

Book Reviews—Home and Abroad

We bring to the attention of the alumni two recent reviews of books published by members of The Law School Faculty. The first, a review of Allison Dunham's *Modern Real Estate Transactions: Cases and Materials*, appeared in the October, 1952, issue of the American Bar Association Journal. The second edition of Edward H. Levi's *An Introduction to Legal Reasoning* was reviewed in the April, 1952, edition of *The Law Quarterly Review*, published in England. Both reviews follow in their entirety.

Modern Real Estate Transactions: Cases and Materials.

By ALLISON DUNHAM. Brooklyn: Foundation Press, Inc., 1952. Pp. 1029. \$8.50.

Concerning this book, the author, a professor of law at the University of Chicago, says that its objective "is to bring together for teaching purposes the legal concepts and institutions of the marketing of land"; that "it is organized on the basis of problems in house marketing." House-building problems are not dealt with. Starting with the raw material, namely, the land on which the housing structure is finally to stand, the problems of processing the land for its intended use—zoning and other restrictions imposed by public authority—are first considered. Next come controls imposed by private agreement—easements, equitable servitudes and covenants running with the land. Here are considered problems of basic policy as to what restrictions and covenants may be enforced, such as restraints on alienation, racial restrictions.

Problems in house marketing occupy some two-thirds of the book. This is as it should be, since few of the students who use this book will ever represent subdividers or wholesale builders, but all of them will have to do with problems affecting the sale or leasing of housing structures. This practical approach is typical. The student will find nothing here about the the Statute of Uses, or De Donis, or Quia Emptores. He *will* find something about the Statute of Frauds, for that is an element entering into almost every transaction affecting real property.



Allison Dunham

In a review of reasonable length, it is possible only to mention some of the house marketing problems dealt with. They cover a field of an extent which will surprise the lawyer who has dealt with such matters piecemeal as they arise in practice. To enumerate a few: Who participates in these transactions—buyer, seller, broker, mortgagee, escrow agent, attorneys for any or all of these—and the laws or customs affecting their participation; documents and papers; when title passes; what constitutes performance; remedies of the parties; title prob-

lems and methods of title assurance. The concluding chapter deals with transfers of undivided interests.

Throughout the work is valuable material on the historical, economic and social aspects of house marketing and the preparation of land for residential purposes. As the author is careful to point out in his preface, he espouses no theory. He is a careful and industrious expositor who has presented a well-organized work in which is drawn together from varied sources, not all of them by any means what we commonly term "legal," a vast collection of material dealing with an important field of the law.

The author calls his work a "coursebook." The term suggests casebook, plus something more, giving a promise which the work fulfils. It is in fact a source book, and it has characteristics which we commonly associate with well-written textbooks. For that reason, I have no hesitancy in recommending it to practitioners, as well as to the students for whose needs it was evidently primarily prepared. The opinions, about one hundred, which, scattered throughout, are given in full, do not occupy a disproportionate part of the 1029 pages. The number of additional cases cited or quoted from cannot be readily determined, since not all of them are referred to in the table of cases, but the number is large. A detailed table of contents is supplemented by an index.

WALTER L. NOSSAMAN

An Introduction to Legal Reasoning. By EDWARD H. LEVI. Second Impression. Chicago: University of Chicago Press; London: Cambridge University Press. 1950. Pp. iv + 74. \$2.00.

This book marks an important advance in "realist" jurisprudence. Professor Levi holds with Jerome Frank that it is mere "folklore" to regard law as "a system of known rules applied by a judge" and legal reasoning as consisting in the subsumption of a new case under a given fixed rule. But for him this overthrow of our traditional jurisprudence does not annihilate all jurisprudence; it does not reduce the legal process to mere guesswork or a calculation of the psychological or digestive factors operating within the individual judge. The legal process is still a process of reasoning and legal concepts and rules are still the tools with which it works. Legal reasoning, however, "has a logic of its own." "The kind of reasoning involved in the legal process is one in which the classification changes as the classification is made." Nevertheless this kind of reasoning can be an object of study and, indeed, "the law forum is the most explicit demonstration of the mechanism required for a moving classification system."

Legal reasoning is reasoning by example or analogy. Competing examples, for instance, previous decisions, are presented to the court and the court chooses which it will apply. Its choice is ultimately a reflection of the ideas generally prevailing in the time and place to which it belongs, but its decision is not necessarily expressed

directly in terms of these ideas. The legal process employs a mechanism of rules, concepts and classifications. Each new decision by adding something reshapes the rule, and the classifications thus change from case to case. Yet in their changes a general law of growth and decline can be traced. Professor Levi illustrates his meaning by three brilliant historical studies of case-law, statutory interpretation and constitutional interpretation. In the first stage (we take only his account of case-law, illustrated from the cases concerning dangerous chattels) a succession of courts fumbles its way towards a classificatory concept which will help in the practical task of decision. In the second stage, having found what seems a practically useful concept, for instance, that of "inherently dangerous things," the courts proceed to apply it in a line of cases, filling up its categories with particular instances, until the dangerous list comprises "a loaded gun, possibly a defective gun, mislabelled poison, defective hairwash, scaffolds, a defective coffee urn and a defective aerated bottle," while the nondangerous list includes "a defective carriage, a bursting lamp, a defective balance wheel for a circular saw and a defective boiler." Then in the last stage of the process the courts, feeling (as in the judgments in *MacPherson v. Buick*) that their classification is getting out of touch with social life, or rather that social life is getting out of touch with their classification, begin to cast about for a higher or wider principle or rule, and, as they do so, the concept which hitherto has served them gradually falls into disuse. But a broad formulation of the new principle (such as was attempted by Brett M.R. in *Heaven v. Pender*) is of no use for direct application. The new principle necessarily embodies its own concepts and thus involves the need for further classification. The decision in *Donoghue v. Stevenson*, for instance, contained many possibilities of future distinctions—distinctions as to degree of proximity or degree of control, distinctions between articles for internal consumption and articles for external use, between obvious and latent dangers, between personal injury and mere pecuniary loss, and so on. All these lines of thought may on occasion have to be explored by the courts until new bases for classification are settled. And so the process goes on. One can think of other topics of case-law, for instance, the history of restraints on trade or the cases following upon *Rylands v. Fletcher*, to which Professor Levi's analysis would seem equally apt. It certainly deserves extensive and thorough testing, for, if sound, it opens the way to a new understanding of the common law and its method.

Professor Levi's illustrations of the judicial process applied to statutory interpretation (the Mann Act) and constitutional interpretation (the "commerce clause") are equally brilliant and suggestive. Here too the process is in broad lines the same, but with differences. For instance, a judge is not so free in dealing with a statute or even with interpretative precedent as he is with pre-

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cedents in the realm of case-law, because all the words of a statute are operative and none can be treated as mere dictum; nevertheless they nearly always admit differences of interpretation. A written Constitution such as that of the United States, however, increases the freedom of the courts in as much as it opens the possibility of appealing from precedent or statute to the higher law of the Constitution, and a written Constitution, expressing in broad language the ideals of its age, "must be enormously ambiguous in its general provisions."

Such in the author's view is the true nature of legal reasoning and such are the lines on which it should be studied. Obviously its results in any single case must be uncertain and hard to predict; we may have been rescued from the utter confusion into which other realists seemed to have plunged us but we have no hope of regaining our old comfortable faith in law as an exact science satisfying the ordinary man's desire for certainty in the conduct of his affairs. Why then do we accept the law and bow to its compulsion? Professor Levi does not leave this question unanswered. In the first place, even if we cannot predict the choice which a court will in a particular case make between competing analogies, legal procedure "protects the parties and the community by making sure that the competing analogies are before the court . . . in this sense the parties as well as the court participate in the law making. In this sense, also, lawyers represent more than the litigants." In the second place, much of the law is at any moment reasonably certain. It is only the area of doubt that calls for the intervention of the court and "the area of doubt is constantly set forth. The probable area of expansion or contraction is foreshadowed as the system works. This is the only kind of system which will work when people do not agree completely."

The publishers are not wrong when they say in their note that "this volume will be of interest and value to students of logic, ethics and political philosophy, as well as to members of the legal profession and to everyone concerned with problems of government and jurisprudence." Few volumes of such small bulk contain so much matter for thought.

A. H. CAMPBELL