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Book Reviews

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BOOK REVIEWS

MINIMUM STANDARDS OF JUDICAL ADMINISTRATION. Edited by Arthur T. Vanderbilt. Published by The Law Center of New York University for The National Conference of Judicial Councils, 1949. Pp. xxxii, 752. $7.50.

This interesting book presents a new and refreshing approach to a field of law which for too many generations has been bogged down with technical anachronisms and purely local perspective. The function and scope of the book is aptly indicated by the following statement taken from its Introduction:

> "Aside from inertia the greatest obstacle to the modernization of judicial administration has been the lack of complete detailed knowledge of what should be done in each state to give it a reasonably effective procedural system. Such knowledge the present volume supplies." (P. xxvii).

The volume consists principally of 494 pages containing an easy-to-read factual survey showing whether or not—or in what degree—each state is complying with those *minimum practical* standards of court organization and procedure approved unanimously by the American Bar Association at its 1938 annual meeting at Cleveland, Ohio. There are nine chapters dealing with court organization and procedure; and one chapter on "State Administrative Agencies and Tribunals" which compares present state systems of administrative agency organization and procedure with the Federal Administrative Procedure Act and the Model State Administrative Procedure Act.

The chapters on court organization and procedure consider such subjects as: Judicial Selection, Conduct and Tenure; Managing The Business of the Courts; Rule-Making—The Judicial Regulation of Procedure; Pretrial Conferences; Trial Practice; The Law of Evidence; and Appellate Practice. Each chapter begins with a headnote containing the recommendations adopted by the American Bar Association relevant to the subject matter. In large type the main text then provides a discussion of the background and purpose of the recommended standards, a classification of the states into various groups, and a report showing the existing situation with respect to the subject standard in each state. The results are conveniently illustrated by 62 maps of the United States graphically portraying in colors of deep black, speckled and pure white the standing of each state with respect to the recommended standard; and a "Conclusion" at the end of each chapter briefly discusses the

current trend with respect to the subject standard in the states generally. Pages 495-691 consist of appendices setting forth the 1938 reports of the committees of the Section on Judicial Administration of the American Bar Association in which the recommended standards were formulated. The remainder of the book consists of sixty pages of index.

Lawyers make a living working for clients, and problems of clients are usually problems in substantive law. Thus it is that "lawyers are so preoccupied with the substantive problems of their clients that they have little time to devote to the great problem of ways and means in the law that we call judicial administration and procedural law." (P. xvii). Yet the law of procedure is the law which determines the lawyer's costs of production—*i.e.*, the number of trips he must make to the courthouse, the time he must spend there waiting to present a motion or take some other intermediate step, as well as the hours and days spent in investigating facts and waiting for the opponent to take the next step. After a lawyer has been in the general practice for a number of years he tends to acquire a substantial quantity of information concerning existing procedural law. But, unfortunately, this acquired information is almost wholly derived from a local perspective. "Every state borrows freely from other states in each branch of the substantive law, but in the sphere of procedure they have been, for the most part, peculiarly provincial." (P. xxi). Since the promulgation in 1938 of the new Federal Rules of Civil Procedure, there has been a renewed interest in court organization and procedure. It is to be hoped that there will develop from it an inquiry concerning a proper perspective to the law of procedure; what community values and objectives are involved; what purely professional values and objectives are involved; and what alternatives there are for accomplishing the desirable objectives.

For those who would seek to formulate a proper perspective on the subject matter presented in this book, the reports in the appendices provide a wealth of interesting research and study. The summary of the different rules applied in each state compared with the recommended standard discussed in the main text, provide the alternatives for evaluation. The result to the reader is a rich experience in attaining a broad perspective with respect to procedure generally and an excellent basis for evaluating legal procedure in his own state.

The style of the book is simple and nontechnical and the subject matter is easily comprehended. It is the expressed hope of the Editor that the book will be read by laymen as much as by lawyers. Intelligent laymen, who in recent years have been adjusting their legal problems through arbitrators, trade associations and administrative agencies, may well provide the needed stimulus for a wholesome consideration of the existing system of judicial administration with a view toward attaining a more economic, time saving

and efficient court organization and procedure.[1] Even the layman reader can easily see how his own state stands with respect to each recommended standard, and how it compares with neighboring and other states.[2]

The preparation of the main text of the book was unique. The objective was to present a "factual survey" of the existing organizations and procedures in each state and compare each to the recommended standards. Questionnaires pertaining to each recommended standard were sent to "reporters" in each state, usually members of the Junior Bar Conference. "The war retarded some of the answers to the questionnaires . . . but much more time was lost through the obvious failure of some of the state reporters to comprehend some of the questions submitted to them. Our ineptitude for dealing with problems of procedure was demonstrated even among those who obviously desired to be useful, and the consequent necessity of seeking substitutes caused further delay. Another great difficulty arose from the fact that seemingly simple legal terms used in the questionnaires often turned out to mean one thing in one state and something quite different in another." (P. xxvii). The state returns were then checked by at least two persons from each state, usually a judge or a practitioner and a law school professor.

It would be surprising if a book containing so much local material from the various states did not have some errors. This one may have, but at best they are trivia and do not at all detract from the principal purpose and function of the book in providing an enlightened perspective on values and objectives in court organization, administration, and procedure and the existing alternatives for attaining such objectives.

To Chief Justice Vanderbilt, the editor who prepared the main text; to Judge John J. Parker, to whom it is dedicated and who has worked so enthusiastically for improvement; to the great leaders of the American legal profession—judges, lawyers, and law professors—who prepared the committee reports in the appendices; and to the countless others in each state who had the interest and the initiative to prepare and check the state returns a sincere expression of genuine appreciation is due. The work is truly representative of the best thinking in the American legal profession.

1. Such a consideration might well begin with a study of the entirely independent trial courts in a single county with nevertheless overlapping jurisdiction. The dockets of some of these courts tend to become overcrowded with resultant delay and expense while other courts having fewer cases move along with leisure. In most states there is no effective means for assigning judges to judicial service so as to relieve conjestion of dockets and utilize the available judges to the best advantage. What is needed is an integrated system of trial courts operating under the management of the state supreme court. Chapter 2 of the book discusses the system now existing in the federal courts, together with the functions of the Administrative Office of the United States Courts.

2. See Porter, *Minimum Standards of Judicial Administration: The Extent of Their Acceptance*, 36 A.B.A.J. 614-18 (1950), containing two interesting tables showing the degree of acceptance by each state of all the minimum standards recommended by the American Bar Association. A treatment of Tennessee law is found in Fort, *Tennessee in Relation to Minimum Standards of Judicial Administration*, 21 TENN. L. REV. 506 (1950).

of *Hewlett v. George*[6] in 1891. Recovery was denied on grounds of public policy, the court stating, "The peace of society, . . . and a sound public policy, . . . forbid to the minor child a right . . . [to assert] a claim to civil redress for personal injuries suffered at the hands of the parent."[7] This doctrine of domestic tranquillity was carried to the extreme in *Roller v. Roller*,[8] which denied relief to a daughter who had been raped by her father. This rule of nonliability has become generally recognized, and a great body of authority supporting it has been built up in this country.[9]

However, there is a trend in modern decisions to depart from the rule by way of restriction, exception and modification. The rule of parental immunity is applicable only to suits brought by unemancipated children; where the child has been emancipated, the action may be maintained.[10] The courts are in conflict on extending immunity to a person who is not the natural parent but stands *in loco parentis*.[11] Where the ultimate liability rests on an insurer, several courts have held the nonliability rule inapplicable.[12]

6. 68 Miss. 703, 9 So. 885, 13 L.R.A. 682 (1891). Here a minor daughter, married but separated from her husband, brought an action for false imprisonment against her mother. Whether she had resumed her former place in her mother's home, and the relationship of a minor child to her parent, did not sufficiently appear. The court denied recovery without citing any precedent or making any examination of the early authorities.

7. 9 So. at 887.

8. The court stated that ". . . if it be once established that a child has a right to sue a parent for a tort, there is no practical line of demarkation which can be drawn, for the same principle which would allow the action in the case of a heinous crime, like the one involved in this case, would allow an action to be brought for any other tort." Roller v. Roller, 37 Wash. 242, 79 Pac. 788, 789, 68 L.R.A. 893, 894 (1905).

9. Mesite v. Kirchstein, 109 Conn. 77, 145 Atl. 753 (1929); Smith v. Smith, 81 Ind. App. 566, 142 N.E. 128 (1924); Miller v. Pelzer, 159 Minn. 375, 199 N.W. 97 (1924), 9 MINN. L. REV. 76; Hewlett v. George, 68 Miss. 703, 9 So. 885 (1891); Goldstein v. Goldstein, 4 N.J. Misc. 711, 134 Atl. 184 (1926); Sorrentino v. Sorrentino, 248 N.Y. 626, 162 N.E. 551 (1928); Small v. Morrison, 185 N.C. 577, 118 S.E. 12, 31 A.L.R. 1135 (1923), 33 YALE L.J. 315 (1924); Matarese v. Matarese, 47 R.I. 131, 131 Atl. 198 (1925); McKelvey v. McKelvey, 111 Tenn. 388, 77 S.W. 664 (1903), 17 HARV. L. REV. 361 (1904); Roller v. Roller, 37 Wash. 242, 79 Pac. 788 (1905), 53 U. OF PA. L. REV. 387; Zuter v. O'Connell, 200 Wis. 601, 229 N.W. 74 (1930).

10. *See* Taubert v. Taubert, 103 Minn. 247, 114 N.W. 763, 764 (1908) ("The general rule is that a minor cannot sue his parent for a tort; but, if he has been emancipated, he can"); Dunlap v. Dunlap, 84 N.H. 352, 150 Atl. 905, 913, 71 A.L.R. 1055, 1068 (1930) ("When the right of discipline and family association have been surrendered, a rule intended to preserve their integrity is not applicable").

11. Immunity extended: Miller v. Pelzer, 159 Minn. 375, 199 N.W. 97 (1924), 9 MINN. L. REV. 76 (husband and wife paid by county to care for illegitimate child); Fortinberry v. Holmes, 89 Miss. 373, 42 So. 799 (1907) (person who was to "support, educate, care for and treat as his own child"); Richardson v. State Board, 98 N.J.L. 690, 121 Atl. 457 (1923), *aff'd*, 99 N.J.L. 516, 123 Atl. 720 (1924) (member of Board of Trustees of day nursery); McKelvey v. McKelvey, 111 Tenn. 388, 77 S.W. 664 (1903) (father and stepmother). Immunity not extended: Brown v. Cole, 198 Ark. 417, 129 S.W.2d 245 (1939) (adoptive father); Treschman v. Treschman, 28 Ind. App. 206, 61 N.E. 961 (1901) (stepmother); Dix v. Martin, 171 Mo. App. 266, 157 S.W. 133 (1913) (maternal grandparents); Clasen v. Pruhs, 69 Neb. 278, 95 N.W. 640, 5 ANN. CAS. 112 (1903) (maternal aunt); Lander v. Seaver, 32 Vt. 114 (1859) (schoolmaster); Steber v. Norris, 188 Wis. 366, 206 N.W. 173, 43 A.L.R. 501 (1925) (officer of juvenile court).

12. Dunlap v. Dunlap, 84 N.H. 352, 150 Atl. 905, 71 A.L.R. 1055 (1930) (fact that the father has provided for satisfying the judgment by liability insurance removes the suit from the class promotive of family discord); Lusk v. Lusk, 113 W. Va. 17, 166 S.E. 538 (1932) (court should not grant immunity as a mere gratuity).

able income. Tax problems are involved in every matter on which the general practitioner is consulted.

This book is especially valuable to the lawyer who shies away from tax matters. It contains a wealth of practical information of the kind that is not generally acquired except through actual experience. The author has had a long and successful career in the tax field, both within the Bureau and on the side of the taxpayer. He leads the reader through every step of tax practice from the problems of the simple return, the informal conferences with Bureau agents, the more legalistic meetings with the Technical Staff, to the formal litigation before the courts. The practical problems encountered at each stage what data to disclose, what arguments to use, what compromise possibilities exist, are discussed in detail with many helpful suggestions. Within the pages of this book will be found something that comes pretty close to equipping the general practitioner with a background and confidence in the handling of tax cases that is normally acquired only through painful experience.

In the chapter entitled "Controlling the Tax Burden," the author develops the advisory side of tax practice. He discusses many of the ways in which tax burdens may be reduced by advance planning, by so shaping transactions as to insure the minimum tax. This chapter itself is worth the price of the book.

However, to me, the most profitable chapters are those dealing with the problem of valuation. Dean Griswold has said: "There are few problems in law or economics where the criteria are more uncertain than in questions of value."[5] The author's approach to this perplexing riddle, present in so many tax cases, is as good as any I have seen. It warrants careful study. The time so spent will pay ample dividends for in this field there is a real opportunity for the lawyer to use all the skills of advocacy. They are as essential here as in the typical negligence case. The outcome of any valuation dispute depends on the thoroughness of investigation, the marshaling of relevant facts, the persuasiveness of presentation. Whether an asset with no market value will be found to be worth $20,000, $30,000 or $40,000 will in large measure depend upon the advocacy of the taxpayer's lawyer just as surely as it does in determining the amount of a wrongful death award. This book is recommended to every practicing lawyer. The style makes for easy, interesting reading. There are few citations and none of the technical jargon that discourages the beginner. Yet it contains a tremendous fund of practical suggestions that the reader will find invaluable in his practice.

William J. Bowe*

5. Griswold, Cases and Materials on Federal Taxation 656 (3d ed. 1950).

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AVAILABILITY FOR WORK. By Ralph Altman.[1] Cambridge: Harvard University Press, 1950. Pp. 350. $4.50.

Ralph Altman has made a valuable contribution to the unemployment insurance program in this country in this book. He points out the need for such a work in his own preface. Fifty-one American jurisdictions (48 states, Alaska, District of Columbia and Hawaii) have their own unemployment compensation laws. Each of these laws stipulates that unemployed workers may not draw benefits unless they are able to work and are available for work. The objective of this book is to discuss the meaning of this statutory provision.

The book is intended primarily for the use of workers in the field of social insurance; it should, however, be of considerable value to all who have problems in that field. It is unique in that it presents the first full-scale book-size study of the subject. The author has appended a number of valuable tables which are particularly worthwhile from a reference standpoint. One of the tables present a comparison of the state unemployment compensation laws through November 30, 1949. Another presents a comparison of the factors considered in the various laws relating to suitable work as of November 30, 1949.

The book is replete with reference to source material which indicates the vast amount of detailed study given to the subject by the author. One chapter is devoted to a thorough discussion of the labor market and the significance of that factor in connection with the general subject of availability. The author reminds us of the long accepted truth that one of the outstanding characteristics of the labor market is the relative immobility of workers. The relative immobility of labor from an occupational as well as a geographic standpoint is indeed a frequent question to be considered in determining the availability of the unemployment insurance claimant. The unemployed worker who clings to the community or occupation and who declines other work opportunity prompts the administrator or the referee to question his continued attachment to the labor market. Other problems in connection with the labor market are pointed up, such as the wage treatment of negroes and women, the effect of employer organizations and labor unions on the general wage structure, the nonstandard characteristics of the labor transaction.

Labor force is discussed separately and the changes that have taken place in it since 1900 are given very thorough treatment. For instance, it is pointed out that there has been a steady increase in the 45 to 64 year old male worker group since the beginning of the century. It is also noted that there has been an increased number of 25 to 44 year old women workers in the labor market and the trend seems to continue in that direction. The author takes the ap-

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parently sound view that there is greater mobility among young workers than among old workers and that there is also greater mobility among unskilled workers than among skilled workers. This factual matter dealing with the labor market and the labor force is in a sense preparatory for the discussion of the general principles of availability themselves which appear subsequently in the work.

Mr. Altman has devoted two chapters to what he calls general principles. In these chapters he emphasizes four points which appear to be the heart of his work.

First, he seeks to explain the availability requirement by describing it as a gross sieve requirement. By that he means the general availability requirement will exclude only those claimants which are patently ineligible. Those that seem to be borderline cases will receive a determination on the basis of the "work test," his view being, of course, that the best test of any worker's availability is the acceptance or rejection of an offer of suitable work.

Second, the writer discusses the question of the burden of proof in connection with the claimant's application for unemployment insurance benefits. He points out that many states, including Tennessee, hold that the burden of proof is on the claimant to establish his availability. He evidently feels that this rule is unsound.[2] He feels that a more reasonable approach would place the burden of obtaining evidence necessary to support its decision upon the unemployment compensation agency. It does not appear that the author has fully sustained his position; however, it must be conceded that from a theoretical standpoint it has considerable merit. From a practical standpoint his view would render administration of the program more difficult.

The author thoroughly discusses the extent to which a claimant should be available for "suitable work" in order to meet the statutory test. He points out that a number of states hold that a claimant should be fully available for *all* forms of suitable work but personally subscribes to the view that the claimant should merely be available for a *substantial amount* of suitable work. He emphasizes the difficulties of determining the question of suitability and also points out some of the difficulties of following the suggested rule, particularly in defining "substantial amount of work."

The fourth point discussed deals with the search for work required to demonstrate availability. Mr. Altman points out that the original acts required that the claimant be able to work and available for work and that the early administrative and judicial decisions show no indication of the requirement of an independent search for work on the part of the claimant. Later, some of the decisions indicated that more was required of the claimant than simply register-

2. "When this is the rule appeal may become a futile formality. Unemployed workers, lacking, as is usually the case, the aid of legal counsel, may present their story but fail for lack of proper technical guidance to make out a prima facie case. . . ." (p. 104).

ing for work—that the claimant should make some effort to terminate his unemployment. This evolved into a rule that the claimant should make reasonable efforts to obtain work. Finally, during the period 1946-1947, some sixteen jurisdictions sought to make the availability requirement more restrictive by requiring that the claimant be "actively seeking work," or that he simply be "seeking work," or that he make "reasonable efforts to obtain work." Today, 20-odd jurisdictions have amended their laws to make this requirement more restrictive.

Mr. Altman favors a middle of the road policy. He recommends what he calls an *active but guided search for work*. He points out that the Employment Service is not the only channel for job openings, that some jobs are normally handled through the Employment Service while others are usually handled by private employment agencies. Still other jobs are normally filled by the employers who "hire at the gate." So long as such a condition prevails the claimant should be given labor markets information and job counseling. Specifically, he should be helped in mapping out a definite plan for his job search. The author seems to make out his best case on this point. This is understandable inasmuch as most unemployment compensation authorities agree that the independent search for work means nothing. It neither tests the worker's availability nor, in most instances, finds jobs. On the other hand, the requirement that the claimant make reasonable efforts to obtain work is indefinite. In truth, however, his concept of an *active but guided search for work* could fit into the reasonable-efforts-to-obtain-work rule. The author also presents a great deal of material on other factors relating to availability, including ability to work, hours and other time limitations and self-employment.

This book is primarily a reference book and is recommended for all administrators, appeals referees and attorneys practicing in the unemployment compensation field.

EMMETT CONNER*
CHARLES K. COSNER†

FORRESTER'S EDITION OF DOBIE AND LADD'S CASES AND MATERIALS ON FEDERAL JURISDICTION AND PROCEDURE. By Ray Forrester.[1] St. Paul: West Publishing Co., 1950, Pp. vii, 990. $8.50.

In 1940, Messrs. Dobie and Ladd published their monumental Cases and Materials on Federal Jurisdiction and Procedure. It was a fine book with a wealth of materials in a field already overcomplex. If any criticism at all was

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proper, it would be that the volume was too encyclopedic. True, there is much to be said for a profusion of materials from which the instructor can make his own selection as need appears to him to require. But also involved are matters of perspective and emphasis which may be thrown somewhat askew for the student, unlike the practitioner, by an exemplification of detail. At any rate the passage of time and the further deterioration of federal procedure under the twin blows of legislative reform and judicial states' rightism made a new edition imperative. That Dean Forrester has given us with fine craftsmanship in the new volume.

What we have, therefore, is a fully revised and quite modernized book. Dean Forrester has retained the old chapter divisions, but has combined or omitted a considerable number of section topics. Moreover, he has apparently revalued the teaching worth of all the eases reprinted, for he has omitted some and re-edited others. This gain in condensation seems to me all to the good. Thus he has been able to include a goodly number of the very important, albeit very lengthy, new Supreme Court cases in the field and yet his edition is nearly a hundred pages less in bulk than the old one. At the same time in revising he has occasionally lengthened the extracts from the old landmarks and has even added others of the ancient precedents. Of course the material is still considerable, too much for any ordinary course, as he concedes in his preface and in his suggestions for omissions.

Thus I think what he has done is a real gain, adding realistically to the teaching value of this already useful collection. Such subjects as original and diversity jurisdiction and venue have now an impact on and indeed an interest for the student which is obtained by thorough plowing into the subject. If anything, I think this editorial trend may well be carried further. Indeed, force of circumstances may compel such a result in new editions. What the new Judicial Code has done to problems of removal, and to venue in such matters as transfer under the doctrine of forum non conveniens, and what the courts are now doing to the Judicial Code[2] will require intensive treatment, at least. I suggest that for pedagogical purposes, as well as for practitioners' needs, such treatment will be more important than a complete coverage of all, even the more esoteric, details of federal jurisdiction. Casebook editors, as well as teachers, in my view, should resolutely steel themselves against "covering a subject." It is not merely impossible; it is undesirable. For it turns the attention from the battlefields to the bypaths of the law.

This brings me to a point where my views apparently diverge from not only the editor here, but the editors of that other valuable casebook in the field, Messrs. McCormick and Chadbourn, in the second edition just published of

2. I have mentioned just a few of these developing problems in my review of McCormick and Chadbourn, Cases and Materials on Federal Courts (2d ed. 1950), 36 Corn. L. Q. 181 (1950).

their *Cases and Materials on Federal Courts.* Both these new editions call special attention to the rather complete revision now made of the material on the Federal Civil Rules and its amplification with respect to important topics thereof, such as deposition and discovery. I can see that much time and thought have been put upon this topic in each volume, in this one indeed comprising more than 200 pages in addition to the 130-page reprint of the rules themselves. And I expect I hardly need to say that I am vastly interested in the rules. Nevertheless I wish the editors had not done it. And it is because of my interest that I say this. I think the pleading principles set forth in the rules are more pervasive than merely the federal judicial establishment itself and they should certainly be taught in, indeed be at the basis of, present law school courses in pleading. But they cannot be taught in the interstices of a course so full of general technicalities as the subject of federal jurisdiction. Even the valiant attempt of this casebook gives me some distress by its sketchiness on many vital problems. Thus I find hardly adequate the undertaking to set forth the modern philosophy of pleading by textbook suggestions by even so good an author as Professor Moore and by a few decisions, among which is included one of my own now having a rather suprising posthumous fame in the casebooks;[3] in truth, it seems if too little, then too much. Moreover, the editor has still found it necessary, as is indeed appropriate, to include portions of the rules under other topics, as, for example, the rules of party joinder in the section on diversity jurisdiction. Here, too, I believe rigorous self-denial would assign to the pleading courses all material on the civil rules of equal and general significance to the development of pleading in the states as well as the federal system, and would retain here only those which may affect the peculiarities of federal jurisdiction.

The reference I have made to the book of Messrs. McCormick and Chadbourn may suggest some obligation upon a reviewer to make a comparative evaluation of these two new editions appearing so contemporaneously. But just as in the past I have found points of value in the earlier editions,[4] so I should be hard put to it to make a choice, because each book has interesting suggestions and ideas. Thus I somewhat prefer the greater compactness of McCormick and Chadbourn, while, on the other hand, I like individual treatment of certain topics, such as venue, of Forrester. No teacher can go far amiss with using either book. Ultimate choice must depend largely upon the impact upon the individual teacher of particular topics and their treatment in each volume. The difficulty now is not with the law teaching possibilities in this field. They are attractive indeed because of the competent authorities, casebook

3. Dioguardi v. Durning, 139 F.2d 774 (2d Cir. 1944), which still does not strike me as so unusual as to deserve its apparent notoriety.

4. See, in addition to the review cited in note 1 *supra,* my earlier review in 55 YALE L.J. 853 (1946).

and textual, at hand and because of the appealing intricacies of the subject matter. The difficulty, on the other hand, in a wider sense is with the subject itself and with the pitfalls for the possible litigant which are developing at an apparently accelerating rate.

I have stated elsewhere[5] my pessimism as to the present and future of this field in the law and need not repeat it here at length. In my judgment it is a reflection upon the lawyer that operation of the dual system of courts known as federalism is of necessity developing and even adding to friction as time goes on. The hope of reform stimulated by the pendency of a new Judicial Code has now been exhausted in the considerable confusion resulting from the enactment of what boldly started as a major reform, and is still an accomplishment in spots, though it has projected so many new problems as on the whole to increase the murkiness of the federal judicial atmosphere.[6] Along with this has been the constant encroachment on federal uniform procedure of state technicalities through the increasing impact of the *Erie-Tompkins* doctrine, which step by step, hardly perceived as each is taken, is now having the usual procedural consequence that the technical drives out the less technical procedure.[7] In my review just cited of the competing volume I suggested to the editors that, the problem being of such major importance, they consider the possibility of stepping somewhat more than usual out of editorial calm to try to bring its unnecessary complexities more acutely home to the students and the profession. I am disposed to repeat that suggestion here, although I must confess that I am not at all sure how much casebook editors can be expected to accomplish on an issue of such social significance. Perhaps the best we can do is to await the inevitable reaction toward a new burst of federal reform which many of us feel is now again overdue.

CHARLES E. CLARK*

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5. See note 2 *supra.*

6. Obviously these questions cannot reach the Supreme Court for solution with anything like the rapidity of their arising. One such, the "separate cause of action" newly imported in the removal statute, 28 U.S.C. § 1441, with consequences which I think are implied in a case such as American Fire & Cas. Co. v. Finn, 181 F.2d 845 (5th Cir. 1950), may perhaps be settled by the forthcoming Supreme Court decision therein, although I fear that no one decision can now close the Pandora's box which the unfortunate phrasing has reopened.

7. As suggested in a sophisticated comment such as Note, *Federal Procedure: The "Outcome" Test Applied in Actions Based on Diversity of Citizenship,* 35 CORN. L.Q. 420 (1950). See also other citations in my review note 2 *supra,* at n.8; and for the impact of a Gresham's Law of pleading, whereby the poor drives out the good, see my article, *Special Problems in Drafting and Interpreting Procedural Codes and Rules,* 3 VAND. L. REV. 493, 498, 505 (1950).

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LIFE INSURANCE AND ESTATE TAX PLANNING. By William J. Bowe.[1] Nashville: Vanderbilt University Press, 1950. Pp. 90. $2.10.

In this little book, beautifully printed and handsomely bound, Professor Bowe covers all the important topics that fall under its title. Considering the torrent of writing on these topics in insurance and tax periodicals, looseleaf services, pamphlets and texts with hard covers, this is in itself an achievement. For such success, good organization of material, a sure touch in selecting the topics to be discussed and a clear style are required. All these merits the book has.

Uses of life insurance in estate planning, good and bad, are first discussed. Then there is an excellent exposition of the manner in which life insurance proceeds become subject to Federal estate tax, and how they can escape the tax by way of the marital deduction. Supplementing such exposition, Professor Bowe includes historical notes on the estate taxation of life insurance, with penetrating criticisms and suggestions as to what ought to be done in this field.

Following such background, there is a discussion of practical planning with life insurance—and what appears under that heading really is practical.

The last seventeen pages deal with the very important topic of survivor-purchase agreements. Here, too, the author's style serves him well; and many will do well to heed his warnings that the purchase price fixed in such agreements may not in every case control valuation for estate tax purposes. I would dispute, however, the suggestion (pp. 73 *et seq.*) that it is perhaps more common and perhaps better, to have each stockholder purchase the insurance on his own life payable to his own estate—instead of having each apply for and own the insurance on the life of the other. But this is the only item in the book as to which I would differ.

Lawyers have not begun to realize the importance of life insurance and how to deal with it. For a lawyer who wants to make a serious study of the uses of life insurance in estate planning, this is an ideal starter. And those who are constantly dealing with life insurance, either as lawyers or underwriters or accountants, will do well to have it near them.

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