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Cases and Materials on Workmen's Compensation,
by Wex S. Malone and Marcus L. Plant. St. Paul,
West Publishing Co., 1963. Pp. xxv, 622. \$12.00.

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BOOK REVIEWS

Cases and Materials on Workmen's Compensation, by Wex S. Malone and Marcus L. Plant. St. Paul, West Publishing Co., 1963. Pp. xxv, 622. \$12.00.

A casebook is usually of interest only to law professors and law students. If a practitioner has any casebooks in his working library, they are usually regarded as having value only as a sentimental reminder of law school days. There are exceptions, of course, such as Professor Henry George McMahon's work on Louisiana practice and procedure,¹ a research and reference work much and frequently used by the practicing Louisiana lawyer.

The subject collection of cases and materials on workmen's compensation law will, in the reviewer's opinion, constitute another brilliant exception to the general rule that casebooks are little referred to by the lawyer in active practice; for this casebook, edited by Louisiana's own Professor Wex Malone and by Professor Marcus L. Plant of the University of Michigan, offers considerable promise in the way of practical research assistance to a sitting judge or a practicing attorney.

First, probably, this review should attempt to evaluate the work in the light of its original purpose, which was for use in the law schools. Succinctly, this casebook seems to be a fascinating and excellent teaching tool.

The organization and contents of the work are both comprehensive and provocative. To this writer, it seems that the hundred and some subsections of the thirteen chapters treat in depth every significant major and minor question which may arise in workmen's compensation law under any of the varying state statutes. Full background material is included in most instances, with succinct summaries of significant current and historical attitudes and reasoning dealing with the question.

In general, each of the topics treated by the work includes a pithy text introduction, then a decision or so selected on the basis of its opportunity for challenging penetration in the heart of legal theory concerning the topic, finally followed by a con-

1. McMAHON, LOUISIANA PRACTICE (1939).

centrated text summary, on a comparative law basis, of general principles utilized in consideration of the question by the various American jurisdictions. These text commentaries include reference to law review and treatise treatment relating to the basic law-fact type-situation under discussion.

As a teaching aid, the text materials serve to place the question under discussion within the context of general compensation law, and also to provide an in-depth knowledge of background and comparative developments relating to it. The selected cases themselves are unusually interesting and lend themselves to thought and discussion concerning the central legal issues and policy considerations involved in litigation concerning the matter.

When the casebook is used as a teaching aid, supplementary reference to the leading cases of a particular jurisdiction concerning the type-situation treated by the text should readily produce a familiarity with the application in any particular jurisdiction of the specific principle of compensation law under consideration. In addition, understanding how the particular results are intellectually justified or how they are subject to attack within the general context of workmen's compensation law, the students should probably be in a position to apply a creative (rather than a merely mechanical) approach, when needed, should the legal question arise in their active practice in later years.

Prior to reading this work, I had thought that, since workmen's compensation is so much a creature of localized statute, a casebook on the subject must be either too generalized or too specific to be useful. After reading the work, I can see that, despite any dissimilarity of the specific statutory provisions of the various states, nevertheless most of the practical problems and choice-of-legal-approach questions with regard to specific type-situations are sooner or later common to workmen's compensation law almost everywhere.

Because of the perception of the editors in cutting through the jungle of semantics and prior jurisprudence which otherwise faces one studying the decisions interpreting the compensation statutes of other jurisdictions, and because the editors selected cases which focus upon the basic type-situations and approaches of workmen's compensation law everywhere, this work, includ-

ing its concentrated and comprehensive text materials, seems to the reviewer to offer promise as an excellent research assistant.

Here in Louisiana, for instance, our compensation law has crystallized on many of the points covered by the work; but it has not on all of them, nor has any development at all taken place on some of them. As to those topics on which Louisiana law has not crystallized, this work offers an excellent arsenal of contrasting or alternative intellectual approaches to the decision of the question, as well as a ready reference to recent law review treatments covering the frontier areas of litigation concerning the topic. Such ready reference is not readily available in the library locally available to most of us, which often includes the standard encyclopedias and treatises, but which usually does not afford us easy access in depth to provocative discussion of developing lines of thought in unsettled areas of the law, with ready reference to current law review and other research sources.²

For instance, so far as I know, the Louisiana courts have never treated the considerations involved in determining whether a suicide's beneficiaries are entitled to workmen's compensation benefits. If the question ever arises, then pages 261-64 and 365-68 of the subject work will provide probably as immediate an approach as possible into the historical and current treatment of the question in other jurisdictions.

Again, for example, about ten years ago an occupational disease coverage (R.S. 23:1031.1) was added to the Louisiana workmen's compensation act. It may be presumed that questions with which our Louisiana courts in the future will be faced in the application of this statutory coverage have in most instances been considered by the courts of the other jurisdictions which have had a longer jurisprudential experience with statutory occupational disease provisions. We may find that the approaches and solutions in such other jurisdictions, as set forth in the subject work, are of interest and help to us in Louisiana, as the questions arise here. See Chapter 6, Section 2, "Occupational Diseases," pages 283-310.

2. As more and more Louisiana practitioners are discovering to their benefit, the resources of the Law Library of Louisiana in the Supreme Court Building in New Orleans are at their disposal without leaving their offices in their home towns. Through the cooperation of the Louisiana State Bar Association with the efficient staff of this library, any lawyer or judge can upon request to the library obtain a photocopy of any law review article or reported decision, at a relatively inexpensive cost and usually by return mail.

This reviewer found the work of interest to him also as an antidote to stereotyped (non-) thinking on routine questions of our own Louisiana compensation law. Reference to the analyses or varying approaches as to a particular question, indicated by the included cases considering it or by the text of the editors, may have this value for the practicing judge or attorney faced with the feeling that there is a more satisfactory approach to a particular question under consideration than as yet developed by the Louisiana jurisprudence.

For instance, in "The Significance of Medical Evidence" (Chapter 7, Section 3, pp. 324-32), the reviewer received some confirmation of his growing feeling that there are limits to the usefulness of medical evidence, and that the testimony of medical experts is not necessarily the be-all and end-all in the determination of disability.³ "Medical" questions of work-produced disability often really require consideration of testimony and evidence additional to that of the medical experts, whose educated guess in borderline situations is often after all based not only upon their learning and training in the *inexact* science of medicine, but also sometimes upon their lay evaluations as men. Medical laymen may sometimes be in as good or even a better position to make these lay evaluations as our esteemed brothers of the medical profession.⁴

With regard to the usefulness of this work to a practitioner with a practical problem, I should probably note the unusually detailed index based on the descriptive word approach. Because of this, it is the work of only a second or so (as I found when using the work this summer as a practical research aid) to locate immediately the section of the materials applicable to a particular point of inquiry.

As noted earlier, the comprehensive scope of this work must

3. In contemporary days, compensation litigation in Louisiana is sometimes thought to have degenerated all too often into the production of an array of opposing medical experts, selected not so much to discover what is or is not wrong with the claimant, but rather on the basis of their honest predilections in favor of or contrary to weight being given to subjective complaints, or a Spartan as opposed to an ultra-humanitarian concept of total disability, etc. The medical experts having neatly cancelled one another out, sometimes the court must determine the disability or not on the basis of the other evidence and circumstances shown by the record which, actually, should have had great weight in the determination of the matter whether there were two or were twenty medical opinions or, for that matter, none.

4. See, for example, *Vidrine v. American Employers Insurance Co.*, 129 So.2d 288 (La. App. 3d Cir. 1961), and *Corral v. Crawford Homes, Inc.*, 113 So.2d 820 (La. App. 1st Cir. 1959).

cover all the significant major and minor questions and type-situations considered throughout America under the varying state enactments.

As some indication of the comprehensive scope of the work, the writer simply cites the title of each of the thirteen chapter headings: 1. Employee's Remedies Prior to and Apart from Workmen's Compensation; 2. The Compensation Principle; 3. The Employer-Employee Relationship; 4. Accidents During the Course of Employment; 5. Accidents Arising Out of the Employment; 6. Accident and Occupational Disease; 7. Proof of Causation; 8. Effect of Independent Cases after the Accident; 9. Compensation for Non-fatal Injury; 10. Death Benefits; 11. Administration of Workmen's Compensation Laws; 12. The Third Party Suit; 13. Conflict of Laws.⁵

Likewise, each chapter is subdivided into treatments of the meaningful litigation areas evolved and evolving in the area of compensation law treated by that chapter. For instance, the discussion in Chapter 4, "Accidents During the Course of Employment," is divided into sections and then subdivided again, to treat each of the following subdivided topics in depth: Introduction — The Classification of Risks Covered by the Compensation Act; Section 1. Accidents While Employee is at Work — Acts for Strangers — Volunteering Help to Fellow Workers; Section 2. Accidents While Employee is Ministering to His Personal Needs or Pleasure — Mealtime Injuries Off Premises — Preparatory Acts and Relief from Discomfort; Section 3. Accidents Resulting from Horseplay and Prohibited Activities — Employer's Defenses — Injuries Through Horseplay — Violations of Rules and Instructions — Employer's Defenses-Willful Misconduct of Employee — Employer's Defenses-Disobedience of Safety Rule or Failure to Use Safety Device; Section 4. Accidents While Going to or Coming from Work — Going to and from Work, Off Premises, Special Errand — Riding in Vehicle Supplied by Employer — Payment by Employer for Time of Travel or Travel Expense; Section 5. Mixed Purpose Trips-Home as Business Situs — Dual Purpose Trips-Deviations — Deviations; Section 6. Unexplained Deaths.

We need refer only briefly to the other works and many law

5. The appendices include, inter alia, comprehensive tables summarizing the provisions of each of the state compensation statutes, as well as a complete text of several federal statutes.

review articles of Louisiana's own Professor Malone to remind us of the immense contribution he has already made to development of tort and workmen's compensation law. By this work, he and his co-editor, Professor Plant of Michigan, have, in the opinion of the reviewer, made yet another valuable contribution to the study and application of compensation law, by furnishing not only an excellent teaching device, but also a stimulating and most useful aid to thinking and research concerning practical compensation problems. The usefulness of this work should extend beyond the law schools and into the working libraries of practicing judges and attorneys, who I am sure will find this work as valuable and as interesting as did the present reviewer.

*Albert Tate, Jr.**

Police Power and Individual Freedom — The Quest for Balance, edited by Claude R. Sowle. Aldine Publishing Company, Chicago, 1962. Pp. 287. \$7.50.

Freedom under law is not unfettered freedom: through law, society often, in order to promote freedom, curtails it. A law prohibiting murder limits the freedom of the would-be murderer, but certainly promotes that of prospective murderers. Our criminal law in a sense reflects the balance struck by society between our interests in freedom from restraint and our interest in protection for freedom.

The point is important also when we come to the question of the administration of criminal justice. For such a system to be effective, some sacrifice in personal freedom must be borne by someone — sacrifice that must be suffered if society is to be protected for freedom. Clearly, a system must make provision for arrests, for searches and seizures, and even for compelled testimony, but under what circumstances, what conditions, and with what safeguards?

Stated succinctly, the question is this: "What price *in* freedom is to be paid *for* freedom?" Although the balance struck from country to country will differ, the problems faced are similar. As witnessed by recent decisions of the United States Supreme Court, we in this country are now in the throes of "agon-

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