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Book Reviews

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MARITAL PROPERTY IN CONFLICT OF LAWS. Harold Marsh, Jr. Seattle, Washington: University of Washington Press, 1952. Pp. xi, 263.

The development and wide-spread use of the automobile and of other more rapid forms of transportation, together with an increasing mobility on the part of the American population, have combined to produce an impact on law in the United States far more intense that a mere expansion in the volume of negligence cases mounting ever upward as people hurtle more and more rapidly toward death or injury. One aspect thereof is reflected in the increase of problems flowing from the tendency to acquire property, movable and immovable, in many scattered jurisdictions without much regard for the legal doctrines regulating ownership, at the time of acquisition or thereafter, as the property, or its owners, move about the country. When, to these complications, is added the factor that a great majority of the owners concerned are married and, in some states at least, form a marital community to which principles different than those applicable to single persons will adhere, the opportunity for a rising flood of conflict of law disputes is made that much the more certain. It is, therefore, no longer possible for courts and lawyers in jurisdictions where the legal system rests on a common law foundation to be disinclined to apply unfamiliar foreign law which, by reason of that very unfamiliarity is difficult to understand, hence frequently misapplied, for problems must be solved, not avoided.

Through the medium of this doctoral dissertation on the subject, a most comprehensive analysis has been made of the choice-of-law questions apt to grow from the acquisition of marital property in community states with the possibility of transfer into non-community areas or the converse of the problem as it relates to the separate estates of spouses acquired in common law areas who later move, or whose property is afterwards located in, those states following community property views. For the benefit of the uninitiated, the author has provided a survey, approximately one-fourth the length of the book, dealing with the marital property laws of all of the states along with a discussion of the basic differences between the community and the traditional Anglo-American systems of ownership. From that introduction, he progresses to a critical evaluation of the choice-of-law problem by illustrating its three-fold aspects of characterization, selection, and application. These are here considered from the theoretical point of view first to reveal the purposes and policies which should underlie the rules to be applied and to point out the confusion

which could attend upon indifferent analysis or misconception. The work closes with three chapters, fully the length of one-half the book, which discuss the existing judicial decisions wherein issues of marital property involving a conflict of law have been considered. They disclose the significance of accurate characterization of the issue, the criteria to be used in making a selection of appropriate law, and the consequences flowing from a correct, or incorrect, application thereof.

The book is not confined simply to problems of the spouses themselves during the existence of the marital community. It reaches into the rights of the parties upon the dissolution thereof by death or divorce; deals with the rights of creditors; discusses transfer of property; considers the application of income; and the liability to third persons for torts committed. Necessarily, it considers property rights at all stages; those arising in acquisitions made prior to marriage as well as those obtained during wedlock, whether viewed from the standpoint of the law of place of acquisition or from that of the point to which subsequent removal occurs. The completeness of the discussion alone serves as an attestation of the worth of the book. The pointed style of the author, refreshing in its comment on the validity or correctness of many of the decisions cited, adds to its attractiveness. Its principal value, however, lies in the degree of clarification it offers for an area of law marked with confusion and not a little local prejudice.

HANDBOOK OF THE LAW OF EVIDENCE. John Evarts Tracy. New York: Prentice-Hall, Inc., 1952. Pp. xviii, 382.

Although the great Wigmore captured, and has retained, pre-eminence in the field of Evidence, his encyclopedia is, to a great extent, beyond the comprehension of a student in a law school. Dean Wigmore's student edition, and other one-volume works at the student level, are not very happy publications and few, if any, of them respond to the quick search of the practicing attorney. Professor Tracy's handbook appears to solve, to a limited measure, the student's problem of finding a readable yet sufficiently comprehensive text on this subject. The volume is not exhaustive nor does the author claim it so to be. Nonetheless, a review of the table of contents will disclose that the coverage is sufficient for a student who desires a quick reference into cases before proceeding to more important works in this field.

It is impossible to speak of any text on Evidence without realizing that perhaps the more solid and searching inquiries have been published, as separate articles under various topics, in legal periodicals and law reviews. Despite this, the arrangement of material, the simplicity of

statement, and the justification for stated propositions to be found in this book are of definite value. The index is complete enough to serve the purpose of locating information rapidly.

Each person interested in the law of Evidence will have what might be referred to as his "pet area" and he will always find that every author has given more than necessary coverage to most topics but less than sufficient coverage to his particular favorite. Self-incrimination, for example, seems to be a very important area for the moment, but it is rather sketchily treated here. Because of the variance existing among the states by reason of statutory modifications, it would be impossible to quarrel very much with the author's treatment of problems arising from the husband and wife relationship, but again this reviewer feels the treatment to be abruptly shortened. It is clear, therefore, that the student should not be led to believe that this handbook will give him simple, direct, and complete answers to all questions, but he should be encouraged to proceed from such volumes as the instant one to more intensive studies dealing with specific questions falling in this field.

WAGE-HOUR LAW: Coverage. Herman A. Wecht. Philadelphia, Pennsylvania: Joseph M. Mitchell, Publisher, 1951. Pp. viii, 499.

Familiarity with the provisions and interpretations of the Fair Labor Standards Act, a statute which regulates the wages and working hours of millions of employees engaged in commerce or in the production of goods for commerce, has become a matter of primary importance for practically every lawyer engaged in general practice. Unfortunately, many such lawyers have failed to acquire the necessary knowledge to deal with even the basic problems arising under, or by reason of, the application of the Act. The prior lack of a handy, easily-understandable and readily-usable book dealing with the subject matter may have been a contributing factor to this unfamiliarity. Mr. Wecht's book is designed to remedy this situation, particularly as it concerns the most important aspect of the statute, to-wit: coverage of employees. Which employees are affected by the law; which partially so; which totally exempted? These are questions confronting almost every employer and he is likely to seek answers on the point from his lawyer. The book, therefore, has been designed to help the lawyer find such answers. Prefaced by an extensive table of contents, which serves at the same time as an outline of the material treated, the book deals in a simple yet accurate manner with the provisions and interpretations of the Act and provides digests and evaluation of all the important decisions. Wherever conflicting views or theories have resulted from divergent decisions, all views are discussed and adequately and

impartially presented. The value of the book is, moreover, greatly enhanced by an excellent index. The work deserves wide circulation and should prove to be a handy tool for lawyers faced with primary problems relating to employee-coverage under the Fair Labor Standards Act.

BAR EXAMINATIONS AND REQUIREMENTS FOR ADMISSION TO THE BAR: Reports of Consultant and the Advisory and Editorial Committee. The Survey of the Legal Profession, Reginald Heber Smith, Director. Colorado Springs, Colorado: Shepard's Citations, 1952. Pp. xvii, 498.

Professor Brenner, opening this comprehensive analysis of the why and wherefore of bar examinations and other requirements for admission to practice, notes that there is as much variation in the requirements of the different states on the point as there is in the divorce laws thereof. He could have added that the differences possess just about as much rhyme and reason, for all would agree that the profession is in need of, and should be open to, all well-educated, conscientious and ethically-inclined recruits. As these traits should be standard everywhere, any deviations intended to do no more than protect local lawyers from competition, rather than to preserve the public from the ministrations of incompetents, would be wholly without justification. The difficulty, however, lies in the fact that while the qualities which mark a good lawyer are well understood, it is not entirely possible to ascertain that the tyro possesses them when he seeks admission, for educational backgrounds vary almost as widely as environmental conditions. The best that may be done, therefore, is to fix minimal criteria at a uniform level no lower than it ought to be and to hope that some, at least, will exceed the minimum and provide the bar with an impetus toward higher and ever higher standards.

In the interest of ascertaining what that minimum standard should be, the several members of the Advisory and Editorial Committee of this division of the important Survey of the Legal Profession have each written extensive and well-documented reports. These, to some slight extent, have been epitomized by the Consultant who has projected therefrom the centers for attack where pressure must be applied if the tone of the legal profession is to be improved. Many of these reports are factual in character, reporting conditions as they did, or do now, exist. This is as it should be for, without a complete knowledge of the battlefield, no wise general would move unless he wished to invite disaster. Through them, a vast array of data, not previously or conveniently available, is assembled in one place. Here one can learn of such scattered, yet related, things as the age, experience and education of bar examination

board members, the extent of the diploma privilege, the work of the Council of the Section on Legal Education, and the pro and con on the issue of labelling bar examination questions, to mention only a small sampling of their contents.

Others of these reports deal with matters concerning which law school deans and their faculties are thoroughly familiar but which could well make significant reading for examiners and practitioners of ten or more years standing who, at times, have displayed a degree of ignorance on changes which have been made in the field of legal education. Still others should concern law students, particularly those who have expressed a sense of mystification about bar examinations, their preparation and grading, or the student's own chance of success in overcoming the dreaded, but generally inevitable, hurdle. The work of the National Conference of Bar Examiners, especially as it relates to character investigation, is also ably explained by its efficient Executive Secretary.

Areas of controversy have not been ignored, nor should they be. Three chapters, those dealing with the scope and content of bar examinations, with bar examinations as testing devices, and on improvement of bar examinations, are particularly worthy of mention for that reason. It is likely, however, that the contents thereof will be overlooked in the debate which could well rage over the report on the subject of a national bar examination, that is to say one to be administered on a national basis, for it is unlikely that state's rights in law practice will yield to national domination short of a civil war among the lawyers and the examining boards.

Naturally, with many persons writing on aspects of the same common ground, there is a fair amount of duplication, of frequent re-quotation from the same sources, within the covers of this volume. To condemn it for that reason would be hypercritical. It would be more proper to say that the legal profession should be congratulated on the fact that it has so many able workers willing to devote energy to such a project and to find law book publishers generous enough to put their product into print as a public service.

REAL ESTATE LAW, Second Edition. Robert Kratovil. New York: Prentice-Hall, Inc., 1952. Pp. xxv, 461.

The first edition of this little handbook on the law of real property was so favorably received when it appeared in 1946 that it ran through eight printings,[1] sufficient to warrant its revision in order to make it a more up-to-date publication. As was then noted, the book contains a

1 The first edition was reviewed in 24 CHICAGO-KENT LAW REVIEW 299 (1946).

well-executed summary of many important facts about real estate law which the average land owner, or contemplating owner, ought to be more informed for his own protection. While not a text-book in the usual sense of that term, it does provide a sufficiently comprehensive explanation to make it a useful volume for the desk of the law student, one which should help him gain an overall picture of the subject before he delves too deeply therein. Although the second edition is over one hundred pages longer than the first, and even larger in content than that figure would seem to indicate because of a reduction in the size of the type used, it is still inclined to be sketchy in some respects.[2] For that reason, the author is inclined to stray into the error of misleading the reader because brevity of treatment often forces a disregard of conflicting views.[3] In the main, however, the new edition merits attention for it is replete with many new decisions, particularly from Illinois,[4] and represents far more than a rehash of old materials. One must express the regretful note that, in the resetting of type, the publisher's staff appears to have failed to live up to usual standards for typographical errors of obvious character are scattered through the new volume, a fault not noted in the original edition.

PLEADING AND JOINDER: Cases and Statutes. William Wirt Blume and John W. Reed. New York: Prentice-Hall, Inc., 1952. Pp. xviii, 684.

JURISDICTION AND JUDGMENTS: Cases and Statutes. William Wirt Blume and Charles W. Joiner. New York: Prentice-Hall, Inc., 1952. Pp. xxii, 718.

A composite review of these two works is dictated not so much by the presence of a common identity in the case of one of the authors as by the

[2] For example, fee simple title is explained in less than one page; determinable fees in four lines; and the law as to lateral support is covered in a ten-line paragraph.

[3] In Section 92, dealing with the effect of a *habendum* clause in a deed, Mr. Kratovil states: ". . . any attempt by means of the habendum to limit the grantee to a lessor [lesser?] title, such as a life estate, is ineffective and void." The statement is true as to Illinois, Roof v. Rule, 348 Ill. 370, 180 N. E. 807, 84 A. L. R. 1047 (1932), but not universally so: McCullock v. Holmes, 111 Mo. 445, 19 S. W. 1096 (1892).

[4] Attention might be called to such cases as Wagner v. Kepler, 411 Ill. 368, 104 N. E. (2d) 231 (1952), cited at p. 412, dealing with the landlord's liability for injury by reason of a defect in premises rented on a month-to-month basis: to Favata v. Mercer, 409 Ill. 271, 99 N. E. (2d) 116 (1951), noted at p. 153, discussing the obligation of a seller to convey to one who concealed his identity under an assumed name for devious purposes; to Madia v. Collins, 408 Ill. 358, 97 N. E. (2d) 313, 154 A. L. R. 778 (1951), discussed at p. 137, on the effect to be given to the signature of but one of several tenants in common to a contract for the sale of land; and Welsh v. James, 408 Ill. 260, 95 N. E. (2d) 872 (1951), noted in 29 CHICAGO-KENT LAW REVIEW 260 and mentioned on p. 300, which settled the law of this state on the question of whether a joint tenant who murders his co-owner is thereby deprived of the right of survivorship.

fact that each deals with a part of one generic problem, that of the manner by which a litigated civil case proceeds through a trial court, either state or federal, up to the point where the case may be tried. To that study is necessarily added the related topic of the finality and binding effect of the judgment which may be obtained in that case, for the full impact of the first stages will not be observed until the end product thereof is exposed to constitutional and other tests.

Designed for use in law schools, the two books cover approximately one-half of the material needed to provide instruction in that area, roughly described as procedure, in which all men who would call themselves lawyers should be trained, whether they intend to engage in active practice or not. Naturally, with pressure constantly being brought to bear to reduce the time allotment allowed older courses in the curriculum in the interest of making room for innovations, large segments of material formerly taught must either be omitted or compressed. It is to the credit of these authors that, except as to ancient materials more of value for their historical content than their present significance, the prime effort has been directed toward compression rather than deletion.

There is, too, a certain novelty in the approach to the subject, as well as a timeliness in the materials, which should arouse student interest in admittedly strange concepts where technical language often tends to befog the view. The comparison and contrast here provided between federal courts, operating under a uniform system of procedure, and state courts, frequently beset by local oddities in matters of jurisdiction and method, should also arouse interest in the matter of securing improvement in the operations of the latter. The student will, through these books at least, have an opportunity to formulate his own conclusions as to the need for further reform, while he gains the knowledge he some day will be expected to possess.