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Book Review (reviewing Lewis M. Simes, Law of Future Interests (1936))

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tortfeasors—may compel a choice between the premises which the author has adopted and those which are beginning to find expression in the present system as it is now actually developing. This may not be so, but serious consideration and study should be given to determining whether it is. The facts assumed in this review are mere guesses (based on some experience, however). They should be verified or shown to be inaccurate. If they are true, those who welcome the trend towards social insurance will regard any scheme providing for contribution between tortfeasors as something like a device for enabling workmen's compensation insurance carriers to shift a part of their burden to those fellow servants of the injured employee whose "fault" happened to contribute to the injury.

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Law of Future Interests. By Lewis M. Simes. Kansas City, Mo.: Vernon Law Book Co., 1936. Three volumes. Pp. xv, 527; xv, 556; xv, 583.

The writer of a legal treatise on any except the narrowest subjects has the intrinsically difficult task of steering a satisfactory route between the Scylla of details, historical, analytical, and factual, that characterize a law review article and the Charybdis of generalities, accurate as far as they go but not helpful in the situation where help is needed. It is not an easy task and no two navigators would in all respects lay the same course.

The general point of view of Professor Simes is indicated by the statement in his preface that ". . . judicial innovations in this field [Future Interests] in the twentieth century are likely to be far more significant than those of the four centuries immediately preceding." Consonantly with the idea thus expressed, Professor Simes uses the older material sparingly. It is there to give a background for, or to throw light upon, the modern law of future interests. There is a liberal use of statutory material throughout the whole work, and without making any extensive computation I should say that the distinct majority of the cases are of the last seventy-five years.

The work is divided into five parts. The first part is an outline and discussion of the classic division of future interests from reversions to expectancies, considered both historically and in their modern aspects. Part II deals largely with construction, and Parts III, IV and V cover what may be called the essential law of future interests; that is, the legal relations that go to make up the various future interests.

Part I gives Professor Simes an opportunity to express his attitude toward many of the underlying problems of Future Interests. He recognizes the survivals of distinctions which at present have mainly only a nuisance value, but contributes his effort toward the minimization of them. A noticeable illustration of this point of view is his discussion of the distinctions between vested and contingent remainders. His analysis of the different degrees of vestedness of remainders and of the various (and often confused) elements of contingency is illuminative and modern. Chapter 6 on Contingent Remainders distinguished from Executory Interests is equally stimulating and modern in its point of view, although his statement² of the difference between a remainder and an executory interest while professedly only in general terms might, it is believed, have

² Vol. I, p. 164.

been so phrased as to accomplish, in a less vulnerable way, the end there sought. I had a feeling that the subject matter of this chapter in fact merited somewhat fuller treatment than it has received. On the other hand, Chapter 14² on Future Interests in Chattels Personal deals with this obscure and often baffling topic in a particularly clean-cut and satisfactory fashion. Chapter 17³ on Powers is also a well organized presentation of a difficult subject.

In Parts II, III, IV and V, Professor Simes' most individual contribution seems to be in the realism of his approach and in the skill with which he assembles and correlates concepts frequently treated, if not regarded, as being largely unrelated. Part II on Construction illustrates well this characteristic of realism. He keeps his readers' attention constantly upon the fact that these so-called rules of construction are for the most part only matters of more or less, and his preliminary chapter on Theories of Construction⁴ treats this much discussed subject with a simple directness that says about all that can be helpfully said from so general a point of view.

Of his skill in correlation, the discussion in Part III of the direct and indirect restraints on alienation and of the varying policies and purposes that underlie these restraints is a good illustration. The same observation applies to Part IV which brings together in systematic and correlated fashion, material that is often scattered and frequently only incidentally treated. Chapter 37⁵ on the rights and liabilities of the owner of a future interest as to taxes, mortgages, insurance and improvements is particularly informative and valuable.

In the physical make-up of the book there is evidence of considerable care to make it a convenient tool. Personally, I do not like the paper, either as to color or texture. The print is good, each volume has the table of contents for all three volumes and a "Chapter Descriptive Index" for all three volumes. There is an elaborate subject index and a table of cases at the end of Volume 3.

The treatise is a valuable work in a field where such a work was needed. It is systematic. One has a feeling that Professor Simes might have made a table of the combinations and permutations possible in a given factual situation and then have proceeded step by step to take up each one that had any reality to it. It is carefully documented: on obscure or disputed topics the citation is exhaustive; on other points it is full and varied. The text is a skilful combination of exposition, statement of important cases and discussion. Professor Simes has his own ideas upon the various problems in this subject, and he gives his readers the benefit of them. Naturally, not all of them will find universal acceptance, but of their helpfulness there can be no doubt. He follows rather completely the Hohfeldian analysis, and to a considerable degree its terminology, with a resulting benefit in clearness of presentation that materially adds to the value of his work.

No great gift of prophecy is required to foretell that this treatise will make a high name for itself. Its value to the student of law—teacher or pupil—is obvious. The harassed practitioner who now and then has a case involving some aspect of this crabbed subject ought to welcome it avidly. The specialist in the subject will use it as a matter of course.

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² Vol. 1, p. 357.

³ Vol. 1, p. 427.

⁴ Vol. 2, p. 11.

⁵ Vol. 3, p. 24.

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