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SMU Law Review

Volume 7 | Issue 1 Article 11

January 1953

Book Reviews

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BOOK REVIEWS

HANDBOOK OF LAW STUDY. By Ferdinand F. Stone. New York: Prentice-Hall, Inc., 1952. Pp. xi, 164. $2.95.

Lawyers should make a note of this book as one well worth recommending to young men who are thinking about studying law. It should be read by the prospective lawyer at the time of his high school graduation, and should be re-read when he enters law school.

Written simply, factually, and sympathetically, this book will serve several purposes. It will persuade the young man to think carefully whether he has the qualities required of a good lawyer. It will take away some of the newspaper and movie-inspired glamour and substitute a more accurate picture of pedestrian service of fellowmen and the ensuing satisfactions. It will give him some appreciation of the ethics of the profession.

Principally, however, Professor Stone is concerned with the educational process by which the young man will acquire his legal wings. Here also he corrects misconceptions. The young man is told properly that the principal purpose of the prescribed course of pre-law school study is not to aid him in passing his law school courses, but is to prepare him to become a leading and responsible citizen in his community after graduation from law school. He is told the importance of getting as good and as broad a liberal arts course as possible, with a stress upon learning to read understandingly, to think logically, and to express himself clearly. He is told to learn the most he can about the society in which he will live, its history and development, its philosophy and literature and modes of thought, its economic and social institutions, its dreams and aspirations.

To impress on the young man the importance of a sound preparation in the liberal arts college, Professor Stone gives him a preview of his later law school training. It becomes clear that a law school is not a trade school producing legal mechanics, clerks and messengers, and miscellaneous client caretakers, but is a place where the young man is to be prepared for a learned and proud profession, with its own history and philosophy, with a long record of service to man in society, and forming an indispensable part of the ordering of human existence. The young man is told of the standard of achievement to be expected of him in law school and why such things must be.

So, recommend the book to the young man (or woman, of course) and after he has read it, borrow it for yourself. It is worth a long evening of your own time.

*Arthur L. Harding**.

MARITAL PROPERTY IN CONFLICT OF LAWS. By Harold Marsh, Jr. Seattle: University of Washington Press, 1952. Pp. xi, 263. $4.50.

The possible problems of the Conflict of Laws in connection with marital interests in property are many and complex. In addition to the law of the situs of the property, attention must be given to the possible effect of the laws of the domicils of the spouses at the time of the marriage, the place of the marriage, the place of making of a possible marriage settlement contract, the subsequent matrimonial domicils of the spouses and the subsequent situs of the property if it be moved. Separation of the parties without divorce, and the resulting separate domicils, add further complications.

In 1834 Joseph Story published his trail-blazing treatise on the Conflict of Laws. In this treatise considerable attention was devoted

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to the problem of marital property interests. Story's solution in essence was that marital interests in movable property would be determined by the law of the domicil. As to movables owned at the time of the marriage this would be the law of the place where the parties intended to live as husband and wife. As to movables acquired after marriage, the point of reference would be the law of the domicil of the spouses (*i.e.*, of the husband) at the time of acquisition. These doctrines were somewhat alien to common law modes of thought and brought forth a considerable body of judicial decisions which accepted only in part Justice Story's contentions. After some twenty-five years the topic became quiescent.

Discussion and controversy were revived in 1932 and have continued since. There has been a new group of judicial decisions. This revival of interest is reflected in the monograph by Mr. Marsh, here reviewed. The author may claim credit for presenting the first comprehensive treatment of the subject between hard covers since Story.

The problems are primarily those pertaining to movable property. Marital interests in lands owned at the time of the marriage and in lands acquired after marriage by gift, devise or descent, are disposed of rather easily by reference to the law of the situs. On the other hand, lands acquired by purchase after the marriage will reflect whatever marital interests existed in the purchase money, so that here the problem is one of movable property.

Looming large in any discussion of marital property interests is the problem of the nonbarrable right of inheritance which may be created in a spouse or his or her heirs. Are these property interests or are they rights of succession only? The Conflict of Laws pattern will differ as this question is answered. If the law of the domicil is pertinent in a marital property case, it is that of the domicil at the time of acquisition. If domicil is pertinent to succession, it is the domicil at time of death. Reference to situs in marital property cases is to situs at time of acquisition; in succession cases it is to situs at time of death.

Mr. Marsh has done a superb job of collecting pertinent statutes and cases. His organization is good and his discussion lucid. The lawyer concerned with a controversy in this field cannot help but derive substantial aid from a careful study of the entire treatise. Lawyers of the Southwest will be particularly benefited by the extended treatment of the conflict of common law and community property systems.

My admiration for the book is not lessened by the fact that I disagree strongly with many of the author's conclusions. Particularly do I question his willingness to accept a reference to domiciliary law in many situations. The maxim *mobilia sequuntur personam,* which was of almost universal validity at the time of Justice Story, has been substantially eliminated from the Conflict of Laws with respect to chattels except in cases of succession or death, and even in that field it appears to be losing ground. To perpetuate the *mobilia* maxim in the field of marital interests in chattels invites serious practical problems. With the present degree of mobility of population, proof of domicil becomes increasingly difficult with conflicting adjudications increasingly possible. Application of the domiciliary rule to marital property raises most difficult problems as to the rights of purchasers and creditors, necessitating the formulation of somewhat vague rules in the nature of exceptions to the domiciliary principle. Reference to the law of the situs, as is done in some states, appears to offer a much more effective solution, and its practical advantages would outweigh the advantage to the spouses in having their marital interests in all property wherever located determined by a single rule of law. In any event the notion that the *mobilia* rule would give a single reference is already illusory, since it is not applied to lands owned at the time of the marriage, to lands acquired other than by purchase after the marriage, or to causes of action in tort accruing to a spouse after the marriage. The illusion of the unifying effect of the application of the domiciliary rule is further dispelled by a change of domicil of the spouses after marriage,

or by the acquisition of separate domicils without divorce.

The author is aware of these problems and suggests solutions. In many cases judicial authority is almost entirely lacking. In some what appears to be authority turns out to be dictum. The tax consequences of decisions in this field are such that an increasing volume of litigation and decision may be expected. We are indebted to Mr. Marsh for providing a starting place for further progress and development.

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POLITICAL AND CIVIL RIGHTS IN THE UNITED STATES. By Thomas I. Emerson and David Haber. Buffalo: Dennis and Company, 1952. Pp. xx, 1209. $7.50.

Prepared primarily for law school use, this book merits a wider audience. Brought within a single volume are both a most comprehensive and catholic collection of cases and materials in a difficult and developing and controversial field, and a rich mine of bibliographical references.

The importance of the problem is manifest: How best to bring to practical fruition in a political society a professed ideal of the intrinsic equality of human souls; how best to bring to all men the sense of human values inherent in the Jewish-Christian social ethic. Related closely is the problem of how to realize from day to day a political ideal that government derives both its authority and its strength from the consent of the governed.

The problems which must be solved to achieve our professed ideals are known to all. The more obvious areas of shortcoming likewise are known. We have progressed sufficiently that most will admit that the problems exist and must be solved. However, much bitterness, prejudice, and even ignorance on all sides of the con-

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troversies remain to be overcome before we may progress far toward solution.

The scope of the editors' coverage is sufficiently indicated by their table of contents. Included are such items as the employment of Federal Civil Rights Acts to assure security of the person of the individual citizen, police third-degree methods, unfairness in criminal prosecutions, impairment of the right of franchise by corruption and fraud and discriminatory legislation, freedom of expression of political beliefs, loyalty programs, group libel, official and non-official control of media of mass communication, freedom of research and teaching, religion and public education, and segregation in housing, education and in public places.

The problems are attacked in a forthright manner. Shortcomings and deficiencies are stated strongly. Suggested solutions and arguments follow. The predilections of the editors are fairly apparent. One senses a crusading spirit, an impatience with reliance on processes of education and increasing maturity of outlook, a willingness perhaps to experiment with strong remedies. Withal, the selection of materials is not unfair; there is little published defense of wrongdoing and injustice. In any event, whether or not the reader will accept the social ideas immanent in this selection of readings, his understanding of the forces involved necessarily will be improved by their careful study.

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PSYCHIATRY AND THE LAW. By Manfred S. Guttmacher and Henry Weihofen. New York: W. W. Norton & Company, 1952. Pp. viii, 476. $7.50.

This book represents an attempt by a psychiatrist, Manfred S. Guttmacher, and a lawyer, Henry Weihofen, to interpret legal psychiatry. According to the authors' foreword, this is the first "general book on legal psychiatry that has appeared in this country

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The main purpose set forth is to "provide a source book and during the past quarter century," and the first collaborative effort in the field by a psychiatrist and a lawyer.

The authors note that the difference between the legal and the psychiatric focus emerges most clearly in trial procedure: A trial practical guide on medicolegal psychiatry for students and practitioners of law and medicine."
is a contest between contending parties; it is not concerned with a scientific analysis.

In recent decades psychiatry has been making rapid strides in its conception and treatment of mental disorders, but some of the legalistic concepts of mental disorder have been slow to change. Furthermore, psychiatry has broadened the conception of the personal factors underlying crime and delinquency. The various incompatibilities in focus between lawyers and psychiatrists result in problems for each: The psychiatrist in testifying frequently must couch his expert testimony in outmoded terminology. He must also answer hypothetical questions which are difficult to frame in a way such as to take into account all the contingencies of which a psychiatrist is aware. At times the expert testimony of a psychiatrist may be nullified by clever cross-examination. The lawyer, on the other hand, is interested in winning a case for his client. Therefore, he frequently is baffled by qualified and tentative statements of the psychiatrist.

This work is liberal in its citation of research literature in the field of mental disorders. It is equally liberal in its citation of pertinent legal cases.

The authors strive for balance in their suggestions and recommendations. Most frequently the recommendations are made within the framework of present legal traditions. As such, the work gives some promise of being a practical guide to some reform of legal psychiatry. The authors do not hestitate to make recommendations for change, for example, to reduce the formality of com-

mitment of the mentally ill. Yet they recognize both the need for the legal protection of the patient and the need to reduce the shock of the commitment procedure.

The work consists of nineteen chapters, and its content may be indicated by citing chapter titles:

1. The Place of Psychiatry in the Law
2. Personality Formation
3. The Psychoneuroses
4. The Manic-Depressive and Schizophrenic Psychoses
5. Psychopaths
6. Sex Offenders
7. Organic Brain Disorders
8. Congenital Intellectual Deficiency
9. The Psychiatrist on the Witness Stand
10. The Psychiatrist on the Witness Stand: Cross-Examination
11. Eliminating the Battle of Experts
12. The Patient's Privilege of Silence
13. Hospitalizing the Mentally Ill
14. Mental Incompetency
15. Veracity
16. Mental Disorder and the Criminal
17. Mental Disorder and the Criminal Law
18. Mental Disorder and the Criminal Law (Continued)
19. Ounces of Prevention

In the opinion of the reviewer, the work should be valuable to

the groups for which it is intended. In addition, many persons in neither the medical nor the legal professions would profit from reading this work, since it deals with two disciplines of profound importance in our culture, psychiatry and the law.

*Alvin J. North**.

VENUE IN CIVIL ACTIONS IN TEXAS. By Allen Clark. St. Louis: Thomas Law Book Company, 1953. Pp. xii, 333. $10.00.

The fast growing volume of appellate decisions on Texas law of venue in civil cases is the occasion for a book just off the press, *Venue in Civil Actions in Texas*, by Allen Clark, of the Greenville Bar, author of *The Case On Appeal*, another widely accepted work in this state. The need of the Bench and Bar for a dependable treatise on the subject has long been felt. This has the distinction of being not merely a new book, but the only book on this subject so far.

Mr. Clark's plan of presentation is most excellent. Two introductory chapters, A and B, discuss venue generally, showing the purpose and policy of the law, the valuable right of a defendant to be sued in the county of his residence, the distinction between venue and jurisdiction, and other general rules which have been established by judicial construction. Following which, chapters numbered from one to thirty correspond to the numbers of the exceptions to exclusive venue as set forth in Article 1995, *Texas Revised Civil Statutes (1925)*. This arrangement enhances the value of the book to the busy lawyer. Not only so, but each chapter follows a general pattern. The exception is stated in full, its judicial history and construction are given, cases within the exception and those not within the exception are cited, and, one of its most valuable features, the proof necessary to sustain venue in the county of suit is set out. It is a very practical plan, designed to

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help the practitioner solve problems which, no doubt, have occasioned much labor to the author in his practice.

The book would have been a valuable addition to the lawyer's library had the author closed it with the first thirty chapters. But he has run the whole gamut of venue in civil actions in Texas by chapters on venue in cross-actions, and where relief is ancillary or incidental; the plea of privilege, the controverting plea, the notice and hearing, the order, the appeal, the briefs of appellant and of appellee, and proceedings in and review by the court of civil appeals. The book concludes with an exhaustive list of forms, and table of some eight hundred authorities, including applicable rules and statutes, and indexed to the page where cited.

Mr. Clark has prepared this book with thoroughness, good judgment and skill. The present writer agrees with the Honorable Towne Young, Associate Justice of the Dallas Court of Civil Appeals, who, in an Introduction, says that this book "appears as a long-needed and most welcome working tool"; and that "[t]he text is couched in simple understandable language for the Texas lawyer by a Texan of recognized ability and experience whose method of approach . . . is entirely practical as opposed to theoretic. . . ."

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