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Book Reviews

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BOOK REVIEWS


The first edition appeared in 1919. The third edition, of 1934, was slightly more extended than the second edition, of 1926. The fourth contains about 250 more than any earlier edition. The preface correctly tells us that the new edition has been rewritten and that the subject “reorganization” has been given much fuller treatment. As to several subjects, however, such, for example, as corporate securities and promotion, while the material is rearranged and the form of statement somewhat altered, they do not show the same degree of reworking as do others. Of special interest, at least to law teachers, are the chapters on corporate securities, promotion, reorganizations and the chapter on the holding company.

Mr. Dewing defines capital stock (p. 62) as “merely the evidence of an ownership interest in a corporation.” See also page 63, “Capital stock represents at the last analysis, the ownership and the rights to receive profits and experience losses of the corporation.” . . . “This stock or capital stock is sometimes called common stock.” . . . Contrast this definition of capital stock with that of Stevens (on Private Corporations, 1936), p. 376: “Capital stock . . . is a bookkeeping item carried on the liability side for the purpose of determining whether there is a surplus or a deficit.” (p. 377). “But the capital stock item which equals the aggregate part value of all allotted par value shares plus the consideration received or to be received or transferred from surplus in payment of shares without par value, must remain constant” . . . One should also compare the definition found in Uniform Business Corporation Act, sec. 1, subsection X. See also Williams v. Western Union Teleg. Co., 93 N. Y. 162 (1883).

To the law teacher abundant material is found in the book for contrasting the varying concepts, capital stock, capital assets and shares of stock, which often require definition, when they are used in statutes and by judges, and in different senses. The reorganization material shows what the development has been respecting the court’s responsibility for the plan finally adopted.

The new edition is, in fact, a valuable working over of the older ones. The same stimulating style is employed as before.

ALVIN E. EVANS

Volume III of the Restatement of the Law of Property is by far the best work done in restating property law. The earlier work in this field was rendered of less value by the reporters dragging in the Holdfeld terminology. This third book of the series deals wholly with future interests; construction, construction of limitations, gifts to classes, "heirs," "heirs of the body," "next of kin," and powers of appointment. Wherever there has been legislation enacted bearing upon the law of future interests, the code sections and statutes of the various states are cited in footnotes. Furthermore, there are references to the uniform states laws and to provisions drafted with a view to their adoption by the various states. (p. 1485, for example).

Perhaps the most interesting part of the work is to be found under the heading, "comment." It is here that those entrusted with working out the Restatement have been enabled to preserve much of the earlier teaching of the course in future interests, by giving the historical background and rationale and also their use of introductory notes to their chapters.

It is interesting to find separate treatment of what the authors call "expectant distributees," a phase of the subject which gives the practicing lawyer much concern when he wishes to put through an inter vivos transaction and finds it necessary to bind those who may become interested parties upon the happening of certain contingencies.

The two hundred and more pages devoted to powers of appointment will probably be appreciated more by the practitioner than any other section of the book. Under present taxing laws a premium is being placed upon the use of powers of appointment and consequently they are playing an increasingly important part in our modern law.

This volume of the restatement of property is bound to be well received by both law teachers and practitioners. The publishers are to be complimented on the fine piece of work they have done in printing and binding.

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The author has prepared a manual of practice which should merit considerable appreciation from the Kentucky Bar for, as pointed out in the preface, one of the most dangerous links in any chain of title is the judicial sale of the lands of persons under disability. The work is more than a revision of Judge Grider's book prepared some twenty-seven years ago on the same subject. The fundamental question of the book is whether loss at a judicial sale will be thrown upon
the person under disability or the purchaser. The curious might well query why judicial confiscation of the rights of what are termed helpless classes should be so abhorred.

The best portions of the book are the last two chapters upon judgment and evidence. Some of the more important forms as well as a usable index have been thoughtfully included, which compensates to some extent for the roving fashion in which the rest of the book is written by references to section numbers of the statutes and the code without explicit statement of the problems. The chief omission is the failure to give the dates and jurisdictions of statutes and cases cited which makes evaluation of the author's source material impossible.

The author might have indulged the reader the presumption of knowing the existence of a Code and realization that general rules do not govern actual cases arising under the Code. In other words, fundamental issues might have been dealt with more analytically. However, all practitioners will have reason to study the manual in the light of the author's collection of the scattered sections of the Code.

ORBA F. TRAYLOR


Professor Kearney's revision of Clark and Marshall's earlier work has all the limitations of a textbook. There is too much broad generalization and the materials are not brought closely enough to bear upon the questions of criminal liability. The dates of the cases cited are not indicated, which detracts from the reliability of the source material of the text. Out of date general studies are also relied upon, which is a difficulty that should have been overcome, especially with respect to the lag of the law on insanity behind the progress of medicine.

The methodology of the book reaches the height of serious comedy when the editor attempts to list the cases showing liability. At many places interpretation of relevant case material would take the dullness out of the discussion.

The text does have the characteristic of giving the common law background of most of the criminal offenses. The style is quite readable and should be of some help to the beginning student of criminal law.


1 E. g., pp. 88–89 covering mistake of fact.
Professor Aigler, in the third edition of his cases on Titles, has followed, for the most part, the order of the earlier editions. The principal changes consist of the addition of new cases, more material on conditional and determinable estates, a new section on the registration of titles, a more thorough treatment of covenants of title, and the substitution of more text material for cases used in some sections in the earlier volumes. The footnotes are more numerous and the citations and references, especially to law review notes, add to the usefulness of the casebook.

The arrangement of the casebook, as well as the choice of cases, might well be characterized as conservative. One trained in Gray's Cases on Property law will feel quite at home using Aigler's book. In fact, the author, in his preface to the first edition, expresses his appreciation of and admiration for the work of Professor Gray.

This new revision of cases and materials has added much to the teachability of Professor Aigler's casebook.

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In view of the fact that federal estate and corporate taxes are very complicated and involve a great deal of mathematical formulae in their computation, it is a very great advantage to have one who is both a lawyer and a certified accountant write treatises about them. Mr. Montgomery is both a lawyer and a certified accountant, and in his two new volumes, Federal Taxes on Estates, Trust and Gifts, 1941-42; and Excess Profits and Other Federal Taxes on Corporations, 1941-42, he has expanded on certain phases of tax law covered in his earlier treatise, Federal Tax Handbook 1940-41, and more fully developed these sections of federal taxation. He has followed the same method of development pursued in the earlier works. As a rule he quotes the provision of the Code covering the particular question under discussion, the departmental regulation giving the Treasury Department's interpretation of the same, and then the construction given by the Board and the courts, embodying in his discussion, the pertinent passages in the decisions. In this manner the author has rendered a valuable service to those drawing briefs. The numerous citation of cases and Board rulings make the work of the brief drawer easier.

The first volume—Taxes on Estates, Trusts and Gifts, deals with the Code sections under which fiduciaries must make their returns. Problems under irrevocable and revocable trusts receive full consideration. The text deals with the fundamentals of tax law and is not of an ephemeral nature, as one might possibly infer from the author's titles. The author makes suggestions which will
reduce possible tax payments where one is drawing instruments effecting future dispositions of property. He sets up red lights cautioning the legal draftsman, as it were. He has made liberal use of cases in developing his subject, case after case follows in rapid succession. That he gives due consideration to local problems is shown by his treatment of taxation in states where premiums have been paid out of community property. (p. 354).

The smaller type used in giving Code sections, regulations of the government agencies and court decisions, have made it possible to pack a very great amount of material into these two volumes of seven or eight hundred pages each. It does, however, make it hard on the eyes of the one who reads the books through, but does not greatly affect the one who uses the books for reference, looking up particular points of law.

Examples are frequently given illustrating the methods of computing taxes under certain situations. The Estates Tax volume concludes with suggestions as to methods of reducing the total taxes on estates by the use of gifts inter vivos. By combining the two, it is possible, the author points out, for the donor to get into the lower tax brackets and thereby conserve a greater portion of the estate for the donees and legatees. He gives tables showing the possible savings by following such a course. Furthermore, avoidance of multiple transfers is suggested by the use of powers of appointment.

The second volume of this series is far less readable than the first. It deals with corporate excess profits taxes. The treatise presses home the idea that our federal corporate tax laws are adapted more to the juggling of accountants than to the rationalizing of layers. Whatever criticism one may be inclined to make against this second volume is due more to the laws themselves than to the manner of the author's treatment of them. As he has said in his earlier work, Federal Tax Handbook, "Congress, as usual, has made taxes as hard as possible to understand." (p. 1184). His suggestions as to the best ways to take advantage of a situation, should prove of more than passing value to corporate counsel. For instance it is suggested that it is better to have stockholders purchase stock in order to allow a corporation to pay its debts to them, than to have them forgive the indebtedness. By so doing they have a capital addition to aid in getting a more favorable basis in the average income method of handling the excess profits tax. (p. 147).

These volumes are the result of the author's long experience in the field of federal taxation. They should give very valuable aid to those called upon to advise fiduciaries and corporate executives in tax matters.

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