

BOOK REVIEWS

CASES AND MATERIALS ON DECEDENTS' ESTATES AND TRUSTS. By John Ritchie, Neill H. Alford, Jr., Richard W. Effland. Brooklyn: The Foundation Press, Inc., 1955. Pp. xlvii, 1113. \$10.00.

While many pressures are being exerted to include more courses in the law school curriculum, some of these have little justification in their contribution to legal education. Nevertheless, their success creates, in turn, pressures to reduce the course time allotted to traditional subjects. As the author-editors have indicated, this alleged need is the usual justification of a coursebook like *Decedents' Estates and Trusts*, which is designed to cover "the fundamentals of wills, trusts and future interests."¹ There is, however, another less obvious and more serious need than that of more coverage in less time and which, even without more new courses, arises as a by-product of our compartmentalized system of legal education. This need is for courses designed to counteract the tendency to lose sight of the broader view of law and its function in society which tends to result from fragmentation of our teaching and our thinking into more and more "courses." This need to present at least cohesive areas of the law as a whole, is the more legitimate reason for attempts of the type illustrated by this coursebook.

It is a tremendous job to prepare a coursebook for an integrated course in an area as extensive as wills, trusts, and future interests. A person's attitude toward the job of preparing such a book depends in large part upon his view of the need and feasibility of such an integration. This reviewer's bias is in favor of a treatment of the area of wills, trusts, future interests, and gifts as an integrated whole so far as is possible. If legal education is to avoid compartmentalizing the minds of future professional leaders, the curriculum should be balanced with courses of broader scope. As a step in that direction, this combination of courses at least reduces the number of pigeonholes within pigeonholes. Having in mind these considerations, the overall attempt made by this coursebook is good. A workable and comprehensive course can be built around these materials.

This selection of materials is a combination of cases, statutes, and text, and the text is as significant and extensive as the cases. By using text material to cover much of what traditionally has been laboriously treated with cases, this coursebook becomes nearly as different in its makeup as it is in scope.² This extensive text is the most significant thing about *Decedents' Estates and Trusts* and is bound to bring varied reactions from teachers and students alike. The text notes and footnotes contain a wealth of statutory references and historical annotations which make immediately available sources for extended study and research. Many of the notes are, as they should be, obviously intended for rereading and review as different topics are taken up.³ This encourages the use of a "spiral" method of teaching and enables an instructor to employ that constant cross re-

1. p. ix.

2. There have been several attempts at different combinations in this area but the general development of integrated courses has been slow. For example, Richard Powell, Barton Leach, and A. G. Gulliver have been teaching combined courses in this area for many years at Columbia, Harvard, and Yale, respectively.

3. Chapter I, § 2, for example, should be reconsidered with Chapter X and Chapter II should be reviewed with Chapters VII and XIV.

ference that refreshes the recent past and gives evidence of the cohesiveness of the subject.

This is a field in which textual treatment is particularly appropriate because of the well developed and informational nature of much of the material. In addition, students in these courses have had at least a year's training in case method techniques and are ready for further development of their material-handling skills. But, the fact that text may be so useful increases the need to recall the student to the underlying policy conflicts by posing questions that make him stop and think that even here is room for improvement and variation of result. The use of hypothetical fact situations with the traditional query, "will or no will," may not alone be sufficient to do this job. It might be done by suggesting in the text more of the policies and functions served by different requirements⁴ or by suggesting possible statutory approaches. The problem of "living probate" might stir up some productive thinking among the members of our next half-century's legal profession.⁵ With as much text material as there is in the books, it would add some stimulus to the constant query of the appropriateness of different trends if more extralegal materials could be referred to on occasion. As an instance of this, the values and trends in adoption, particularly the blind adoption policies, might question whether our law of succession is keeping pace with the sociological development in this area.⁶

Another of the dangers inherent in using extensive text is the tendency to give "answers" rather than raising questions for the student to resolve in his own mind when confronted with the opposing policies.⁷ An example of this is the opportunity to permit the student to make his own discovery of the significant manner in which "substantive interests" can be determined by a "preliminary proceeding."⁸ One such opportunity is lost when the standing of an heir to contest a will, though disinherited in a prior unprobated will, is dismissed by the soothing statement that "an heir . . . is a proper contestant . . . unless he has been disinherited by some means other than the will offered for probate."⁹ Problems of the evidentiary value of an unprobated will or its effect upon the conceptualistic descent of "title," or upon the protection of the family, or upon the efficient disposition of judicial business, are laid to rest rather than being raised to perturb our future legal profession. Notwithstanding these shortcomings, the book illustrates in many instances the effective use of text material. The conflict of very strong policies in the matter of enforcement of spendthrift trusts against noncontractual claimants is treated better and several questions are left unanswered to stimulate corridor, if not classroom, discussion.¹⁰

4. See, e.g., pp. 115, 132 n.66; cf. Gulliver & Tilson, *Classification of Gratuitous Transfers*, 51 YALE L.J. 1 (1941).

5. Cf. pp. 26, 189, 199. See Kutscher, *Living Probate*, 21 A.B.A.J. 427 (1935).

6. Cf. p. 56.

7. As in any concise textual material, there is bound to be an occasional statement that seems too broad to generalize accurately all situations that may come within it. For example, "Probate of the will is unnecessary to vest title in the devisee but, of course, is vital in order to prove the title." p. 25. Does it do any good to treat title as a unitary concept when the interest which is proved is the only significant interest in the long run?

8. p. 191.

9. p. 192.

10. pp. 404-06. The trust and fiduciary administration sections seem to raise more questions for student consideration than do those on wills. This is particularly true in the introductory notes preceding the chapters. For example, the adequacy of rules developed in regard to personal fiduciaries in an era of "preserving principal" is questioned in a modern era of professional corporate managers and "income conscious" dispositions. See, e.g., pp. 829, 852, 880.

In a course consolidation such as this, many will ask, what was left out? Much that is missing should perhaps have never been included; however, "familiar faces" like *Ex parte Pye*¹¹ and *Morice v. Bishop of Durham*¹² are conspicuous by their absence. Though the omission of *Morice v. Bishop of Durham* may be considered by some as a slight to an old and faithful friend, the whole problem of identification of the beneficiary and of charitable purposes is more than adequately covered. Some instructors may in fact find it possible to make further deletions in this area.¹³ Other omissions may be more significant and at the same time more difficult to detail. Nearly everyone would agree with the authors that "a thorough understanding of each type of future interest is part of the essential professional equipment of one engaging in an estates practice."¹⁴ There is considerable doubt that these materials are adequate to do this. Particularly in the area of classification, an occasional instance of actual facts and clauses in litigated cases seems needed to give meaning to the text.

Some will find the material on will substitutes rather scanty. While a few cases posing the difficult problems incident to gifts inter vivos and causa mortis would be desirable, the material on contract and deed substitutes together with the text material on gifts may be adequate to create an awareness of the significant problems in this area. Coming, as it does, at the end of the will section,¹⁵ the material on will substitutes serves as transitional material raising alternative means of accomplishing objectives and preparing the student for the consideration of trusts.

Reaction will be varied toward any suggestion of further broadening the course by inclusion of tax and conflict of laws material. But, these matters are ever present considerations in estates work. Though the authors specifically omitted nearly everything relating to tax problems,¹⁶ it might be well to identify some of the many existing tax questions without attempting to answer them. When administrative or dispositive problems are expected tax consequences, text treatment would be appropriate as in the matter of apportionment of estate taxes, an important factor in distribution.¹⁷ Similar treatment could be given conflict-of-laws questions which are known on occasion to trap the unwary in all of the areas with which the book is concerned.

Most persons using the book will be pleased with the substantial treatment of the fiduciary's management function. This is a most significant factor in modern trust and estate matters. Of particular import is the discussion of commonly existing but not yet extensively litigated matters relating to the continuation of the decedent's business and such devices as the "buy and sell" agreement.¹⁸

11. 18 Ves. 140, 34 Eng. Rep. 271 (Ch. 1811).

12. 10 Ves. 522, 32 Eng. Rep. 947 (Ch. 1805).

13. C. XV, § 2; c. XVIII, § 4. An illusory omission is the matter of testamentary capacity which, other than a very brief textual survey (*e.g.*, pp. 77, 122), is included as a part of the matter on will contests. C. VIII, § 2. While some may feel it more appropriate to consider this part of execution, the significance of the capacity doctrine is enhanced by the setting in which it arises, *i.e.*, contest upon proposed probate.

14. p. 544.

15. C. IX, § 2. The problem of will substitutes is raised again in the section dealing with avoiding administration. pp. 891-95.

16. p. x; *cf.* p. 592.

17. The materials also might be improved by the inclusion of more comparative law materials. A note on the Family Provision Statutes generally adopted in the British Commonwealth might offer a suggested solution to the problem of spouse and family protection. *Cf.* p. 8. Such references could be helpful in stimulating that questioning attitude which often leads to law reform and a flexing of existing rules to more nearly meet new or unforeseen needs.

18. pp. 979-82; *cf.* note, p. 862.

The section on misnomer, misdescription, and mistake raises some exceedingly worthwhile questions as to the function of the judicial process when the reasonably clear intention of the testator may be frustrated by "well-settled rules" which were designed to give effect to that intent.¹⁹ This element of the growth of law is particularly significant in the field of gratuitous transfers, and the integrated course should give renewed emphasis to this aspect of legal education.²⁰

The book contains sufficient suggestions of practical detail to enable students to see the application of the materials. Most students will remember the suggested procedure for executing an attested will.²¹ Suggestions of this type provide readily available answers to any "Cantrall"²² questions that may be raised.²³ No two men would prepare exactly the same materials and few, if any, have ever seen a perfect coursebook. Nevertheless, in this instance, three men, by pooling ideas, have prepared a coursebook to which many will find they can comfortably adjust their course or which can be adjusted to their needs. Further, the book represents a noteworthy attempt to bring together in teachable form the materials of a cohesive area of the law.

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THE CHALLENGE OF LAW REFORM. By Arthur T. Vanderbilt. Princeton, New Jersey: Princeton University Press, 1955. Pp. vi, 194. \$3.50.

The stature of Chief Justice Arthur T. Vanderbilt of the Supreme Court of New Jersey is such as to make a book length publication by him a significant event in academic and governmental circles and in the legal profession generally. Thus, his latest work, *The Challenge of Law Reform*, which surveys the need for reform in various areas of procedural and substantive law and which proposes possible solutions, is worthy of considerable note.

Few are as qualified to comment upon these matters with understanding and knowledge, bred from both experience and study, as Chief Justice Vanderbilt. For years, as distinguished general practitioner,¹ teacher,² and judge,³ Chief Justice Vanderbilt has almost single-mindedly devoted himself to the study of law reform and the improvement of existing legal systems. He has served on

19. pp. 650-57. See also p. 549 n.5.

20. Particularly is this true when the tax incentive has caused "overnight" changes which formerly took years to occur. *E.g.*, p. 630. See also the handling of the controversial "second look" doctrine in perpetuities, pp. 760-66, and the Thelusson statutes, p. 818 n.46. Incidentally, the colorful saga of Peter Thelusson, his progeny, trustees, and their lawyers, is relegated to judicial discussion, (p. 811) and a statistical footnote (p. 815 n.44).

21. p. 98.

22. Cantrall, *Law Schools and the Layman: Is Legal Education Doing Its Job?* 38 A.B.A.J. 907 (1952); *cf.* McClain, *Is Legal Education Doing Its Job? A Reply*, 39 A.B.A.J. 120 (1953).

23. See also p. 778.

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1. Between 1913 and 1943 Chief Justice Vanderbilt was a leading practitioner of the bar of the State of New Jersey. In 1937 he was elected President of the American Bar Association and in 1939 President of the American Judicature Society. In 1948 he was awarded the American Bar Association Medal.

2. Between 1913 and 1943 he served on the law faculty at New York University. He was appointed dean of the law school in 1943 and dean emeritus in 1948. See Gerhardt, *Chief Justice Vanderbilt and Teaching Procedure*, 34 SYRACUSE L. REV. 205 (1953); Williams, *Arthur T. Vanderbilt and Legal Education*, 24 N.Y.U.L.Q. REV. 1 (1949).

3. He has served as Chief Justice of the Supreme Court of New Jersey since 1948.