfortunately true of what is still a majority of workbooks for law students, this book leaves the impression that the traditional requirements of law publishers have detracted from the influence of an editor whose free hand would have resulted in a more significant contribution.

DAVID S. EDGAR, JR.*

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STUDIES IN FEDERAL TAXATION. Third Edition. By Randolph E. Paul. Cambridge: Harvard University Press, 1940, pp. 539.

It is always refreshing to come upon a technical work which is not out of date when it reaches the reading public. This tribute can be paid to the book which is now the subject of review. The criticism hurled at so many books, that they are merely a "rehash" of what has been written by others, can never be addressed to this stimulating volume.

There are five studies undertaken and this matter is supported by Lists of Cases and Authors, together with an excellent Index. It is well known that a carefully prepared Index enhances the usefulness of any book; the present effort in this respect is commendable.

The five studies pursued concern themselves with the following subjects:

1. Reorganizations;
2. Revocable Trusts and the Income Tax;
3. Federal Income Tax Problems of Mortgagors and Mortgagees;
4. Life Insurance and the Income Tax;
5. The Use and Abuse of Tax Regulations in Statutory Construction.

One glance at the subjects treated recalls, to student and practitioner alike, the fact that this collection embraces the most difficult problems encountered in tax practice. Only those with great courage, unusual ability and unlimited patience could engage the weighty problems which are everywhere resident in the five studies.. The right man accepted the challenge.

Throughout the discussions the reader is impressed with the efforts of the author to point out the many weaknesses in our existing tax laws which make for tax avoidance. The author deplores the fact that such a condition should exist, and observes that the problem "for the legislator is one of drawing an intelligently discriminating line which will result in maximum relief with a minimum of tax avoidance. It is a hard line to draw, but despair and defeatism are hardly in order."

Every reader of this volume, though unacquainted with the previous works of the author, will very early realize that here is a profound work—from the hand of a master. When it is appreciated that approximately two thousand

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