

Cases and Other Materials on Trade Regulation. Edited by Milton Handler. Chicago: The Foundation Press, Inc., 1937. Pp. xxxv, 1287. \$7.00.

Cases on Trade Regulation. Edited by S. Chesterfield Oppenheim. St. Paul: West Publishing Co., 1936. Pp. lii, 1518. \$6.50.

One of the chief merits of the "case-method" of legal study was the training it gave to the student in the use of the original materials in use by the courts in the development of the law. The early case books represented the general opinion of that day that the law was developed by the application and new extension of the principles which had been applied in the decided cases of the past. These two case books show strongly the influence of the modern idea that much material which is not to be found in the reported cases enters into the make-up of the law. In very few fields of the law can this theory be better demonstrated than in the field of trade regulation, and a comparison of two new case books on the topic of the law, each by a recognized authority on the subject, offers an opportunity to examine how these extra-legal materials can be collected and presented to the modern student. Such an examination cannot be made in a review of the books written before much experience in their use.

Both books cover very largely the same materials, but the order is somewhat different. Professor Handler follows his historical introduction with materials on the common law as to restraint of trade and combinations, and then takes up the Sherman Anti-trust Act. Then the subject of trade marks and trade names, and the various forms of unfair competition and other illegal practices are considered, leading to a consideration of the Clayton Act and the later statutory attempts to control industry by statute or administrative agency. Professor Oppenheim takes up trade marks, unfair competition and other forms of control before he deals with the problems of restraint of trade and monopoly. Each arrangement has some advantages not possessed by the other, and both have the disadvantage, which is the bane of all editors of case books, of requiring many cases to appear before others which are really essential to their complete understanding. Since the early activity of governmental interference in this country took the form of protection of competition, rather than of regulation, the reviewer prefers the arrangement of Professor Handler for use in a course where the emphasis is upon governmental control, rather than upon the mutual rights, privileges and duties of competitors.

Professor Handler devotes more than one hundred pages to a preliminary discussion of the development and general characteristics of the business system. He has gathered here much early historical material that otherwise would not be accessible to the student, and has combined it with excerpts from standard authorities. Probably very few teachers of the course would have time to cover this material even superficially, in view of the fact that our modern experience in this field is based on such radically different premises that the early history of the law in this field is of much less value than in most others. Professor Oppenheim's eighty-seven page introduction is composed very much more largely of his own statements, and deals more with the present, than with the historical aspects of the problem. It is a general preview of all of the problems to be considered in the course. It is hard to see why the editor felt it to be necessary to devote nineteen pages of this introduction to a reprint of portions of the opinions in the *Schechter* case. That case had an important political effect, but it seemingly has made very little contribution to our law upon the subject of trade regulation.

In both case books, there is a wealth of material in the footnotes, in addition to that incorporated in the text itself. The attempt has apparently been to make the footnotes

exhaustive rather than selective. For the instructor's use, that may be desirable, though very few instructors would be able to read all of this material in preparation for teaching the course for the first time, and certainly no one could expect any student to become familiar with even a small fraction of it. It is at least open to question if the books would have been more useful to the students if the editors had undertaken the task of selecting from this mass of material only so much of the best as it would be possible for him to read. How far are we justified in expecting a student to pay for material which is useless to him but which saves the instructor a good deal of time that would otherwise have to be spent on digests and indexes? But there is no question that this material would be of immense value to any practicing lawyer who has cases in the field covered by these collections. Either book will give him excerpts from much material to which he could not otherwise have access without considerable trouble, and besides will give him references to practically all of the cases and legal writings on the problem he has at hand.

But the criticisms that can be made of either of these two books are trivial when compared with their merits. A teacher of a course on trade regulations ought to be profoundly grateful if he had the use of only one of these books, when he has the opportunity to choose between them, and to use the best of each to guide his own thinking on the subject, he must realize how fortunate he is.

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How Lawyers Think. By Clarence Morris. Cambridge: Harvard University Press, 1937. Pp. 144. \$1.50.

There seems to be an inverse relation between the ability to expound a systematic theory of an art and successful work in that art. The greatest advances in science have been made by men who either have no explicit theories of scientific method or who, when they talk about 'how they think' at all, talk badly. The world's greatest music and poetry have been the work of men who had no clearly formulated theories of these arts. Political scientists have not built empires and there appears to be little connection between the acquisition of great wealth and the ability to formulate economic theories systematically. It is obvious, then, that to do or make things well one need not be able to make explicit the nature of one's activity. However, in order to communicate to others what it means to do or make things well, one must be able to exhibit the principles of the art he is attempting to teach. Mr. Morris's book, *How Lawyers Think*, undertakes to do this for the art of "legal problem solving."

He says, "It is an attempt to generalize expressly on the subject of the solution of legal problems so that the student of the law may have a systematic theory which may be useful in formulating or criticizing habits of thought." Such a theory Mr. Morris attempts to provide by a few hundred words each on such topics as "The Natural History of Problem Solving," "Past Experience and Present Problems," "Logic and the Solution of Problems," "Immediate Inference," "Syllogisms and Problem Solving," "Classification and Definition," "The Extension and Intension of Terms," "Inductive Logic," and "Theory and Reasoning." The briefness of Mr. Morris's presentation is not due to his skill in grasping essentials nor to his extraordinary capacity for contracted exposition. On the contrary, despite the slightness of his book, it wanders at random high above the surface of dozens of the chief problems of metaphysics,

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