

June 2014

Cases and Materials on Evidence (Book Review)

Leo C. Kelly

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Recommended Citation

Kelly, Leo C. (2014) "Cases and Materials on Evidence (Book Review)," *St. John's Law Review*: Vol. 9: Iss. 1, Article 49.
Available at: <http://scholarship.law.stjohns.edu/lawreview/vol9/iss1/49>

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"It is as impossible to teach virtue as it is to teach genius. It would be as foolish to expect our moral system to produce virtuous characters and saints as to expect the science of æsthetics to bring forth poets, sculptors and musicians."

The book under review is a complete demonstration that its author has no belief in the foregoing doctrine of Schopenhauer. It is possible that Professor Costigan, along with many others, regards the speculations of that dour old gentleman as "a monument of dark genius rather than a light of philosophy." In fact, one can say with assurance that Costigan gives full acceptance to the thought of Paulsen that, "if knowledge is capable of influencing conduct, it is hard to understand why the knowledge of ethics alone should be fruitless in this respect * * *"

The managements of numerous law schools, fortunately for the legal profession and the public, have been won over to the Paulsenian theory. Hence it is that courses of study upon the subject of legal ethics are now recognized as desirable by institutions that formerly treated them with scant consideration. Professor Costigan's book bids fair to help consolidate the gains of this accomplishment. The student who seriously peruses this excellent compilation, or who has its contents brought vividly to his attention, will quickly perceive that there is good reason for lawyers to practice their profession decently and uprightly. He will be made to realize that a departure from high standards of conduct is likely to result in swift and condign punishment. But, beyond this, he will come to a better understanding of the fact that the history and background of ethics in the legal profession are not myths of tradition, but are real and substantial and worthy of preservation. In short, the book will give to tomorrow's lawyer a concept of the moralities of his profession that is highly desirable, and which, when put into practical application in his work, will tend greatly to temper, if not to silence, the criticism now heaped upon members of the Bar.

In sources of material, the book is comprehensive and widely inclusive. The authorities presented for study have been selected with discriminating judgment, and have been arranged with a keen appreciation for sequence and development of subject matter. The work deserves to be known in the classroom of every law school in the land.

JOHN C. KNOX.

St. John's University School of Law.

CASES AND MATERIALS ON EVIDENCE. By Edward J. O'Toole. Brooklyn: Remsen Publishing Co., 1934, pp. xxix, 1065.

"Cases and Materials on Evidence" by Professor Edward J. O'Toole, presents to the law student an exhaustive treatise on the fundamental principles of the law of evidence. But it goes further than that and, by reason of the tremendous amount of case law treated in full, enriched as it is by the copiousness of footnote statutes and case citations, becomes a ready manual of reference for the practicing attorney as well.

The author has carefully divided his subject matter into distinct general topics. A brief discussion of the topic involved precedes the cases under each heading. The well selected cases themselves then exemplify clearly the rules appertaining to the particular branch of the subject. The student should find such a logical system of presentation of inestimable value in shearing away the difficulties which beset any beginner in undertaking what is probably the most fascinating, and at the same time most involved, field of the law. The practitioner, studying his own case in the light of the discussion and cases set forth in this book, will find that such a close analysis of the probative facts of a cause of action or defense is of the utmost value in giving him a mastery of the details of the case.

While Professor O'Toole has attempted, as he himself says in the preface, "to interpret the law of evidence as it is found in the State of New York," his choice of cases has been by no means narrow in this respect. Quite to the contrary, cases from other jurisdictions may be found, illustrative of various important points, and they are so carefully fitted into the entire work that the whole appears before the mind as a complete mosaic from the hand of a finished artist.

The general rules of admissible evidence have been handled with the most painstaking care. The realm of pedigree, for example, is made most interesting and while illustrative of the principles involved also shows the practical present-day application of them, as illustrated by such a recent case as *Matter of Wendel*¹ on page 367. Here, again, the author's able use of the cases of other jurisdictions is well illustrated in the Nebraska case of *Grand Lodge, A. O. U. W. v. Bartes*² on page 377. Then, again, in his chapter on entries in books of record, the author has brought simplicity, clarity and eminent practicality to the subject matter.

In the field of "Dying Declarations" the modernity of the book is well exemplified. The author has brought down to date the developments in these fields by the selection of the most interesting and recent New York cases on the subject. The "Parol Evidence" rule, which because of its great difficulty of application has probably been the most abused of all the rules of evidence, has received most careful and comprehensive treatment. Not only the law student, but once again the practicing attorney, will find the solution of many grave difficulties in Chapter 21 of Professor O'Toole's book. The clear-cut statement of the rule itself in the beginning of the chapter is so well illustrated by aptly chosen cases that no student of the law can fail to find these citations of assistance. The footnote cases in this chapter most thoroughly exemplify and supplement the principal cases and are indicative of the scholarly fashion in which the book is prepared.

Probably no rule of evidence has been more discussed by the professor, the student and the practitioner than the rule set forth in Section 347 of the Civil Practice Act. The cases collected by the author to illustrate the judicial interpretation of this rule are most valuable. The old Section 829 of the Code created a devious and involved path for the old practitioner. The cases cited

¹ 146 Misc. 260, 262 N. Y. Supp. 41 (1933).

² 69 Neb. 631, 96 N. W. 186 (1903).

by the author very materially simplify the rule. To such an extent in fact are they found to be helpful that we may well feel that one of the greatest bugaboos presented to the legal profession should in great part lose its terrors for the user of this book. It would not be fair in speaking of this book not to say a word in praise of the lawyer-like manner in which the field of "privilege" between attorney and client, doctor and patient, *etc.* has been treated. This field of the law, which during the past few years has been given a great deal of publicity in the press during not only judicial but legislative investigations, is most clearly and succinctly explained by Professor O'Toole and a frequent reading of the cases thereunder will prove of great benefit to the student in an understanding of the necessity for these privileges.

The highlight of the entire volume is to be found in Chapters 27 and 28 where the true practicality of the book is best illustrated. The author has devoted a great deal of attention and has obviously spent a great deal of time in research on the practical subjects of examination and cross-examination, impeachment and rehabilitation of witnesses. The great fault claimed of evidence courses in the past, that while they have taught the rules they have not shown the application of them in fact, must be said to be eliminated in "Cases and Materials on Evidence" in these two chapters. Even though the author had not been careful throughout the rest of the book, as he has been to show the practical side of the law of evidence, these two chapters would prove to be a real application of the practice to the theory; and the student who has carefully followed the course as set forth in these chapters cannot fail, upon completion of his studies, to realize the deep fundamental principles underlying those rules and regulations which have been laid down for the purpose of adjusting our court procedure and of securing for both plaintiff and defendant in every action a full and fair presentation of the case.

LEO C. KELLY.

St. John's University School of Law.

SELECTED CASES ON BANKRUPTCY AND REORGANIZATION. By Samuel C. Duberstein. Brooklyn: St. John's University School of Law, 1934, pp. ix, 546.

Recent events have ushered in a new era in the laws with respect to insolvency. It is doubtful whether the Constitution makers, when they provided that Congress shall have power to establish "uniform laws on the subject of bankruptcies throughout the United States," had in mind that the Bankruptcy Act might become an instrument of the economic policy of the nation. But much has occurred since those early days and now our federal law-makers must use every avenue of power that is given to them by the Constitution in order properly to effectuate the purposes which are the mainspring of all modern governments.

The subject matter of this volume, therefore, has become and will increasingly become of greater and greater significant importance to law school curricula, and the present collection of cases and materials is an extremely