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Trade Associations: The Legal Aspects, by Benjamin S. Kirsh (1928)

Charles J. Miller

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BOOK REVIEWS

TRADE ASSOCIATIONS: THE LEGAL ASPECTS. Benjamin S. Kirsh, New York. Central Book Company 1928, pp. 271.

The book might well have been titled, Trade Associations: The Economic and Legal Aspects. The author's keen and thorough economic interpretation—both intensive and extensive—of the problems discussed impresses the business man and the economist as much as do the legal implications of the book—and the latter are striking.

The work is not a digest of legal cases. It is in effect an economic analysis of the necessity for and desirability of certain trade association activities with excerpts of legal cases to show how the United States Supreme Court in the last five years has shifted the basis for its decisions in anti-trust cases from technicalities and precedents to the needs of business and the facts of each case. The legal principles are extraordinarily clear—the business man can follow them readily.

This unusual clarity is the result of conciseness and simplicity. The author confines his discussion to the legal problems arising from the federation of independent business units. Thus the legal problems of mergers, consolidations, agricultural cooperation and labor unions are excluded. Likewise in discussing the individual legal problems of the trade association, Mr. Kirsh keeps his theme clear by avoiding irrelevant and long excerpts and discussions.

Each of the following trade association activities is discussed in a separate chapter: Statistics—Uniform Cost Accounting Methods—Credit Bureau Functions—Patent Interchange—Foreign Trade Functions—Uniform Basing Point Systems—Collective Purchasing Functions—Standardization—Trade Relations—Restricting Channels of Distribution.

Mr. Kirsh is liberal with valuable references that will allow economist, business man, or legal practitioner to delve into any phase of trade association economics or law. His former position as special assistant to the United States Attorney in New York in the prosecution of anti-trust cases provided a wealth of material and background that has been inculcated into this work.

Because of its clarity, specificness, and singleness of purpose the legal conclusions are of practical value to trade association executives. The author is careful to warn that only a few cases have been adjudicated by the United States Supreme Court on the basis of a liberal construction of anti-trust laws, and that "If it is too early at the present writing, to refer to the Maple Flooring and Cement cases as definitive, it may perhaps be noted that they are, at any rate, basic and epochal in announcing a liberal construction of the anti-trust laws in their application to the cooperative functions of trade associations."

Specific suggested rules for the guidance of trade association activities constitute a valuable feature of the book. These include suggestions as to what should as well as what should not be done by trade associations, when engaged in cooperative effort, if they are to preserve the legality of their activities. Such suggestions are based not only on the author's diagnosis of judicial decisions, but upon attitudes expressed by such influential bodies as the Federal Trade Commission and the Department of Justice.

The lawyer, the business man, and the economist will enjoy and profit from this clear, concise economic and legal interpretation of trade association activities in their relation to existing anti-trust legislation.

University of Washington.

CHARLES J. MILLER.

CASES ON DAMAGES By Judson A. Crane, Professor of Law of the University of Pittsburgh. Published as one of the American Casebook Series by West Publishing Company. 1928, pp. xiii, 508.

Professor Crane has arranged the subject in a different order than has usually been followed. In the divisions and subheads he has grouped the cases so as to build up the subject from the fundamental principles for the giving of damages in law suits to the methods of applying the principles and finally to the use of the methods in particular classes of cases. The work opens with cases on the procedural features and pleading; this is followed by non-compensatory damages. Part 2 takes up compensatory damages as direct and consequential, value, interest, liquidated damages, etc. Part 3 treats cases of torts to persons, torts affecting domestic relations, torts affecting property interests and damages in certain actions on contract.

The book has a table of contents and index and a complete table of cases with the reference cases printed in italics; also many valuable footnotes throughout, the author using them to indicate some variations and modifications of the rules announced in the cases selected. There are also many helpful references to valuable articles in the law journals and reviews from which the student may derive great benefit.

Some of the old leading cases are retained, but generally the collection is of recent decisions, well selected to develop the subject. The book is ideal for a course to be completed in one collegiate quarter.

J. GRATTAN O'BRYAN.

ADMINISTRATIVE POWERS OVER PERSONS AND PROPERTY. By Ernst Freund. Chicago: University of Chicago Press, 1928, pp. xxi, 620.

Professor Freund again presents us a thorough and stimulating study. While the immediate incentive for the preparation and publication of this survey of one section of administrative law appears to have been the decision in 1920, by the Legal Research Committee of the Commonwealth Fund, to devote funds to research in the field of administrative law, yet the author's ideas are the result of ripe reflection and may be traced back to his earlier works. The present volume is, as the author indicates, limited to one section of administrative law, namely, "powers determinative in their nature and exercised with regard to private rights which are in a sense of a normal character." In the words of the author, "the present volume endeavors to summarize, from the point of view of administrative powers, an era of regulation which combined respect for private right with a growing sense of the social obligations of property and business, and which fully recognized the paramount claims of public interest." The survey includes a study of special administrative powers in the law of the state of New York, in pre-war Germany down to 1914, in England and in American Federal government. It is written from the viewpoint of the publicist describing and analyzing a particular phenomenon of government and not from that of the text writer seeking to aid lawyers and students in the solutions of specific and concrete cases in courts of law. The author "assumed that an extended course of legislation may be as legitimately treated as a source of legal principle as a body of judicial decisions." The judicial material is used merely "by way of supplementation."

The first half of the book systematizes and analyzes the whole field of administrative control as one general subject. The second half of the