

BOOK REVIEWS

LIFE INSURANCE AND ESTATE TAX PLANNING: By William J. Bowe.

Nashville: Vanderbilt University Press. 1950. Pages 92. \$2.10.

In most any comprehensive treatise on a phase of taxation, one becomes accustomed to reading thick books. It is refreshing to find a book consisting of only ninety pages, published with very readable print.

Even among lawyers who have considerable tax practice, it seems to be true that there are a very few who have a comprehensive knowledge of life insurance in estate tax planning. The same is certainly true among accountants who are in the field of tax practice. Among the life insurance underwriters, there are very few who have adequately studied the subject. This book discusses the various phases of the problems in a clear and understandable manner, without being highly technical. However, it is well fortified with footnotes giving citations of Internal Revenue Code Sections and of decided tax cases, which readily lead to a deeper and more detailed study of any one of the specific subjects being treated.

The book starts off with some interesting illustrations of some things not to do, lest proceeds of life insurance be subject to income tax, or to gift tax without income or estate tax benefit.

The second chapter deals with estate taxation of life insurance discussing the ownership test, premium payment test, non-donative transfer, transfer in contemplation of death, and the technical changes of The Tax Act of 1949.

Chapter III discusses the marital deduction, qualifying insurance proceeds for the marital deduction, payment in a lump sum, payment to an insurance trust, and settlement options; also, it compares relative advantages of these.

Chapter IV discusses certain pitfalls to be avoided such as indirect payments of premiums, cross insurance, and transfers of existing policies. It also discusses inter vivos insurance trusts, corporate ownership of policies, and testamentary insurance trusts.

Chapter V deals with survivor-purchase agreements and life insurance as related thereto.

The book having begun with some warnings, ends with a warning, with reference to survivor-purchase agreements and certain things not to do.

It would certainly be true that the information in this book could be found in a comprehensive tax service, but it would not be found in such an easily readable form which will serve for the average lawyer, accountant, or life insurance man who desires to acquaint himself with the subject in a practical and non-exhaustive manner.

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LEGAL DRAFTING. By Robert N. Cook. Brooklyn, N. Y.: The Foundation Press, Inc. 1951. Pages xxxvii, 867. \$8.00.

The problem of whether the law schools should, in addition to the traditional training as already expanded by the newer public law developments, try to teach the so-called "lawyer skills," and whether they could successfully do so if they tried, will probably be debated for years to come. There are strong believers in opposite views, while many find various middle grounds.¹ A definition of the purpose with which it may be attempted to teach such skills can be the critical element in some views, for it qualifies the nature of the problem, its difficulties, the available solutions, their likelihood of success and their desirability.² But even the determination of what are those "lawyer skills" is as yet imprecise and incomplete, and will vary with varying analyses.³ It is clear, however, that in all of them skill in legal drafting is a major item.

Like the law schools, the practicing profession, in its (happily) now widely prevalent efforts at post-admission legal education, selects legal drafting as one of the principal skill fields in which competent advice, guidance and training are needed. At the recent Southeastern Regional Convention of the American Bar Association held in Atlanta in March, Legal Draftsmanship was one of the Workshop Courses, together with Taxation and Office Practice; in the Southwestern Regional Convention held in Dallas in April, Legal Draftsmanship again shared the Workshop Courses content with Taxation and Trial Practice. These subjects are evidently "bread and butter stuff" designed to appeal to practitioners, and as to whose need and usefulness there need be little persuasion. The Practicing Law Institute monographs and courses have long featured legal drafting; so have the institutes and monographs of the Committee on Continuing Legal Education of the American Law Institute and the American Bar Association. Large local bar associations which are active in post-admission legal education have long had effective and popular sections on the drafting of legal instruments.

Professor Cook's book on Legal Drafting is a revision and enlargement of a temporary edition of Cases and Materials on Legal Drafting used by him for several years in a course in Legal Drafting at Western Reserve. The content, technique and objectives of a series of

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1. Compare, for example, Clark, "*Practical*" *Legal Training An Illusion*, 3 J. LEGAL EDUC. 423 (1951); Frank, *A Plea for Lawyer-Schools*; 56 YALE L.J. 1303 (1947); Jackson, *The Advocate: Guardian of Our Traditional Liberties*, 36 A.B.A.J. 607 (1950); Fuller, *What the Law Schools Can Contribute to the Making of Lawyers*, 1 J. LEGAL EDUC. 189 (1948); Cavers, "*Skills*" and *Understanding*, 1 J. LEGAL EDUC. 395 (1949).
 2. Cavers, *supra* note 1.
 3. HANDBOOK OF THE ASSOCIATION OF AMERICAN LAW SCHOOLS 75-80 (1947); Cavers, *supra* note 1; Cook, *Teaching Legal Writing Effectively in Separate Courses*, 2 J. LEGAL EDUC. 87 (1949).

legal writing courses which are given at Western Reserve have been detailed previously by him.⁴ The present volume, he states, is a selection of material not only for law school use but also for reference use by practicing attorneys. It is a pioneer venture of its kind in the field. As Karl Llewellyn puts it in his Introduction, it is "an interesting and valuable experiment in collecting teaching materials in an area in which our sins of omission have been verging on the amazing and unpardonable."

This does not purport to be a textbook or casebook in the usual sense, a "How To" book for the deceptively easy acquisition of skills whether simple or complex, a form book or a book of theorizing, yet it is all of them to a certain extent, and considerably more besides. It will not "teach" legal drafting, but it can do a splendid job of helping a competent teacher to teach it, or an interested student or practitioner to see the problems, acquire a philosophy as well as a technique, and improve his work. It is primarily a well-organized source and reference book of interesting, provocative, appropriate and useful materials. They are of both the theoretical and the eminently practical kind. From a wide variety of sources—writings on logic, psychology, language and other general fields, non-legal periodicals, dictionaries, non-legal pamphlets, studies and other literature and materials imaginatively resorted to, bulletins and reports of government departments, lectures, panel discussions, statements of policies, local bar association publications, forms, check lists, and the more customary cases, statutes, Restatements, Uniform Acts, texts and legal periodicals, and many others—there has been culled an excellent collection; and references are given to much of interest and value which could not be included as text. Every teacher and every lawyer will no doubt already have some favorite materials which seem to him to make or raise some points in this and related fields especially effectively, and to serve as a prod and a reminder;⁵ with them he will supplement the large store of fine material in this book.

4. Cook, *supra* note 3.

5. This reviewer is fond, for example, of the witty lesson on lawyers' customary obfuscating verbosity so astutely conveyed in H. Allen Smith's uproarious novel, *Rhubarb* (1946):

"Do you believe that the fact of this cat's ownership of the baseball club has contributed materially to the rejuvenation of that club, even to the extent of rendering that club a more successful and profitable business venture?"

'Rack 'em up and break 'em again,' said Len. 'I didn't get that one.'

'Does the team make more money now because the cat owns the team?'

'Over twice as much as before,' said Len.

'Your witness,' Munk said to Orlando Dill."

Or, more soberly on the same theme, of Mr. Justice Jackson's comment, *supra* note 1, at 698, on the lawyer trained under the old apprentice system, that "He learned to speak not merely so

After treating the broad general problems of the theory and practice of legal composition (including general principles, definitions, recitals, punctuation, "illegal forms," and legal interpretation and semantics), the book particularizes to treat in turn simple agreements, realty sale and purchase contracts, deeds, restrictions and building contracts, leases, credit instruments, labor agreements, partnership agreements, corporation agreements, non-commercial instruments and legislation and administrative regulations. It contains also brief chapters on the liability of the draftsman and on drafting of legal instruments as the practice of law.

To this reviewer the cases included in the book seem to be of less value than the other materials, except that they remind one insistently of the need for good drafting by showing the consequences of poor, and help teach the lesson of preventive law in the broader aspect. Some problems are included by the editor, but they are few, so that the teacher will necessarily use his own problems, as well as techniques and devices, to make the material contribute most effectively to the development of the particular student group. The book is ample and detailed enough, too, to serve for an intensive course in legal drafting, or for a series of successive but less concentrated courses, or for collateral use in connection with appropriate drafting work incorporated in various substantive and procedural law courses. As law school training in legal drafting may become more widespread, this collection of materials can furnish a blueprint from which to build.

The thoughtful practitioner who is bent on self-improvement and on increasing his ability to render effective service to his community will find much in Cook's book to encourage intelligent self-appraisal and facilitate self-improvement. If he is of a studious mind, moreover, he will find much in the book to amuse and delight him, and to cause reflection on the larger aspects of the lawyer's role, as well as to instruct.

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SELECTED ESSAYS ON FAMILY LAW: Compiled and Edited by a committee of the Association of American Law Schools. Brooklyn, N. Y.: The Foundation Press, Inc. 1950. Pages xv, 1118.

This latest addition to the group of selected essays on various legal topics, sponsored by the Association of American Law Schools, was compiled by a committee first appointed in 1941 and continued with varying personnel until the work was completed. The successive editors were Paul Sayre, Albert E. Jacobs and Nathan Feinsinger.

A cursory scanning of the table of contents makes it clear that the

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he could be understood by persons of education, but so he could not be misunderstood by those without it." Much more could be (and frequently has been) written, yet much less said.

volume contains a much greater proportion of discussions as to the adaptability of the law to present day economic and sociological conditions relative to the critical discussions of the actual state of the law, than is to be found in the other collections in the series. This is to be expected, not only because of the increasing tendency in all fields of the law to concentrate more on the operation of the law than on its content, but also because in most branches of the family law the dissatisfaction with the law as it is is so great as to obscure the relatively minor problems of just what it is in particular circumstances. The entire first part of the book dealing with the Place of the Family in Civilization is almost barren of any discussion of the actual law, except as it is necessary to show its relation to the needs of the family on economic, sociological and religious grounds.

In Part II, The Creation of the Family Unit, and Part III, The Family as a Going Concern, including the rights of the parties—spouses, and parents and children—with respect to each other, and their capacities to engage in other legal transactions, there is, of course, much more consideration of the law as it is, but even here there is a very large part of the material devoted to suggested changes in the law to adapt it better to perform its functions. Part IV deals with Family Disorganization, chiefly separation and divorce. Here the modern character of the work is manifested by the complete omission of the voluminous literature discussing the *Haddock* case,¹ an omission that could not have been justified before that case was overruled, but which has resulted in relieving a student of the book from facing a problem which had not been solved by any of the numerous writers on the case to the satisfaction of any other ones of them. Apparently Professor Bingham² regrets the overruling of that case, but the practicing lawyer must feel a great relief in advising a client as to the validity of an out of state divorce. We may not like the solution reached, but the consistency with which the United States Supreme Court has since followed the doctrines laid down in the two cases of *Williams v. North Carolina*³ should give a much greater confidence in predicting how far the State courts will be required to recognize such divorces in a given state of facts than was possible during the reign of the *Haddock* case.

A review of a compilation of previously published articles, such as this is, does not call for examination or criticism of the articles themselves. Any criticism of the selection of the articles for republication would be a presumptuous assertion of the reviewer's judgment as superior to that of a committee which has devoted much more study

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1. *Haddock v. Haddock*, 201 U.S. 562, 26 S.Ct. 525, 50 L. Ed. 867, 5 Ann. Cas. 1 (1906).
 2. Bingham, "Song of Sixpence," p. 1075.
 3. *Williams v. North Carolina*, 317 U.S. 207, 63 S.Ct. 207, 87 L. Ed. 279, 143 A.L.R. 1273 (1942); *Williams v. North Carolina*, 325 U.S. 226, 65 S.Ct. 1092, 89 L. Ed. 1577, 157 A.L.R. 1366 (1945).

to the question than has the reviewer, and has had the benefit of the exchange of views of the various members of the committee. In the introduction, the Committee recognizes the difficulty of selection, and points out that an important factor in making the selection must be the adequate coverage of all the phases of this field of the law. To each section has been appended a list of additional articles on the material of the section, and the committee concedes that often those articles may have greater intrinsic merit than the ones printed, but they do not fit so well into the plan of the whole work. The Committee's purpose to give adequate consideration to each portion of the field seems to have been accomplished.

Since so much of the work is critical of the existing law, and since several of the writers point out that it is in the law of divorce that the law makes its greatest impact on the family, the reader's interest is naturally directed to the closing article, Principles of a Modern Divorce Law, by N. Ruth Wood, Chairman of the Committee of the National Association of Women Lawyers on Marriage and Divorce Law.⁴ The Introductory paragraph of the article states that the purpose is to propose a divorce law which will meet the general standards of the community. "Every religion is free to establish its own standards in the religious sphere . . ." This is followed by more than a page of discussion of a Trade Mark Act, the procedure under it and the effect of registration. Since there is no citation to the original publication of the article, the reader cannot determine just how that act relates to modern divorce. Could it be that the Committee of the Association did not read the proof carefully, or at all?

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HANDBOOK OF MODERN EQUITY: William Quinby deFuniak. San Francisco. University of San Francisco Press: 1950. Pages viii, 295. \$6.00.

The book in its Preface purports to be "a concise presentation of the principles and rules of modern equity." Certainly, the text material is concise. In two hundred and sixty-seven pages this work attempts to cover the origin and nature of equity, means of equitable relief, requisites for protection against torts, protection against waste and trespass, protection against nuisance, protection of public or social welfare, protection of business and rights incident thereto, protection of personal or individual rights, possessory relief, specific performance and contracts so enforced, requisites and conditions of specific performance, vendor and purchaser relationship, and defenses to specific performance. The cases cited seem to have been carefully selected as representative of modern trends in equity. The novel aspect of this brief treatise is that a surprising proportion of the number of

4. P. 1116.

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footnotes contain references to other treatises and many, many law review articles.

To the law student the book may prove to be invaluable in leading directly to the leading treatises and periodicals which would permit an exhaustive study of any particular point of interest. Also, it should prove a valuable aid in reviewing for law school examinations or for Bar Exams. To the practicing lawyer the book will be of little value. The text discussion is too brief to allow its use as a reference volume. The comparatively great number of law review articles and treatises cited, the basis of the book's only claim to favorable distinction, will be of less value for the simple reason that the average lawyer will not have access to them.

The book is written in a delightfully flowing style that makes for very pleasant reading. While brevity is usually held out as one of the highest forms of virtue, this book illustrates the more universal rule that there are exceptions to all rules, for in this instance brevity has become a vice in that such brevity coupled with the author's flowing style has the tendency to leave the reader with the impression that the complex subject of Equity has been reduced to simplicity. To so reduce the subject may be quite desirable, but also quite impossible, for "Equity is a roguish thing"¹ full of pitfalls and minute distinctions that require incisive and exhaustive research and explanation.

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1. Selden, TABLE TALK. TIT. EQUITY.