

Three Book Reviews

of

Francis B. Tiffany: *Handbook of The Law of Principal And Agent*.
(1903).

Francis Buchanan Tiffany, a St. Paul lawyer and a founder of the St. Paul College of Law, wrote several treatises in the 1890s and early 1900s. His hornbook on the law of principal and agent was published by West Publishing Company of St. Paul in 1903, and a second edition followed in 1908. It was reviewed in the *Michigan Law Review*, *Columbia Law Review* and *Harvard Law Review* in 1903. The reviews were mixed. They follow:

A. Review by Edwin C. Goddard 2 *Michigan Law Review* 154-155 (June 1903)

“The general features of the Hornbook Series are too well known to call for comment in a notice of the latest addition, Tiffany on Principal and Agent. Except for some minor typographical changes that have on the whole produced a more pleasing page, the plan of the book conforms strictly to that of the series.

“The book appeals, of course, to the student rather than to the practitioner, and is not to be compared to the classical and standard works on agency, which it makes no profession to approach in fullness of discussion or citation. As a text-book for students it is worthy of a better fate than to be damned with faint praise, and yet the fact is that it is simply one more good text on agency of a sort of which there were already several in the field. There is no reason why it should not rank well with these, however, for it is written in the clear and accurate manner for which its author has already earned a reputation. The only originality to be desired in a text of such compass is an originality in arrangement of the work for the student, and in this respect the book will appeal to all who approve of the plan of the Hornbook Series. But it will scarcely be satisfactory to those who wish to make a study of cases an important part of a course of study, as no cases are included, and there is too much text to admit of the assignment of much

else in the time usually given in the schools to the study of agency. "Some errors are inevitable in the first edition of any work, and the present work is no exception. But the errors are of minor importance and will doubtless be corrected in another edition. 'Thompson v. Davenport,' page 236. Thomson v. Davenport,' page 238, 'Thompson v. Davenport,' page 240, is an illustration of the need of attention in this direction. The arrangement of topics follows the same plan adopted in several works except in its order. It seems difficult to justify leaving discussion of the relations between the principal and agent for the closing chapters. Those relations are primary in point of time and importance, and until the duties of the agent to his principal are explained, the relations between the principal and third persons can be but partially explained. To take a single illustration, the rule that notice to the agent is imputed to the principal, page 257, can not be understood until it is known that the law makes it the duty of the agent to make known to his principal all facts relating to the agency that come to his knowledge (page 415).

"The subject matter is to be commended for clearness and accuracy of statement. The treatment of the more obscure principles is subjected to a critical and often elaborate analysis which is sometimes to be praised and sometimes deprecated. An analysis based on real differences is desirable, but one that makes much of surface differences when there is essential unity is unfortunate. To illustrate, much is made of the distinction between an agent and a servant, because of its alleged bearing on the liability of the constituent for the acts of the representative, which is said to depend upon different considerations in the case of agency from those that determine the liability of a master for his servant's acts. It is doubtful if these seeming differences are real. All depends upon whether the representative was so acting in the course of the purpose for which he was employed that the constituent should be responsible.

"Agents and servants are employed for different purpose, but so are different agents, and often the same person is both agent and servant. Whatever name is given to the representative the question is still what was the course of his employment. The discussion, here and in some other recent text and legal journals, is almost purely academic, as there are few if any cases that recognize the distinction between duties that involve 'manual or mechanical' service, and those that result in new legal relations with third persons. As a matter of fact the only cases in which the distinction between agent and servant has been of real importance have

been those involving a statute using the word 'servant.' In such cases it is necessary to decide whether the statute applies to the particular representative. Again it is submitted that the extended analysis of 'imputed notice' has obscured rather than clarified a simple though disputed matter. At first notice to the agent was imputed to the principal on the ground of their legal identification on matters within the scope of the agency. With the fading of that view the courts rested the doctrine on the duty of the agent to disclose. Such duty extends equally to all facts as to the subject matter of the agency known to the agent, no matter when learned. Unless there be in the circumstances something that makes it probable that the agent will not do his duty the law presumes he has done it, and imputes the knowledge to the principal. Starting from such a simple basis all the applications of the rule become comparatively simple.

"Such broad principles, explaining many apparent differences, and making easy a variety of applications, the author has often stated as a starting point, with happy results. The general statement as to scope of agencies, p. 203, res gestae, p. 255, admissions by agents, p. 247, and execution of negotiable instruments, p. 336, are a few of many illustrations of admirable statements of general fundamental propositions that greatly simplify the understanding of their varied applications.

"On the whole the work is very creditable to its author, already of established repute because of his valuable services as a legal writer. To say that it is what was to have been expected from his pen is to give both the text and the writer deserved praise. The value of the cases cited is increased by including the citations to the American Decisions, Reports and State Reports as well as to the Lawyers' Reports Annotated and the National Reporter System."

----- Edwin C. Goddard

B. Reviewed in 3 *Columbia Law Review* 503
(November 1903).

"This volume is one of the 'Hornbook Series' professedly designed for the presentation of the elementary principles of given subjects to the student rather than the practitioner. It possesses the usual typographical

features of the series,— a synopsis of the law of the subject running through the book in the form of scattered blackletter paragraphs, amplified by more extended comment. These features will endear the book to those students who yearn for a cram book just before the annual or the bar examinations.

“The field covered by the author is limited to that part of the general topic of Agency, which he classifies under the head of Principal and Agent, and excludes the discussion of the law of Master and Servant. His defense of this course is his desire to treat the subject-matter with greater fulness than would have been possible had he attempted to cover the entire field, and his anxiety to avoid the discussion of questions covered by other volumes in the Hornbook Series. However expedient this course may be from the standpoint of the publisher it does not enhance the value of the treatise to one who wishes to familiarize himself with the broad fundamental doctrines of the subject of Agency. Notwithstanding the difference in the meaning of the words ‘agency’ and ‘service,’ the law of each, according to what seems to be the more rational view, is one and the same.

“The severest criticism to be made of the book is its entire lack of originality, not only in arrangement and plan, but also in its detailed treatment of the questions as they arise. The author in his preface frankly acknowledges his debt to Prof. Mechem, Prof. Huffcut and Prof. Wambaugh; and the most casual reader of the book will see the justice of this acknowledgment. Upon closing the volume the reviewer must feel that its publication has scarcely filled any long felt want other than that of the West Publishing Company to add another volume to its Hornbook series. The work will not prove nearly so helpful to the student as Prof. Huffcutt’s admirable little book, nor so satisfactory to the practitioner as Prof. Mechem’s treatise. The author shows to the best advantage in his discussion of ‘Irrevocable Authority,’ and one could wish that he might have treated all the topics with the same freedom. The citations appear to have been made with more than the usual discrimination, although, in common with the vast majority of the text-book writers, the author does not exercise the necessary care in distinguishing decisions from dicta.”

C. Review in 17 *Harvard Law Review* 149
(November 1903).

“As the preface states strongly the author's indebtedness to certain predecessors who have composed treatises or have edited cases, it is obvious that this book makes slight claim to originality. This has excited some criticism, but, it would seem, unjustly, for the author, going far beyond quotation and paraphrase, gives occasional discussions of his own and adds references not found elsewhere. The chief defect is the omission of about half of the subject of Agency, namely, the topics often treated under the head of Master and Servant. The blame for this omission seems not to rest upon the author, for he explains that it is caused by the plan of the series to which this book belongs. It would be possible, doubtless, to divide the law of Agency into parts and to assign them among Contracts, Torts, Criminal Law, Evidence, Equity, and Persons; but such a distribution of the subject would disregard and conceal the very important truth that Agency is a consistent science composed of interdependent parts, and any departure from the treatment of the whole subject as one science — such, for example, as the consigning of parts to Torts, Negligence, or wherever else this series may place the omitted topics — differs from that most objectionable course in degree only, and not in kind. The author must, it seems, bear the burden of a few slips. Surely it is a mistake to fail to modify the statement (p. 21, n. 6) that ‘a partner cannot bind his firm by deed unless authorized under seal.’ Again there is a pitfall for students in the statement (p. 90), in bold type, that ‘a contract of agency which contemplates an illegal object is void’; for this statement, especially as the context is ‘What acts can be done by an agent,’ encourages the inference that acts performed under such an agency create no liability against the principal and in behalf of the third person, and a neighboring passage (p. 91) which may set the thoughtful reader on the right track is not so placed or expressed as to overcome the danger of error. Again, the statement and discussion (pp. 167-169) as to formal powers of attorney cannot be considered adequate, for *North River Bank v. Aymar*, though cited, is not discussed, and seems to be quite inconsistent with a natural understanding of the text. Still again, the discussion (pp. 199-201) of fictitious bills of lading and the like is not adequate. It would be easy to lengthen this list of shortcomings, but to do so would give the unjust impression that the book is frequently inaccurate. The truth is that many of the shortcomings are the mere slips found in any first edition,

and many others are mere examples of the danger lurking in general statements.”

Francis Tiffany died in St. Paul on October 25, 1936, at age eighty-one. A memorial to him by the Ramsey County Bar Association can be found in “Ramsey County Bar Memorials – 1937” 3-5 (MLHP, 2016).

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