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Estates Practice Guide with Forms (Book Review)

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using implements which are ineffective and obsolete, merely because of the ease with which motor habits are formed and the impermeability of the low-grade brain to new ideas. The innovator in the field of mechanical science is regarded with suspicion, fear, and hatred, because his inventions are misunderstood and because they seem to give him an unfair advantage and to depreciate the time-honored methods, inferior tools, and lesser ingenuity of the ordinary worker. These observations are valid in primitive societies and probably held true in civilized nations up to the last century. Only within that time have innovations become the rage of industrialization. The primitive inventor had to overcome a far greater inertia of stupidity and conservatism than it is easy for us in our mechanical age to conceive. He had to possess not only the mental ability to formulate mechanical principles and to translate them into working models, but also the moral courage to persist in the contrivance and use of the novelties which made him suspect."²⁴

And again, "With the advance of knowledge consistency ceases to be a jewel and is nothing more than an obdurate chunk of useless rock."²⁵

Is this conclusion of a physical anthropologist not an explanation in terms of his science of the "inarticulate major premise", that craving for the illusion of certainty and security, in which Holmes phrases precisely the same conclusion with regard to innovations designed to relate law to life?

RALPH A. NEWMAN.*

ESTATES PRACTICE GUIDE WITH FORMS. By Homer I. Harris. New York: Baker, Voorhis & Co., 1939, pp. xxxviii, 1281.

The administration of an estate is a skill that calls for the maximum abilities of the legal practitioner. Since the state is an interested party, the process of administration is hemmed in with legal technicalities that require not only an expert knowledge of the law, but also the art of putting into proper form the facts that must be revealed to all the interested parties. The Surrogate's Court Act and the Decedent Estate Law form the background of estate administration, but the practitioner would be ill prepared if his expertness were limited to these two statutes. An intimate knowledge of the tax law, both federal and state, with respect to death transfer taxes and income taxes, is virtually a prerequisite. Two sovereignties seek their pound of flesh before the estate may be transferred to the ultimate beneficiaries and the portions which must be allotted to these powers is quite a substantial one. The devices employed by testators to deflect assets away from the state to their beneficiaries, in the form principally of trusts and gifts, are so delicate that even a proper understanding of what the testator

²⁴ ERNEST ALBERT HOOTON, TWILIGHT OF MAN (1939) 23, 24.

²⁵ *Id.* at 96.

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did or attempted to do requires the ability of a scholar and the practical experience derived from years of work in this field. But estate administration touches other fields of law as well. The Personal Property Law contains pertinent provisions with respect to suspension of ownership, validity of trusts of personal property, accumulation of income, and stock dividends, to mention but a few items. The Real Property Law deals with the entire field of future estates, vested and contingent, suspension of the power of alienation, accumulations, general and special powers in trusts, grants and devises of real property for charitable purposes, estates in common, joint tenancies, widows' quarantine, etc. The Banking Law has provisions dealing with the investment of funds; the Domestic Relations Law deals with the appointment, duties, and liabilities of guardians, and adoption. There is the Civil Practice Act and Rules of Civil Practice, and the Judiciary Law on compensation of an attorney. Even the constitution of the state has a relevant provision with respect to the situs of intangible personal property.

The presentation of the scope of the law as it affects estates will give the reader some indication of the scope of the author's treatment of the subject. It is obvious that the average practitioner would be lost without some able guide pointing the way, from the problems to be considered in drafting a will to the final accounting. The material available in this field is quite meager, aside from the statutes and the multi-volume commentaries on them. Several volumes have been offered in the last few years, written primarily as text books from the point of view of the instructor presenting to the student the elements of the problem. One of them, *Estate Administration and Accounting*, by Dodge and Sullivan, has had a practical appeal to the practitioner, although written primarily for the student. Mr. Harris' guide is therefore a welcome offering from one who obviously has had years of practical experience in the administration of estates. It is really the only book of its kind in the field. The treatment is simple and thorough and practitioners are enabled to accept the accumulated practical wisdom graciously given by the author. To him who reads it will be given. To a tyro at the game, the book is absolutely indispensable.

This reviewer was impressed with the excellent draftsmanship displayed in the complete narration of what the author had to say. It is all said in a direct, lucid manner. There is no pedantry of footnotes, although each paragraph, adequately numbered, is replete with references to court cases giving the proper authority for the statements made by the author. The citation of cases, this reviewer believes, might have been even more helpful if the year in which the case was decided had been inserted. The requisite forms are not collected in one place at the back of the book, but follow immediately after a discussion of any point that should be illustrated by a form. To be sure, there is a complete index both to the book and to all forms found throughout the book. Each paragraph is preceded by a title in heavy type and the print is large, all of one type, and readable. The table of contents gives a double reference to the page number and to the paragraph section.

The author did not sacrifice thoroughness to practicality, in itself quite a feat. As this reviewer read through the pages, all of them, it did not seem that any point, no matter how rare or insignificant, was omitted. It was therefore a matter of some satisfaction to discover something that Mr. Harris might

have included in this guide. In the chapter on the management of the estate or perhaps in the chapter on distribution, the author might have added a paragraph on the requirements of transfer agents in transferring securities, especially the affidavit on death and domicile, the latter illustrated by an appropriate form.

It is difficult to single out any one chapter for special commendation. That would depend upon one's special interest. This reviewer found the chapter on estate taxes particularly stimulating, especially the complete illustration of the actual tax returns, including the calculation for the determination of good will, the valuation of annuities, and the valuation of a charitable remainder.

The legal community will undoubtedly be grateful to Mr. Harris for his presentation of Estate Administration and Accounting. The book is more than just a guide.

BENJAMIN HARROW.*

SELECTED CASES ON THE LAW OF TAXATION. By Henry Röttschaefer. Chicago: Callaghan & Co., 1940, pp. xxxvii, 757.

It is not so long ago that the principles of the law of taxation were taught as a branch of conflict of laws. The importance of this field of law can therefore be gauged from the fact that, this year, three case books on taxation are offered to law students, two of them being third and revised editions. The multiplicity of tax laws accounts for frequent and necessary revisions. So too, does the changed economic outlook, with concomitant effects on courts in their points of view with respect to what the law is on issues once considered settled. The case of *Collector v. Day*, 11 Wall. 113 (U. S. 1870), which held that the federal sovereignty may not tax salaries of state employees, is no longer law. *Curry v. McCaless*, 307 U. S. 357 (1939), denotes the beginning of a swing away from the attempt to limit double taxation of intangibles. These are random instances of new trends, and in the field of estate taxation the law has even yet not been stabilized.

In many respects, this case book is eminently satisfactory as a basis for integrating the principles of the law of taxation. In the first place, the presentation follows a plan that this reviewer has used for many years in his courses on the general law of taxation. The first two chapters deal with the power to tax and the purposes for which taxes may be levied. The Social Security Act and state unemployment insurance tax laws are recent enactments affecting fundamental principles of taxation, and the cases validating these laws are prominently included in these chapters. *United States v. Butler*, 297 U. S. 1 (1935), holding the Agricultural Adjustment Act unconstitutional, is given only minor mention in a footnote, although it deserves greater prominence.

Chapter 3 considers the problem of classification and uniformity, two basic principles of taxation, and Chapter 4 deals with the principle of exemptions. The fundamental principles presented in the first four chapters form the background for an understanding of the problems of jurisdiction to tax considered

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