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## Book Reviews

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## BOOK REVIEWS

HOW LAWYERS THINK. Clarence Morris. Cambridge, Massachusetts: Harvard University Press, 1937. Pp. xiv, 144.

A dean of a law school has set out to illustrate the mental processes of a lawyer with a problem to solve, in the hope that, while an awareness of those methods should prove helpful to the practicing lawyer, yet, primarily, the law student should be benefited through expert guidance in the development of a legalistic mind.

Being conscious of the psychological facts about the learning process, he realizes that theory without practice, like practice without theory, is not likely to result in effectual and critical habits of thought. He, therefore, combines the applicable elemental theories of logic with the accepted practices of jurisprudence and adds a flavoring of delightful wit to make a respectable treatise on what to do and what not to do when confronted by a legal problem.

Too often a reliance on authority, or a submission to intuition, has led the untrained legal thinker into grave error, but such mistakes will not occur to one who realizes that true thought is a process in which the alert mind will beware of hasty generalization and a too-ready acceptance of oft-reiterated dogma.

No one, as the author suggests, can "purchase an alarm clock which will warn him when it is time to be bothered," so his success in problem-solving can only come from a constant watchfulness for those factors which should give rise to a reflective pause. Relevant ideas are not painted red like fire-alarm boxes for easy identification, nor are they trained, like English butlers, to appear without call. The ways by which such ideas can be developed, recognized and applied are, consequently, clearly pointed out.

The novice in the law, although he knows something about problem-solving in general, usually has a "fuzzy" conception both of the legal problem before him and also of the methods by which a solution therefor can be developed. Too frequently his pedagogical instructor is concerned with imparting a knowledge of legal principles without adequate consideration of the processes by which such standards have been produced or the applicability

thereof to solve other related problems. The result of their combined efforts is not infrequently still further confusion. Dean Morris's treatise should prove most helpful to both. It will, without doubt, make both interesting and thought-provoking reading.

HANDBOOK OF THE LAW OF WILLS AND ADMINISTRATION OF DECEDENTS' ESTATES. Thomas E. Atkinson. St. Paul, Minnesota: West Publishing Company, 1937. Pp. xiii, 916.

This new text book on Wills is so well adapted to its purpose that it is entitled to special consideration and may be recommended without reservation. Notable improvements are found over the former handbook on the subject which was prepared by Professor Gardner of the Law School of the University of Maine and dealt almost exclusively with testate estates. In the present text equal emphasis has been laid upon intestate estates and the principles relating to procedure and administration. The chapter on descent in cases of intestacy is as competent a statement of the law thereon as may be found and that alone entitles the book to favorable comment.

Approximately one-half of this handbook deals with the administration of estates. While the work of our own Professor James on Illinois Probate Practice stands by itself as a local treatise, the present volume covers the rules in a number of different territorial jurisdictions. Attention should be called to the fact that in addition to the material mentioned, there is a treatment of the questions relating to insurance, taxation, and conflict of laws that cannot be found in any other similar work.

For collateral reading in connection with the proper use of a case book, this text may be recommended without hesitancy to the law student.

RESTATEMENT OF THE LAW OF PROPERTY. Adopted and promulgated by the American Law Institute, at Washington, D. C., May 9, 1936. St. Paul, Minnesota: American Law Institute Publishers, 1936. VOL. I, pp. lxi, 503, Ap. 22; VOL. II, pp. liii, 505-1179, Ap. 23-82.

Inasmuch as it has been announced that five volumes will be required for the completion of the Restatement of Property noth-

ing more is attempted in this brief review than to indicate its scope in so far as it has been presented in the first two volumes.

For the benefit of those students and practicing attorneys who have not seen the preliminary drafts or the finished product it is urged that they avail themselves of the first opportunity to examine and pass upon the merits of this colossal work at first hand. This will not be a difficult task since the principles are stated concisely and the comments and illustrations are, in most cases, of a character sufficiently clear so that little effort is required to read and understand them.

The Restatement proper comprises 1175 pages and is arranged in seventeen chapters. The first seven chapters are devoted to general principles and freehold estates and the remaining chapters to future interests. The seventeen chapters are consecutively entitled as follows: Definitions of General Terms; Definitions of Terms Relating to Estates; Estates in Fee Simple Absolute; Estates in Fee Simple Defeasible; Estates Tail, Estates in Fee Simple Conditional and Related Estates; Estates for Life; Future Interests Differentiated; Transferability to Future Interests by Conveyance Inter Vivos; Succession on Death; Subjection to Satisfaction of Claims of Creditors; Partition and Judicially Ordered Sales; Protection of Future Interests Resulting from Requirements for Judicial Action Binding upon Such Interests; Protection of Future Interests as against Acts and Omissions of the Owner of the Present Interest; Protection of Future Interests as against Acts and Omissions of Persons other than the Owner of the Present Interest; Protection of Future Interests as Affected by Statutes of Limitation and the Doctrine of Prescription; Ineffectiveness of an Interest in its Inception and Effect Thereof upon Prior or Succeeding Interest; and Termination of an Interest as Affecting Succeeding Interests. The Appendix to Volume I contains two monographs written by the Reporter, one being entitled Dower and Curtesy as Derivative Estates, and the other, Implication of Cross Remainders in Deeds. The Appendix to Volume II also contains monographs by the Reporter on the following subjects: "The Severability of a Power of Termination"; "Ineffectiveness of an Ultimate Executory Interest"; and "Aspects of the Law of Acceleration and Sequestration."

It is impossible in a brief review to set out in detail the contents of various chapters consisting of a total of 240 sections,

many of which comprise numerous subsections and subdivisions of the subsections. The seeker after precise statements of rules of law will not find them in the Restatement, since it is confined almost entirely to an expression of general principles and seldom suggests what may be termed a precise rule of law. While this may be disappointing to one who wants the law ready made, it has the merit of forcing the student to evolve his own rules from the declared principles. The more or less extended comments following the statement of principles in each section are of substantial assistance to one who is able and willing to deduce his own rules from governing principles. Occasional illustrative problems, interspersed in the comments, are of assistance in determining whether the principles heading the section are applicable to a given factual situation.

The selection of subjects for special comment is difficult since they seem to be of equal importance. Neither is it easy to suggest subjects which should have been but were not treated under particular topic headings since it is probable that many such will be found in future volumes under related subjects. However, some of the subjects treated in Volumes I and II are so clearly a departure from general impressions as to justify one in suggesting that a statement of the reasons for such departure would have been helpful to the ordinary reader. The positions taken in some of the principles are so contrary to what most lawyers consider the great weight of authority as to suggest they might well have presented the opposite rule and explained why it is not followed. The Reporter's monographs in the Appendix of each volume does this in masterly fashion for the few topics so treated. In the monograph, "Dower and Curtesy as Derivative Estates," it is explained why dower or curtesy, in an estate of inheritance less than an estate in fee simple absolute, should be treated as a provision for the surviving spouse out of the assets of the deceased spouse rather than as an independent interest created by the original conveyance in favor of the surviving spouse. The position is adopted that dower or curtesy in such estates ends whenever the estate of the deceased spouse would have ended under the terms of its limitations. The decisions cited in support of the position so taken are of high authority and sufficiently recent to warrant the conclusion that there is a judicial trend in the direction of the suggested change.

The comments on the various sections are so thorough that it is difficult to select any particular sections as outstanding. However, the sections on future interests covering Transferability by Conveyance Inter Vivos, Ineffectiveness of such Interests in their Inception, and their Termination as Affecting Succeeding Interests are so complete and conclusive as to justify special mention. It is believed that a lawyer will find it to his advantage to have the Restatement available for reference and having used it at least once, in preparation for litigation, he will not thereafter proceed in any case involving property rights without making use of it.