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**CASES AND OTHER MATERIALS ON LEGISLATION. By Horace E. Read and John W. MacDonald. Brooklyn: The Foundation Press, Inc., 1948.**

George W. Stengel

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# BOOK REVIEWS

CASES AND OTHER MATERIALS ON LEGISLATION. By Horace E. Read and John W. MacDonald. Brooklyn: The Foundation Press, Inc., 1948. Pp. 63, 1357. \$8.50.

HERE is a meritorious book of cases and materials in a field that has long been grossly neglected. The case method of legal education, which prevails in practically all American law schools, has been universally extolled for teaching the common law. But we have not learned how to teach statutory law. While this deficiency in legal education has been frequently lamented, very little has been done to correct it. As early as 1917 Professor Ernest Freund spoke of "the monopoly of the judicial point of view in the study of law." During the next twenty-five years, more and more attention was devoted to the problem. Articles were written on the teaching of legislation,<sup>1</sup> a number of law schools introduced courses on the subject,<sup>2</sup> and a few case-books were written.<sup>3</sup> In most law schools, however, it has either been neglected entirely or treated as a stepchild in the law curriculum.

In many schools where legislation has been taught, it has been merely a course on statutory construction. While this is certainly a very important part of any course on legislation, the course should not be limited to a study of rules of statutory interpretation, but should also include a comparison of legislation with case law, a study of the nature and function of the legislative process, the creation of legislation and the drafting of statutes. We should recognize that legislation and judicial decisions are coordinate sources of our law and should be given the same comprehensive treatment. After graduation, the student will be working with statutes more than with case law. When a client comes into his office with a problem, he will usually consult the statutes before considering cases. Probably more of our law students will become legislators than become judges. Those who never hold public office will represent clients before legislative committees and be called upon to draft statutes, regulations and municipal ordinances. Moreover, most lawyers are regarded as civic leaders in their communities, and their ideas on legislative matters, whether voiced from a public rostrum or uttered pri-

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1. Two excellent articles on courses in legislation are: Hurst, *The Content of Courses in Legislation*, 8 U. of CHI. L. REV. 280 (1941); Julius Cohen, *On Teaching of "Legislation"*, 47 COL. L. REV. 1301 (1947).

2. The University of Nebraska College of Law has instituted a "Legislative Laboratory." See Beutel, *The New Curriculum at the University of Nebraska College of Law*, 25 NEB. L. REV. 177, 184 (1946).

3. DE SLOOVER, *CASES ON INTERPRETATION OF STATUTES* (1936); PARKINSON, *CASES AND MATERIALS ON LEGISLATION* (1936); NUTTING, *CASES AND MATERIALS ON LEGISLATION* (1939); HORACK, *CASES AND MATERIALS ON LEGISLATION* (1940).

vately, are given far more weight than is given to the opinions of citizens generally or even to those of members of other professions. In teaching legislation, we should, therefore, teach it from a jurisprudential point of view. As Mr. Justice Frankfurter recently said, "every really good course in law is a course in jurisprudence."

Prior to the publication of this book by Read and MacDonald, the only casebook in the field, other than those devoted almost exclusively to statutory construction, was written by Professor Horack in 1940.<sup>4</sup> He found "the undertaking hazardous and the result experimental."<sup>5</sup> About half of this book (379 pages) was devoted to the formulation of legislative policy, legislative organization and procedure, and factors influencing legislative action; the remainder (443 pages) was devoted to types of statutes, their structure and interpretation.

Read and MacDonald's book is divided into eight chapters, covering the following subject matter: (1) comparative aspects of growth of law through the legislative and judicial processes (211 pages); (2) legislative organization and procedure (124 pages); (3) types of statutes (147 pages); (4) various means for making laws effective (163 pages); (5) the form of law-making—parts of a statute (139 pages); (6) legislative language, its arrangement, and mechanics of drafting (187 pages); (7) methods of interpretation and construction (235 pages); and (8) fitting legislation into a unified legal system (132 pages).

The first chapter, which compares judicial law-making with legislation, gives an excellent historical and analytical approach to the subject. Although it seems that law-making by agency regulation might well have been included in this comparison, much can be said for the authors' policy of leaving such a comparison to a course on administrative law. While much of the subject matter of this chapter has been taught in courses in jurisprudence, very little of it has appeared in other casebooks on legislation.

The second chapter begins with an outline of legislative procedure, followed by sections on the office of the speaker, legislative committees and legislative investigations; the remainder of the chapter is devoted to constitutional limitations on legislative procedure, continuation of legislative powers after adjournment, the enrolled bill and journal entry rules, and the place of the executive in the legislative process.

Chapter 3, on types of statutes, deals with direct, declaratory and creative legislation; amendments, supplements and repeals; revisions, codifications, consolidations and compilations; special legislation; uniform laws; and interstate compacts.

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4. HORACK, *CASES AND MATERIALS ON LEGISLATION* (1940). For an excellent review of Professor Horack's book, see Hurst, *The Content of Courses in Legislation*, 8 U. of CHI. L. REV. 280 (1941).

5. HORACK, *op. cit.* p. iii.

In Chapter 4 various means for making laws effective are considered. After a brief inquiry into the limitations on effective law-making, the Securities Act of 1933 is set forth as a specimen regulatory statute. The following sections on sanctions deal with penalties, contempt proceedings, invalidations and disabilities, abatement and summary enforcement in equity, adverse presumptions, civil liabilities, the requirement of an oath and bond of public officials, effectuation of laws through administrative agencies, licensing and inspection, publicity, and preventive devices.

The fifth chapter, on the form of law-making, is devoted to the bill or resolution; the title, preamble, enacting and interpretation clauses of a statute; the purview; exception, provisos and savings clauses; severability clause and clause as to when a statute shall take effect.

Much of the subject matter in Chapter 6 (on legislative language, its arrangement and mechanics of drafting) is usually covered in a study of statutory interpretation. Students should, of course, have some knowledge of statutory interpretation before they attempt to draft statutes. For this reason, perhaps the problems on drafting should be postponed until after Chapter 7 on statutory interpretation. On the other hand, the students will learn more from Chapter 7 if they have first wrestled with some of the problems of the legislative draftsman. The authors believe that specific drafting and research problems should be taken from the law teacher's current environment and, for that reason, have not attempted to provide any such problems in their book.

Chapter 7, on methods of interpretation of statutes, deals with the familiar problems and rules of statutory construction. Under "Postulates and Approaches," the authors take up their historical origins and development in England, enunciation of postulates by American courts, the literal approach and plain meaning rule, equity of the statute, the "mischief rule" and the "golden rule" approach. The third section of the chapter, entitled "Intrinsic and Extrinsic Aids and the Problem of Ambiguity," is concerned with the words of the statute, the context, statutes in *pari materia*, previous judicial interpretation (by the same court, borrowed statutes and re-enacted statutes), previous administrative interpretations, history of legislation on the subject and conditions at the time of enactment, legislative history, and methods of presentation of extrinsic aids. The rest of the chapter contains excerpts from several articles portraying current points of view on the basic theory of statutory construction.

Chapter 8 (on fitting legislation into a unified legal system) is a continuation of the subject of statutory interpretation. After the introduction, materials on strict and liberal construction are inserted, *viz.*, statutes in derogation of the common law, penal laws, remedial statutes, taxing statutes, statutes concerning the sovereign, and territorial application. The remainder of the chapter covers common law statutes, use of common law as a material of

interpretation, statutes covering entire subjects, uniform laws, analogical reasoning from legislation, violation of statutes as negligence per se, judicial adaptation of common law to basic legislative changes, and the problem of codification and restatement.

In choosing their materials for the book, the authors have drawn extensively from treatises and law review articles as well as from cases, committee reports and statutes. They seem to have chosen cases or reports, rather than excerpts from articles, whenever satisfactory cases could be found. It would, of course, be impossible to find cases dealing with many of the problems covered in such a book. The selection of cases and materials is very good. I think, however, that it would have been better if the authors had written textual material on many of the topics rather than attempting to cover them by excerpts from articles. When a series of small excerpts from articles is used, continuity of thought is generally lacking, and one can seldom obtain the full meaning from an excerpt taken out of context. The authors have done an excellent job in editing the cases. Seldom have they found it necessary to edit a case so severely as to excise its facts. If the facts of a case are omitted, it is no longer a short story in itself, and often becomes an almost meaningless abstraction.

The book is patterned for a course of four semester hours. The authors say in the preface that the course is given in the third year in their schools and extends through the academic year. It seems preferable to me to give the course in the second year. While the students will undoubtedly learn more from the course if it is postponed until the third year, I think it should be taught earlier as a basis for other courses. Problems of statutory construction constantly arise in second and third year courses, and the student will be much better prepared to cope with them if he has had a course in legislation.

Considering the novelty and magnitude of the task, the compilation of this casebook represents a real contribution to legal education. With the help of such men as Professors Reed and MacDonald, and others in this field, perhaps some day we shall become as adept in teaching legislation as we are in teaching the common law.

GEORGE W. STENGEL

ASSOCIATE PROFESSOR OF LAW,  
UNIVERSITY OF MIAMI

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THE ROOSEVELT COURT. By C. Herman Pritchett. New York: Macmillan Company, 1948. Pp. 314. \$5.00.

UNTIL a decade ago the conservative role of the United States Supreme Court was given universal credence. Two factors had served to emphasize the traditional check and balance interpretation: the life tenure of federal