
David S. Stern

Follow this and additional works at: http://repository.law.miami.edu/umlr

Recommended Citation
Available at: http://repository.law.miami.edu/umlr/vol5/iss4/21

The phrase “acclaim verging on awe,” which Prof. Wm. T. Dean, Jr. used to describe the reaction of the learned public to Vol. I of this work has not diminished, nor should it. When a monumental work is under construction, it behooves all lesser creatures who watch its growth to sing its praises. The reviews already dedicated to Rabel’s treatise represent a valid cross-section of the best opinion of the entire common-law world in this field. This reviewer can suggest nothing better for the pioneers of the Michigan Legal Studies than that, when the great work is done, a supplement be published to be called—Studies on the Conflict of Laws by Ernst Rabel or the Experts Confounded. Never before has such unanimity existed; such praise to the instigators; nor ever so rarely has a work had the impress on its time as this. It would be close to heresy to break with tradition but I shall risk it.

One cannot question that this is “an enterprise conceived in the boldest spirit which finds no counterpart elsewhere in the literature of the conflict of laws.” As Deans Farley and Griswold have pointed out, Rabel has, by his “enlightened eclecticism,” removed the “constricting blight of provincialism cast by much of the otherwise wonderful work of the late Prof. Beale” and has served, probably without conscious intent, “to bridge the gap which was so deeply cut between Beale and Cook and their supporters.” This new treatise has an enormous value as a collection of authorities and views, but I am left with the feeling that Rabel has found his way through the maze in his own private and unrevealed way. He does not choose to let us know how or why he has arrived. There are frequent pas-
BOOK REVIEWS

sages\(^8\) of brilliant summary in all three volumes, but they are not frequent enough. To the practitioner vexed with a problem in this field, the monumentality of the work will be of great help. He is bound to find something to support his views. To the student, certain of the brilliant Rabelian passages\(^9\) will be of aid and comfort but, before entering this enchanted world, he is well advised to have before him this cryptic warning “... nothing better for students to read who have advanced far enough in the subject to have their feet on the ground.”\(^{10}\)

Two general criticisms can be made of this book. The first is a reiteration. Rabel has collected and joined magnificently. No one could help but be overawed at the “wide learning and indefatigable industry”\(^{11}\) of the author. We are all duly thankful that he escaped from Hitler’s purge to give us this work. We are also grateful that he has removed all “excuse for insularity of thought.”\(^{12}\) Comparative works are now well imbedded in our legal panorama and firmament. I have used this treatise with good results. Many of my students have told me of their delight in certain passages, but they and I concur in Griswold’s reaction\(^{13}\) that “it is hard to argue with Dr. Rabel. He takes no violent positions either way.” Perhaps my reiteration has been too long, for at Rabel’s age one probably does not care to stir up controversy.

The second criticism is merely an echo of one made earlier by Prof. Rheinstein.\(^{14}\) It is the only one that I have found that can be leveled at this third volume with any validity. Possibly it is a reflection of the same desire to achieve concord. I do not believe so. The false unity achieved by Erie v. Tompkins has not led to concord.

In the volume itself, Rabel continues to follow the classic civil-law breakdown of the subject. Part Nine, consisting of chapters 34-48 and requiring no less than thirteen pages of table of contents, deals with special obligations—money in the laws; sales; representation; maritime carriage; insurance; suretyship and extra-contractual obligations.

Part Ten on Modification and Discharge is a mere wraith, consisting of five chapters, but containing some of the most brilliant passages of the entire volume. Were the entire work near the standard of the essay on

---

8. Particularly fine is the survey at the beginning of Volume I.
9. In Volume III under review, Chapter 35 on Special Problems of Money Obligations and that on Statutes of Limitations, infra note 15.
12. Ibid.
13. Griswold, supra note 10. But cf. the remark of Dean Falconbridge, in reviewing the same volume, that Rabel in stating his views or his understanding of the views of others “... is concise to the point of being cryptic ...,” 25 Can. B. Rev. 318 (1947).
14. The full statement is contained in the review of Volume I in 14 U. of Chi. L. Rev. 124, 136 (1946). It is worth quoting:

... Rabel is still inspired by the notion that... the conflict of laws principles should aim at international or interstate uniformity of decision. This notion can be questioned. The aim... may be stated more modestly as the protection of expectations which are regarded as justified under the principles of legal policy prevailing in the forum.
Statutes of Limitations, it would not only awe but stimulate all readers. It might even stimulate their curiosity. A search now can, and will, be made into why some of our legal rules grew the way they did. They need to be rescued by analysis rather than overwhelmed by descriptive prolixity. It is not enough merely to catalogue human inventiveness, especially when it is of the kind that leads to obfuscation rather than clarification.

Plans to carry on have already been laid. It is hoped that Dr. Rabel will enjoy both health and energy until the task is completed and absorbed. For the excellent Americanization of the text, thanks should go to Barnes. He has rendered it readable, while leaving the fine flavor of the European to give it verisimilitude.

A few of the minor errors which occurred are noted below to assist the careful author who has already appended the errata for Volumes I and II.

In conclusion, I would like to state that any work must be judged on the basis of its own limitations. If this volume impresses the reader as having been conceived in an era of thought which greatly antedates the authorities reviewed let him bear these words of the author in mind:

I am fairly satisfied that at this time our critical survey of past and present conflicts doctrines and the outlook for their reasonable progress ought not to be disturbed by the fear that it may shortly become obsolete.

The author having taken this position, it would be unfair for anyone to criticize the volume because the critic felt that he had used the wrong
tense. For even if it were true that it had lost its utility as a guide to living law, it would let retain its monumental historical value.\(^{22}\)

**David S. Stern**  
**Associate Professor of Law**  
**University of Miami**


The book under review, the latest in a series of distinguished text books in international law, is a refreshing approach to the casebook method. It seems evident that the author has organized the book with a view to permitting the student to derive the maximum benefit from its use with the minimum expenditure of time.

Collateral commentary in the form of author's notes, and carefully selected readings from the authorities, have been made a part of the text, thus eliminating footnotes. This material is sufficient to make the cases understandable to the student and eliminates the necessity of his doing a mass of outside reading and of the instructor's devoting a great deal of class time to preliminary factual lectures. This feature permits a higher percentage of the limited amount of classroom time to be devoted to the all-important matter of case analysis.

Professor Dickinson's departure from the traditional type of casebook makes available to the profession a text which will aid the growth of legal pedagogy without detriment to the teaching of inductive legal analysis. Much of the justification for the selective and streamlined collection of materials in this casebook is the recognized need that, with the extraordinarily rapid growth of the law in recent years, and with the more liberalized attitude in law schools toward elective courses, it has become impracticable to devote more than two semester hours of study to any except the more fundamental courses of the curriculum. Yet, in this instance, the reviewer believes that more is involved for he is convinced that this type of casebook answers a long and widely-felt need for less mystery and more common sense in elementary legal pedagogy. If, in this critical time, when trained minds are needed more than ever before, legal pedagogy is to grow, Professor Dickinson's is the type casebook that will aid that growth without completely emasculating the advantages of the Langdell system. It is believed that these advantages must be preserved since they are based upon a recognition of the fundamental differences between the deductive method of the civil law and the inductive method of the common law.

The reviewer has had the privilege of using this casebook in his course

\(^{22}\) But see contra Lipstein, Book Review of Volume II, 10 Camb. L.J. 302, at 303 (1949), where he states of this work that it is "an outstanding example of the value of the comparative method where technical problems rather than national institutions are under review. Legal theory may divide, but the work of the courts tends toward uniformity." The nature of the problems here dealt with being the same, it can be presumed that his feelings would be the same.