



1937

Book Reviews

James W. Martin

Department of Revenue, Commonwealth of Kentucky

W. Lewis Roberts

University of Kentucky

Follow this and additional works at: <https://uknowledge.uky.edu/klj>

Right click to open a feedback form in a new tab to let us know how this document benefits you.

Recommended Citation

Martin, James W. and Roberts, W. Lewis (1937) "Book Reviews," *Kentucky Law Journal*: Vol. 26 : Iss. 1 , Article 8.

Available at: <https://uknowledge.uky.edu/klj/vol26/iss1/8>

This Book Review is brought to you for free and open access by the Law Journals at UKnowledge. It has been accepted for inclusion in Kentucky Law Journal by an authorized editor of UKnowledge. For more information, please contact UKnowledge@lsv.uky.edu.

BOOK REVIEWS

GOVERNMENT FINANCE. By Jensen, Jens P. Thomas Y. Crowell Co., 1937. Pp. xxxii, 595.

TAXABLE INCOME. By Magill, Roswell. Ronald Press Co., 1936. Pp. ix, 437.

During recent months several able works on public finance have been published. The observation applies not only to legal but also to economic literature. The two works under review represent examples of the best. Jensen deals with social, especially economic, phases of his subject matter largely to the exclusion of emphasis on legal aspects. On the other hand Magill is concerned mainly with legal and only incidentally with the economic and accounting sides of the problems he attacks. Again, Jensen is concerned with a synthesis of the entire field of public finance; whereas Magill is concerned with a monographic attack on a comparatively narrow area. It must be said, however, that both writers exhibit consciousness of the considerations with which they do not greatly concern themselves. This is more than can be said of some earlier writers on similar subjects.

More perhaps than any other American text writer among economists concerned with public finance, Jensen devotes special care to making his work not only systematic but also readable. Both in his earlier general book published in 1924 and in the present work, he maintains an easy style sharply in contrast with that of some of his contemporaries. His organization is comparatively orthodox; although he does introduce certain departures including more elaborate consideration of income taxation, more attention to interjurisdictional tax problems, more emphasis on tax administration, and minor variations of other sorts. Although Jensen is sometimes careless with his facts (as for instance in his confusion at page 379 of the Kentucky three per cent gross-receipts tax and the gross sales tax of 1930) and he has utilized terminology not common in literature of government finance, he has written perhaps the best general work on the subject for the reader, such as the practicing lawyer, who has only a general interest in the subject. His book should be one of the most popular college texts in general public finance.

Professor (now Undersecretary) Magill is one of the half dozen students of the law of taxation who knows enough about the intricacies of economics and accounting to discuss the law of income taxation as it has developed in this country without seeming to the economist frequently to miss the point. He is one of perhaps two of these students who has had enough experience with actual administration and legislation to appreciate the many practical problems involved in the subject matter with which he deals. At any rate his *Taxable Income* is at once a monument to his scholarly competence and a

credit to his understanding of practical issues remote from the underlying legal theory. The scope of the work is narrow; numerous practical problems relating to the definition of income for tax purposes remain unsolved so far as this study is concerned. Included are "Part I—The Requirement of Realization," "Part II—Characteristics of Income," and "Part III—The Source of Payment." As suggested by the language, the Part I deals with the idea that gains must be realized before they are legally income under the federal definition. It may be remarked parenthetically, however, that the courts have not seen fit to apply this general concept to the treatment of inventories. In Part II the principal issues considered are whether the discharge of a taxpayer's obligations constitute income to him, whether payments of amounts to others pursuant to taxpayer's orders constitute income to him, and whether the term "income" as used in the Constitution of the United States means gross receipts, gross income, or exclusively net income. Part III deals largely with the treatment of certain types of capital transfers and with the general conclusions of the author.

Professor Magill's book constitutes the first report on the definition of taxable income, a study undertaken jointly by law and economics students at Columbia University. Other material will subsequently be presented by Professor R. M. Haig, Professor Carl Shoup, and Professor Paul H. Wueller (the last of Pennsylvania State College). It is anticipated that the subsequent reports will deal with accounting and economic aspects but that they will be prepared in close cooperation—if not collaboration—with scholars in the field of law.

JAMES W. MARTIN,

Commissioner of Revenue, Commonwealth of Kentucky.

HANDBOOK OF THE LAW OF WILLS. By Thomas E. Atkinson. West Publishing Company, St. Paul, Minn., 1937, pp. vii-916.

This is a well written discussion of the more general problems arising from testamentary succession. The book deals, likewise, with the history of succession, intestacy, limitations upon succession, substitutes for wills, as well as with capacity, execution, fraud and mistake, integration, revocation, republication, probate and contest, and administration. Many subjects are handled rather briefly, inasmuch as the book is intended rather for law students than for lawyers.

One might criticize the author's theory of that most confusing device, the doctrine of dependent relative revocation. It was mentioned in the earliest edition of Powell on devises in 1788 and the original author of it envisaged two acts, one a dependent act (the revocation of a will by cancellation) and the other a relative act (a supposed substitute for the will). The substitute proving ineffective it was declared that the dependent act (the revocation by cancellation) was conditioned in the mind of the testator upon the efficacy of the

relative act (the substitute will), and so the revocation should fail. The weakness of this doctrine is that the revocation must fail if the doctrine is rigidly applied whether or not the clear intent of the testator would thus be violated. It is clear that the English writers limited the doctrine to revocation by act to the document (cancellation), thus refusing to apply it where the revocation was by subsequent writing only.

The author, however, does not think of the doctrine as involving two related acts necessarily, but rather he contemplates the case where the testator has revoked his will while laboring under a mistake as to the existence of a *situation* and believes that the court should declare the revocation absolute or void, depending upon which the testator would probably have preferred. His language seems broad enough to include all revocations made under a mistake. In England revocations are generally inoperative when made under the influence of mistake. At least one American case holds that such a revocation is operative. The application of dependent relative revocation seems to require mistake, dependent act, and relative act, as well as an inquiry with respect to the testator's probable wishes and intent. Revocation by subsequent will well executed but ineffective to dispose of property seems excluded because if the later will does not, by express declaration or by inconsistency, remove the property from the terms of the first will, it does not revoke the first will. Possibly this doctrine might be applicable where the terms of the so-called revocation are inconclusive. But even here is it not better to presume that the prior will is not revoked unless such intention is clearly stated?

In his discussion of *Fowles Will* [222 N. Y. 222, 118 N. E. 611 (1918)] the author takes the view that a will non-existing at the time but subsequently executed, can be incorporated into a prior will, rather than the view that such will is as to the prior testator, a non-testamentary act. This view involves a violation of the doctrine of incorporation by reference and an overthrow of the New York rule against incorporation by reference. It also conflicts with the expressed view of the New York court, speaking through Mr. Justice Cardozo.

These are but minor criticisms of a treatise which is well written and shows that thought and reason have been applied in the confection of it. This is an excellent single volume on the subject.

CASES AND MATERIALS ON THE LAW OF CREDIT TRANACTIONS. By Wesley A. Sturges. Second Edition. St. Paul, Minn. West Publishing Co. 1936. Pp. xiii, 1082.

Professor Sturges has emphasized "materials" in his second edition, incorporating a great many new forms, many of which are being used by the "New Deal" financing organizations, the Farm Credit Administration, the H. O. L. C. and the Resettlement Administration; and also taking boldly a very great number of notes and comments on recent cases from the various law reviews. Whether one will like the new edition better than the old will depend to a certain degree upon

whether he prefers textbook materials to cases for class work. There are also many more questions found in the notes of the new volume.

The course on credit transactions has already replaced the courses on suretyship and mortgages in many schools; and has proved superior to these separate courses. It also gives the subjects of conditional sales, trust receipts and pledges the importance their use in present day mercantile transactions warrants. The editor has worked out a better co-ordination of these subjects by his selection of cases in his second edition. Those insisting that modern cases be used will find here thirty-five or forty decided since the first edition was sent to press.

As the editor points out in his preface, practically the same arrangement is followed in the second edition as was adopted in the first. Two exceptions to this statement will be found; a sub-section, entitled "By Special Execution" is included under the section on Enforcement Proceedings and Right to Redeem; and a new section on the appointment of receiver.

The reviewer has found the first edition a first class casebook, one of the best, and he expects to find the new edition an even better instrumentality for putting the subject across to his classes.

University of Kentucky,
College of Law.

W. LEWIS ROBERTS.

Equity, By F. W. Maitland. Cambridge University Press, Cambridge, 1936. Pp. vi-343.

The first edition was published in 1909. It was reprinted many times, the last appearing in 1932. The lectures on Forms of Actions are omitted in the new edition. There have been some additions to the footnotes, e. g., Restrictive Covenants and Trusts. Maitland's views on equitable rights as rights *in personam* and not *in rem* are reproduced. It seems unfortunate to find no reference to the American Restatement. A large part of the book is occupied with trusts and only some twenty-five pages are devoted to specific performance and injunctions. Two lectures deal with the administration of assets.

AMERICAN PRISONS. By Blake McKelvey. The University of Chicago Press, Chicago, 1936. Pp. ix-242.

This brief treatise is the first thoroughgoing review of a subject of growing interest as the subject of penology comes more and more to the fore. The table of contents indicates ten chapters, which deal with the origin of prisons (not in antiquity, however), the coming in of new theories with respect to the function of punishments, the reform movement, and the inter influences of Europe and America, convict labor, reforms, penal developments in the South and West, the Auburn system and its passing. The student of penology will want this book for the development of the background.

AMERICAN CONSTITUTIONAL LAW. Charles W. Gerstenberg. Prentice-Hall, New York, 1937. Pp. v-742.

The book is intended for students who have relatively little time to devote to constitutional law, according to the preface. It is a combination of treatise (pp. 1-277) and casebook (pp. 281-717). As should be expected, the book deals only with the larger aspects of constitutional law and not with details. The treatise part seems reasonably accurate and most of the cases are well chosen. It would seem to be well adapted for a rapid review of fundamentals for students about to take bar examinations. On page 29 the writer says: "This (various mentioned powers) does not mean, however, that the federal government possesses a general power over matters which are national in scope and with which the states are unable to deal because of the nature of the problem involved." Intelligent laymen can use the book profitably.