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The past year has been unusually rich in the production of casebooks on Wills. Thus the third edition of Mechem and Atkinson (June 1947, pp. 732) was preceded by Laube’s Decedents’ Estates (August 1946, pp. 895) and by Rheinstein’s Decedents’ Estates (May 1947, pp. 1295).

The first edition of the first named book appeared in 1928 and was comparatively small. The second is dated 1939. The third edition is about a hundred pages shorter, but its table of contents is substantially identical with that of the second, as are most of the cases. It contains, I think, just twenty-four new cases (without counting those in the footnotes).

The appearance of a number of new cases and of the Model Probate Code, together with the resurgence of legal education after the war, are the professed reasons for a new edition since the prior one eight years earlier.

Yet few of the new cases are the subject of periodical comment. Only one of them is used in Professor Rheinstein’s collection, and only six or seven are used by Professor Laube or cited in his footnotes. These late cases are not relatively very significant. Further, the fact is that the largely increased attendance in law schools does not seem to have affected the general tenor of the book, save to shorten it by a hundred pages. The appearance of the Model Probate Code, however, is an occasion of importance, and the editors have made generous reference to it. Such time as the reviewer gave to the other two books did not disclose in them a similar interest. I did not observe in any of the three that much if any attention was paid to The Annual Surveys of American Law now appearing from New York University.

The boundary line between some courses cannot be closely drawn. Thus this casebook deals with some problems that others leave to the course in Conflicts, e.g., the privilege of a personal representative to sue in a foreign jurisdiction; with some constructive trust problems often left to the Trusts course, with rights of a spouse which may be referred to a Domestic Relations course, and to some extent with several Future Interests issues, such as powers.

I note that the other two compilers prefer generally to leave Conflict of Laws questions out (one can’t be too sure without going carefully through each page and footnote) but the reviewer thinks the time for this may justifiably be taken here. He would like to see more attention paid to the devices by which a testator seeks to protect his will, more thought given to the type of questions involved in probate jurisdiction, and possibly to types of remedies for fraud with respect to succession of estates. Nothing appears on joint executors and not much on joint and mutual wills. Joint wills are becoming surprisingly common. Succession to community property is ignored, though we now have thirteen states under the community property system, and though the editors have a chapter entitled “Property Rights of the Surviving Spouse.” (See Rheinstein, pp. 966-967.)

I have wondered at the captions, “Instruments Not Offered as Wills” and “Instruments Offered as Wills.” Would not a single heading, “Tests of Testamentary Character,” be more expressive?

There has been much discussion as to the place of Wills in a law course, embracing, as the subject usually does, wills, intestate succession, and probate. It is arguable that
there is no time for probate material and probate is statutory anyway. Rheinstein devotes fifty-three pages to intestate succession, and Laube uses seventy-seven, while these editors employ sixty-seven pages. The second edition of Professor Gray's book (1906) (I have never seen the first edition) covered all three in 730 pages, giving about thirty pages to intestate succession. Warren's edition, ten years later, had an almost identical table of contents, but added about a hundred pages to the total. When the Harvard courses were revamped some years ago, Professor Leach brought out an edition of 180 pages (without the appendix). In the appendix are some statutory provisions on probate and administration. He devoted thirty-eight pages to intestacy and to the rights of the widow and children. The course was reduced to some twenty to thirty class hours, to be followed by and more fully developed in the course on Future Interests with the related material found in Trusts, given concurrently.

Professor Rheinstein's book is quite the antithesis of Leach's book. Its 1,295 pages are literally crammed with learning on decedents' estates. Many class hours would be required if one were to acquire a speaking acquaintance with this rich material; yet he does not step over into Conflicts, Future Interests, or Trusts, save incidentally. His book deserves a careful review which this writer cannot now make. The somewhat briefer book of Professor Laube (though longer than Mechem and Atkinson's by more than 150 pages) also would require many hours of class work.

It thus appears that this third edition strikes something of a medium between the view that the whole field of succession should be covered in detail, and the Leach view that this subject matter is of less importance (due partly, perhaps, to the existence of local statutes) and more time should be released for related subjects. Also, the editors have not hesitated occasionally to pass over the dim boundaries separating this subject from others in order to afford students a rounded training, particularly in probate practice and procedure. There is much to be said for this point of view. The average law graduate is likely to have these problems to deal with very early in his experience, and it may well be worthwhile to afford him the assistance which is here found. It would not be difficult to omit such materials as the teacher knows are adequately studied in other courses.

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