BOOK REVIEWS


Mr. Rheinstein's Cases on Decedents' Estates can claim the distinction, quite rare among current casebooks, of a wholly novel approach. In addition, the job has been most expertly done. Nevertheless it is to be expected that some advanced thinkers in legal education will think it presumptuous of him to have done it at all. The subject commonly (or formerly) known as "Wills" or "Wills and Administration" is at the present time much in disrepute. A number of schools have abandoned it altogether. Mr. Leach has prepared a brief casebook, now in its second edition, which reduces the subject to a one-hour course and is intended to serve simply as a deferential introduction to the important mysteries of Future Interests. In a stimulating review of a number of recent books, including Mr. Leach's and Mr. Rheinstein's, Mr. Bordwell admits to grave doubts as to the need of a two- or three-hour course in "Wills and Administration" as well as to the propriety of the name. So, Mr. Rheinstein has two strikes against him at the start.

The present reviewer makes no bones about admitting that he has a stake, professional and pecuniary, in the course on Wills. The reader is free to assess to his own taste the extent to which that colors the reviewer's views on the merits of such a course. That admitted, the reviewer proceeds to state that he thinks there is a definite place in the curriculum for a course on Wills. Why not?

Particularly in smaller communities the handling of estates is, and is likely to continue to be, one of the most important, lucrative, and useful portions of the average lawyer's practice. People may be too timid, too peaceful, or too thrifty to sue their neighbors or divorce their wives, but they can't help dying; and if they have been timid, non-litigious, and thrifty, they are likely to leave estates. It is important to them and to the community that their estates be settled as expeditiously, efficiently, and economically as possible. It may be even more important to the community that its lawyers be adequately trained to assist its property owners in planning wills (or intestacies) that will most satisfactorily exercise their right to control the disposition of their estates.

These skills are best taught in a course on Wills. The average testator will probably not wish to set up a trust or to provide for a congeries of future estates, but he will have to dispose of real and personal property, and will be lucky if he is advised to make a will which is so drawn as to minimize the dangers which threaten the simplest will. Some one must warn him of the risk of thinking in terms of the present and the specific, some one must point out to him what is likely to happen to a legacy of "my General Motors stock" or "my money in the First National Bank," and some one must see to it that he charges his land with his legacies and doesn't provide for his wife and children by a residue that turns out to be non-existent. These are humble matters from the standpoint of the New York and Washington lawyers whose ideas are so conspicuous in legal education at the moment; but they are, in the long pull, important matters. People in lesser communities matter, too, and the advance sheets offer full and
eloquent testimony to show that their lawyers are shockingly ill-prepared to advise their clients in just such humble matters. This perhaps suggests that the subject of Wills hasn’t been as well taught as it should be, but it hardly affords a basis for saying it shouldn’t be taught at all.

The writer believes that there are fashions in courses as there are in other things. Currently, Wills is out of fashion, like plus-fours and the Airedale. Probably Taxation is the present darling of the curriculum. Many schools offer not merely a single course but separates ones in Garden, Income, and Inheritance Taxation. Might not this be said to be mainly mechanical and informational matter—a charge frequently leveled at Wills? Does it tend to inculcate “Policy-making” (another darling of the day)? Is it any more productive of the broad and civilized lawyer than any other intensive study of small details? But students hear that there is lots of money to be made in Taxation, and they flock to patronize the courses.

Fashions pass. It is possible that Taxation and Labor Law and Corporate Finance may lose their glamour and resume their appropriate place in the curricular picture. It is also quite possible that the law of Decedents’ Estates will not disappear from the picture and that in the long run it will be appreciated that the training of lawyers to draft workmanlike wills and to administer estates with maximum expertise and efficiency is not the least of the functions of a law school.

Mr. Rheinstein’s new book is highly adapted to foster such an appreciation. For one thing, he is a genuine enthusiast; his enthusiasm is likely to promote enthusiasm in others. In his quite extended “PREFACE, Meant to be Read by Students (and by Professors, too)” he says (at p. vii): “To the student who is going to use this book and to whom I can not talk face to face I wish to say that I, at least, regard the field of decedents’ estates as intensely interesting. It is technical in the sense in which engineering is technical; if a machine is to function well one has to attend to its careful design, maintenance, and handling. But the law of decedents’ estates is also full of political and human problems. . . . Try your own hand on some problem of drafting and experience the satisfaction of a job well done, the job of preventing strife and quarrel in a family, of forestalling the dissipation of an estate, and of thus serving your community.”

In addition to being an enthusiast, Mr. Rheinstein writes from a very profound background of knowledge as to the comparative law of succession; he has both the Roman and the modern continental law at his finger tips. If any other editor in this field is equally learned, the reviewer is unaware of it; certainly no other casebook shows so unmistakably the consequences of such learning.

These consequences are several. Mr. Rheinstein’s critical thought is constantly comparative; he sees every problem not in the light of one method of approach whose soundness is to be taken for granted but in the light of several approaches which, if they conflict, as they often do, need to be appraised with a view to determining the best of them or perhaps of thinking of some new way better than any of them. The terminology is occasionally unfamiliar and, by the same token, thought-provoking. And it may be that the editor’s great and varied fund of information has influenced somewhat the size and form of the book. Mr. Rheinstein is palpably unable to see his topic as a small and neat unit capable of being readily polished off. To him it is a vast field with almost unlimited ramifications and affinities; it must be realized as such, however small be the segments selected for detailed study.
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It follows as of course that the book is extraordinarily interesting. To this reviewer it is the most stimulating and unusual specimen of a casebook he has seen in a long time. There is nothing like it in the field; the reviewer knows of nothing quite like it in any field. Exactly what sort of book is it? That is difficult to answer. Without quoting the entire table of contents (it is five pages long) it is hard to suggest with accuracy the exact nature and flavor of the book. However, consider, for example, Section 2 of Chapter 26, entitled "Effects of Adjudication as Between Persons Claiming Under Different Titles." This commences with a two-page case which is followed by a three-and-a-half-page footnote, summarizing and quoting at length three cases. This is followed by two cases, separated by a very brief note. The second of the cases is followed by a note nearly a page long, which is a quotation from a law review article. Then follows a long case which in turn (concluding the section) is followed by a six-page note; the bulk of this is made up of a translated excerpt from an article by Professor Dernberg of the University of Berlin on "Immoral Abuse of Res Judicata," but it also includes the quotation of several sections of the Restatement of Restitution and the extended summarization of, and quotation from, a number of cases. Mr. Rheinstein sensibly and mercifully has his notes printed in large size type; this involves a technical problem which he has not always handled successfully (as who has?), namely, that of making clear, typographically, the nature and provenience of the note material. Occasionally it is hard to tell whether one is reading Mr. Rheinstein's statement of his own opinions and findings, a quotation from a case, or an excerpt from a law review article. See, for example, page 55, where an "Intestacy Act" is set forth, with comments and questions. It does not appear whether the act is proposed or enacted, or by whom, nor who is the author of the comments and questions.

This necessarily inadequate attempt to give some idea of the character of the book suggests some of the practical questions sure to arise. The author must have considered and faced them; he can have no objection to a statement of them by a reviewer. American law professors are, it is to be feared, an extremely conservative lot. They have not, as far as the reviewer can tell, been very cordial to novelties in casebook substance or form. Such novelties are commonly reviewed with admiration, or at least with cautious respect, and then put on the shelf by most teachers to be glanced at from time to time as reference works. Mr. Rheinstein's book may mislead them. Much of it varies really very little from the norm as far as substance goes, but is merely set up and captioned so as to appear unusual. Will teachers go beneath the surface? Again, Mr. Rheinstein's notes not infrequently imply or even state the view he takes of the topic at hand. This, to the reviewer, is as it should be. The editor of a casebook will normally have devoted years of study to the subject; if he is any good he will have ideas on it worth knowing. Why should they be sedulously withheld from users of his casebook, or (to mention one of the supreme absurdities of current legal pedagogy) concealed from the students who buy and pay for the book—but privately supplied to teachers in the form of a "pony," apparently on the interesting assumption that while the students are supposed to read the cases in the book and deduce from them the "law" of the subject, the teacher won't be able to understand them unless someone explains them to him. Still, an exposition of the editor's opinions remains largely tabu; a foolish prejudice, if you like, but one that must be reckoned with.

Finally, there is the matter of the length of the book: nearly thirteen hundred longer-than-average pages. Mr. Rheinstein makes his position on this quite clear: "Only cer-
tain parts of the book are meant to be ‘studied’; others are included only for reading; and still others may well be skipped by the general user and be looked up only by those who are specially interested in a particular set of problems. . . . One point ought to be kept firmly in mind, however. I do not regard it as necessary or even advisable that a course on decedents’ estates should cover everything that is covered in this book. Every instructor will have to make a choice which may or may not coincide with that just stated here. For whatever field an instructor may decide to emphasize, however, I hope I have provided him with sufficient material.”

This is an honest position; much can be said for it. Much can be said against it, however, and it is feared that it will run counter to the prejudices of the average teacher. A publisher’s representative lately said, in substance, to the reviewer: Teachers clamor for shorter books—but when they come to write their own they refuse to keep them down. This particular prejudice the reviewer shares. He is committed by preference and practice to the integrated casebook intended to be used substantially as a whole. It seems to him an important part of the editor’s job to delimit and chart the parts of the subject matter which should be studied by the student and to devote the space at his disposal to dealing with those parts so as to suggest best both their interrelations and their relations with parts of the subject which have been excluded as a matter of necessity. However, it is only fair to Mr. Rheinstein to say that in his preface he has given a list of cases which he states to be his own personal choice. This should be immensely helpful to the beginning, or not very experienced, teacher.

These may be humble, even sordid, matters, but they cannot be overlooked. Everyone who still teaches Wills and everyone who has ever written a casebook in any subject will be interested in this one and curious to observe its reception. It is not necessary to add that none of the speculations just set forth are intended to qualify in any way the reviewer’s opinion that this is a notable, indeed a brilliant, book, that it deserves success, and that it greatly enriches the literature of the field.


One gets an eerie feeling reading Federal Protection of Civil Rights—Quest for a Sword. Written by Robert K. Carr, Professor of Government at Dartmouth University and recently Executive Secretary of the President’s Committee on Civil Rights, it contains a complete, accurate, and highly analytical study of the law governing federal protection of civil rights. The history of that law as it developed under the Reconstruction Amendments is well presented. There is a detailed description of the nine-year history and work of the Civil Rights Section of the Department of Justice and of the problems, legal and political, which it has faced. An appendix supplies the text of past and present federal civil rights laws. The book is certain to be of value to any attorney who has occasion to deal with the thorny problems which it covers so thoroughly.

Still the reader who has any familiarity with the facts with which the law of civil rights is supposed to deal—the widespread and all-pervasive violations of the guar-

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