

# Handbook of the Law of Equity Pleading and Practice (Book Review)

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large a degree inevitably, the history of Roman legal procedure. Knowledge of the steps to be taken when a wrong is done, the *modus operandi* of the legal order, is a wise precursor to the systematic study of any legal system and almost a necessary one to the study of Roman law. Thereafter, the author follows in broad outline, Justinian. The law of persons is dealt with summarily. The law of obligations consumes nearly half the book and represents a thorough-going analysis of Roman concepts of contract and tort liability. Where uncertainty exists, where material for a conclusion is sparse or inadequate, the author states so frankly.

The treatment of corporations and trusts, together with partnership in a single chapter, will surprise some minds of classical mould. But, doubtless, it is to be attributed to modern notions of a functional classification of the law. Again, Dr. Radin's tendency to translate Roman concepts into English ones, sometimes results in a translation of the Latin words rather than the Roman idea. Thus, "abstract negligence," "concrete negligence," "special diligence," "simple diligence" are merely so many words. They fail palpably to convey the associations attached to "*culpa levis in abstracto*," "*culpa levis in concreto*," "*exacta diligentia*," "*diligentia quanti in suis rebus, adhiberi solet*" (pp. 191-194).

But the most serious quarrel that will occur to the student of comparative law, is the author's failure to treat together and with adequacy, the fundamental notions that run through nearly all the subdivisions of a particular legal system and through all legal systems, namely, the effect of fraud, mistake, duress, conditions or impossibility upon legal transactions.

The law of property is next analyzed. Roman ideas of acquisition and transfer of property, servitudes, testamentary and intestate succession, are stated clearly,—the emphasis falling largely on dogmatic exposition and only incidentally upon the historic development. The discussion of possession is outstanding in its simplicity and clarity. But that other intriguing series of problems that are called to one's mind by mention of the words "*accessio*," "*specificatio*," "*confusio*" are hardly handled with justice to their importance.

Dr. Radin's modest preface limits the scope of the volume to "a brief and simple introduction to a large and difficult subject." In the main, his mission is well met. And if it is difficult to refrain from echoing the regret that we mentioned at the beginning, we may recall those old wood-cuts of the latter half of the 15th century that illustrated how hornbooks were sometimes used to teach children the elements of knowledge. Made of tough horn or leather and shaped like an old-fashioned butter paddle, the larger hornbooks formed a convenient instrument with which to discipline the erring child.

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HANDBOOK OF THE LAW OF EQUITY PLEADING AND PRACTICE. By Walter C. Clephane, St. Paul: Hornbook Series. West Publishing Co., 1926, pp. xiv, 605.

Professor Clephane's work will find its greatest usefulness in making available to students a comprehensive outline of equity pleading and practice. The need for such a book is increased by the fact that in

many law schools these subjects are presented in courses which students may elect only at the sacrifice of other subjects perhaps more important. Furthermore, the peculiarities of the terminology of equity pleading make a book like this very helpful to the student in his study of cases on equitable relief.

As a reference book for legal research, this work, like many of the Hornbook Series, is not of great use except as a starting point. Professor Clephane has added to its value in this respect by references on practically every page to the classic treatises of Story, Langdell, and Daniell and to over a dozen other books on equity pleading. Especially in the later chapters, the author has cited many very recent cases, and has included a few references to case notes in A. L. R. and to Key Numbers of the American Digest System. More frequent references of this kind in treatises would greatly facilitate the work of legal research.

In the presentation of some of the branches of equity pleading, the Hornbook style of brief and generalized treatment is unfortunate. Particularly is this true of the discussion of joinder, intervention, and substitution of parties. No presentation of the subject of joinder of parties plaintiff occupying less than two pages could be of great help in solving the frequently difficult problems in that field. Again, the content of bills in equity depends so completely upon principles of substantive law that Professor Clephane's very sketchy treatment of the various types of bills as problems of pleading might very possibly prove misleading.

The most satisfactory chapters are those discussing disclaimers, demurrers, pleas, and answers, although most of these topics are becoming of increasingly less importance in practice. These subjects are presented in considerable detail and with the citation of many recent cases. There is but a brief chapter on the subject of the enforcement of decrees, and it is to be regretted that no reference is made to the excellent work of Huston on this subject.

The appendix contains 100 pages of forms, including eighteen types of bills of complaint, a full set of interpleader papers, and various forms for answer, disclaimer, plea, demurrer, subpoenas, writs, orders decrees, etc. From the caption at the head of many of the forms it appears that they are in accord with the practice of the District of Columbia. The appendix also includes the Federal Equity Rules, and frequent references to these rules and to various Federal statutes are made throughout the text.

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CASES ON TRIAL PRACTICE IN CIVIL ACTIONS. By James Patterson  
McBaine, St. Paul, West Publishing Co., 1927, pp. 1045.

This is another volume added to the American Case Book Series and is indeed a praiseworthy and successful attempt at compiling decisions dealing with the major steps that are most frequently taken in the trial of a civil action. The editor is the Dean of the Law School at the University of Missouri. Dean McBaine has not limited his research to a single jurisdiction, but has included in his compilation cases in a great many American jurisdictions, as well as decisions to be found in the English reports. It is, however, worthy of note that only such questions