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BOOK REVIEWS

The Liability of Strikers in the Law of Torts: A Comparative Study of the Law in England and Canada. By I.M. Christie. Kingston, Ontario: Industrial Relations Centre, Queens University. 1967. Pp. xxii, 198. \$8.00.

Teachers' strikes in New York, Detroit and other cities, the long strike against the Ford Motor Company, the work stoppages of haulers of steel, the threat once again to paralyze New York City's transportation system—all of these and more make one realize that industrial disputes continue in the United States in spite of modern legislation. Even the non-expert is well aware that here the use of court injunctions is severely limited, that protected picketing is the order of the day, that statutory cooling-off periods are often not successful and that the right to work without union affiliation is not always guaranteed.

To the American interested in the law of labor disputes, the book will be disappointing on two grounds. With a very few exceptions, it does not include even a passing reference to experience in the United States, when a sentence or two of comparisons would result in increased understanding. Second, the method used in analyzing the very limited area covered results too often in a sort of A plus B plus C without an adequate synthesis of the parts.

Granted that the title does not lead one to expect comparisons with the liability of strikers and unions in the United States, too much is nevertheless missing for even the average reader who possesses a basis in the subject. The author admits that "the comparison here attempted would be made more valuable by a consideration of the American law and the law of Quebec." Why exclude the important province of Quebec if this is a comparison of England and Canada? "The closely related question of remedies, the basis upon which the court will award an injunction rather than damages, or either or both, has been arbitrarily put beyond the scope of this work" in favor of the question "is there any legal basis for liability?" A good example of a missed opportunity is in the discussion of the Canadian and English "watching or besetting" criminal laws. A few parallels or contrasts with the American view of picketing would have enlarged the list of interested readers.

In spite of these misuses, however, this monograph will be of great value for the serious student of industrial disputes in England and Canada. No one can read the book without agreeing with the author that the Canadian law is in an "unhappy state," largely because the courts there have even recently found tort liability in connection with strikes where the liability is not in harmony with modern statutory protections of union activity. The chapter on Civil Liability for Conspiracy is an in-depth analysis of the doctrine of conspiracy and the effect of the earlier criminal conspiracy in generating civil conspiracy. Judicial legislation in the area of inducing breach of contract is detailed well in another section. The most interesting chapter for this reviewer, perhaps because of the excellent picture of the interrelationship between the functions of the legislature and the courts, is that on "Liability for Interference with Rights To Trade and

Livelihood." For in this area, judicial intervention has been superimposed on the statutory basis.

RALPH F. BISCHOFF*

Higher Education & Tax-Motivated Giving. By Richard L. Desmond. Washington, D.C.: American College Public Relations Association. 1967. Pp. 89. \$3.50.

This excellent monograph was prepared by the author as his doctoral dissertation while studying at the Center for the Study of Higher Education at the University of Michigan. Being both a lawyer and an experienced college fundraiser, Mr. Desmond is particularly well qualified for the preparation of this study. The book provides a complete federal tax history of the development and current status of deferred gifts in support of higher education, broadly described as life-income gifts. On the basis of published data, the author estimates that life-income gifts constitute 2 per cent of all gifts to colleges and universities. Although the discussion is directed solely to deferred gifts to educational institutions, it is equally applicable to similar gifts to all charitable organizations.

Life-income gifts are classified by the author as consisting of three types: (1) the gift-annuity; (2) the life-income contract; and (3) the life-income trust. The gift-annuity involves a transfer of property by the donor to the donee institution in consideration of the payment of a fixed annuity for the duration of his life, or for the joint lives of the donor and another, the present value of such annuity being less than the value of the property transferred. The life-income contract consists of the transfer to the donee institution of property which is to be added to its investment portfolio with the donor receiving his proportionate share of the income produced by the aggregate of such investments for the balance of his life. The life-income trust differs from the life-income contract in that the specific property transferred is held in a separate fund for the sole benefit of the donor for life. In each of these transactions the donor obtains an immediate charitable contribution deduction. In the first case, the deduction is measured by the difference between the present value of the annuity and the fair market value of the property transferred. In the last two types, the deduction is measured by the value of the remainder interest which is vested in the transferee.

The author's discussion follows chronologically and treats the four periods of development which have affected these transactions: (1) "1913-1929: The Initial Tax Upsurge;" (2) "1930-1945: Economic and Tax Downswing;" (3) "1946-1959: The Dramatic Rise in Tax Benefits;" and (4) "1960 to Date: The Tax Reversal and Its Retarding Influence." As these chapter titles may suggest, the reader is taken step by step through the several developments which lead to the establishment—at least for a time—of substantial tax advantages in the utilization of life-income gifts.

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Although there were significant statutory changes, the principal developments in this area were the favorable rulings issued by the Internal Revenue Service. First among these was Revenue Ruling 55-275, which held that no capital gain would be recognized upon the transfer of appreciated property under a life-income contract. The second was the letter ruling to the United Presbyterian Foundation in September, 1955, which stated that recognition of capital gains in a gift-annuity transaction would be deferred until the donor's cost basis had been fully recovered. In the same year, the Internal Revenue Service endorsed the life-income trust funded with mutual shares and allowed an immediate charitable deduction for the remainder interest. The capstone, of course, was the Pomona Plan ruling in 1957. This ruling permitted a donor to transfer appreciated property under a life-income trust with the property to be sold and the proceeds reinvested in tax exempt securities without recognition of capital gains by the donor.

The last named chapter in the chronology recounts the downfall of these advantages. It began with the issuance of Revenue Ruling 60-370, recognizing gain to the donor on the sale of appreciated property in the case of a Pomona type trust. This was followed by Revenue Ruling 60-385, denying a charitable deduction with respect to a mutual fund trust which permits distribution of capital gains dividends to the donor beneficiary. The final blow was dealt by Revenue Ruling 62-136, holding that capital gains would be recognized in the year of transfer of appreciated property in a gift-annuity transaction.

In his concluding chapter entitled, "The Lesson Learned," the author takes the position that the special tax benefits of these gifts were lost by reason of the excessive promotional activities which stressed the tax savings to the donor rather than the philanthropic programs of the donee institutions. This reviewer holds the opinion that the special tax advantages which were generated by favorable administrative rulings during the period 1955-1959 were ill-founded in the light of applicable legal principles. For this reason, the subsequent reversals of position by the Internal Revenue Service were premised upon an inevitable reappraisal of the legal incidents of these transactions. Unfortunately, from the standpoint of the tax lawyer, Mr. Desmond has limited his study to a recital of the history of the various developments and does not provide either an incisive analysis of applicable legal principles or a broad evaluation of policy issues. One must hasten to add, however, that these considerations were not within the stated scope of his dissertation.

J. NELSON YOUNG*

Successful Labor Relations—An Employer's Guide. By Noel Arnold Levin.
New York: Fairchild Publications, Inc. 1967. Pp. xviii, 328. \$12.00.

Labor relations, the study of the dealings among a commercial enterprise, its employees and their union, demands attention on many levels: the economic, social, psychological, legal and practical. Deeply-rooted emotional attitudes,

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however, often warp rational analysis of this complex subject. Indeed, no other aspect of business engenders quite as much emotional reaction as employee organization and unionization. Many successful businessmen, who are able to rise brilliantly to the pressures of their competitors, crumble when they see a union button appear on an employee's workshirt. To such businessmen, *Successful Labor Relations* should prove invaluable, for the author conducts a complete, though necessarily hurried tour of the thicket of overlapping considerations which the businessman must confront before he confronts the union.

The great strength exhibited by the author in this book is a practicality which he has developed during many years as an active labor relations consultant to management. Mr. Levin does, however, discuss the field of labor relations on many levels besides the strictly practical. A basic outline of the legal factors at each step of the relationship, from the first day the union appears at the gates of the plant through the negotiation and administration of a contract and its renewal, are woven throughout the volume. Stressing the highly dynamic nature of labor relations law, the author points out that: "Before taking action, the reader must ascertain that his position is justified in light of the most recent pertinent rulings. In order to be sure of its ground, management should consult counsel prior to taking a position."¹ As an attorney engaged in labor law, I wish that that caveat, contained in the foreword of the book, were imprinted on each and every page of the volume. The doctrine that a little knowledge is a dangerous thing has been re-written by the National Labor Relations Board to read "yesterday's knowledge is a dangerous thing."

Mr. Levin carefully explores the impact of economic factors, particularly in his chapters dealing with negotiation of the initial contract. By the skillful use of illustrations drawn from his wide experience, the author offers the readers an insight into the effect not only of his own firm's balance sheet, but of conditions throughout the industry, on the bargaining taking place around his conference table. Most aptly, he warns that the "fringe benefits" demanded by the union are a substantial and important part of the company's potential cost structure, and not "just details to be mopped up by the second team."²

The author takes care to point out that there are psychological implications to many of the steps that management must take. For example, he devotes a few amusing sentences to the question of what day of the week is best suited to holding a meeting concerning union representation and concludes that it is Friday, at the beginning or end of the shift. He devotes some brief discussion to such related questions as where to hold meetings and whether to use a conference table or "a simple dispersal around chairs in an office."³ Mr. Levin also touches upon some of the manifold social aspects of the labor relations process. He devotes an entire chapter to the role of labor relations for government employees—a subject of ever-increasing importance. The thicket of problems regarding equal opportunity and the recent civil rights legislation are also explored, briefly but adequately.

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1. Foreword to N. Levin, *Successful Labor Relations* at xviii (1967).
 2. N. Levin, *Successful Labor Relations* 89 (1967) [hereinafter cited as Levin].
 3. Levin 60.

However, when Mr. Levin discusses the practical considerations involved in labor relations, he is at his best and the volume is at its most useful. This is the meat of the menu he has to offer; for, above all, labor relations is a practical art. Mr. Levin is very careful to point out that he did not intend this to be a "Do-It-Yourself" book and that at every step it is of great advantage to the employer to have at his side a skilled practitioner, "labor relations advisor" or attorney. Indeed, how to choose a labor relations advisor is the subject of an entire chapter. Cautioning against sending the second team to the opening negotiations, Mr. Levin stresses that at its very first contact with the union the company "must be represented there by an experienced negotiator . . . a well-qualified and articulate management spokesman who will convince the union's organizer that he is not dealing with an ill-defended and amateurishly-run company."⁴

An objection might be made to the author's suggestion that the firm's attorney draft the actual language of plant rules since lawyers have a way of writing for lawyers and plant rules are meant to be read by employees, unskilled in deciphering legal terminology. It would probably be better for management to write the rules for the lawyer's technical review. In this way, rules will not be drafted to cover situations that need not be covered or that would best be left unadvertised.

Curiously, the author only hints at the most practical of all bargaining devices—informal contact. Early in his book, when he discusses the beginning of the relationship between union and company, Mr. Levin notes that "usually it is a good practice for the employer to have one of his people meet the union representative at a relatively incipient point in developments"⁵ Later, when dealing with the techniques of negotiating the first contract, the author notes that "particularly where the union has been recognized without an election, informal exploratory talks can be held between the parties."⁶ In the chapter on planning for negotiations in advance, the following suggestion appears: "It is advisable to evaluate the union's probable position from the most authoritative source of all—its own negotiators. A company representative or counsel, whoever is the key negotiator, is well advised to meet with his union counterpart."⁷ This is good, practical advice. These informal contacts open up important channels of information, which afford both the union and the company an opportunity to gain insight into the other's position and needs. In the process of exchanging views and information, the parties develop a personal relationship which provides the same security that governments seek when they establish hot lines. One wishes that Mr. Levin had developed his point further because successful labor relations is, in essence, the successful resolution of problems, and much of the machinery created by law, contract or custom is designed to do nothing more than to open avenues for the settlement of these problems. Indeed, the informal exchange of views and positions should be developed as a parallel to the bargaining table. For no matter how informal one might wish it, the process of bargain-

4. Levin 21.

5. Levin 20.

6. Levin 77.

7. Levin 149-50.

ing around the table, or even a "simple dispersal around chairs in an office,"⁸ tends to enforce a formal pattern. Indeed, the author suggests that management bargaining teams should have only one spokesman through whom requests to talk should be funneled. Although this is a good bargaining technique, it may interfere with the free exchange of views. Practitioners in the field have all too often heard the chief bargainer deliver speeches for home consumption. The union's chief bargainer may still have to sell his membership on his ability or on his "fire"—which is quite a different thing from selling management on a five cents an hour increase.

Problems cannot be solved without communications. If any fault exists in Mr. Levin's approach, it is that it leads to mere repetition of the classic forms of bargaining, that which most people conceive to be "collective bargaining"—a most formal informal procedure. True, jackets may be removed and ties loosened, but this does not make the procedure informal. It is still highly structured. It is still a formal procedure in the sense that communication is by way of address and reply, charge and counter-charge. Ideally, there should be more interchange, less speech and more talk.

Why does Mr. Levin slight the question of informal communications? He says, in the "sermon" concluding the volume, that the basic goals of labor and management are irreconcilable and that understanding itself will not create successful labor relations. "Many would-be do-gooders say that if communications were improved between the parties, the problems would all be solved. This is not true."⁹ I disagree; it is, at least, mostly true.

Mr. Levin overstates his basic philosophy, for what both union and management really want is to exist. A union is not merely a social phenomenon, but an institution. When a union finally realizes that the employer does not want to put it out of business, and an employer realizes that the union knows that its existence depends on his continuance, their goals cease to be divergent. This view of the union can, in extreme cases, be misleading. There are many firms that will not agree to live with a union, cost be damned! Likewise, there are many unions more interested in an industry than in individual firms. Such firms and unions simply cannot co-exist peacefully until both decide to live within the "rules" imposed upon them. Such cases, however, are probably not as common as many believe and can usually be adequately handled by aggressive management willing to be efficient and business-like—which is also not as common as many believe. In the great majority of cases, Mr. Levin's sermon to the contrary notwithstanding, there exists a true identity of interest between the warring parties, if it can only be found.

HERBERT FERSTER*

8. Levin 60.

9. Levin 325.

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Detection of Crime. By Lawrence P. Tiffany, Donald M. McIntyre, Jr. and Daniel L. Rotenberg. Boston: Little, Brown & Co. 1967. Pp. xx, 286. \$10.00.

This book is the first in a series of reports emanating from a study of the administration of criminal justice in the United States sponsored by the American Bar Foundation. The titles of the other books will be *Arrest, Prosecution, Conviction* and *Sentencing*. The series will cover the administration of criminal justice from investigation of the crime before arrest through parole supervision of the criminal after release. The purpose of the undertaking is to find more effective means of dealing with crime in the United States. The philosophy behind the study is that a piecemeal criticism of individual aspects of the criminal justice is inadequate, and that an analysis of the whole process is required to determine if our entire system of administration of criminal justice is sensible.¹

The book is of great current interest insofar as the increase in the crime rate coupled with the limitations placed upon police procedures by recent court decisions has made the problem of crime control much more complex. Laymen as well as lawyers and law enforcement officials, concerned with reform and efficiency, agree that improvements will have to be effected by means other than traditional legal research. Hope for improvement lies in the analysis of what actually occurs in the work-a-day world rather than in the analysis of cases limiting police procedures. Recognizing the need for this type of information, the President's Commission on Law Enforcement and Administration of Justice has published several volumes under the general title of "Task Force Reports." These reports show the same concern with the problem of crime control and the same approach to the problem as the American Bar Foundation.

By offering information about the first step in the administration of criminal justice, *Detection of Crime* contributes significantly to the resolution of the problem of crime control. The authors raise the central question of whether the police can realistically be expected to cope with crime under present conditions, with special emphasis on the problems raised regarding restrictions placed on interrogation and the problems involved in training police officers to handle the curbs placed upon arrests, searches and seizures. While police procedures must be changed to meet these new standards, some contend that the changes are so drastic as to preclude effective law enforcement under present conditions. The actual effect of the new limitations remains to be seen.

The authors, in addition to describing impediments to efficient law enforcement, supply information which might lead to means of easing these difficulties. They present this information through detailed accounts of the factors which influence police activity and descriptions of what police officers actually do in the areas of field investigation, search and seizure, and encouragement. The authors systematically treat each phase of their study. They give a statement of police administrative policy on a particular phase of one of the above areas; a description of police officers' conduct, illustrated by detailed accounts of specific events; an analysis of legislative limitations upon police procedure; and an analysis of judicial reaction to such legislation and police conduct.

1. P. Tiffany, M. McIntyre & D. Rotenberg, *Detection of Crime* xv (1967).

The following summary of the authors' treatment of the interrogation of suspects during field investigation is an excellent illustration of this format.

Police Administration Policy: Police administrators have stated that field investigation and interrogation of suspicious persons is essential to effective law enforcement. Typical announcements of such a policy are:

No citizen should object to identifying himself unless he has done something wrong. We would be perfectly within our rights to lock up the man for refusing to identify himself.²

The [field investigation] . . . may not, on the other hand, terminate with the immediate release of the suspect. What he says or refuses to say, what the officer observes and what he learns from possible witnesses at the scene, may add to the reasonable grounds for belief sufficient to justify arrest and may provide evidence of the need for wider and more extensive investigation.³

The general policy of police administration is to encourage field investigation and interrogation. An opposite view has been expressed by the Committee on Penal Law and Criminal Procedure of the New York State Bar Association:

Through the euphemism of calling the action of a police officer "stopping" a citizen rather than "arresting" him, it [a New York statute] permits a police officer, on a purely subjective reaction, to detain a citizen without any probable cause other than his suspicion. . . . Nowhere in the history of Anglo-Saxon jurisprudence have we so closely approached a police state as in this proposal to require citizens to identify themselves to police officers and "explain their actions" on such a meager showing.⁴

Police Training: Police training varies considerably. Since field investigation and interrogation are linked to such nebulous concepts as "suspicious persons," officers need clarification of, and insights into their meanings. A Milwaukee Police Training School Bulletin states: "In short, a 'suspicious person' is one who, because of the peculiarity of his conduct, differs from the other persons an officer customarily meets during his tour of duty."⁵ At this early stage of the analysis the possibility of conflict with judicial opinion is apparent. It may well be that the officer's training will lead to the exclusion of evidence and the frustration of the officer.

Police Conduct: Generally, police practice is to conduct a field investigation and interrogate when there is belief that such might result in the detection of crime or the identification and conviction of a criminal offender. The authors illustrated police conduct by presenting detailed accounts of field investigation and interrogation.

Legislation: The various legislatures have defined the limits of search and seizure fairly well but have done little in the area of interrogation during field investigation. As a result, police administrators have few guidelines to help in

2. Id. at 57 (statement made by an undisclosed police officer of Pontiac, Michigan).

3. Id. at 81 (statement made by Superintendent O.W. Wilson, Chicago Police Department).

4. Report of Comm. on Pen. Law and Crim. Proc. of the New York State Bar Ass'n (1964).

5. Milwaukee Police Dept. Training Bull. 5 (1951).

developing an acceptable policy and in providing adequate training. The need for responsible articulation of procedures which are within constitutional limits is obvious.

Judicial Reaction: Not many problems in the area of field investigation and interrogation have been resolved by the courts. Further, judicial reaction is mixed. One author, reviewing the effect of *Mapp v. Ohio*,⁶ stated that:

It might be possible . . . to lessen the risk of arrest without probable cause by giving police clear authorization to stop persons for restrained questioning whenever there were circumstances sufficient to warrant it, even though not tantamount to probable cause for arrest. Such a minor interference with personal liberty would touch the right to privacy only to serve it well.⁷

*United States v. Bonanno*⁸ upheld the right to interrogate during field investigation. The court stated:

But, to rely solely upon the fact that there was no technical arrest, or no arrest as that term is commonly understood, would be to fall into . . . [a] very semantic trap. . . . The problem, as I see it, is not whether the challenged police procedures constituted an "arrest" but whether these procedures were of such a character that all evidence stemming from them must be suppressed. That every temporary restriction of absolute freedom of movement is not an illegal police action demanding suppression of all resultant evidence is accepted in federal courts, though it is a proposition incompletely articulated. I believe that the relative dearth of authority in point can be explained by the fact that few litigants have ever seriously contended that it was illegal for an officer to stop and question a person unless he had "probable cause" for a formal arrest . . . [R]equisites for a legal stoppage for investigation . . . [being] (1) belief by the officer involved that a crime might have been committed; (2) reasonable grounds for such a belief and (3) absolute necessity for immediate investigatory activity.⁹

Courts have listed relevant factors such as time of day, crime rate, crime area, known criminal or associate of known criminal, attempted flight and attempt to conceal an object. Some courts consider refusal to answer questions as one factor which might justify arrest for probable cause. Other courts feel that while the police have a right to ask questions, a citizen has no duty to answer.

The authors concluded that if interrogation during field investigation is essential to efficient crime detection, the basic problem is to define the limits of such interrogation and afford adequate training to police personnel. The authors propose that neither the legislature, the courts nor police administrators have taken responsibility for such definition. The question of which group should take the initiative is open, but certainly the need for definition of limits and training is great.

This reviewer has no doubt that the problem to which the study is addressed is crucial. Nor is there any doubt that the most promising means of resolution is the empirical approach taken by the authors of this book. The ultimate value

6. 367 U.S. 643 (1961).

7. Traynor, *Mapp v. Ohio at Large in the Fifty States*, 1962 Duke L.J. 319, 333-34.

8. 180 F. Supp. 71 (S.D.N.Y. 1960).

9. *Id.* at 78-80 (citations omitted).

of the book cannot be determined until it can be considered in conjunction with the other volumes in the series. However, even standing alone it is of merit since it contains information which, if intelligently used, may produce needed reforms. The benefit of the book to lawyers and law students will not be to increase their technical understanding of the leading cases in the field; it was not so designed. Rather the benefit will accrue through insights into the practical effects of these decisions upon police conduct and insights into how these decisions fit into the context of the practical problems which confront the police officer daily. Perhaps a collateral benefit will be the most significant of all. Recently, respect for empirical research in law has increased. The Supreme Court of the United States has considered results from such research in landmark decisions such as *Brown v. Board of Education*¹⁰ and *Miranda v. Arizona*.¹¹ This study by the American Bar Foundation and the Task Force Reports, by their excellence, may give impetus to this trend.

THOMAS A. WILLS*

10. 349 U.S. 294 (1954).

11. 384 U.S. 436 (1966).

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