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Book Reviews

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BOOK REVIEWS

STUDIES IN FEDERAL TAXATION. By Randolph E. Paul and Philip Zimet with introduction by Jerome Frank. Chicago: Callaghan & Company, 1937, pp. xxxiii, 341.

Restatement of the Law of Tax Avoidance, Realistic Valuation for Federal Tax Purposes, and Suggested Modification of the Bad Debt Provision constitute Studies in Federal Taxation by Messrs. Paul and Zimet.

The first constitutes the greater part of the treatise and is the most important essay. All are suggestive and well state the problems involved. In the first, due emphasis is placed on the distinction drawn between tax evasion and tax avoidance, the former coming within the ban of the law and the latter not. Mr. Justice Holmes is quoted with approval when he says: "The fact that it desired to evade the law as it is called, is immaterial, because the very meaning of a line in the law is that you intentionally may go as close to it as you can, if you do not pass it . . . It is a matter of proximity and degree as to which minds will differ. . . ."

The author points out that the taxpayer interprets at his peril; that he has a right to go as near the line as he pleases, but that if he unconsciously mistakes the line he must pay the penalty. The essay as a whole is somewhat philosophical, not as concrete as the average practitioner might desire and in spots will displease because of a somewhat flippant way of phrasing where the reader has a right to look for a lawyer-like statement of the law.

The second essay considers the various methods of valuation—market quotations, earning record, going rate of interest or dividend yield and book or asset value—and concludes that "valuation is neither crystal gazing nor geometry, but a serious hard business with economic and social implications of vast significance. . . . The law of valuation cannot be put into a straight-jacket; it involves, as do few tasks in the law, a delicately poised judgment which will reduce to their proper place a host of cross influences and deflecting forces."

The third essay, published formerly in the Cornell Law Quarterly (Vol. 22, p. 196, 1937), emphasizes the fact that the present bad debt clause of the income statute is the source of much litigation and needs amending.

Perhaps the very great number of footnotes and citation of cases constitute the greatest value of the work to the tax lawyer. It is not a manual giving minute directions as to how taxes may be avoided but, as already stated, a suggestive statement of the problems involved.

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A HISTORY OF KENTUCKY. By Thomas D. Clark (Prentice-Hall, N. Y.), 1937. \$5.00. 702 pages.

In this interesting and scholarly work Dr. Clark has told more than the history of a state; rather he has actually and accurately portrayed the role of the west in early national development from the social, political, and economic points of view. Unlike most states, especially some of the more recent ones, Kentucky played a major role in national development. In this book, Dr. Clark does not fail to take this into account, and make the most of it.

The first fact to impress the reader of this only complete history of the Blue Grass Commonwealth is the fact that it is very readable. This is partially due to the type in which it is set, but to a greater degree to the manner of presentation of the old and the new materials used in the book. Dr. Clark's style is fresh and vigorous, and this combined with his humor and frankness makes an exceedingly readable and enjoyable narrative. He has not hesitated to tell the truth, even though the truth, at least in the minds of some readers, might tend to dethrone some of the revered statesmen of the past, and cause them to be considered as human beings instead of historic untouchables. In telling the truth as borne out by the actual records, there is no attempt to "smear" the reputation of any one. As a matter of fact the shortcomings, if they be shortcomings, of many of the leaders of Kentucky in the past, are made so interesting that they almost ceased to be shortcomings. The intrigue, the disloyalty, the gambling, and the racketeering of these leaders of the past in Kentucky is told with perfect frankness and in good humor. All of this simply goes to make the composite picture of the development of the state.

The second impression one gets from the book is its splendid balance. Kentucky histories of the past, and some of them have not been of the distant past, have been confined to pre-civil war Kentucky, and in too many cases have left the impression that all the history of Kentucky worth relating came to a close with that struggle. This book covers the history of the state from the earliest settlements to the year of publication. And, the recent period is given its proportionate share of attention along with the romantic past of the state. Not only is the work balanced so far as periods are concerned, but it is functionally balanced. It is not a political history, nor is it an economic or purely social history of the state. Rather, it is a combination of all these approaches, and each is given its proper share of attention. This is shown by the treatment given the following subjects: Geography, resources, Kentucky society, agriculture, industry, the development of railroads, river transportation, highways, education, the press, politics, and culture. If there is a dominate note stressed in the narrative of the development of Kentucky as a state that note is economic. It is more or less clearly demonstrated that practically every major decision Kentucky has made has been dictated by economic motives. This held from the first settlement of the territory to recent developments. After

all, there are few, even in the absence of evidence such as presented in the book, would question the soundness of this thesis.

For the average reader this work is entertaining and readable. For the student of history and government it contains much new material which is presented in a scholarly fashion.

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CASES ON FUTURE INTERESTS. By Richard R. Powell. Second edition. American Casebook Series. St. Paul: West Publishing Company. 1937, pp. xxxix, 1068.

The second edition of Professor Powell's casebook on Future Interests is very much changed from the first edition. It is larger. It is much more practical in its treatment of the subject, placing the emphasis on present day problems and the statutory changes made in the law. The rearrangement of material suggests a more conventional approach—classification, construction, Shelley's case, disposition to a class, characteristics, powers of appointment, the Rule against Perpetuities, and restraints on alienation—not so far from Kales and Gray. This new arrangement is certain to meet with the approval of teachers of Future Interests.

The one hundred pages added to the second edition is not due to the use of new cases for there are about twenty-five fewer cases in the new work. The enlargement is due to the use of text material, excerpts from law reviews and Professor Simes' treatise, sections of the Restatement of the Law of Property, statutory matter and to an unusual number of digests of cases. A majority of the cases selected were decided within the past fifty years, about a dozen since the first edition was published in 1928. The early important cases that established important rules of future interests have been retained.

The great amount of note material renders the book of very great value not only to student and teacher but also to practicing lawyers. In fact, this aspect of the book reminds one of Ames' casebooks.

If one were to be critical of Professor Powell's book, he might object to the meager treatment of the subject of powers of appointment in view of the present-day importance of that subject and that there are many good law review articles not cited.

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