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Book Reviews

William F. Zacharias

Donald Campbell

BOOK REVIEWS

CHILDREN AND FAMILIES IN THE COURTS OF NEW YORK CITY. Walter Gellhorn, assisted by Jacob D. Hyman and Sidney H. Asch. New York: Dodd, Mead & Company, 1954. Pp. xii, 403.

Judges and lawyers have long recognized that courts can operate only in a partially satisfactory manner when dealing with inter-family problems since the judicial process, as traditionally applied, is not completely adequate to deal with those matters which arise from family breakdowns. The addition of social service workers, aid bureaus, psychiatric and psychological experts, probation officers, and other types of counsellors to the judicial staff has been of some help. But the issues created by violence between the spouses, from neglect of children, growing out of adoptions, underlying disputes concerning custody, and inherent in matrimonial actions, whether for divorce, separation or annulment, are of such intense human character that, to date, society has been able to do little more than provide the lick-and-a-promise kind of solution which, too often, is no solution at all and leads only to more serious conflicts.

The situation becomes even more serious when, by the process of dividing jurisdiction over such matters among a series of courts, some of which possess powers that overlap to one degree or another,[1] the resulting fragmentation and scattered distribution of power produces a loss in efficiency which undermines the whole effort. While not so acute a problem in rural areas, the metropolitan scene in every large American city, where the pressures of normal family life tend to become unbearable from the very density of their impact, reveals that existing methods for handling family disputes, perhaps because of this confusion in jurisdiction but also perhaps because limited auxiliary staffs can give only scant attention to overwhelming case loads, become more and more inadequate as time goes by.

Conscious attention given to this fact by a committee of the Association of the Bar of the City of New York has now led to the preparation of a report, as well as the conduct of a study by Professor Gellhorn, on the subject of the administration of laws relating to the family as carried on in that city. The study itself fills most of the pages of this volume.

[1] See, for example, the case of People ex rel. Houghland v. Leonard, 415 Ill. 135, 112 N. E. (2d) 697 (1953), noted in 32 CHICAGO-KENT LAW REVIEW 183, which deals with the conflict in jurisdiction between an Illinois divorce court on the one hand and an Illinois juvenile court on the other in so simple a matter as a determination with respect to custody over a minor child.

It provides a detailed account of the several local courts entitled to deal with one or more aspects of the family in its troubles with law, describing the staff and facilities of each. It probes into the functioning of each tribunal and its related agencies. It records the cost and case load, even noting the amount of time which each court is able to allot to its work. It puts a finger on each existing defect as it points to potential cures. Except as names would change or local peculiarities would tend to affect minor aspects of the study, Professor Gellhorn's analysis could serve as a picture of present conditions in any large city.

The accompanying report of the special committee is excellent not alone because of the findings it makes but more for the conclusions it draws. Among them is a proposal for the creation of a new, single, integrated court which, if formed, would be unique both in its scope and its function. Problems inherent in organizing such an institution have not been overlooked by the committee. They are, to some extent, peculiar to New York. The blue print, however, is one which could be borrowed and, with some adaptation, could be made workable elsewhere.

If Illinois should get the chance to reform its judicial department and should vote to integrate its welter of courts into one major trial tribunal, as has been proposed,[2] it could, by establishing a specialized division within that court on the lines suggested, achieve first place in the rank of states heading toward a genuine solution for society's most deep-seated and most urgent need. Those who will have power to determine the internal workings of such a tribunal, if it should come to exist, cannot afford to neglect the data here offered for consideration.

W. F. ZACHARIAS

HANDBOOK OF THE LAW OF EVIDENCE. Charles T. McCormick. St. Paul, Minnesota: West Publishing Company, 1954. Pp. xxviii, 774.

In the preface to this newest addition to the Hornbook series, Professor McCormick states that the law of evidence has not responded to the need for simplification and rationalization as rapidly as has been true of other parts of procedural law. This is certainly not debatable, but the failure to respond cannot be laid at the door of either the lawyer, the judge, or the legislator alone although it is true that lawyers and judges do display grave inertia in this respect. While it has been said that the rules of evidence are bottomed upon experience rather than logic, the past century of experience has produced but little change in the rules of

2 See Zacharias, "The Proposed Judicial Article," 30 CHICAGO-KENT LAW REVIEW 303-38 (1952), particularly pp. 330-3.

evidence and the slight modification which has occurred has come primarily from legislative action rather than from judicial decision. In his treatment of the subject, therefore, the author says he has been highly selective, with no pretensions to completeness. This is, without doubt, true modesty for a survey of the volume will reveal that important topics have been covered with some amplitude and with a great deal of imagination and suggestion.

Quite naturally, there is no competition with encyclopedic works on the subject but there is both excellent and sufficient coverage for the law student. The practitioner, on the other hand, may start with the black-letter statement and find a reference note to a specific case, to a section of Wigmore, to a key number of the American Digest System, or to a substantial article or other treatment in a law journal, on the topic at hand. To coin a phrase, there is "uranium in the footnotes" far more valuable than common gold.

Specific attention might be drawn to Chapter 35, which points up some special weaknesses in the present rules relating to hearsay together with changes and proposals for change in these rules. It is perfectly true that, if the shift be too far to the East, a litigant could lose his case or be convicted upon evidence which admits of no real cross-examination, the truth-finding engine of the advocate. A shift too far to the West, could produce injustice because of a lack of historically competent probative evidence. But who can deny that human judgments and human acts are overwhelmingly based each day upon "facts" or knowledge that never would pass through the sieve of Evidence or be admitted in a court of law?

It is evident, also, that modern procedural codes have had a lot to do with making available, by agreement of counsel, many important facts bearing upon the issues which might have been difficult or even impossible of satisfactory proof under earlier procedural rules. It is at this point that the profession runs into the lawyer who, steeped in the idea of adversary procedure, is unwilling to concede anything which he suspects his opponent cannot prove without prodigious effort and expenditure of time. Such an advocate will be of no help in the task of modernizing rules of evidence. Running through this text, however, is a considerable amount of fair and constructive criticism both with respect to the present rules and those who operate under them.

The current discussion regarding the privilege against self-incrimination is enough to demonstrate that it will probably be impossible to bring this material into hard and fast classifications, to mark the boundaries thereof, and to define due process, without relating the problems to the

facts of particular cases. The difficulty becomes more acute as the controversy passes from the courts and arises before committees of legislative bodies. For that matter, the controversial area is not clearly marked between the executive and legislative branches of government, but Professor McCormick does give excellent coverage within the pages he has allotted to the subject.

It has been difficult, heretofore, to recommend a one-volume text for use as collateral reading by a class in Evidence law. This volume comes closer to the desideratum than any this reviewer has been able to discover. Despite the modesty expressed in the preface, a perusal of the table of contents and a sampling of the text of the several chapters will reveal that the standard divisions of the law, as customarily treated, are all present although the sequential arrangement is not necessarily that followed in other texts.

D. CAMPBELL

HOW TO WIN A TAX CASE. Martin M. Lore. New York: Prentice-Hall, Inc., 1955. Pp. xii, 244.

In a somewhat jocular vein, Mr. Lore prefaces his treatment of the subject of how to win a tax case by saying that the best way is to avoid dispute over tax liability at the start; the second best way is to settle successfully; and, only in the third instance, is it best to win in court. The first can usually be accomplished by reporting and paying on the highest possible tax basis, since the Internal Revenue Department is astute enough not to waste time advancing claims which could produce no extra tax revenue. That method, however, could well bankrupt the taxpayer. The second calls for the highest arts of persuasion and negotiation, matters which can be mentioned in but cannot be taught by books. It is to the third best way, therefore, that the author addresses most of his remarks although he is conscious of the fact that, even when the taxpayer wins, he will be out the expense of presenting his case since there is no provision in law for reimbursement.[1]

As the author has had wide experience in the subject on which he writes, having been trial counsel on the technical staff of the Bureau, lecturer and writer on tax subjects, member of bar association tax committees, and in private practice as a tax counsellor, it is to be expected that he would provide excellent coverage with respect to the details of a

[1] Some opportunity for indirect reimbursement exists in the form of deductions against gross income in the manner indicated in the case of Northern Trust Co. v. Campbell, 211 F. (2d) 251 (1954), noted in 32 CHICAGO-KENT LAW REVIEW 330-4.

tax case, from the incipiently dangerous stages of inadequate preparation of returns through every step including appeal from a Tax Court decision. This running account, aided by an eighty-page appendix reproducing the documents used in an actual case which was tried before and determined by that court, is interspersed with much good advice as to strategy and tactics while it cautions against those things which should best be avoided. It is, however, a book primarily intended for laymen, business heads and the like. It may not, therefore, suit the purpose of lawyers, particularly not those who would seek citation to chapter and verse for every point mentioned. Nevertheless, the practical approach it provides to a very practical situation is not one which can be overlooked. To all but the tax expert, this book is one to be recommended.

PATENT LAW IN THE RESEARCH LABORATORY. John Kenneth Wise. New York: Reinhold Publishing Corporation, 1955. Pp. v, 145.

This, the fourth in a series entitled Reinhold Pilot Books, a new concept in the field of publications on technical subjects, is designed to present, in short but convenient form, the essential information which the inventor in any field needs to have at hand as he passes from the matter of developing his ideas over to the question of means provided for the protection thereof from appropriation by others. Industrial research workers are provided, in this form, with enough practical insight into the workings of the patent system to be able to know how rights may be acquired, or lost, in the processes of the Patent Office. Following upon a discussion of the history and fundamental purposes of the patent system, the author sketches, in fairly elementary language, such points as the matter of patentability, the rights given under a patent, the nature and content of the application, the procedures involved in securing the grant of the patent, the transfer of rights thereunder, and the correction of mistakes, if any, which may appear in the grant. Two excellent chapters deal with the manner of solving the patent issue between rival claimants and the significance of adequate record-keeping for the support such records may provide in close cases. No one would expect to be an expert in the patent field from the reading of a book like this but it possesses merit beyond its meager size from the readable quality it gives to the elementary message it conveys. The book may be regarded as a primer in a field which is foreign to many lawyers.

TAX PLANNING FOR ESTATES, 1955 Revision. William J. Bowe. Nashville, Tennessee: The Vanderbilt University Press, 1955. Pp. 98.

The labor put forth by Congress and its committees in connection with the adoption of the Internal Revenue Code of 1954 not only called forth prodigious effort on the part of lawyers who were forced to familiarize themselves with the changes made in the federal tax law but also stimulated the tax experts to revise their writings on the subject. Among those so stimulated is Professor Bowe whose earlier valuable short work on the fundamentals of estate, gift, and income tax principles as they relate to the art of estate planning has become well known to the bar.[1] The style and format of the new edition, substantially similar to that of the original work, is marked by the same readable, non-technical qualities which made the earlier edition a joy to use. Naturally, all material has been revised to reflect the recent changes but the point remains that only by virtue of a thorough understanding of the various exemptions, exclusions, marital deductions, gift splitting provisions and trust devices is it possible for the lawyer to utilize estate plans most advantageously to accomplish tax reduction. Theoretical explanations in that area are fine, but it is by a study of concrete illustrations, with the dollar consequences laid bare, that complete understanding may be attained. The author, by providing both the theoretical discussion and a good round dozen or more of comparative statistical computations, has again accomplished his purpose of removing the mystery which tends to becloud the subject.

[1] The earlier edition of this book was reviewed in 28 CHICAGO-KENT LAW REVIEW 186-7 (1950). See also the author's book entitled Income Tax Treatment of Life Insurance Proceeds (Vanderbilt University Press, Nashville, 1951), which was reviewed in 30 CHICAGO-KENT LAW REVIEW 202-3.