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Trade Associations: The Legal Aspects (Book Review)

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BOOK REVIEWS

TRADE ASSOCIATIONS: THE LEGAL ASPECTS. By Benjamin S. Kirsh. New York: Central Book Company, 1928, pp. 271.

This book by Mr. Kirsh brings under a single cover the author's articles on trade association subjects, which have appeared in the leading law review and accountancy journals during the past two years. By the inclusion of important additional chapters, the book has been made a most exhaustive and analytical discussion of the legal aspects of trade association activities.

The author, until recently counsel for the Government in many of the important Sherman Anti-Trust Act prosecutions and a recognized scholar in this field of the law, brings to his discussion an authoritative viewpoint based upon first-hand observations of the workings of the anti-trust laws in their relation to the realities of business enterprise.

In this volume there is presented an analytical critique of the business and of the economic aspects of the post-war trade association or institute movement. Thus the volume is more than a work on the legal aspects of the anti-trust laws; it is a distinct contribution to the solution of the trust problem as well.

In the first paragraph of the volume, the author sums up the thesis which he consistently follows throughout the book. He says:

"A proper approach to a survey of the legal aspects of the post-war trade association or institute movement, demands an analysis of the constructive and positive—as well as the prohibited and negative—features of the development. For the law as it stands to-day, is directing inquiries into what may legitimately be done by collective efforts as well as to what may transgress the letter of the anti-trust statutes. This has already led the courts to take greater cognizance of the newer economic and business necessities, and to recognize that the experience and insight of those engaged in the practical affairs of industry and trade must be considered in passing upon industrial and commercial problems presented for adjudication."

To those who have followed the trade association movement, this shift of emphasis is recognized as the all-important factor. In the examination of such trade association activities as statistics, cost accounting, credit bureaus, standardization, foreign trade, patent interchange, collective purchasing and trade relations, the author has adopted the functional or institutional approach advocated by the adherents to sociological jurisprudence. In accordance with his own prophecy regarding the extensive use of business and economic indices in the law of the future, the author, in his footnotes, gives evidence that in the development of this volume he has made abundant and discriminating use of a mass of practical data, carefully collected not only from the legal digests and indices, but from business newspapers and magazines, political science and

economic journals, and numerous government documents, particularly of those governmental agencies whose function it is to aid business.

"In the law of the future, reliance will be placed as much on the indices of business writings as on the Index to Legal Periodicals and Shepard's Citations," declares the author. Regarding the truth of which there can be no doubt.

There is recognition here of the judicial process as a balancing of conflicting social interests and an evaluation of law in its business and social setting. Enlightened social control, pointing to coöperative efforts within industry, requires a re-evaluation of the social aspects of collective business endeavor. The Supreme Court of the United States in the *Maple Flooring* case and the *Cement* case pointed the way. The author indicates that present-day industrial and commercial coöperation concerns activities which effect savings in time, labor, money, and materials. These savings, in turn, under the stress of inter-industrial competition, are passed on to the consumer in such forms as lower prices and better quality and service. Each trade association activity, therefore, must be considered with a view to determining how far the restriction of trade is merely incidental to the main purpose and effect of making competition among the members of a trade more intelligent and more ethical, thereby decreasing the risks of business and developing wholesome trade which benefits all the factors.

The author leaves us with the impression that he possesses, to a marked degree, the twin requirements of sound scholarship and economic statesmanship. In such matters as codes of ethics and arbitration, he sees a great opportunity for "social engineering," through their utilization by business as a means of self-regulation, rather than governmental dictation from without. Thereby he recognizes not only the limits of effective legal action but offers a constructive solution which, as he shows, has already achieved noteworthy results in practice; especially through the close correlation of legal, economic, and business thought of the day.

It is quite probable that the Federal courts will recognize that the author has broken a path which offers a solution of the vexing "trust problem." Certain it is that the author's plan and suggestions cannot be disregarded in the formulation of the judicial attitude towards trusts and combinations.

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CASEBOOK ON ADMINISTRATIVE LAW. By Ernest Freund. American Casebook Series. St. Paul: West Publishing Co., 1928, pp. 745.

In most law schools, administrative law is as yet practically an untaught subject. That boards and commissions are real parts of our judicial system has not yet been universally felt by law teachers. But just as in past years even the statute law was looked upon by most of our historically-trained jurists as a foreign body in the law, so now with our new appreciation of the reality and importance of the statute law, we are also coming to realize the