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BOOK REVIEWS

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LEGAL ETHICS. By Henry S. Drinker, Columbia University Press, New York, 1953, (Published Under the Auspices of the William Nelson Cromwell Foundation.)†

This book should be read by every lawyer. It was written by one well qualified for the task. A leading member of the Philadelphia Bar, he has been a member of the American Bar Association Standing Committee on Ethics and Grievances for fourteen years, and its chairman since 1944.

The essence of the work is the development of the duties and obligations of lawyers to the public, to the courts, to clients, and to other lawyers; and as a corollary, the thorough treatment of a lawyer's duty not to advertise or solicit professional employment. The author believes that the chapter dealing with this latter subject will be the least interesting to the average lawyer. However, there is much of interest in this chapter to lawyers generally, who desire scrupulously to comply with the Canons and the opinions construing them having to do with such matters as proper material for law lists, professional cards, and notices.

The Canons of Professional Ethics are lawyer-made rules of guidance for themselves which distinguish the legal profession from a business. Inherent in them are the lawyer's cardinal loyalties, which, as stated by Mr. Drinker, in brief, are: to the court he must be thoroughly candid and sincere, preserving a self-respecting independence in the discharge of professional duty without diminution of the courtesy and respect due the judicial office; to his client he owes absolute candor, unswerving fidelity, undivided allegiance, and devotion to his cause; to his brethren at the bar, courtesy and good faith, disdaining to seek preferment except by the establishment of a well-merited reputation for professional capacity, achievement, and fidelity to trust; to himself and his profession, tireless industry and loyalty to his own ideals and to the traditions of a noble profession.

It is unquestionably true that the public believes, and unfortunately not without substantial justification, that it is difficult, if not impossible, for a layman to obtain justice when he has a claim against a member of the Bar because other lawyers will not accept employment to proceed against him. Mr. Drinker points out that one of

†The Law Quarterly has an option on 50 copies of the foregoing work on legal ethics at $2.00 per copy until December 1, next, and will honor requests for copies from South Carolina lawyers and judges in the order in which they are received until this supply is exhausted.

the principal features resulting in just public criticism of the bar is the unwillingness of lawyers to expose the abuses of which they know that certain of their brethren are guilty, and that much of the public suspicion of lawyers is due to the realization that most of the abuses of which lawyers are guilty could be eliminated if the bar and the courts were constantly alert and willing to do their full duty in this regard. He quotes from Canon 29: "Lawyers . . . should accept without hesitation employment against a member of the Bar who has wronged his client", and cites A. B. A. Opinion 144. There, in answering an inquiry as to whether it is proper for a lawyer to accept employment to collect a claim from, or to institute a suit against, another lawyer, the Committee held that it was not only not professionally improper for a lawyer to accept employment to compel another lawyer to honor the just claim of a layman, but that it was highly proper that he do so. The Committee continued by saying that the honor of the profession, whose members proudly style themselves officers of the Court, must surely be sullied if its members bind themselves by custom to refrain from enforcing just claims of laymen against lawyers.

"Legal Ethics" will prove to be an excellent reference book on many practical questions. It treats in detail of the lawyer's obligations to the public, to the courts, to his client, of the lawyer's obligations and relations to other lawyers, and of advertising and solicitation.

Much space is devoted to the last, as the construction of the Canons, (particularly 27), relating to this subject have been the subject of many opinions of the A. B. A. and others.

It appears that the only forms of advertising now sanctioned are reasonable advertising by bar associations, and publication of law lists designed to enable persons who need a lawyer to choose the one best suited to their needs. It is improper for a lawyer to permit bold-face listing of his name in a telephone directory either in the alphabetical or classified sections. One need only glance at a telephone directory to observe violations by lawyers who would be shocked to learn that they had been guilty of an impropriety. On the other hand, lawyers may send announcements in the usual form to persons with whom they have established "personal relations", as that phrase is used in Canon 27, and to members of the local bar and other lawyers with whom they have had professional relations; but, at present such an announcement may not state a special branch which the lawyer intends to practice. The A. B. A. as of August,

1953 has before it a proposed amendment in this regard. These points, and others, are considered by Mr. Drinker in this chapter.

A lawyer soundly brought up in the law, who wholeheartedly accepts his professional status, will rarely have any difficulty in realizing the difference between what is right and what is not in most situations. But a schooling in legal ethics will fortify him against unwitting violations of the Canons which deal not with morality but with proper conduct of a member of the profession.

"Legal Ethics" fills a long standing need of the law school curriculum, and should be a universal required course of study in preparation for admission to the Bar. The prescribed course of study for applicants for admission to the South Carolina Bar now includes Sherwood's Legal Ethics, which was published in 1854, when law was practiced in a very different world, and long before the adoption of the Canons of Ethics by bar associations.

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THE TRIAL JUDGE IN SOUTH CAROLINA. By the late Judge Lanneau DuRant Lide. (Columbia: University of South Carolina Press, 1953. Pp. 114. $3.50.)

With the publication of "The Trial Judge in South Carolina" the late author has with vivid clarity and readable simplicity given to the Bench and Bar as well as to the lay public an excellent step by step picture of the procedural operation of the law in our trial courts. As we follow the course of a case through our various trial courts and accompany the judge at his hearings at Chambers, we are impressed with the dedicated spirit and fine conscience of the author as expressed in the quotation which is a yardstick for the judiciary ". . . . a man of good will knows 'what is just and good and fair'."

The pattern adopted for the presentation of his subject takes up in succession a term of the Court of General Sessions, the trial of a capital case, a term of the Court of Common Pleas and follows through with the trial judge in his disposition of cases at Chambers. The final chapter consisting of an article formerly published in the *South Carolina Law Quarterly* points up certain unique phases in the substantive and adjective law of South Carolina. Reference to Code sections, judicial decisions and court rules throughout lays an authoritative foundation for the legal content of this volume. The treatment accorded these phases of our system of legal procedure reflects a deep appreciation and a remarkably thorough understanding of the machinery and the administration of justice in America.

The term of the Court of General Sessions is thoroughly treated from the arrival of the trial judge at the court and the donning of his official robe to the rendering of the verdict. For the student of the law, the practicing attorney, or the trial judge the section of this chapter devoted to jury selection, both grand and petit, the duty of the grand jury, the suggested charges, the fixing of the sentence, the informative discussion of the Parole and Probation Act and the numerous practical suggestions to both the practitioner and the jurist is invaluable. Both the misdemeanor case and the felony case are used as vehicles for illustration in carrying us through the term of the Court of General Sessions.

For obvious reasons the trial of a capital case is treated in a chapter apart from the general coverage of the Court of General Sessions. Here is discussed in detail with numerous cited authorities the appointment of counsel in capital cases and the status of the law in regard to the number of such appointed counsel. Suggestions on the subject of attendance and conduct of the public at sensational

trials will be welcomed by the trial judge to whom this exhibition of human curiosity has been a problem. Examination of the jurors on their *voir dire,* peremptory challenges and the all-important question of the admission of confession in murder cases are treated in detail. Perhaps of greatest interest to the trial judge and the trial attorney in this chapter is the discussion, with examples, of the judge's charge in a murder case involving a confession and one in which a plea of insanity is interposed as a defense. Rounding out the subject of the trial of capital cases the author sets forth with appropriate suggestions and references his recommended form of verdict and sentence in a trial for the capital offense of murder.

Stepping from the criminal side of the court to the civil side there is the chapter on the Common Pleas Court. Beginning with the sounding of the roster and the drawing of the jury, the author takes up the question of distribution of strikes in the impaneling of the jury in civil trials. The problem of handling requests to charge and the reciprocal rights and duties of the trial judge and the trial counsel in regard to these requests is covered in an appropriate excerpt from the opinion of the court in the case of *Powers v. Rawls,* 119 S. C. 134, 112 S. E. 78, citing and quoting the case of *McCaleb v. Smith,* 22 Iowa 242. Of keen interest to the trial judge is that portion relative to the preparation of the trial judge's charge accompanied by an illustrative charge covering the question of damages in a personal injury case. After a comment on the much debated pre-trial conference and the portrayal of a hypothetical condemnation suit, the author closes this section of his book with an editorial reproduced from the June 1948 issue of the American Bar Association Journal entitled "The Judge and the Jury". The selection by the author of a comment which so clearly described the fitness of the parts of the judge and jury in our judicial system is a tribute to the jury system as a vital part of our American method of administering justice.

To the lay reader the work of the trial judge at Chambers may come as a revelation. The usual picture of the trial judge seldom carries with it the more technical phase — hearing of motions, demurrers, equity cases and similar matters that form the bulk of this facet of the trial judge's judicial service. Dealing first with "at Chambers" hearings on the criminal side of the Court the author considers the subject of petitions to revoke probations where a violation of probation has occurred, citing as a safe guide for the trial judge in these cases the opinion of the Court in the case of *State v. Miller,* 122 S. C. 468, 115 S. E. 742. Clarifying the question of ap-

plications for bail under the constitutional (state) provision covering capital offenses the author proceeds to a consideration of civil matters. Much of this portion of the work is devoted to a discussion of the statutory phase of appeals in Workmen's Compensation cases and "the . . . . perplexing (and even painful) duty" of the trial judge in child custody cases. He feels very keenly the weight of responsibility in these latter instances and reveals a conscientious and heart-warming attitude toward those who depend upon the court for that all-important decision in planning their future. With this guiding principle "There is no path for judges to tread but to ascertain the law to the best of their ability, and to declare it according to their judgment," the author turns to his final chapter.

In this last chapter of the work are collected certain "uniques" in our South Carolina law, the explanation and comments upon which will prove invaluable to the professional reader. Important among these "uniques" is the historically treated constitutional provision prohibiting a charge on the facts by the court. The discourse on the status of the *scintilla* rule in South Carolina, the absence of the Statute *de Donis* with its resulting effect and an excellent coverage of the subject of the trial of equitable causes and issues in law cases are especially recommended to the student of the law.

With the revealing comment — "we cannot escape the conviction that there are certain fundamentals of right and justice, 'the same yesterday, to-day and forever'," the able and revered jurist completes his legacy to the Bench and Bar.

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