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

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BOOK SECTION

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. MECHEN.

CASES ON PLEADING AND PROCEDURE. By Charles E. Clark. St. Paul: West

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 sub-
stantive 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 through-
out, 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 com-
mon counts; the evolution of the real and personal property ac-
tions; the history of equity and its triumph over law the at-
tempt, 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 fur-
nishes 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 tech-
nical 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 PERSONALITY AND REALTY.

Chapter 11. Personality
Chapter 12. Realty.

BOOK 4. EQUITY.

Chapter 13. Early Development of Equity.
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


