

Cases on Criminal Law (3rd Ed.) (Book Review)

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worth attaining and a symmetry to be shunned. One of the reasons why our law needs to be restated is that judges strive at times after the certainty that is sham instead of the certainty that is genuine. They strive after a certainty that will keep the law consistent within their own parish, their little territorial jurisdictions, instead of the certainty that will keep it consistent with verities and principles as broad as the common law itself, and as deep and fundamental as the postulates of justice. * * * The certainty that is arrived at by adherence to precedent is attained, but there is a sacrifice of another certainty that is larger and more vital."¹⁸ It seems that the doctrine of *stare decisis* is still too strong to admit of the courts' overruling a long line of decisions to the contrary in their jurisdictions in order to attain the larger certainty of the law by following the Restatement. When the Restatement does not conflict with a long line of decisions in that state, it will be followed; otherwise not; that seems to be the present attitude of the courts as to the Restatement. In order to attain the larger certainty in the law for which Judge Cardozo so eloquently pleads it may be necessary to resort to legislative enactment of the Restatement as was found necessary to give sanction to other uniform acts which have been drafted in the past.

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CASES ON CRIMINAL LAW. Third edition. By William E. MiKell. St. Paul: West Publishing Company, 1933, pp. 775.

The focalization of interest on arrangement of topics, which has been manifested in recent publications of case and material books, is extremely gratifying. The result has been an ever-increasing experimentation in the theory of legal pedagogy, with a view to determining a methodology which will best serve the aim and purpose of legal education. Heretofore, case books have been usually compiled with a view to developing the law teacher's approach to his subject, such approach being either historical or logical or a combination of both history and logic. The capacity of the student to absorb the material so arranged, was strangely overlooked. The old way, however, is not necessarily the inadequate. It remains to be proven whether some or all of the varied attempts to revamp the system of legal education, from a pedagogic viewpoint, will result in a substantial improvement in the quality and quantity of student achievement. If and when such improvement becomes an accomplished fact, the pedagogy of legal education can be appropriately restated. In the meantime, it would seem advisable that each proposed experiment be discussed and examined before trial, with the primary purposes of understanding its aim and of appraising its adaptability to the end sought to be accomplished.

¹⁸ *Supra* note 9, at 17.

In his preface to the third edition of his case book, the author has expressed his dissatisfaction with the generally accepted arrangement of topics in case books on criminal law. Such arrangement is substantially as follows: the general nature of crime; the criminal act; the criminal intent, which includes a consideration of the defenses of infancy, insanity, intoxication, mistake of fact and of law, lack of specific intent, etc.; the parties to a crime; and finally a treatment of the more important offenses against person and property. The fault in this grouping, as the author sees it, lies in the fact that the defenses to crime are studied before the elements of the various offenses are mastered. ("The student will get a more orderly and clearer knowledge of the subject by mastering the elements of various crimes before studying matters of defense."¹) So, with a view to correcting this defect, the topics have been rearranged in the following order: the nature and elements of crimes, the particular offenses against persons and property, the defenses to a criminal prosecution, and the combinations of persons in crime.

An analysis of this order of topics would indicate that the author would have the students creep before they walk in that he would have them know what is forbidden by the criminal law, before he would have them consider what extraneous facts will excuse the apparently forbidden act when done. Logically, it would seem that the excused forbidden act is no forbidden act at all; and therein lies the justification for the present method of studying defenses in connection with the criminal act and criminal intent. However, there is no gainsaying the fact that the teaching of defenses under the old arrangement is fraught with difficulties. The elements of crimes, not yet understood, must furnish the background for a discussion of defenses. Even the various degrees of a crime become important in comprehending some defenses. Apparently, there is an incentive for simplification.

Although the author's arrangement may offend against logic and unity, it seems, on the other hand, to make for clarity and to prevent duplication. Not to submit this experiment to a complete test, would be to impede progress in legal education.

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CASES ON CIVIL PROCEDURE. By James P. McBaine. St. Paul: West Publishing Company, 1933, pp. xx, 1008. \$6.00.

In 1927, Professor McBaine prepared a volume of "Cases on Trial Practice in Civil Actions."¹ Part 3 of the present volume consumes 694 pages and is devoted to a consideration of the topics on trial practice included in the earlier volume. Parts 1 and 2 consume three hundred pages and are devoted

¹ P. vii.

¹ For review of this volume, see Ilsen, Book Review (1927) 2 ST. JOHN'S L. REV. 103.