

Cases on Conflict of Laws. Edited by Ernest G. Lorenzen. St. Paul: West Publishing Co., 1937. Pp. xxxvi, 1138. \$6.00.

Comparative Commentaries on Private International Law. By Arthur K. Kuhn. New York: The Macmillan Co., 1937. Pp. xii, 381. \$4.00.

Cases on Conflict of Laws. Edited by Fowler V. Harper and Charles W. Taintor II. Indianapolis: The Bobbs-Merrill Co., 1937. Pp. xxix, 1189.

To review Lorenzen's Fourth Edition, Kuhn's *Commentaries on Private International Law* and Harper and Taintor's *Cases on Conflict of Law* is to witness a glorious sunset, endure an interlude of darkness, and then, enjoy a brilliant sunrise.

Within the limits which Lorenzen has set, his casebook is a masterpiece. A review of its structural organization, however, is unnecessary for the new edition follows essentially the pattern of prior editions.¹ The basic philosophy has been preserved. Although the number of chapters has been increased from seven to thirteen and one hundred ninety-five new cases have been added and seventy-three omitted, the overall length of the volume has not been altered.² A much too short introductory chapter (sixty-four pages) on the history of conflicts, domicile, and qualification and renvoi begins the new volume. Jurisdiction and foreign judgments have been divided into two chapters, as have torts and workmen's compensation. The administration of estates has been expanded into three chapters on decedent estates, trust estates, and debtors' estates. Commercial arbitration provides a thirteenth chapter.

As ever, Lorenzen's new edition is a most teachable book and a most useful guide to the substantive materials on conflicts of law. Nevertheless the reviewer believes that casebooks written on this model have come to the close of their day. The writings of Cook, and Cavers, and Lorenzen himself are having their effect and at least attention is being given to the much neglected prechoice of law problems which to the practice forever will be the more difficult and the more significant.³ This change can be only a credit to Lorenzen himself, for while in his four editions he has not made this re-emphasis, surely without them the change would have been delayed.

To turn to Kuhn's text book is to turn to darkness—for like the night it covers all things. And like the night, there is little illumination. After the introductory chapters on "Historical Development" and "General Nature and Scope" the book strives to compare the civil and common law conflicts rules on nationality and domicile, jurisdiction and procedure, status and capacity of persons, the contract and status of marriage, dissolution of the marriage status, parent and child, property, contracts, foreign torts, and succession upon death. To cover this multitude of subjects in the short space of 347 pages of text necessarily has produced a condensation which results in platitudes, generalities, omissions and inaccuracies.

The discordant note with which the chapter on foreign torts is opened epitomizes the spirit of the entire volume. "Justice demands that wrongs be redressed even if they occur outside the jurisdiction."⁴ But what is "justice?" Is it everywhere equal

¹ Lorenzen, p. vii. "The arrangement of materials in this edition is substantially that of the third."

² This is particularly remarkable because in addition to the many new cases, "Introductory Notes" to chapters and sections have been added, as have law review and "restatement" material.

³ See the discussion of Harper and Taintor, *infra*, p. 706.

⁴ Kuhn, p. 304.

and the same? "Who" demands in the name of justice? What are "wrongs"? In short, the careful scholar will be distressed by Kuhn's cavalier treatment. The inclusion of the classical landmarks of *Machado v. Fontes* and *The Halley* affords but little additional assistance in escaping from the Scylla of the concept and the Charybdis of result. The classical territorial theories of conflicts in the field of torts have run afoul of perplexing complexities in *Young v. Masci*,⁵ in *Scheer v. Rockne Motor Corp.*⁶ and in *Dallas v. Whitney*.⁷ Similar cases are legion, but their problems escape this volume. In short, this chapter and the entire volume contains only the most general references to abstract (*i.e.*, meaningless) common law "principles." There is little analysis, less criticism, and no consideration of the problems as "conflicts problems."

The volume is written with an uncritical acceptance of a conceptualistic view of the law of conflicts. Apparently all literature and case material which throws doubt upon the perfection of this theory has been excluded. And this exclusion can not be forgiven. I do not suggest that Mr. Kuhn must accept other theories or rationales of conflicts cases, but without their recognition one cannot but doubt the adequacy of the volume. The omission of critical law review writings is legion. Outstanding among the omissions is the failure to cite or discuss Cook's articles on "The Logical and Legal Bases of the Conflict of Laws,"⁸ "Substance' and 'Procedure' in the Conflict of Laws,"⁹ "Tort Liability and the Conflict of Laws,"¹⁰ and "'Contracts' and the Conflict of Laws."¹¹ Whether you accept or reject Cook's point of view is your business, but it must be patent to all that without the inclusion and discussion of this point of view a treatise can hardly be considered scholarly.

Thus, so far as the common law materials are concerned the book appears to be indubitably deficient, and this is particularly unfortunate for the true merit of Kuhn's work was to make available civil law materials to the common law lawyer. The suspicion, based on the inadequacy of the treatment of common law rules naturally extends to the civil law materials. So far as this reviewer is concerned it can be suspicion only. Suspicions, perhaps, are unfair, and extrapolation from what we know to what we do not know is usually dangerous. The suspicion itself, however, repels further investigation. And the Arctic night already is too long, and the reviewer is eager to turn to the light of a newer day which Harper and Taintor promise in their *Cases on the Conflict of Law*.

This casebook is of normal size and dimension. At this point its similarity with existing conflicts books ceases. The editors have taken a bold stroke. Unlike Lorenzen who dedicates but 52 pages to domicile and therein inserts what materials he uses on "qualification" and "renvoi," Harper and Taintor devote their first 345 pages to "Foreign Elements in Legal Relations." This is the first serious attempt to present in a casebook the method which makes conflicts a separate body of legal learning.

In the past casebooks have shunned this problem not only because of its uncompromising complexity but also because the romantic couple—the territorial theory and the renvoi—turned out to be incompatible. Eventually the deficiencies of renvoi and the absurdity of the hypothesis that choice of law rules produced uniformity had to be disclosed in casebook form. Harper and Taintor have done this.

⁵ 289 U.S. 253 (1933).

⁶ 68 F. (2d) 942 (C.C.A. 2d 1934).

⁷ W. Va. 188 S. E. 766 (1936).

⁸ 33 Yale L. J. 457 (1924).

⁹ 42 Yale L. J. 333 (1933).

¹⁰ 35 Cal. L. Rev. 202 (1935).

¹¹ 31 Ill. L. Rev. 143 (1936).

Part I of Harper and Taintor's volume is so attractive in its focus on the basic question of what is the conflicts technique as distinct from what happened in tort or contract cases that the reviewer is tempted to extend the discussion to unreasonable lengths. Certain that the book review editor would not permit this he hopes that his enthusiasm will incite your curiosity to read and revel as he has.

Part II carries forward the same basic inquiry and asks the question "When Will Courts Adjudicate Controversies Involving Foreign Elements?" Three chapters reduce the conceptualistic limits of jurisdiction and judgments to the more significant inquiries, "When Will Foreign Elements Affect the Legal Desirability of Adjudication," and "When Will Foreign Elements Affect the Constitutional Limitations on Adjudication." Conversely, Part III considers "Foreign Elements Regarded as Legally Insignificant." Part IV, the last part of the volume, considers the issue of choice of law or "When Foreign Elements are Regarded as Legally Significant." The choice of law problem consumes less than half of the volume. This reduction of emphasis on substantive differences in local law rules seems highly desirable. It is, of course, always grievous to lose old friends, and many of the classical cases do not appear in this shortened part on choice of law. But new friendships will grow as strong and will perhaps be more delightful.

It forever may be perplexing that a person is treated as married in one state and not in another; but the marriage relation as a legal problem seldom arises singly. Economics is ever intruding. Thus a court must frequently decide whether a case should be treated as a status case, a domicile case, or a property case. For as it starts, so will it finish. Thus, this reviewer believes that the emphasis on qualification which Harper and Taintor have injected into this volume is indispensable to an intelligent prediction on the issue of choice of law.¹²

To date, no casebook has endeavored to present these materials with an adequacy which they deserve. Thus, this volume may well mark the beginning of a new day for conflict of laws casebooks. It is well edited, concisely organized and footnoted.¹³ Balanced in length and content it should be a thoroughly teachable book.

¹² See Harper and Taintor, p. 258, quoting Arminjon as follows: "How can we know what law is applicable to a legal relation without having first determined the nature of that relation? Qualification must necessarily precede the choice of law for, when two laws seem simultaneously applicable and when they qualify differently the relation in question, there is not one but two relations depending upon whether we consult one or the other law. . . . To act otherwise would be to suppose competent, *a priori* and arbitrarily, one of the conflicting systems whose applicability must be established by means of one of the choice of law rules of that legal system must decide the question. That question can be decided only after its elements have been defined and classified by means of the rules of qualification of that legal system."

¹³ In some instances the cases have been too concisely edited, *i.e.*, the facts in *Loucks v. Standard Oil*, p. 21, are omitted to the detriment of the case. This has occurred frequently in the early part of the volume. The footnotes are not mere repositories of authority but guide the student in the development of the problem. Cross-referencing of cases, however, would improve the volume at numerous points and the citation of all the law review materials contained in the footnotes in the table of books and articles—scarcely a fourth of them appearing—would facilitate its use. Occasional typographical errors will no doubt be corrected in future editions.

The weather report for the new volume: "Clear, with fresh but moderate winds." And from the old prophets, perhaps, "storms of protest."

FRANK E. HORACK, JR.*

The Good Society. By Walter Lippmann. Boston: Little, Brown & Co., 1937. Pp. xxx, 390. \$3.00.

Since its first publication early last fall, Mr. Lippmann's book, *The Good Society*, has been the subject of a good deal of highly divergent comment. Within my own observation, the highest note of praise has been that struck by Mr. Horace J. Bridges, of the Chicago Ethical Society. "The work," says Mr. Bridges, "has stirred me to great enthusiasm. For twenty years I have been consciously waiting and longing for just such a book as this. . . . [It is] a work worthy to stand in the line of succession to the First Book of Hooker, to Milton's 'Areopagitica,' to Locke's 'Treatises on Civil Government,' to Burke and Adam Smith, and to John Stuart Mill."¹ In contrast to the enthusiasm of Mr. Bridges are the opinions of Mr. Lippmann's ex-brother socialists. From them has come a chorus of assertion and innuendo, that Mr. Lippmann has simply "sold out"; and even the relatively moderate Max Lerner, though absolving Mr. Lippmann of any conscious dishonesty, observes significantly that "Mr. Lippmann is a rich man; [that] his friends are the possessors of the earth; [and that] he is their prophet." His book is described as "a rationalization of the economic claims and political fears" of his friends, and he is accused of "fleeing to the Nirvana of political inaction."²

It does not seem to me that *The Good Society* itself gives much support to any of these views. It is, most decidedly, not a great book; it is rather dull, much below Mr. Lippmann's own standard as a piece of writing,³ and confused and inconsistent in its substance almost from beginning to end. On the other hand, it seems to me equally certain that the book is not a plea for inaction, and, though confessedly a product of a period of personal bewilderment and wishful thinking on the part of its author, it is, I think, about as honest as tracts of its kind usually are.

"I began to write," says Mr. Lippmann, "in a mood of protest but without much hope." He has been "bewildered," he says, ever since the War. Yet his occupation forced him into daily comment upon critical events with no better guide to their meaning than his own "hastily improvised generalizations." His "predicament," was "not pleasant."⁴ He speaks of "weariness" and "discouragement," of "the

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¹ Bridges, Mr. Walter Lippmann's "Good Society": An address to the Chicago Ethical Society (1937).

² Lerner, Lippmann Agonistes, *The Nation* (Nov. 27, 1937). See also Marshall, Columnists on Parade VI: Walter Lippmann, *The Nation* (April 23, 1938).

³ Any one doubting this estimate should compare *The Good Society* with Mr. Lippmann's *Method of Freedom* of 1934, which dealt in a prefatory way with somewhat the same subject as his present book.

⁴ It is hard to believe that Mr. Lippmann was aware of much "bewilderment," or that he felt his predicament "unpleasant," when he wrote his Preface to *Morals*. See, especially, chapters xii and xiii. The Preface to *Morals* was published in May 1929; the stock market crash, it will be remembered, came in October.