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Book Reviews

BOOK REVIEWS

NEWMAN ON TRUSTS. By Ralph A. Newman.[1] Second Edition, Brooklyn: The Foundation Press, Inc. 1955. Pp. 600. $4.50.

PROFESSOR NEWMAN has favored legal education with a new edition of his text on the law of trusts. At the outset your reviewer must admit to a mild partisanship, in that as a teacher of trusts, he has for the past five years admired and used the first edition of this work and therefore looks upon this new edition as an old friend.

All authors of texts are obviously aware of the problem of content, but it is questionable as to whether the same number are equally conversant with the problem of style and presentation. We shall assume (but carping critics might not concede) that text writers are able and well informed in their subjects, but it does not necessarily follow that these experts are equipped to deliver a generally usable learning device. The chief difficulty in the offending texts is the naked presentation of rules immediately substantiated with footnote citations. This type of skeleton delivery makes learning questionable, remembering difficult and interest almost impossible.

Professor Newman has added flesh and blood to the skeleton and the result is a warm lifelike work. He accomplishes this by the technique of generously including the fact patterns which create the problem as part of the text material and by following through with a lively (and frequently subjective) discussion and analysis. The rule which follows is no longer disconnected and abstract.

The author's target is the law student and the lawyer who seeks to maintain his learning level in the law of trusts. There is no attempt here to displace the multi-volumed texts which are the standard tools of detailed trust research available to students and practitioners.

There should be no inference drawn from anything previously stated that this text is informal, casual or less than complete. It compares favorably in subject matter with any other one volume text known to your reviewer; its chief distinction lies in the fact that Professor Newman's consummate skill and painstaking care has made it a less forbidding device to the user.

The plan of approach in this edition is quite similar to the first edition but the typography and layout of pages have been markedly changed, and in your reviewer's opinion, all for the better. The new work is longer by some one hundred fifty pages and the extra material has made for a more complete coverage of the subject matter. Naturally, the text and footnote materials have been revised to include the latest decisions and articles on the subject. The fact of the matter is that the author has completely revised the work and not merely made scattered changes principally for the purpose of bringing the book up to date.

Professor Newman follows the generally accepted plan of presenting the subject matter. He begins with an historical introduction and follows with an investigation into the various elements of the express trust, its creation, the res, the trustee and the beneficiary. He then takes up the various kinds of express trusts such as those to accumulate, the spendthrift, honorary and charitable trusts. This is followed by the material on the constructive and resulting trusts.

The second half of the text deals with perpetuities, powers, taxation of trusts, estate planning, the administration of the trust estate, the trustee's liability to the trust estate for his conduct and termination of trusts.

An interesting and valuable feature of this work is the topical bibliography which

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contains a scholarly and rather full list of reference reading collated to the chapter headings. There is, of course, a table of cases placed at the rear of the book and an especially complete index. By way of a small complaint, your reviewer would have found a supplementary table of contents which contained a breakdown by sections of the various chapters, a desirable addition.

Your reviewer would like to make mention of certain parts of this fine work which he found especially interesting and valuable. In the section on Tentative Trusts the author shines a bright light on the vexatious problem of the savings bank trust or "Totten Trust"[2] and the collateral problem of the right of a surviving spouse to claim against such proceeds. Professor Newman does not hesitate to disagree with the courts if he feels a decision is not consistent with good law. His disagreement with the New York Court of Appeals over *Matter of Halpern*[3] is mildly expressed[4] but in another area, the resulting trust, where there is also a very illuminating discussion and penetrating analysis, he plainly states "the decision in *Jackson* v. *Jackson* is clearly wrong."[5]

This method of approach is interesting and plainly gives the reader a point of view. The law is stated and the argument against it follows without delay.

The problem of the constructive trust is exhaustively treated by Professor Newman. He points out that this artificial relationship is no more a trust than a quasi-contract is a contract and that the state of the law would be more simplified if the remedy were to be classified as a decree for specific restitution. The section on a "Suggested Re-Classification" for constructive trusts is by itself sufficient reason for adding this work to the library of anyone interested in trusts and/or equity.

In the suggested formula for relief the emphasis has been shifted from unjust enrichment, an elusive test, to the manner of acquisition, with appropriate allowance for the interest and conduct of defendant.

The material on trust administration and conduct of trustees is complete and up to date as is the work on termination of trusts. The troublesome problem of obtaining the beneficiary's consent to revoke a trust not specifically made revocable is especially well treated.

Professor Newman is to be congratulated for his scholarship, craftsmanship and sincerity in the preparation of this new work. He has made available a current text in the law of trusts which will prove rewarding to any interested reader.

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AN ESTATE PLANNER'S HANDBOOK. By Mayo Adams Shattuck and James F. Farr, Second Edition. Boston: Little, Brown and Company, 1953. Pp. xxv, 610. $10.75.

WHEN the first edition of *An Estate Planner's Handbook* by Mayo Adams Shattuck made its appearance in 1948 it was cordially received by lawyers, teachers, trust officers and all those who had become aware of the increasing importance of intelligent

[2] Matter of Totten, 179 N. Y. 112, 71 N. E. 748 (1904).
[3] 303 N. Y. 33, 100 N. E. 120 (1951).
[4] "In Matter of Halpern the New York Court of Appeals confused the test of illusoriness." Newman, TRUSTS, c. IV, 79 (2d ed. New York, 1955).
[5] *Ibid.*, Newman, TRUSTS, c. XIV, 293 (2d ed., New York, 1955).

estate planning. It was immediately recognized as a standard authoritative work on the subject.

The second edition under the joint authorship of Mr. Shattuck and James F. Farr has all of the virtues of the first edition with the addition of 204 pages of annotated forms. It also retains the same defect from the practicing lawyer's point of view. Coming on the eve of the enactment of the Internal Revenue Code of 1954, it soon became obsolete to some extent so far as the treatment of taxes is concerned. While it is true that tax considerations are not the most important factor in effective estate planning, they still remain and probably always will remain a vital part. Perhaps the defect is congenital to any attempt to treat this subject within the hard covers of a bound volume. The solution might be a looseleaf treatment, which, in turn, is uneconomical, confusing, cumbersome and time consuming. The problem is recognized by the authors in the opening sentence of Chapter VIII entitled "Taxation and Estate Planning" in these words:

"The necessity of including, in any treatment of the fundamentals of estate planning, some observations on the subject of taxation almost compels abandonment of the whole project."

Perhaps the dilemma could have been solved to a great extent by providing for a pocket supplement such as was done by the same publishers in the case of A. James Casner's excellent volume entitled "ESTATE PLANNING: CASES, STATUTES, TEXT AND OTHER MATERIALS." Notwithstanding this short-coming, the basic approach to the impact of taxes in any estate plan remains the same, even under the new code and its inevitable amendments. There are new pitfalls for the unwary and new solutions for the vigilant, but these can best be met by a mastery of the code itself and the regulations which are still to come. Any plan which is inflexibly based on the tax statutes in effect today may be totally obsolete if not suicidal next year. In the final analysis, the most that any handbook on the subject can hope to do is to hang out in clear view all the warning and danger signals. This *An Estate Planner's Handbook* does and it does it well.

Since so much has been written during the last decade on the subject of estate planning, one of the first inquiries which naturally comes to mind when a new work or a new edition of an old work appears is, why was it written and what contribution does it make to the existing literature on the subject? The best answer in the case of *An Estate Planner's Handbook* probably appears on page 27 of the volume itself where the authors state that "It is with the affairs of an average family that this handbook is chiefly concerned." The remarkable extent to which the authors adhere to that objective is one of the virtues of the book. Too frequently estate planning is regarded by lawyers as well as laymen as something only for the wealthy. This book recognizes what banks, insurance companies, the New York Stock Exchange and business generally have come to accept as one of the phenomena of the times. Large fortunes have shrunk to a spectacular degree so that more and more the burden of supporting our economy falls upon the average family. If estate planning is necessary or desirable in the case of the wealthy, it is all the more vital in the case of the man in the average and low income brackets where every dollar is important and where one mistake could be fatal.

The constantly growing bibliography on the subject of estate planning is in itself an impressive testimonial to the increasing awareness of the important place it occupies in everyday life. Much has been written in recent years on various specialized phases of estate planning and many valuable contributions have been made to a better understanding of the techniques involved. The difficulty has been in most cases with

the unbalanced emphasis upon a single device as the solution, thus losing the broad perspective that is essential in functional estate planning. To the tax minded the avoidance of taxes has been the principal objective. To the insurance counselor life insurance is the only solution. To the average lawyer the will is too often the complete answer. And still to an alarming extent many persons confidently believe that joint ownership solves everything. One is reminded of John Godfrey Saxe's poem "The Blind Men and the Elephant" where the story is told of the six blind men of Indostan who wanted to satisfy themselves as to just what sort of an animal an elephant was. The first came in contact with the sturdy side of the animal and proclaimed that an elephant is like a wall. The second, feeling the tusk concluded that an elephant is like a spear. The third, touching the trunk was sure that the animal was like a snake. The fourth, touching only the knee, was equally positive that the animal was like a tree. The fifth, feeling the ear of the animal, declared that an elephant is like a fan and the sixth, seizing the tail, was certain that the animal was exactly like a rope. The tale concludes:

"And so these men of Indostan
Disputed loud and long,
Each in his own opinion
Exceeding stiff and strong,
Though each was partly in the right,
And all were in the wrong!"

What has been needed in the field of estate planning is a concise presentation of the subject as a whole for use by the lawyer in his regular practice. *An Estate Planner's Handbook* in a single usable volume presents a coordinated treatment of every phase of the subject with emphasis on where, when, why and how to employ the various available tools of estate planning to the best advantage. The use of wills, life insurance, revocable and irrevocable trusts and various business arrangements is developed with emphasis on their appropriateness and effectiveness in a given situation. The first 310 pages of the book are devoted to a non-technical discussion of the practical and administrative considerations entering into long range planning against a background of tax consequences, statutory and other substantive legal limitations, the marital deduction, workability and draftsmanship. The remainder of the book is devoted almost entirely (204 pages) to typical forms constantly employed in estate planning with analytical commentary on their effective use. This timely "Shake Well Before Using" warning applicable to the proper use of any form is prominently printed at the foot of each page of forms.

"Forms have value only as suggestions—
no form is authoritative."

With this caveat in mind the forms with their searching annotations open the door to many interesting possibilities.

When viewed as a guide and not as an exhaustive treatise on the subject *An Estate Planner's Handbook* is a valuable and usable tool in the hands of anyone engaged in the field of estate planning. It offers a practical down-to-earth approach to the effective handling of the basic elements entering into the formulation of any estate plan, including the assembling of the pertinent facts, the limitations of the law, the avoidance of disastrous and unanticipated tax consequences and the implementation by intelligent draftsmanship. To those experienced in the field, the volume helps to restore perspective and to the beginner and the student it offers a fair substitute for the actual experience that can come only with time.

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LEGISLATIVE DRAFTING. By Reed Dickerson. Boston: Little, Brown and Company. Pp. xvi, 149. 1954. $4.95.

TODAY the legislative process is certainly the preeminent institution for making law. While this device made its appearance quite early in English legal history, it was not employed extensively in that country, or in the United States for that matter, until fairly recently. The gushing forth of statutes by our legislative bodies since the turn of the century has been awe inspiring, to say the least. The reasons for this popularity are complex.[1] In any event, the statute has largely superseded the judicial decision for making drastic and swift changes in law. The legislative body has the apparatus for securing information upon which intelligent law making must be predicated, standing and *ad hoc* committees, commissions and administrative investigating agencies. Legislation as a law-making device has a fluidity and precision which judicial decisions frequently do not have. Its ambit can be extended to include those social areas for which regulation is considered necessary. Thus, it enables regulation and community planning in such fields as housing, juvenile delinquency, taxation, governmental administration, control of currency. In short, legislation has the faculty of most effectively communicating the fiat of government to the public. In our trying times, the common law has all but abrogated its hold over the critical problems to the legislative dominion.[2]

Every lawyer, in the course of servicing a client or participating in civil activities, has felt a lack in his knowledge of statute making. The drafting of a statute is an important part of the legislative process. Expert legislative drafting is not, to borrow the words of someone else, "a pastime for a summer afternoon." It is a professional skill born only as a result of application and experience.

It requires precision and economy of language. It must surpass the purple prose and flourishes of the legislative debate for the exact word and clear sentence of the technician, saying what is intended to be said, nothing more, nothing less. As practiced by an expert, it involves skill in counseling, in analysis and in the interpretation of problems that are often highly complex. And, of course, it requires skill in finding the words to set out in the bill.

Mr. Dickerson's book is probably the best treatment of the job of committing the legislative idea to paper in the form of a bill. It is latest in a number of articles and manuals which have been published covering legislative drafting. Since Mr. Dickerson was formerly Assistant Legislative Counsel of the House of Representatives and is, at the present time, Chief of the Codification Section, Office of the General Counsel, Department of Defense, his credentials are unimpeachable. In his introduction, the author points up the virtuosity required of the legislative draftsman, and the importance of the final legislative product. His observation that most people are unaware of the pitfalls of this work will find hearty support from anyone who has tried his hand at this art. His remarks call to mind the experience of Professor Harry W. Jones[3] in drafting an amendment to a state statute at the request of a distinguished study committee which requested his help in "putting into final shape" a proposal which the

[1] See Pound, *Sources and Forms of Law,* 22 Notre Dame Law. 1-3, 5-8 (1946); Von Mekren, THE JUDICIAL CONCEPTION OF LEGISLATION IN TUDOR ENGLAND (Interpretation of Modern Legal Philosophies), 751, 756-757 (New York, 1946); Frankfurter, *Some Reflections on the Reading of Statutes,* 47 Col. L. Rev. 527 (1947); Salmond, JURISPRUDENCE, c. VII, 176 (8th ed., London, 1930).

[2] See Harno, *Social Planning and Perspective Through Law,* 8-22, in: The Handbook of the Association of American Law Schools (1932).

[3] 35 A. B. A. J. 941 (1949).

committee had carefully studied and regarding which the members of the committee felt they had reached a complete meeting of the minds. The proposed statute, which ran four and a half double spaced pages was the result of the following work by Jones: research time, 58 hours; conference time, 18 hours; actual writing time, 4 hours. The research time was devoted to an analysis of existing statutes, study of judicial decisions interpreting the statute, consideration of administrative practice under the statute, evaluation of experience in four other jurisdictions having similar legislation. The conference time resulted from the fact that his research revealed subordinate questions of policy which required resolution by the committee members.[4] Experience will prove to anyone who tries his hand at bill drafting that Jones' experience is not unique.

Appropriately, therefore, almost half the book is devoted to a discussion of the objectives of legislative drafting and to an analysis of the basic problems of drafting. There are chapters dealing with "What Legislative Drafting is About," "Tools for the Job," "Steps in Legislative Drafting." His introductory chapter dealing with the formulation of legislative policy reflects his experience and thoughtfulness. Mr. Dickerson realizes full well how precarious is the role of the draftsman in steering between the Scylla of non-concern with policy and the Charybdis of imposing his own policy choices on the client. As he states himself:

"The draftsman's job is to know the problem in detail, foresee the pitfalls, bring these to the client's attention, and present the relevant choices that the client must sooner or later make. But he must not forget that he is a legislative midwife; he is not having the baby himself."[5]

These chapters dealing with the draftsman's function with respect to policy, educating the client, acquiring up-to-date knowledge of existing law, sources of information as to factual data, etc., are probably the most important portions of the book in that they point up the basic responsibility of the draftsman and the underlying philosophy with which he must carry out his assignment. However, since the announced purpose of the author is to furnish a manual for the drafting of statutes, it is necessary to consider the remainder of the book.

The last half of the manual is entitled, "What to Say." It deals with such matters as "General Management," "Legislative Style and Grammar," "Suggestions on Specific Wording." "General Writing Problems" and "Special Problems." The appendices give where the federal law is to be found, a table of state constitutional provisions, a bibliography and two indices.

LEGISLATIVE DRAFTING has been greeted generally with cheers and the stamping of feet. While this is in part a tribute to its worth, to a considerable degree it is a reflection of the need for a definitive treatise in the field.

It is true that drafting and legislative advocacy can never be entirely taught from a text. There can be no substitute for actual experience in this work. However, a comprehensive and systematic text can certainly make the acquisition of experience an easier task for the novice and even help the specialist in dealing with some of his own problems. The book is advertised as "manual for lawyers" who draft statutes. Mr. Dickerson has not fully exploited the potential of his assignment. There is a tremendous need for information about legislative advocacy and drafting a statute on the part of lawyers. There is a comparable lack, and to this reviewer's mind, a more significant lack of training and emphasis in the law schools on legislation. It is true

[4] For similar expressions see the statement of Mr. Middleman Beaman, Joint Committee on Organization of Congress. Hearings, 413-430, April 27, 1945.

[5] Dickerson, LEGISLATIVE DRAFTING, c. I, 14 (Boston & Toronto, 1954).

that many schools offer courses in legislation. By and large, these courses are simply descriptive rather than functional. This is especially surprising when it is considered that at the same time there is this shortage in realistic training, there is a tremendous need for persons skilled in legislative procedures and techniques in the legislative halls, at the bar and in the community generally.

It is unfortunate that the author did not use this opportunity to incorporate material relating to legislative advocacy, including such topics as influencing public opinion, influencing the legislator and influencing legislative committee action. More material on interpretation would have been of great value. It would also have been helpful if the manual explained the important legislative procedures and institutions as the value of the legislative body, legislative records and judicial review, bill procedure prior to committee reference, the committee system, committee hearings and investigations, procedure subsequent to committee reference, executive participation in the legislative process.

It would be inappropriate to recapitulate in detail the specific points that the author covers in discussing statutory form and language to which the author has confined himself. In substance, they are suggestions which seek to promote clarity and understanding. They are good as far as they go. However, a manual which holds itself out as dealing with form should have more emphasis on form and should contain more forms. There seemed to be a dearth of material upon which draftsmen could rely as a model. Certainly, more examples of different types of resolutions and statutes as well, should have been included. The author emphasized federal materials, but did not include enough federal forms. He was far less complete in state materials and references. Possibly, this is too much to ask. However, Mr. Dickerson missed the opportunity to render an invaluable service by furnishing the definitive guide book to law students, legislators, lawyers and others engaged in or about to engage in legislative work.

In view of the fact that the book is concerned with style to a considerable extent, it seems in order to comment on Mr. Dickerson's style. In the first half of the book, it was difficult to decide whether the author was attempting to write a chatty story or furnish a working tool. As a technical manual, the book seemed to "talk down" and at the same time was not always clear. The author's attempt to be humorous detracted seriously from his purpose of informing.

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THE LIBRARIES OF THE LEGAL PROFESSION. By William R. Roalfe.[1] Saint Paul: West Publishing Co. 1953. Pp. 471. $6.00.

PROFESSOR ROALFE'S book climaxes his previous efforts to mold law librarianship into a well defined science. Law libraries are still struggling for their proper place in the professional sphere. It has never been determined whether they primarily belong to the legal or to the library profession. Too often, they are a bone of contention between them, and with regard to professional training, an actual vacuum exists. Aside from a very few exceptions, no library training is provided in law schools, no law training in library schools. Law library management usually emphasizes the legal angle more than the library angle. Of 129 librarians who responded to Mr. Roalfe's ques-

[1] Professor of Law and Law Librarian, Northwestern University School of Law.

tionnaires, 24 were library school graduates, 10 graduates from both law and library school, and the rest had mainly legal but no library training. The importance of library education for the pursuit of law librarianship is not widely enough recognized. True, legal literature is so highly specialized that in law libraries many general library patterns become inapplicable. Nevertheless, it is only the librarian's skill which transforms a book collection into a functioning library. Book selection, ordering, accessioning, circulating, the methods and psychologies of reference service are the librarian's domain. Also, the lawyer's problems are not confined to pure law. The law librarian must be trained to answer diversified questions, as they arise from the factual background of cases. The idea that law librarianship is the joint responsibility of the legal and of the library profession, is shared by Professor Roalfe, although he does not elaborate on it. Altogether, his book gravitates more toward recording than toward discussion. Written for the Survey of the Legal Profession, the book is essentially a statistical survey, interspersed with constructive suggestions. It analyzes in great detail the various types of law libraries (their organization and maintenance, their services, holdings, equipment, geographical distribution, training and compensation of the staff) and cooperation with other libraries. Libraries of law schools receive only scant attention. This is due to the consideration that they belong to Education rather than to the Profession. Their inclusion on a broader scale, however, would have strengthened the survey. Even if their main purpose is educational, their contents are "professional", and there is also a growing tendency to make them available for professional use.

In all other respects, the statistics are so copious that it becomes at times arduous to read them, but they are of unquestionable reference value. The book is an historical guide to the development of law libraries, a record of their present status, and a brief manual for their administration. In the legal profession, more than in any other, reading is part of the professional routine, and knowledge of libraries is the concern of the researcher and the practitioner alike. Mr. Roalfe's findings will benefit them both. He devotes an interesting chapter to national and regional Law Library Associations, especially to their publications and periodicals. The implication is that law librarianship will be vitalized by contact with professional activities. This is also the chapter which contains the most fruitful suggestions on organized bar activities. The book affords a good insight into the inner workings of law libraries. Showing the interdependence of the legal profession and its libraries, it will promote the standards and the prestige of law librarianship. It is recommended for lawyers as well as for librarians. The abundance of bibliographical material on the legal profession as a whole adds to its value.

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