Book Review: The Judicial Process in Tort Cases, by Leon Green

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The Judicial Process in Tort Cases. By Leon Green, Published by West Publishing Co.

One merely conversant with that division of the law called torts is well aware of its extreme extension. A tort may arise in any relationship and relationships are as many and diverse as men. They co-extend with human nature. Again one is particularly impressed by the numerous theories, doctrines, formulas, rules running through tort decisions—all very flexible and often strained to the breaking-point. It would be idle to confess that too often the old common-law dictum "law is reason," has very often little application to the law of torts as set forth by our courts. Hence it is only natural that an age which questions definitions, words, phrases and approaches the study of law from a factual and social viewpoint runs absurdly radical when it considers torts. The modern viewpoint has its merits but they are almost obliterated by its limitations.

The Judicial Process in Tort Cases by Dean Green is such a strictly modern approach to the study of the law of torts. According to the compiler of this excellent selection of cases "the significance which tort decisions have for the law student is to be found in the numerous processes which courts employ in dealing with them." In any particular case: (1) How does the judicial process operate? (2) Why does it operate one way rather than in some other? On these two inquiries can be hung all of tort law. And so the title of the casebook and the approach both for student and instructor.

We must not, however, imagine from the foregoing that Dean Green has given us a mere mass of cases among which students may wander at will observing the judicial process at work. Only the more extreme advocates of the Dewey pedagogics would so precipitate into the dark, the young bewildered human mind. There is therefore an analysis, division and classification of the materials assembled in the book. All this inspired order is however related to the Judicial Process. Dean Green is very explicit. To quote again "Persons have interests which are subjected to Harm against which the Judicial Process gives Protection." It is true that interests and theories are larger conceptions and form the basis for subdivisions which are descriptive. The Judicial Process is the main and essential thing in the law of torts. Theories, doctrines, formulae, rules are employed in the course of the Judicial Process in a particular case. Jurists have too often thought of Proximate Cause as a sacrosanct substantive rule. To Dean Green its value lies in its being a formula which performs the function of aiding the court in submitting to the jury the causal relationship between the defendant's conduct and the plaintiff's hurt. Thus it is but part of the Judicial Process. We consider the point well taken. Negligence and causal relation are factors distinct and separate.

There are those of us who cannot assent to the metaphysic which indubitably constitutes the background of Dean Green's approach. This of course has no vital concern with a casebook. Rather does it concern the use of such a book. However, to avoid the scandalum pasillorum and to stress a fact now neglected and in some circles forgotten we dissent from the eminent jurist's metaphysic. We cannot accept the concept of law as the power to pass judgment as the basis of social control. Were we to do so we would reduce human rights to the province of the contingent and the pragmatic. For us law becomes very unintelligible and consequently inhuman apart from rights and duties absolute in essence.
contingent in the concrete. Our dissent has to do with this point and this only.

It is, we believe, an advantage that the reports of the cases are so fully
given. That is of course incidental to the formative idea of this admirable case-
book. We welcome the presentation of the more important damage problems, as
also the development of equitable relief against torts.

THOMAS P. WHELAN

Unemployment Insurance in Wisconsin. By Roger Sherman Hoar,
Published by The Stuart Press, South Milwaukee, Wis., (1932).

This treatise is a timely appraisal and analysis of the Wisconsin Unemploy-
ment Reserve Act signed by Governor La Follette on January 28, 1932 and pub-
lished the following day, as chapter 108 of the Wisconsin Statutes relating to
Unemployment Reserves and Compensation.

Mr. Hoar, the author, is ably qualified to discuss unemployment insurance,
being a member of the Committee on Unemployment Insurance of the Wiscon-
sin Manufacturers’ Association, and member of the Legislative committee of
the Milwaukee Association of Commerce. He is also counsel for one of the
largest industrial concerns in this state. However, this connection with employ-
ers’ interests makes him rather critical of this new social venture on behalf of
labor.

The Act provides for the establishment of unemployment reserves out of
contributions by employers in proportion to their payrolls. From these reserves
unemployment benefits will be paid. The act excludes farm labor, domestic serv-
ice, relief projects, teaching, public officers, salaried public jobs, “part time”
work, railroad work, and logging; and employers of less than ten persons. The
Act is compulsory, unless by June 1, 1933, employers throughout the state, hav-
ing an aggregate total payroll of 175,000 employee's, adopt voluntary plans of un-
employment insurance, otherwise, the compulsory features go into force on
July 1, 1933. The administration of the act is placed into the hands of the in-
dustrial commission.

In this book, Mr. Hoar, first traces the history of unemployment insurance
in Wisconsin. He then presents a series of arguments in opposition to the com-
pulsory features of the act. The act itself is stated in full and analyzed in detail.
Types of voluntary insurance plans are presented. The reports of the Manufac-
turers' Association and the Legislative Interim Committee on the matter are
also included.

Mr. Hoar’s attitude, typical of the group he represents, is in opposition to
compulsion. He feels that employers, if left to themselves, will work out their
own salvation in the matter. This reviewer feels however, that to date, so little
has been done by industry to alleviate employment fluctuations as to warrant
the state's taking a hand. One gathers that Mr. Hoar favors the laissez faire
attitude, that is, that the state should not meddle. However, the tendency of
modern economic history throughout the world is away from this “hands off”
policy because it means degradation and suffering for those who have not the
power to relieve adverse economic conditions. This attitude is well expressed
in the Act itself, in section 108.01 (1), relating to public policy declaration:
“Unemployment in Wisconsin has become an urgent public problem, gravely
affecting the health, morals, and welfare of the people of this state. The burden
of irregular employment now falls directly and with crushing force on the un-