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Estate Accounting and Taxation (Book Review)

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antedate 1900. While the footnotes have been enriched in places with citations to more recent cases, there is still a complete lack of reference to periodical literature.

It would perhaps be wise to end the review with this report on the nature of the revisions. But it is difficult to refrain from comment. The casebook is as distinctly out of touch with recent trends in legal education as is the course which it is designed to serve. Both are framed around several abstract concepts and treat with a miscellaneous collection of parts of dissimilar problems arising from a wide variety of human activity. The cases seem to be arranged with a view to showing first the "elements" of the concepts and then their operation in various controversies. But the concepts have little meaning apart from the controversies and are fashioned as much by the cases in the later sections as by those in the sections purporting to define the "elements." In this respect, the new edition offends more than the old. In the latter, there was no attempt to collect cases on the "elements of a bailment," or the "physical control" and "intent" "elements" of possession, or on the distinctions between a bailment and "other transactions." In the second edition, these attempts have been made, with the consequence that at times related cases are scattered in different chapters and sections and have to be studied apart from the whole situations which give rise to them, unless the teacher can find time to re-edit the volume. At other times the student is given only a partial and erroneous impression about problems which are not followed up at all. The new edition might be justified by the inclusion of the more recent cases. In analysis and plan, however, in so far as it departs from the first edition, it conforms more closely to the 1915 edition of Warren's Cases on Property. Perhaps this indicates that the second edition is even more old-fashioned than the first.

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ESTATE ACCOUNTING AND TAXATION. By Emmanuel Sachs and Walter A. Levy.
New York, N. Y.: Burrell Snow, Inc., 1931, pp. 267.

Attorneys have a justifiable grievance against extraneous agencies that in the past decade have been quietly but surely gobbling up their most profitable business. In the main the attorney has been powerless to withstand this steady inroad made on his business, whether by collection agencies, credit organizations, corporations that handle matters of new incorporations and corporate reorganizations, accountants, or finally by the insinuating work of banks and trust companies. The latter have succeeded amazingly in increasing their own estate and trust business at the expense of the lawyer, and of late they have entered even the field of bankruptcy practice. It is left to the legal organizations protecting the interests of attorneys to determine why these agencies, more especially the banks, should be permitted virtually to practice law. At the same time it is desirable that attorneys should be aware of their own responsibility in bringing about this unhappy situation.

For it must be admitted that to a degree attorneys themselves are responsible for the present state of affairs in their profession. In many instances the attorney is inadequately prepared on the practical side. Then too, there seems to be an unwillingness on the part of attorneys to accept what others outside of their profession so generously and humbly have to offer. For example, a thorough understanding of Estates and Trusts, and Taxation is almost impossible without more than a superficial knowledge of accounting principles. Yet who of the learned members of the Bar will deign to mingle with the humble accountant in a common desire to fathom the mysteries of debit and credit. The present administration of the federal income tax laws has been considerably influenced by the accountant, and in the field of estate taxation, the influence of accounting principles will undoubtedly aid in bringing order out of the chaos existing today.

In an attempt to clarify much of the uncertainty existing in the field of Estate Accounting and Taxation, two accountants, one of them also an attorney, have collaborated in presenting the most recent work on this subject. It is the first formal work since Harold Dudley Greeley published his famous little handbook¹ on the subject, a book that has proved so invaluable to innumerable accountants and lawyers.

The present work is the product of the class room and is frankly a text book for accounting students of the subject. While the presentation is therefore elementary, it is nevertheless thorough, including a survey of the law of testate and intestate succession, the law governing executors and administrators, and the law respecting rights of life tenant and remainderman. Both the Federal and New York Estate Tax laws are presented and analyzed and returns actually prepared, and since estates are affected by the income tax laws, a chapter is devoted to the Federal and New York State Income Tax Returns.

In an estate all the work of the executor culminates in the legal accounting to the Surrogate, and the authors in Part II of their book illustrate the actual accounting procedure in the form of a diary of events, showing the books of account, the account of proceedings, and the calculation of executor's commissions. Why the authors did not carry the illustration one step further to the decree on accounting is not disclosed. In view of the fact that a lawyer assisted in writing the book it is strange that the authors have overlooked such an important step, since among other things, the authorization for the payment of executor's commissions (very important for attorneys who happen to be executors) depends upon the signing of the decree.

If the attorney, who is a bit befuddled by the whole procedure of estate accounting and taxation, will eavesdrop on the authors as they tell the accountant what it is all about in the fifteen short, concise chapters, he will find this book an excellent first aid. The novel method of tying up each paragraph in each chapter with an index number, recently used most successfully by Dr. Joseph J. Klein in his book on Federal Income Taxation, is again effective. Not so successful or effective is the device of placing sources and notes referred to in the text by numbers at the end of each chapter. The

¹ Estate Accounting.

lawyer reading a text prefers the notes at the bottom of each page, and it is submitted that from the standpoint of good pedagogy—and this book is meant for class room use—placing the notes away from the reference to them is unsound.

The Tax Law changes so rapidly that the student must be cautioned to run down the minute controversial issues. One such issue that has long troubled executors is the matter of transfers intended to take effect in possession or enjoyment at or after death. Following the case of *May v. Heiner*,² the courts wavered on the question of whether reservation of income to the transferor for life made the transfer one to take effect at death. The Supreme Court on March 2, 1931, finally held³ that it did not, thus upsetting what seemed to be the intent of Congress. The result of this decision was a huge loss of income to the government, although Congress⁴ did immediately staunch any future loss of revenue through such a misinterpretation of the law. No part of this controversy is touched upon by the authors of the book in their discussion of transfers intended to take effect at death,⁵ partly because most of the events described above transpired after the book was published, and partly because the story of estate taxation and accounting is presented without personal commentaries by the authors.

The danger of eliminating fuller comment sometimes makes for uncertainty, as where the authors⁶ say that the "estate may take credit for all federal estate taxes and state inheritance taxes paid." A fuller discussion of his item would make clearer to the reader the reason why the estate *must* take credit for estate taxes or why only the estate may take such credit.

As the need for additional revenue becomes more urgent, doubtless the administration of estate taxes will become more certain. With the ironing out of the uncertainties in the law there will be room for a scholarly work on the subject similar to the work of Dr. Klein and Mr. Montgomery in the field of Income Taxation. In the meantime, the present work will unquestionably be helpful to the lawyer as well as the accountant.

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² 281 U. S. 238, 50 Sup. Ct. 286 (1929). Here, the transfer of securities was to be held in trust until after the transferor's death, the income in the meantime going to the transferor's husband, and then to herself if he should predecease her. The court held that upon the death of the transferor no interest in the property passed.

³ *David Burnet, Commissioner v. Northern Trust Co., Executor*, 283 U. S. 782, 51 Sup. Ct. 343 (1931); *Edgar M. Morsman, Jr., Administrator v. David Burnet, Commissioner of Internal Rev.*, 283 U. S. 783, 51 Sup. Ct. 343 (1931); *Cyrus H. McCormack, et al., Executors v. David Burnet, Commissioner*, 283 U. S. 784, 51 Sup. Ct. 343 (1931).

⁴ House Joint Resolution No. 525 (March 3, 1930) amended Section 302 (c) of the Revenue Act of 1926 taxing transfers of the kind here discussed.

⁵ *Ibid.* at p. 63.

⁶ *Ibid.* at 96.