Book Review: Cases on Civil Procedure, By James P. McBaine

Vernon X. Miller
BOOK REVIEWS


Professor McBaine's book is a casebook on procedure prepared for a first year course. Most law teachers believe that first year students should have some introduction to the study of "adjective law." Many of them have their own ideas as to what such a course should contain. Whether they can present some or all of these ideas in any special courses depends upon the amount of time the several curricula allow for the study of procedure during the first year. Professor McBaine's book is prepared for a full year course of two or three hours a week. It has the old familiar cases on the several actions with modern cases attached for illustrative purposes. It has a few cases on common law pleading, and has a lot of material on trial practice. The cases in this last and largest part of the book are the kind of cases that law students usually study during their last year in school, if they study them at all.

Now to be critical: Some law teachers will not want to use the case materials on common law actions. First year students should be well grounded in an understanding of the common law actions. They should be made to realize as soon as possible that much of their contract course is built around the history of the action of assumpsit, that much of their tort course is built around case and trespass, and almost all of their course in personal property around case, trespass, trover, replevin, and even assumpsit. Whether this work can be given better by lectures supplemented by selective readings in Holdsworth, for example, than by an analysis of cases, is a matter of opinion. This reviewer prefers and practices the former method. Perhaps most law teachers prefer the other. This particular part of the casebook is prepared for them.

To be critical again: There are not enough cases in the book on common law pleading. That part of the study of procedure, at least for students in "code" states, is background work. It does not have to be presented from a definitely academic point of view. The growth and expansion of the substantive law through the common law actions can be traced after a study of pleading and the framing of issues. The over refined historical peculiarities and anomalies in the old rules should not be studied for themselves. Stress should be placed upon the devices and courts have used to adapt the rules of pleading to afford convenience and fairness in the disposition of cases before them. Students should begin to understand how the courts allowed and emphasized forms of general or special statements in the pleas and subsequent pleadings, even in the declaration, to bring about this fair and convenient disposition of cases within the traditions of accepted practice. The course can be so built as to show that the adoption of codes of civil procedure in the several states was a big step, but not the final one, in a continuous process.

As for the portion of the book on trial practice: Practice and procedure should be emphasized all through law school, and in every course. First year students should know something about process, something about trials, about verdicts, and judgments, and they should have some ideas about the functions of appellate courts. There is plenty of material in Professor McBaine's book for a course in trial practice. Perhaps there is enough of the proper kind of material so that the instructor can illustrate the differences between the functions of the trial court and the functions of the appellate court. Perhaps in a comprehen-
sive casebook on procedure for first year students there should be some material on what is popularly called "equity jurisdiction."

The following is a very personal suggestion: If this reviewer had three or even two hours a week all during the first year for a course on procedure he would use his time in this way: First he would lecture on the common law actions. When he had finished with that, finished, that is, in giving a more or less understandable outline, he would spend a part of each week for the rest of the year on common law pleading and the other part of the week on the fundamentals of procedure. No doubt Professor McBaine does with the materials in this book and in his own classes what this reviewer would like to accomplish if he should give such a course. The point is that anyone who has experimented with first year courses in procedure will have his own ideas as to the content of the course. It is not to be expected that another man's materials will altogether please him.

VERNON X. MILLER.*


Rearrangement of the material presented in former editions of this work is the outstanding feature of this new criminal law casebook. Professor Mikell advances some excellent and logical reasons for this departure from the conventional form of the usual criminal law casebook. The idea that a student will get a more orderly arrangement of the subject by studying the elements that make up the particular crime before attacking the possible defenses seems a logical approach.

Another good feature is the elimination of a consideration of negligence under the general subject of "mens rea." The transfer of this topic to that part of the book dealing with the only two crimes in which it is involved, namely, manslaughter and assault, will prevent the student from getting an unconnected idea of negligence in criminal law.

Most of the major crimes are covered by separate chapters but a separate treatment of the presently important crime of kidnapping seems to be missing.

No attempt is made to cover lightly the field of criminal procedure which is so ineffectively treated by some casebooks supposedly written to cover both the substantive law of crime and criminal procedure. And this omission is proper. In most schools too little stress is put on criminal procedure as a separate field from that of criminal substantive law. A separate work should cover this field.

Generally surveyed, this new book is up to the usual fine standard of all the prior editions of the criminal law books written by Professor Mikell.

J. WALTER McKENNA.*

*Professor of Law, Marquette University.