

Book Review: Regulation of Public Utilities, by Cassius M. Clay

Ernest O. Eisenberg

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Cases on Contracts, By Arthur L. Corbin, Hotchkiss Professor of Law in Yale University. 1933. One Volume. West Publishing Co., St. Paul, Minn.

Reference to the various sections in the *Restatement of the Law of Contracts* by the American Law Institute is an outstanding feature of Corbin's new edition of his contract casebook. This will enable the student to make a comparative study of the Restatement rule and the case in the book. This idea should be followed in other casebooks on contracts and also on subjects other than contracts.

Pertinent questions follow the case in many instances as an aid to the student in attacking the problem suggested by the case. This idea is also good and adds much to the value of a casebook.

The addition of a section entitled "Remedies for Breach" will assist the student in appreciating the relationship of remedy to the substantive law of contracts.

The new volume has been reduced in size by omitting about 200 pages including many cases of little teaching value, and by adding many new cases which show the recent development in judicial thought. It will be a welcome addition to the contract casebooks which are now in use in the various law schools.

J. WALTER MCKENNA.*

Regulation of Public Utilities, By Cassius M. Clay, Member of the Bar. 1932. One Volume. Henry Holt and Company, New York.

When an author possesses a style which is free of legal pomposity, when he views the economic background of law with broad comprehension, when he questions the validity of the decisions of the United States Supreme Court and presents evidence to challenge the soundness of those decisions, he stands admitted as the disciple of Mr. Justice Holmes and Mr. Justice Brandeis. There is something decidedly refreshing in the vital treatment given public utility regulation by the author. For although his book is replete with citations and footnotes, it is by no means another dull treatise of dusty legal precedent. Rather, it a living picture of a nation's attempts to readjust itself to the tremendous economic upheavals of the present day.

The subject matter treated lends itself into two logical divisions; the first, that of rate regulation, and the second, that of interstate regulation. In the first part of his book, the author discusses at length the constitutional background, the historical perspective, and the legal and economic theories of rate regulation. With pain-staking citation of cases, and with liberal quotations from the dissenting opinions of Mr. Justice Holmes and Mr. Justice Brandeis, he riddles the attitude of the United States Supreme Court in holding that the present fair value of the utility should be the basis for rate making. Thus on page 99, he writes:

"Regardless of what convenient expressions the Court has chosen to employ, fair value when used with respect to property in a regulated industry, is a pure legal fiction and nothing more. Neither the Court, nor any human intellect, can conclusively determine what the fair value of a utility property is. Subjected to economic analysis, the term appears in its true light, as conceptual prattle." As

* Professor of Law, Marquette University.

a remedy for the present tangle of commissions and utilities in their "thirty years' war" over rates, the author proposes the adoption of the prudent investment theory as a reasonable norm for the determination of the rate base and concludes that its adoption "as the constitutional deadline of fairness would eliminate the guesswork and baffling uncertainties incident to estimates based upon reproductive costs and thus delimit more clearly the boundaries of legitimate legislative experiment."

In the second half of the book which is devoted to the problems of interstate regulation and holding company regulation, the author sums up the recent development of huge power transmission companies, the organization of pyramided holding companies, and the outgrowth of the complex legal problems incident to both. He presents arguments for and against state and federal regulation, he points out the weakness in both systems, and lists the modern solutions suggested by interested economists. His attitude throughout is fair and impartial. Admitting the abuses of modern holding company practices he nevertheless doubts the efficacy of Federal control, stating that it is doubtful whether Federal control would solve any problems other than jurisdictional ones. In conclusion, he points out that the regulation of interstate transmission of electricity should be adjusted between the powers of the states and those of the nation by the organization of regional settlements with appeal to a central authority. The holding company, he contends, can be effectively controlled by an indirect form of regulation through the operating company, and it is interesting to note that this viewpoint has been adopted by the states of Wisconsin and Alabama.

ERNEST O. EISENBERG.

