

Washington Law Review

Volume 6 | Number 1

2-1-1931

Cases on Pleading and Procedure, by Charles E. Clark (1930)

Ivan W. Goodner
University of Washington School of Law

Follow this and additional works at: <https://digitalcommons.law.uw.edu/wlr>



Part of the [Civil Procedure Commons](#)

Recommended Citation

Ivan W. Goodner, Book Review, *Cases on Pleading and Procedure*, by Charles E. Clark (1930), 6 Wash. L. Rev. 45 (1931).

Available at: <https://digitalcommons.law.uw.edu/wlr/vol6/iss1/5>

This Book Review is brought to you for free and open access by the Law Reviews and Journals at UW Law Digital Commons. It has been accepted for inclusion in Washington Law Review by an authorized editor of UW Law Digital Commons. For more information, please contact lawref@uw.edu.

freshness of its approach that commends it for careful consideration by all who may be engaged in the study or teaching of commercial credit problems.

FRANK L. MECHEM.

CASES ON PLEADING AND PROCEDURE. By Charles E. Clark. St. Paul: West Publishing Co., 1930. pp. 674.

This casebook by Charles E. Clark, Professor of Law and Dean of the School of Law, Yale University, presents the subject of pleading in a new and interesting form. The book is to be followed by a second volume dealing with equitable remedies, joinder and splitting of causes of action, parties and their joinder, motions, demurrers and amendments.

The attitude of the author and the scope of the publication is best shown by the following quotation from the preface:

"There has been a tendency to emphasize history apart from the law of procedure, and largely as an introduction to the substantive law courses. And when the subject of modern pleading is at length reached, emphasis is placed on local rules. In the present casebook modern law administration is stressed throughout, and, while history appears, it is presented only to explain general principles of present day utility. It is believed that this leads to a more interesting and realistic, as well as a less time consuming, presentation. Among high lights of interest in the present volume are the following: The development of pleading and procedure from the days of oral pleading down through the common law to the present system; the distinction between law and fact and the nature of law itself, as the problem arises with reference to stating the case in the complaint; the handicapping process in law shown by the rules as to stating new matter in the answer, and as to burden of proof and presumptions; the effect of rules of pleading on the proof at trial; the development of contract actions and the present day attitude towards the common counts; the evolution of the real and personal property actions; the history of equity and its triumph over law; the attempt, still largely unrealized, to secure a real union of law and equity and the attendant questions as to trial by jury, appeals and equitable defenses; the enforcement of equitable decrees by contempt proceedings and otherwise, and the extraterritorial effect of such decrees."

This volume, well bound in *fabrikoid*, contains 674 pages and furnishes ample material for a course of 4 to 6 units. The cases presented have been selected with care and are mostly modern. While an occasional decision at common law is introduced to show the origin and development of principles of present value, no time is lost in considering mere technical forms, as in the commencement and conclusion of declarations, etc., at the common law, and other matters of that sort having no present-day utility except as history. It is believed that Dean Clark has in this publication presented a better method of acquiring a thorough working knowledge of pleading; a method that should make the study of the subject interesting to the student and without inspiring the terror with which he has been accustomed to approach the study of common law pleading.

The editor states that he contemplates using the present volume in a first year-course, taken somewhat slowly, of four to six units, and the proposed second volume in a shorter course of perhaps three units in the second year.

In the volume under review selected cases are arranged under these heads:

- Chapter 1. Introduction.
 BOOK 1. CLAIMS FOR DAMAGES FOR INJURIES TO THE PERSON.
 Chapter 2. Institution of Suit.
 Chapter 3. The Complaint.
 Chapter 4. Defendant's Answering Pleadings.
 Chapter 5. Plaintiff's Reply and Later Pleadings.
 Chapter 6. Relation of Pleadings to Proof.
 BOOK 2. CLAIMS FOR DAMAGES FOR BREACH OF CONTRACT AND FOR DEBTS
 OR SUMS DUE.
 Chapter 7. Forms of Remedy.
 Chapter 8. The Complaint—Breach of Contract.
 Chapter 9. Complaints for Debts or Sums Due.
 Chapter 10. Defensive Pleadings.
 BOOK 3. ACTIONS CONCERNING PERSONALTY AND REALTY.
 Chapter 11. Personality
 Chapter 12. Realty.
 BOOK 4. EQUITY.
 Chapter 13. Early Development of Equity.
 Chapter 14. Union of Law and Equity Under Modern codes.
 Chapter 15. Equitable Decrees: Enforcement and Effect.

The matter in Chapter 13, twenty pages, may be considered as duplicating, to a small extent, the course in equity jurisprudence, but since the cases in this first volume will usually be presented in the first year, and before the student has had equity the inclusion of the chapter at this point will be helpful and the duplication inconsequential.

While acknowledging the great value of an understanding of the fundamental principles of common law pleading, this reviewer has long believed that time consumed in the study of the forms and fictions of common law pleadings and actions is not only time lost, but serves to clutter the mind with obsolete matter that is an impediment to a clear understanding of the principles themselves. Something of this sort must have been in the mind of Dean Clark in preparing this casebook. Law schools appear to be abandoning the course in common law pleading, but are preserving in one way or another the principles that underlie the subject, in the endeavor to teach the course in pleading understandingly.

In this volume and the one to follow it would seem to be easily possible to thoroughly cover the whole subject in six to eight units.

IVAN W GOODNER.

BOOKS RECEIVED

- CASES ON PLEADING AND PROCEDURE. Volume 1. (American Casebook Series). Charles E. Clark. West Publishing Company. 1930. pp. xiv + 674.
- HANDBOOK OF THE LAW OF INSURANCE (Hornbook Series) Second edition. William R. Vance. West Publishing Company 1930. pp. xv + 1104.
- CASES ON THE LAW OF INSURANCE (American Casebook Series) Second edition. William Reynolds Vance. West Publishing Company 1931. pp. xxiii, 1020.
- CASES AND MATERIALS ON THE LAW OF CREDIT TRANSACTIONS. Wesley A. Sturges. West Publishing Company. 1930. pp. xi, 1228.
- HOW TO FIND THE LAW. Fred A. Eldean. West Publishing Company 1931. pp. xv + 782.
- JUDGE AND JURY. Leon Green. Vernon Law Book Co. 1931. pp. vi, 429.
- PROGRESS OF THE LAW IN THE UNITED STATES SUPREME COURT. 1929-30. Gregory Hankin and Charlotte Hankin. Legal Research Service. 1930. pp. xiii, 483.