

Casebook on Administrative Law (Book Review)

Maurice Finkelstein

Follow this and additional works at: <https://scholarship.law.stjohns.edu/lawreview>

Recommended Citation

Finkelstein, Maurice (1928) "Casebook on Administrative Law (Book Review)," *St. John's Law Review*: Vol. 3 : No. 1 , Article 26.
Available at: <https://scholarship.law.stjohns.edu/lawreview/vol3/iss1/26>

This Book Review is brought to you for free and open access by the Journals at St. John's Law Scholarship Repository. It has been accepted for inclusion in St. John's Law Review by an authorized editor of St. John's Law Scholarship Repository. For more information, please contact lasalar@stjohns.edu.

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.

NATHAN PROBST, JR.

St. John's College School of Law.

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

significance of that vast body of law which governs most of our every-day affairs and which is administered in quasi-judicial fashion by administrative tribunals. Professor Freund's second edition is thoroughly adequate to present to the student an opportunity to study the administrative board throughout all its functions. The casebook is detailed in its treatment of the relation between the board or commission and the people. It has a well-selected and instructive number of cases which treat with the character of the administrative order and the scope of administrative discretion as well as with the rights, procedural remedies, and safeguards thrown around administrative action by the law. Questions of procedure are particularly important to the lawyer who practices before the commission. Thus, the chapters dealing with mandamus, certiorari, and other extraordinarily legal remedies provide an excellent background for the study of these questions. Professor Freund has eliminated the purely constitutional problems but it is difficult to see how any real understanding of administrative functions can be had without a further analysis of the place in our constitutional system of these tribunals. Unfortunately, courses in constitutional law do not usually include these problems. The problem of the separation of powers, while of decreasing importance must yet be faced by administrative law teachers. So, too, the questions raised by the provisions for due process contained in the federal and state constitutions are frequently the bones of contention surrounding the administrative order. While these problems may be more suited for work in a seminar than in a formal law school course, the scope of the volume would tend to eliminate the possibility of such work in a course where this casebook is employed. In addition, aside from the section on notice and hearing and summary action, it would seem there is very little in the casebook which deals in the procedure before an administrative tribunal, a problem which is of importance to the practitioner even if it does not have the theoretical interest which other matters treated in this volume do have.

There ought to be some way of connecting administrative law with the general body of the common law and of indicating that many of our administrative bodies have felt the pressure of common law rules of evidence, even if they have not universally adhered to them. Little of this type of material can be presented in a casebook but surely something can be done to show more clearly than is here apparent the fact that administrative law is still new and in the process of becoming. Perhaps some typical instances of administrative action would bring this out better than anything else.

On the whole, however, any law teacher who sets out to teach administrative law will find in this casebook adequate material for a background for the course.

M. F.

St. John's College School of Law.

CASES ON THE LAW OF CARRIERS. By Frederick Green. Second Edition. St. Paul: West Publishing Company, 1927, pp. 829.

This is a book of 829 pages of cases on the law of carriers of goods and passengers on land and water. Decisions from approximately thirty-four States, besides Federal and English cases are reported in this volume. A Table