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Cases on Torts - Bohlen

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note became due. The statute of limitations was six years, but there were notations of partial payment. In a suit to set aside the judgment so that the defendant might plead a defense, the Supreme Court of Colorado held that the partial payment upon the note operated as a redelivery of it, thereby extending the time for confession of judgment. The judgment was held valid.

The Ohio Supreme Court correctly distinguished the Colorado case since in Ohio partial payment only operates as an implication of a new promise,¹⁶ the theory being that the party paying intends by such payment to acknowledge and admit the greater debt to be due. This view differs greatly from a holding, such as the Colorado court expressed, that such part payment acts as a redelivery of the note.

In view of the long history of the rule of strict construction in Ohio, the court in the principal case arrived at a correct decision. A warrant to confess judgment is a sacrifice of the debtor's right to defend in an action on his note. It is only just that such power be narrowly defined and interpreted, and that a creditor be restrained from exceeding its scope.

ARTHUR S. LEB

Book Reviews

LABOR LAW: CASES AND MATERIALS, Second Edition, by Russell A. Smith. Indianapolis: The Bobbs-Merrill Company, Inc. 1953. Pp. xxxiii, 1003.

Labor Law continues as a volatile subject, not only in the nation's market places but also in law school classrooms. The preparation of adequate materials for its study presents a great challenge to legal educators. Economic, social, and political factors influence statutes as well as administrative orders and court decisions. Numerous casebooks have appeared within the past several years. Professor Smith's "second edition" is among the better attempts to meet the challenge. Both from the point of view of the materials contained and the method of presentation his work is commendable.

The first two chapters offer background data for the student. This portion has been reduced in size from the first edition. One whole chapter on

217, 72 N.W. 739 (1897), the plaintiff claimed that the defendant's absence from the state extended the time within which the power of confessing judgment might be exercised. It was held that since the defendant's absence from the state would not bar confession of judgment during his absence, therefore this absence did not toll the statute of limitations as to the period within which the power might be exercised. Thus, an attempt to confess judgment after the statutory period had run was void as not exercised within the time allowed.

¹⁶ Kerper v. Wood, 48 Ohio St. 613, 29 N.E. 501 (1891).

the history and structure of American Labor unions is relegated to supplementary Volume II which is to follow. The bulk of the book covers in great detail unionization and collective action with the National Labor Relations Act and Labor-Management Relations Act of 1947 thoroughly dissected on the subjects of employers' obligations, representation questions, collective action by labor, union security, procedural and jurisdictional problems, unionism in public services and vital industries. The third area of study includes collective bargaining and settlement of disputes with the final portion of the book covering the institutional problems of unionism by emphasizing external and internal legal relations of the union. The book contains 1000 pages; necessary statutes are carried in an appendix.

The pathological experiences in Labor Law—strikes, lock-outs, boycotts—are not watered down by the editor. About one-fifth of the material is devoted to this more spectacular phase of the labor-management picture.

Professor Smith utilizes, in the traditional way, case and statutory materials. A liberal number of editorial notes to capsule important labor law principles for the student are added to develop a complete story. Most adequate tables of contents and cases with a good index make this publication easy to handle not only for the student but also the teacher.

The big questions in labor law education—how to keep material current and what phases of labor-management relations to emphasize to law students—still pose fundamental problems. With this second edition Professor Smith discards his former "loose-leaf" plan for revision. A new edition every several years apparently is just as satisfactory. Costs of publication and revision for current material can be better handled in a new edition using new special printing processes.

To complete the scope of necessary materials which students need, the editor plans a supplementary volume containing the history and structure of American labor unions and syllabi on wage-hour, social security and other statutes. Comparative labor law developments in England and continental Europe will also be included in this supplement.

The crux of teaching labor law adequately involves the time allotted to the study in our modern curricula already bursting with "must" courses. Because of growing industrialization with its handmaiden—unionization—, to indoctrinate all prospective lawyers in certain aspects of labor law will soon become essential. Perhaps we are heading toward a third year course with a total of six semester hours. It may be an integrated course of study in collective bargaining, including the economic war activities of the employers' anti-unionism and the workingmen's collective pressure action, the union and its relation to its members, and the social legislation influencing heavily all labor-management relations—wage and hour, social se-

curity, unemployment insurance, workmen's compensation. Professor Smith's as well as other current publications is pointing thusly. During this period of growth in labor law education, this second edition takes another significant step toward improvement. Teachers and students will find it of great help in understanding and evaluating the mechanics as well as the philosophy of labor law.

OLIVER SCHROEDER, JR.*

CASES ON TORTS — BOHLEN, Fifth Edition, by Fowler V. Harper. Indianapolis: The Bobbs-Merrill Company, Inc. 1953. Pp. xlv, 992.

This is the fourth revision of Professor Bohlen's "Cases on Torts." Professor Harper revised the last two. The present edition appears to be the answer to the tort teacher's prayer, an almost ideal book, both as to arrangement of materials and selection of cases. It is difficult to appraise thoroughly a case book until after it has been tested in the class room. The task is eased somewhat, however, by the fact that of the new cases, approximately one hundred fifty, a number were in the third edition and others are recent familiar decisions. In the selection of cases it is noticeable that decisions from no particular jurisdiction predominate, in contrast to what is often the case when the author has taught or practiced law in a particular locality.

In the first chapter, captioned "Moral Basis of Tort Liability," the author follows the modern trend with the classic cases of *Weaver v. Ward* and *Brown v. Kendall* and also by contrasting the result of an "involuntary act" with that of an insane person. *Fletcher v. Rylands* and the *Exner* case, the oft cited dynamite case, supplemented by foot-notes on animals etc., cover the field of "ultrahazardous liability," with an interpolation of *Ives v. South Buffalo R. Co.*, the New York case which held the Workmen's Compensation Act to be unconstitutional. A case on nuisances and *Vincent v. Lake Erie Transp. Co.* conclude the chapter. Since these cases are the only ones in the text which deal primarily with the specific principles involved, there is a rather marked departure from the orthodox method both as to extent, selection and arrangement of materials. In the opinion of the writer it is a welcome change, as too many cases are often included in the modern case book on these aspects, particularly nuisances. They can be more appropriately considered in Equity and Real Property. The same result could of course be attained by the customary process of elimination on the part of the instructor, but it would be impractical to attempt the same selection and arrangement, a factor which gives the chapter its badge of merit. The student is apprised at the outset that while the common law

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has in most instances kept pace with modern progress, yet in some it has failed, at least in a number of jurisdictions; and that logic must yield at times "because of convenience, of public policy, or rough sense of justice" (Andrews, J., *Palsgraf v. Long Island R.R.*). The author states that the cases are designed to raise the issue whether society is better served if certain kinds of conduct involve legal liability absolutely, without regard to moral fault, or whether liability should be predicated on conduct which is personal and moral. Naturally the question is unanswered. Much could be said on this proposition but that is beyond the scope of this review.

Chapter two combines intended injuries to persons with trespass to property and includes "malicious prosecution," the latter being a logical addition. It curtails considerably the cases dealing with intended torts, particularly with respect to property invasions, a desirable deletion in view of the fact that most trespass actions are usually covered in the Procedure and Property courses. The following chapter on Privilege supplements the cases on intended personal wrongs and at the same time eliminates the repetition found in most case books. The author's treatment of false arrest is a vast improvement over the cases in the previous edition and his relegation of the subject of "consent" to one case and footnotes is to be commended. It would not be surprising if the brevity arouses considerable criticism and it is possible that it may inspire some bard to say:

'Tis with regret Miss O'Brien you must go;
The author has decided to revise the show.
In Consent for years you have been starred
Though you spoke not a word aboard the Cunard.
Silence was the keynote of your fame;
Legions could profit by doing the same.

The negligence issue is presented in Chapter Four and contains a number of recent decisions, among which are the "viable child" and aviation cases. *Res Ipsa Loquitur* is given a more extensive coverage than in the previous edition and the equitable arbitration agreement between the claimants and Ringling Bros. arising out of the fire at Hartford is set out in detail. The next chapter covers Proximate Cause and contains the usual orthodox cases, with a few recent decisions. The chapter on Affirmative Obligations has been pruned of a number of obsolete cases without impairing its objective, and the addition of recent decisions, particularly on "supplier of chattels," imparts a stimulating increment to a highly important topic. The cases in these three chapters should give one the proper perspective as to the requisite elements in negligence actions, as well as indicating a few of the ever present deficiencies in the law. Procedure has been properly omitted for treatment in other courses. The usual problems arising out of contribu-

tory negligence and other defensive pleas are well presented under the caption "Shifting and Distribution of Loss." In addition to including the usual statutory modifications the material has a case on the Dram Shop Act. The conflict arising in the application of the "last clear chance" doctrine is aptly shown by a few well chosen cases, as well as its progenies "discoverable peril" and "humanitarian" doctrine. "Contribution" could be abridged, but on the whole the chapter has been effectively streamlined without impairing the topic.

The principal feature of the chapter on "Emotional Disturbances" has been its insertion prior to "Misrepresentation" and "Defamation," a welcome change from the previous addition, preserving the continuity of the previous chapters. Several new cases have been added, and while to many it may seem an extensive coverage, yet most of this can be attributed to the "right of privacy," presently a controversial topic, particularly with the advent of television.

"Deceit" has been rejuvenated by the deletion of many antiquated decisions and the inclusion of a number of recent cases which cover the topic more effectively with less material, a helpful change since most instructors usually find themselves pressed for time at this stage. "Defamation" has also been pruned of considerable surplusage but could stand a little more. The cases on defamation by radio and television, six in number, have been put in a concluding section.

The chapters on "Business" and "Political Relations," a part most instructors seldom reach, have undergone little change except the omission of cases on industrial relations. The final chapter on "Family Relations" is a newcomer and a welcome one to those schools which do not teach Domestic Relations. How this may impress the overcrowded Tort instructor is a debatable question.

The author is to be commended for his disregard of the pattern of approach established by the noted writers of the past and followed by most authors in their latest case books. The substantive law predominates almost exclusively, except where the adjective law is interwoven with the former, as in *Res Ipsa*. The footnotes are terse, but adequate, and the Index is very comprehensive. While it is difficult to please everyone, particularly teachers of Torts, the writer feels that Professor Harper is to be complimented on turning out one of the best case books on Torts available today.

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