

## BOOK REVIEWS

CASES FOR REVIEW. (Supreme Court of Washington). James Holland Bell, (Seattle University Publications, 1957. pp. 161).

Congratulations to a colleague at Seattle University whose devotion to the art of teaching and more particularly to his mistress, the law, has brought forth a compilation of Washington cases of which he can be justly proud. Pride is not his forte for he states "It is a work book with no pretense of elegance or literary merit." Be assured, however, that it has literary merit even though its covers are bound by the familiar rings and its pages are reproduced by mimeograph. Profit was not the motivation, but service to the students. The aim of the author was to bring to the student a compilation of Washington cases which would not be possible through the usual means of publication.

A table of cases lists 119 cases, five of which are used a second time in the compilation. An infrequent second use of a case is desirable to impart to the student that the same case may have several uses. Almost half of the cases are in the 1950 decade and a quickly shrinking proportion from the immediately preceding decades. Reading these cases was like meeting old friends again. A great many of these cases have been used by this reviewer in classroom and in examinations since they first appeared in the advance sheets. Every lawyer has his own selection of cases to illustrate the principles being presented. It was satisfying to identify so many of my own familiar cases.

A new index to business law texts and students lists in numerical order the sections of the statutes cited in the cases, together with their page numbers. Should one desire a case citation for a particular statute, this index will provide it, if the case cites it. This is a very useful tool. Further, there are seven citations to the Washington State Constitution and two to the U. S. Constitution. Being a firm believer in the use of statutory material both in the uniform acts and the state statutes, I find this index a key to a valuable storehouse of law and most useful.

The index of subject matter I found far beyond the usual type for a small publication of this character. Every item of legal analysis appearing in the cases also appears here. To illustrate: Accounting, actions for- with four citations, down to the W's and Wrongful Death, with two citations. In detail, for instance, Automobiles (1) family car doctrine, with two citations; (2) negligent operation, four citations; (3) safety glass, one citation, and (4) unlawful repossession, one citation. There are approximately six hundred and fifty cross references, although there are only 119 cases. Each case, therefore, contains the principal legal points involved in the case. Customarily, the more remote points are edited out. To cite a familiar one on page 27, - *Lubin v. Cowell*, the head notes (appearing as footnotes) indicate Trial, Evidence, Continued Objection, Contracts, Infant, Recission and Estoppel. The case is followed by appropriate statutory compilations relating to (1) A minor is bound; (2) No contract can thus be disaffirmed; (3) Age of majority; (4) Guardianships, and (5) Contracts of marriage, statutory provisions. Statutory provisions are usually followed by reference to other cases which are available at the library for further study. To the good student who is interested there is no end to the profitable spade work he can continue, once embarked on the cross references and with the law books available.

Cases to the lawyer are his meat and drink. The cases presented are mostly recent ones, larded with local color. Professor Bell's disclaimer as to literary merit is not well founded. His editing of the facts in the cases holds the interest of the student. No two individuals have the same style, but Professor Bell has sought to preserve the character of the individuals and the local color. It is most satisfying to the instructor when he can present a case to his students, either in the book or in lecture and have some student respond that the events occurred in his home town, that he recalled the notoriety at the time of the event, but failed to note the final legal outcome. Interest and suspense.

The wide margins will be useful to both student and instructor. The typing is the width of a 3 x 5 card so that the case may be folded on a card. Note: Professor Bell offered the suggestion that other business law professors might care to use his cases and might therefore find his own adaptation a convenience. They should feel welcome to so use his cases.

Professor Bell selected and edited each case, accumulated the statutes and then cut the stencils, one by one. It is said that virtue is its own reward. Devotion to one mistress,

the law, and to one's students is Professor Bell's reward at present. Let us add our commendation and admiration for a job well done, without help, without hope of monetary gain. This book is sold at cost by Seattle University Bookstore. Royalties? Here was work to be done which no publisher could profitably undertake. Here was a devoted practitioner, willing to make the sacrifice to implement his own style of teaching. The classes and students are not too numerous to direct them to the original source material in the library.

Professor Bell has been presented to you indirectly, but now let us meet the man. He has his law degree from Northwestern University and pursued graduate study in law at the University of Washington. He is fortunate in that after a lucrative practice he could retire early and afford the luxury of doing exactly what he likes, teaching and studying law. Twenty years of practice have enabled him to bring to the classroom an enthusiasm and enriching experiences which are invaluable.

Every high school or college teacher of business law in the state of Washington should have a desk copy of this book. Further, copies should be made available in the libraries so that the instructor might on occasion refer the students to this source and the cases made available. Some schools use a straight text approach. Such schools should certainly enrich their offering by making this supplemental material available.

The breadth of legal problems presented is very substantial. Many business and professional men would find these cases, with few exceptions, interesting reading, and exceedingly fruitful, in refreshing their legal concepts, some of which may have strayed.

A book review should also present constructive criticism. Professor Bell is aware that the table of contents page is missing. Assume the usual organization of offer and acceptance, etc. and areas customarily included such as Principal and Agent and Partnerships, for instance. The indexed cases are not in depth, they cannot be in only one hundred and nineteen cases, but the depth is obtained by the citations given and also by notes included as on pages 99 and 100. Other teachers may well prefer depth or breadth of case illustration found in the usual core presentations to the breadth of subject matter presented in this

present edition, but Professor Bell wrote for his own use. Professor Bell does not use a text book as a supplemental book, but rather, all of the library books referenced and cross-referenced. Your reviewer would prefer that the parties litigant be identified immediately in their legal relationship. At times, citations appear much more than adequate. I hope that Professor Bell will be induced to publish a second edition and when that time comes that he will enjoy some of the monetary fruits of his endeavor. A sketetal text might then join the cases or assist in any transition. Use and reappraisal of the materials by Professor Bell will evolve into a substantial addition to the present materials.

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ESSENTIALS OF INSURANCE LAW. Edwin W. Petterson. New York: McGraw-Hill Book Company, Inc., 1957. Pp. xiv, 558.

In 1935 the author of this volume, who had been a Deputy Superintendent of Insurance for the State of New York, and who then was a teacher of law, brought out the first edition of his "Essentials of Insurance Law." His experience as a state executive in the regulation of the insurance business at a commercial level and his experience as a teacher of the law of insurance on a theoretical plane combined to give him a rare combination of talents which were exploited to the full in the writing of that book.

Since that time many changes have occurred in the field of insurance. A list of these changes must include the introduction and wide adoption of the 1943 New York Standard Form of fire policy; the Southeastern Underwriters case,<sup>1</sup> holding insurance to be commerce; and the McCarran Act<sup>2</sup> which followed that case, surrendering the newly found federal power to control the insurance industry to the states for the time being. The general development of case law also added to the need for the preparation of this new edition.

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<sup>1</sup>U.S. v. Southeastern Underwriters Ass'n., 322 U.S. 533, 64 Sup. Ct. 1162, 88 L. Ed. 1440 (1944).

<sup>2</sup>59 Stat. 53 (1945), 15 U.S.C.A. §§ 1011 et seq., as amended by 61 Stat. 448, 15 U.S.C.A. § 1012.

It is clear that an understanding of the law of contracts, although prerequisite to an understanding of insurance contract law, is no substitute for it. As Professor Patterson states in his introduction: "The general law of contracts has supplied the basic ideas for the law of insurance contracts; yet the general law has been profoundly modified by the needs of the insurance business."<sup>3</sup>

The purpose of the author in the preparation of this volume is to set forth to the general reader interested or working in the field of insurance the more important legal doctrines specially applicable to that area of law. This task has been accomplished in large measure between the covers of this volume.

One of the problems facing the writer of a volume on a field as intricate and as practical as insurance is the necessity of coping with an infinite variety of factual situations. Often these factual situations are merely variations under a particular theory or approach. In such a case they have little value from a theoretical point of view, but are of great interest to the man in the field. If many cases are cited the author will satisfy the man in the business, but will lose himself in a mass of detail which obscures theory. On the other hand, to omit the factual examples may lead to improperly broad generalizations.

Professor Patterson has avoided the horns of this dilemma with remarkable success. His main devotion is clearly to principle and theory. He has not avoided, by any means, the practical problems involved in the application of those principles and theories, however. It may seem, on first glance, that the book contains a paucity of footnotes and citations. This, however, was part of a well-planned attempt to escape from the heaviness and dullness which accompanies the devotion of time and energy to the recitation and citations of factual situations differing from each other only slightly. While many if not most books in this field are works of reference, this is a book that can be read from cover to cover with pleasure and profit. Still, because of the stature of the author, it can be cited as an authority with confidence.

This devotion to principle in the light of practice is further implemented by Professor Patterson's refusal to consider separately and in detail the technical refinements of the law

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<sup>3</sup>At viii.

of Marine Insurance, Accident Insurance, and other special forms. Likewise he does not undertake a clause-by-clause interpretation of the usual Standard Form of fire policy. His intention, on the contrary, is to develop and explain general principles, illustrated from time to time by cases and hypothetical examples. The gain in readability is worth the loss of documentation and detail.

Another problem facing the writer of a text on insurance law is how to juxtapose life and property insurance. The principles applied to each are, in many instances, radically different, and yet a text devoted to general insurance law must take account of both forms. A writer may set off separate chapters for a discussion of the application of certain insurance principles to property and then life insurance. At other times one finds life and property concepts and cases indistinguishably merged in the same paragraph. Professor Patterson avoids this dilemma by devoting separate sections of particular chapters to life insurance, and by devoting one entire chapter to the unique problem of insurable interest in life insurance. As a result the reader is never in doubt whether he is reading about life or property insurance.

The coverage of the volume must be viewed in the light of the author's major aim to create a readable book setting forth the most important principles of insurance law, illustrated by or y enough examples to make the theory meaningful. As a result he covers the usually expected areas of insurance law such as "The Making of Insurance Contracts," "Insurable Interests in Property," "Insurable Interest in Life Insurance," "The Termination and Transfer of Insurance Contracts," "Warranties and Conditions," "Representations," "Concealment," and "Waiver, Estoppel and Election."

Two chapters of the book are worthy of special notice. The very first chapter, entitled "Governmental Control of the Insurance Business," is particularly important because it is devoted to the practical aspects of the insurance business. The chapter covers administrative control of rates, policy forms, financial condition, and the like, and ends with an analysis of some problems in conflict of laws. Professor Patterson, because of his wide experience with the insurance industry in action, is particularly able in this field and his discussion, consequently, is extremely interesting.

The sixth chapter, entitled "The Event Insured Against and Excepted Causes and Consequences," is unique, to my knowledge, in insurance writing. The author's endeavor is to

explain the nature and aims of the insurance business and how the law implements or hinders those aims. The purpose of the business, of course, is to assume the risks of others on a predictable basis. This requires selection of the risk in advance. It also contemplates the possible cancellation of existing policies. Control of risks is also achieved by limiting the nature of the event insured against. While preliminary risk selection is not subject to legal control, except for assigned risks, the problems of cancellation and clause interpretation are clearly matters for legal control. The chapter constitutes an excellent synthesis of insurance concepts and legal ideas, and presents a new approach to a practical analysis of insurance problems.

In a few places one can find substantive disagreements with other writers in the field, as might be expected. He says, for instance, that "By the great weight of authority... an agent's oral assent to an assignment is ineffective,"<sup>4</sup> citing a 1920 New York case.<sup>5</sup> The transaction to which he refers is the oral approval of an assignment of a policy of fire insurance from an insured owner of real estate to a new owner of the property, by an agent with authority to countersign and deliver policies. The policy by its terms requires written consent to make an assignment effective against the company. He goes on to make the suggestion that the old owner cancel his policy at the short rate, and that the agent enter an oral contract to insure the interest of the new owner immediately the old policy expires. In this way he overcomes a technical difficulty by a technical dodge, for now there is no assignment to put in writing, and the agent has authority to enter an oral contract of insurance.

Professor Clarence Morris, however, seems to have a more practical and equally just solution to this problem which does not require a mechanical readjustment of procedures. Professor Morris suggests that "Once, however, an agent gives informal consent to the transfer, courts are not likely to be impressed with company argument that transfer must be in writing, especially since agents normally have authority to insure the transferee by a new oral contract."<sup>6</sup> Professor Morris thereby takes Professor Patterson's argument and uses it as a supporting reason for a contrary answer.

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<sup>4</sup> At 222.

<sup>5</sup> Greentaner v. Connecticut Fire Insurance Co., 228 N.Y. 388 (1920).

<sup>6</sup> Morris, Walver and Estoppel in Insurance (1957), 105 Univ. of Pa. L. Rev. 925, 937-938, note 38.

Occasionally evidence can be found of writing that was a bit too quick and casual. A case of this occurs in relation to the problem of the rights of a vendee of property in the vendor's insurance. Clearly the vendee has no interest in the policy unless it is assigned to him, and has no action against the company. Equally clearly, however, most jurisdictions give the uninsured vendee the right to claim the insurance money received by the vendor. Professor Patterson then concludes that "This result conforms to the common understanding of persons buying and selling real estate that the insurance coverage goes along with the property. It does not conform to the old maxim that the fire insurance contracts are 'personal' to the insured."<sup>7</sup> While the result may conform to the "common understanding," the maxim that fire insurance contracts are personal to the insured would be violated only if the uninsured vendee were permitted to sue the company directly. As long as he must sue the vendor for the proceeds received from the company, the maxim stands.

Such criticisms, however, are not meant to detract from the value of the book. The writings of no man, regardless of his stature and experience, are to be read in an attitude of open-mouthed acceptance. The surprising thing is, on the contrary, that the conclusions stated and the cases given are, in general, so apt and convincing, considering the fact that Professor Patterson at so many places gives his considered conclusions on theory and does not hide behind the citation of a plethora of decided cases.

The volume is excellent reading for the person who has not previously been exposed to insurance law, for basic principles are laid bare. The volume is valuable in a different but equally important way to the person acquainted with insurance law, for it will give such a reader insights into the relationship between law and insurance not available in such quantity in any other single source. Whether this book can be used alone as the basis for a course is problematical. Clearly, however, it can be used as supplementary reading for advanced students of insurance, or in conjunction with another work on the commercial and economic aspects of general insurance.

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<sup>7</sup>At 151.