

Trade Associations in Law and Business (Book Review)

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Interpleader. The English, New York, and Connecticut statutes are set forth with material for study. The recent Federal Interpleader Act of 1936 is set forth in the index. Statutory remedies modifying the technical requirements of Bills *Quia Timet* and the type declaratory judgment statutes with material for study are also included. The use of statutory material in teaching equity is so desirable and necessary⁴ that inclusion of this material is definitely a real contribution.

As this book is a part of a whole it will probably be more serviceable to those teachers and students using the other parts mentioned above. But I believe this material could well be used to supplement other courses which deal largely with Specific Performance and Specific Relief against Torts. This is a problem the adjustment of which depends on the philosophy of the curriculum.

As a book it is the most exhaustive and scholarly treatment of the topics covered that I know of. However, we would all appreciate the "short chapter" on reformation and rescission which the author promises to add to this book. In spite of the able reasoning⁵ by which he justifies its omission, one gets the impression that something has been lopped off and I feel that most teachers would prefer that its permanent home be in this book rather than in Cases on Restitution.

JOHN P. MALONEY.*

TRADE ASSOCIATIONS IN LAW AND BUSINESS. By Benjamin S. Kirsh in collaboration with Harold Roland Shapiro. Central Book Company, 1938, pp. 399.

Barely a few decades have passed since the very term "trade association" carried with it the concept of a wicked group of scheming industrialists, formed into a pool for the illegal and anti-social purpose of fixing prices, limiting production or apportioning output, sales, territory or profits. The existence of these organizations was a perpetual source of agitation for the trust-busting fraternity who saw in every such organization a conspiracy to flout the law governing the free play of competitive forces in our industrial economy. That the modern trade association has largely moved away from these wholly illegitimate objects and has entered into a useful, constructive and indeed indispensable field of cooperative effort, most of us have been all too slow to recognize. When we consider how vital to our economic life, especially during the present period of economic and social discontent, is a right solution of the problems of competition and monopoly, and especially when we consider the utter dearth of exhaustive and constructive analysis in this field free from political or social bias,—we must welcome a work on the subject inspired solely by the impartial spirit of research and an honest determination to present and analyze the best available thought on the subject.

⁴ See instructive article by Simpson, *The Use of Statutory Materials in the Teaching of Equity* (1932) 21 GEO. L. J. 457.

⁵ Pp. vi, vii.

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Such is the work which has been presented by Mr. Kirsh, formerly Special Assistant to the United States Attorney in New York in the prosecution of Sherman anti-trust cases, in collaboration with Professor Harold R. Shapiro. Mr. Kirsh has spent many years of research and active practice in this field and his latest effort on the subject is a particularly valuable contribution at this time. It represents a splendid coordination and commentary on the leading decisions of the federal and state courts, articles in the law reviews, economic and business journals, and numerous addresses and reports dealing with the subject.

Only too few of us are familiar with the purpose, functions and extent of the modern trade association. It was certainly a surprise to the writer to learn that there are now more than 8,000 trade associations in the United States. These trade associations, as defined by the United States Department of Commerce, are voluntary organizations of business competitors in different branches of the industrial, trade or service fields, the aim of each being to promote its own particular branch of trade or industry through cooperative activities in such matters of common concern as accounting practices, arbitration, business standards, commercial research, public relations, statistics and trade promotion.

How far may these organizations travel in these fields of cooperative effort without treading on one of the numerous live wires of anti-trust regulation with which this field is strewn,—many of them almost completely hidden from the view of even the sharpest-eyed business counsellor? In dealing with these trade associations, what should be the policy of the law? Should it favor cooperation between, or fusion of competing business enterprises, in order to obtain the advantages of large scale industry; or should our policy be one of alert watchfulness to discourage business amalgamations whose very size, in and of itself, as Mr. Justice Brandeis has so frequently pointed out, is a menace to our body politic, a thwarting of American ideals, a creeping paralysis on equality of opportunity, a converting of independent tradesmen into clerks and a sapping of "the resources, the vigor and the hope of the smaller cities and towns"?¹

These, and many other similar questions, the right answer to which is so frightfully important to the ultimate success of our institutions, our ideals and our entire economic existence, are discussed by the authors with an unusual wealth of reference to source material on the subject. The discussion is not, however, primarily directed to these questions as such, but is evoked rather by the particularized treatment of the subject of trade associations, and the various functions which they seek to discharge. The work therefore takes up in detailed chapter treatment such trade association activities as statistical reporting services, uniform cost accounting methods, trade relations, standardization, credit bureau functions, boycotts and defensive combinations, patent infringement and cross license agreements, collective purchasing, foreign trade and similar functions which represent the constructive and legitimate functions of the modern trade association.

Yet back of all this detailed treatment lie the major questions, the answers

¹ Mr. Justice Brandeis dissenting in *Liggett v. Lee*, 288 U. S. 517, 53 Sup. Ct. 481 (1933).

to which will have to depend on the strength or the weakness of the trade association movement. Certainly, as Mr. Justice Holmes pointed out, the anti-trust statutes "will not be construed to mean the universal disintegration of society into single men, each at war with all the rest".² Rather will the solution be found in a sympathetic approach which refuses to view competition and co-operation as mutually exclusive. That such is the approach of the authors of the present work is unmistakable. "The modern trade association", they point out, "is the outstanding example of the organization of business upon a co-operative plan. The movement is an attempt to 'co-ordinate competitive forces without relinquishing the fruits that spring from individual initiative.'³ It makes use of and co-ordinates the soundest thought and proved experience of an industry."

Perhaps because the law governing trade associations involves a no man's land lying somewhere in between the normal field of the legal practitioner and the field of economic and social research, the average lawyer is deplorably un-informed on this extremely important subject. This is a fact for the practitioner in search of a specialty to ponder carefully; for the opportunities of intelligent, useful and profitable practice in this field are practically limitless. To such, a careful study of the present work by Messrs. Kirsh and Shapiro should prove invaluable.

The present work is particularly timely in view of the forthcoming inquiry by the temporary National Economic Committee consisting of Senate, House and Executive Department representatives into the entire question of the concentration of economic control and monopolistic practices in industry. This Committee, created by Congress, is charged with the duty of investigating the matters referred to in President Roosevelt's message to Congress of April 29, 1938. The scope of the inquiry is to include, among other things, monopoly and the concentration of economic power and the control over production and distribution of goods and services. The Committee will seek to determine the causes of such concentration and control and their effect upon competition; the effect of the existing price system on industry; the effect of existing statutes and other government policies upon competition, price levels and related subjects. The Committee is to make recommendations to Congress with respect to legislation improving anti-trust policy and procedure and the establishment of national standards for corporations engaged in interstate commerce. The work by Messrs. Kirsh and Shapiro is sufficiently comprehensive to serve as an excellent guide to the members of the Committee in so far as their investigation will extend into the field of trade associations, and perhaps even a bit further.

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² Mr. Justice Holmes dissenting in *Northern Securities Co. v. United States*, 193 U. S. 197, 24 Sup. Ct. 436 (1904).

³ Sharfman, *The Trade Association Movement* (1926) 16 AM. ECON. REV. 1, Supp. 203.

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