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Handbook of the Conflict of Laws (2nd Ed.)(Book Review)

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HANDBOOK OF THE CONFLICT OF LAWS. By Herbert F. Goodrich. Second Edition. St. Paul: West Publishing Co., 1938, pp. xiv, 624.

The first edition of the author's handbook on Conflict of Laws¹ has long been a standard textbook of reference for students and teachers of a phase of the study of law that presents a point of contact with almost every other subject in a law school curriculum. The publication of a second edition comes after eleven years of unusual activity and events in the development of principles of conflict of laws.

On the scholarship side should be mentioned the completion of the task of the restatement of the law² first undertaken in June, 1923, under the leadership of Professor Joseph H. Beale with the present author as arbiter for the chapter on administration, and also as advisor. This was followed almost immediately by Professor Beale's outstanding treatise in three volumes on the conflict of laws and selections from the treatise printed especially for the use of law students.³

In the field of casebooks for the use of students, three recent contributions have appeared.⁴ The publication of such a wealth of material was given a festive air through the celebration of the one-hundredth anniversary of the publication of Justice Story's *Commentaries on the Conflict of Laws*.

The first edition of the handbook was intimately tied up with the first edition of Professor Lorenzen's casebook: the citations to cases referred the student to the appropriate page in Professor Lorenzen's casebook. This proved an ideal combination for the student. He could read the cases assigned to him for study and then refer to the handbook for a correct understanding and comment on the principles illustrated by the cases. But the Lorenzen editions were changing rapidly from one to four, and Professor Goodrich himself had become part author of a casebook.⁵ The references in the handbook to Lorenzen's casebook were fast becoming obsolete. Each year the student looked forward hopefully to a revised edition of the handbook.

The second edition is quite rich in references to cases, especially recent ones, and to the vast material that has been made available in the field of conflict of laws, particularly the restatement of the law. It is rather surprising to find the author still closely attached to Professor Lorenzen's casebook, and numerous cases are cited throughout the book with special reference to the appro-

¹ Handbook on the Conflict of Laws by Herbert F. Goodrich; West Publishing Co., 1927.

² Adopted and promulgated by the American Law Institute on May 11, 1934.

³ A Treatise on the Conflict of Laws published by Baker-Voorhees & Co. in 1935; Selections From a Treatise on the Conflict of Laws with a Summary, published by Baker-Voorhees & Co. in 1935.

⁴ Cases on the Conflict of Laws by Elliott E. Cheatham, Noel T. Dowling, and Herbert F. Goodrich; Foundation Press, Inc., 1936.

Cases on Conflict of Laws, Fourth Edition, by Ernest G. Lorenzen; West Publishing Co., 1937.

Cases and Other Materials on Judicial Technique on the Conflict of Laws by Fowler Vincent Harper and Charles W. Taintor; Bobbs Merrill Co., 1937.

⁵ *Ibid.*

prate page in the Fourth Edition of Lorenzen. One would have expected references to the author's own casebook. The absence of such references must be attributed to the author's modesty.

It has been said that principles of conflict of laws have changed very little since Justice Story first stated them one hundred years ago. A comparison of both editions of the author's handbook would confirm this and would reveal the further fact that the major changes that have taken place have occurred during the past decade. As the author himself points out in the preface, the development of the law has been most marked in the field of taxation. These developments have been in the direction of limiting the jurisdiction of states to tax, in order to minimize double taxation, particularly in the field of death and inheritance taxation.

Following the case of *Frick v. State of Pennsylvania*⁶ which held that only the state of the situs of taxable property could tax the transfer, at death of such property, the Supreme Court has limited the jurisdiction to tax intangible personal property at death to the state of the domicile of the owner of such property.⁷ Jurisdiction to tax the transfer, at death, of intangible personal property that had become part of a business situs different from the domicile of the owner has not yet been determined finally by the Supreme Court, although the trend of recent decisions in personal property tax cases⁸ would indicate that such jurisdiction will be limited to the state of the business situs.

In the light of the development of principles of taxation in the field of personal property taxes and inheritance taxes, it would appear that the power of states to tax income is proceeding along unsound principles. The Supreme Court has held that a state may tax the entire income of a person domiciled in that state regardless of the source of such income.⁹ A state also has jurisdiction to tax a non-resident on income earned within such state.¹⁰ These decisions open up a fertile field in income taxation for double taxation on two different bases of jurisdiction, so that while the court is attempting in one field (inheritance taxation) to establish a rule that double taxation is unconstitutional, it actually seems to be working towards a contrary rule in the field of income taxation.

It is submitted that economic developments in modern times make it necessary to limit jurisdiction to tax incomes to the state where such income is earned, eliminating the jurisdiction of the domiciliary state to tax such income a second time. This principle would appear to have constitutional sanction in the equal privileges and immunities clause, which gives to a citizen of the United States the right to transact business in any state. For the domiciliary state to tax such a right safeguarded by the Constitution merely on the basis of the domicile of the citizen is certainly inequitable and most likely unconsti-

⁶ 268 U. S. 473, 45 Sup. Ct. 603 (1925).

⁷ *Farmers Loan & Trust Co., Executor v. Minnesota*, 280 U. S. 204, 50 Sup. Ct. 98 (1930); *Baldwin v. Missouri*, 281 U. S. 586, 50 Sup. Ct. 436 (1930); *First Nat. Bank of Boston v. Maine*, 284 U. S. 312, 52 Sup. Ct. 174 (1932).

⁸ *Wheeling Steel v. Fox*, 298 U. S. 193, 56 Sup. Ct. 773 (1936); *First Bank Stock Corp. v. State of Minnesota*, 301 U. S. 234, 57 Sup. Ct. 677 (1937).

⁹ *Lawrence v. State Tax Commission of Mississippi*, 286 U. S. 276, 52 Sup. Ct. 556 (1932); *Cohen v. Graves*, 300 U. S. 308, 57 Sup. Ct. 466 (1937).

¹⁰ *Shaffer v. Carter*, 252 U. S. 37, 40 Sup. Ct. 221 (1920).

tutional.¹¹ The author of the handbook might have discussed more thoroughly the expanding powers of states to tax income and its implications.

As a handbook the Second Edition continues to be an outstanding textbook and work of reference. One hundred twenty-four pages have been added to the original book. The arrangement of the material continues to be ideal for students. In each chapter the principles are succinctly stated in bold-face type followed by the author's clarifying elaboration with copious references to cases and sources. The publisher's contribution of an attractive red cover should also be mentioned.

BENJAMIN HARROW.*

FEDERAL TAXES ON ESTATES, TRUSTS AND GIFTS, 1938-1939. By Robert H. Montgomery. New York: Ronald Press Co., 1938, pp. xi, 511.

In 1935 there first appeared a *Handbook on Federal Taxes on Estates, Trusts and Gifts* under the co-authorship of Robert H. Montgomery and Roswell Magill. The reader can think of no other two persons better qualified to write such a handbook. A Second Edition appeared in 1936 and after a lapse of one year, tax practitioners will be pleased to learn that a Third Edition may now be added to their library.

The author explains that Professor Magill was unable to collaborate in the preparation of this edition for the reason that he served as Under-Secretary to the Treasurer of the United States from 1937 to September, 1938.

The present edition follows the same plan of the previous editions of discussing the current status of the law as it affects the Estate Tax, the Gift Tax, and the Income Tax on estates and trusts. There is also a valuable contribution on planning the distribution of an estate.

The basic problems of an estate tax are not difficult to understand. The complications arise primarily in connection with *inter vivos* transfers that are made taxable upon the death of the grantor. Property to which a decedent has absolutely no legal title is included as a basis of taxation, as if such property actually were legally owned by the decedent at death. This system of make-believe which turns accepted legal principles topsy-turvy is responsible for chaos in legal reasoning and whimsical decisions on the part of courts. For example, a decedent transfers property in contemplation of death. This property is included in the donor's estate at death, the tax being based on the value of such property at the date of death.

Again, there has been considerable litigation on the question of whether or not a gift has been made in contemplation of death. Most cases before the courts have been lost by the Treasury Department. Inasmuch as *inter vivos* transfers are today subject to a gift tax, the author is of the opinion that the contemplation of death provision might readily be repealed with corresponding benefits in the reduction of litigation and simplification of administration.

¹¹ *Colgate v. Harvey*, 296 U. S. 404, 56 Sup. Ct. 252 (1935); *The Taxing Power—State Income Taxation* by Walter K. Tuller, published by Callaghan & Co., 1937, *passim*.

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