

Outlines of the Law of Torts (Book Review)

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Federal judges, done far more good than harm, and will continue to do so, "if they use it, as a famous English painter once said, he mixes his paints, 'with brains'."

The citations in the footnotes of this volume are brought almost to the day of publication, containing discussions of such timely problems as the Virginia Sterilization Statute, recently upheld by the Supreme Court. The problem of one corporation chartered by two or more different states, the oft-discussed question as to whether there is a "Federal common law," the question as to whether practice on the law side of the Federal Court should be regulated by rules promulgated by the United States Supreme Court, instead of in conformity to the practice of the State Court in which the Federal Court is sitting—all these problems are interestingly treated, with comprehensive references to appropriate articles in various legal periodicals. The somewhat acrimonious debate between Senator Walsh and Dean Pound upon the last mentioned question is handled judiciously; but the writer does not hesitate to express his own view in favor of giving control of Federal practice to the United States Supreme Court.

The Eighteenth Amendment and the Volstead Act have given greatly increased importance to the constitutional prohibition against unlawful searches and seizures. The decision of the Supreme Court that evidence obtained by an unlawful search can not be used, over the defendant's objection, has been caustically criticized by Professor Wigmore. Professor Dobie rather effectively defends the criticized rule with the statement that "only the inadmissibility of that evidence can properly safeguard the rights guaranteed by the constitution," since "civil suits, or other proceedings, against the offending officers, would afford scant balm to the accused if convicted on the illegally obtained evidence."

The usefulness of this volume is unnecessarily impaired by the omission of a table of cases cited. There seems to have been one serious oversight in quoting Equity Rule 58 (p. 724) by omitting from the Rule the entire first paragraph, which is the most important part of the Rule, and which is the part sustaining the headnote under which it is cited.

H. H. BRELAND.

New York City.

OUTLINES OF THE LAW OF TORTS. By David Stewart Edgar and David Stewart Edgar, Jr. New York, 1927, pp. 123.

To review an outline of the law of torts, intended for the use of students, after its utility and value have been proven by actual use in the class-room is largely a work of supererogation. The dilatory reviewer must plead unfamiliarity with the subject-matter as well as lack of opportunity; feeble if, indeed, acceptable excuses.

No one who knows the authors, the zeal and earnestness of the father, implanted and instilled in the son, will fail to realize that the crispness of expression and the paucity of words is a result of a long and patient effort succinctly to state and clearly to express basic legal principles. The problem of the uninitiate is ever before them. The student is being introduced not only to the law of torts—a task of no small moment—but to the law generally. He is learning for the first time the language of a new science. Its

habits of mind, its frailties and its strengths must be absorbed before he can proceed along the endless road. Moreover the beginning must not be too dreary or he will turn back. It must not be too foggy or he will not see his way. In all of this the authors have succeeded eminently well. Clearness, painstaking simplicity, and a broad background are the great characteristics of the Outlines.

There is an alluring orderliness about the work. Thus when the specific "torts" are discussed, each chapter states briefly the essential elements of the "tort" in question and then proceeds to explain each of the elements *seriatim*, giving to each that space and exposition which its relative importance merits.

The collection and statement of basic principles is an art much ignored by law writers. For example, this reviewer has read whole chapters in other books which have left not one particle of the clear idea one gets of the concepts, *damnum absque iniuria* and *iniuria sine damno*, that section 18 of this work most plainly and eloquently gives. But almost any section of the book is illustrative of the same idea. To multiply examples can serve no purpose.

But the authors can not escape the hypodermic. Albeit their own opinions are the best insulation against it. Thus a theorist of a modern school is obsessed with the idea that not enough space is given to the more theoretical aspects of the law of torts. The views and quarrels of the law writers about the basis of legal liability are indifferentially neglected. This is clearly brought out in the treatment of the law of negligence as a body of rules of law. While, to be sure, the text is the classic common law vein, nevertheless we should remember the efforts of modern schools of jurisprudence to lead the way to a concept of liability based on philosophic standards of conduct rather than rules of law fixed by precedent. This reviewer has waywardly followed these modern leads and misses their note in the present Outlines. (See, A Functional View of Legal Liability, 34 International Journal of Ethics, 243). It is submitted that first-year law students are not too immature to grapple with these problems.

There is a spiritual quality to the book which graces almost every page. One senses the authors' indignation with "wrongs", "torts" of every description. This is as it should be. The law of torts was made necessary by an imperfect humanity.

Colleagues of the authors who aspire to write legal literature will envy those inspired qualities of the book which can only be attributed to A. M. E. and M. J. E.

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HANDBOOK OF AMERICAN CONSTITUTIONAL LAW. By Henry Campbell Black. Fourth Edition. St. Paul: West Publishing Co., 1927, pp. xxxi, 815.

In the first edition of his excellent work, the author mentions that the book was intended primarily for the use of students at law and instructors in the law schools. The fourth edition is offered by the author with the hope that it may be useful to the practitioner of the law as well as the instructors and students in the law schools. It is fortunate that the book is intended for this more extensive field, for with each revision and reconstruction the original handbook grows in size so that it becomes more difficult to utilize it in the short time allotted to the course in Constitutional Law.