



UNC  
SCHOOL OF LAW

## NORTH CAROLINA LAW REVIEW

---

Volume 35 | Number 3

Article 6

---

4-1-1957

# Book Reviews

North Carolina Law Review

Follow this and additional works at: <http://scholarship.law.unc.edu/nclr>



Part of the [Law Commons](#)

---

### Recommended Citation

North Carolina Law Review, *Book Reviews*, 35 N.C. L. REV. 450 (1957).

Available at: <http://scholarship.law.unc.edu/nclr/vol35/iss3/6>

This Book Review is brought to you for free and open access by Carolina Law Scholarship Repository. It has been accepted for inclusion in North Carolina Law Review by an authorized administrator of Carolina Law Scholarship Repository. For more information, please contact [law\\_repository@unc.edu](mailto:law_repository@unc.edu).

## BOOK REVIEWS

**Federal Estate and Gift Taxes.** By Charles L. B. Lowndes<sup>1</sup> and Robert Kramer.<sup>2</sup> Englewood Cliffs: Prentice-Hall, Inc. 1956. Pp. xxii, 1028. \$25.00

The three-fold purpose of this work is set out in its preface. "To the experienced practitioner, we have attempted to present a compact text to refresh his recollection. To the general practitioner, who is not a tax specialist, we have tried to offer a convenient means of familiarizing himself with the tax considerations he must have in mind properly to plan an estate, draft a will or a trust, or act as attorney for an estate. To the student beginning his studies, we have sought to supply an introduction to the basic principles of the federal estate and gift taxes and of tax planning for estates." The authors are due the greatest amount of commendation for the way in which these objectives are attained.

*Federal Estate and Gift Taxes* is divided into three parts: Estate Tax, Gift Tax, and Tax Planning for Estates. While estate and gift taxes are discussed as separate branches of the law, when specific items or transactions involving income, estate, and gift tax implications are encountered, a full analysis is given at that point. The authors do not hesitate to repeat analyses of important decisions in succeeding discussions, where the decisions are of importance to the second topic. It is a considerable advantage that the necessity of flipping to related topics is minimal.

The arrangement of the Chapters of Part I concerning estate tax is excellent. The authors begin with "The Nature of a Death Tax," "A Brief Outline of the Federal Estate Tax," and "The Constitutionality of the Federal Estate Tax." While the treatise is on a technical subject, these chapters begin with detailed appraisals and clear histories of the subject matter which are sufficiently elementary for the reader who is otherwise uninitiated to estate tax laws to "climb aboard" for a full understanding of the detailed discussions to follow. The attorney whose impulse may be to question the constitutionality of any tax provision which affects his client adversely should appreciate the treatment given this subject by the authors. As concerns retroactive transfer taxes, the authors state: "To permit a transfer to be made tax-free and later to turn around and tax it is like inviting a guest to your home for dinner and presenting him with a bill at the end of the repast. There is an element of unfair surprise in taxing a transfer which was tax-free when it was

<sup>1</sup> Professor of Law, Duke University.

<sup>2</sup> Professor of Law, Duke University.

made. The real question is not, however, whether a retroactive tax is unfair, but whether it is so unfair that it violates due process." Then follows a complete review of the history of litigation concerning the power of Congress to pass a retroactive transfer tax, ending with the authors' opinion as to developments reasonably to be expected in the future.

The remaining chapters of Part I discuss the estate tax provisions of the Internal Revenue Code of 1954, with the sequence of the provisions being somewhat rearranged for more effective presentation. Statutes, judicial interpretations, and administrative regulations and decisions are quoted or summarized liberally when they are found to be necessary for a full presentation of the subject matter. The authors' opinions and analyses are presented on each point covered, with the source of available authority, or the fact that it is the authors' opinion, being clearly indicated. While all of the chapters are comprehensively and effectively treated, the coverage of the chapters on transfers in contemplation of death and the marital deduction is of especial excellence.

Part II presents an extensive analysis of the history and present status of the gift tax. This portion of the book should be a valuable sword and shield for the attorney and his client in its comprehensive treatment of the gift tax laws—which may not be comprehended by a mere reading of the statutes themselves without an understanding of pertinent judicial and administrative history and interpretations. This Part contains an excellent discussion of complete and incomplete inter vivos transfers and the interrelation and effects of income, estate, and gift taxes on incomplete transfers.

The treatment of "Tax Planning for Estates" is in itself worth the purchase of the book for the attorney who is not a tax specialist, but who will advise even one client regarding the planning of a reasonably large estate. The entire subject is covered comprehensively and systematically, with specific "do's" and "don'ts" being pointed out. Warning that "[i]t is much more important to dispose of an estate sensibly than it is to save taxes" and that successful tax plans are those which "are tailor made to fit the particular estate," the authors carefully analyze the diverse legal means available for disposition of an estate and the effects thereof on income, gift, and estate taxes. Mathematical illustrations are interspersed in the discussions for a clear understanding of the principles involved.

The treatise is especially recommended for those lawyers who have been telling themselves that some day they are going to catch up on the law concerning estate and gift taxes. In *Federal Estate and Gift Taxes* will be found a concise summary of the historical developments leading to

the present laws, and the laws as in existence at the date the book went to press.

One unfortunate deficiency of the book is found in the Table of Cases where cases are referenced to Parts, Chapters, and Sections of the text. However, throughout the text only the page number is given at the top of the pages, without indication of what Part, Chapter, or Section is there involved. Location of cases in the text from the Table of Cases thus involves either reference to the Table of Contents where the Part, Chapter, and Section may be reduced to a page number, or fumbling through the text itself until the Part, Chapter, and Section is found. Probably the reader would have been more inconvenienced if the Table of Cases were referenced to pages of the text and if sections were numbered consecutively throughout the book. Also, while the subject index is sufficient for most purposes, the experienced practitioner would be greatly aided by a more detailed listing; preferably, since the book is published by Prentice-Hall, Inc., more in line with its Federal Tax Service, insofar as the same topics are covered in this book.

As a total appraisal the reviewer believes that *Federal Estate and Gift Taxes* will constitute an unusually valuable utility instrument for the tool chest of the lawyer in that it presents this difficult subject with unusual clarity.

J. DUANE GILLIAM

School of Law  
University of North Carolina  
Chapel Hill, North Carolina

**McIntosh North Carolina Practice and Procedure.** By Thomas Johnston Wilson, II and Jane Myers Wilson. St. Paul: West Publishing Co. Second edition, 1956. Two volumes. V. 1: pp. lvi, 791; v. 2: pp. lvi, 982. \$35.00.

It is indeed good to see McIntosh back in print. The original edition by Dr. McIntosh was long awaited by the profession and upon its appearance rightfully assumed a position as the leading authority in its field.

The new edition is a commendable work. First as to its styling and second as to its contents.

#### STYLING

As to be expected in a work covering a period of nearly thirty years since the original, much law has been written and many additional authorities are available. Therefore, two volumes became a necessity to facilitate use.

The new edition contemplates supplements and, therefore, has con-

venient pockets within the binding. At frequent intervals section numbers have been reserved for supplementary material. This may, or may not, be an advantage but at any rate does exist. The new edition has some 220 pages devoted to tables—both of cited cases and table of statutes. The profession should indeed welcome this addition.

The index in the new edition is more complete. No lawyer was ever completely satisfied with any index, and any elaboration along this line is received with pleasure. The table of contents appears to be entirely adequate, and a decided improvement over the first edition. There is a summary of contents, and at the beginning of each chapter there again appears the contents of the particular chapter. These are all mechanics of the printing industry, but they greatly facilitate the busy practitioner in assisting him to use the tools of his calling and are to be highly regarded. Last, but by no means least to be considered in any appraisal of the styling of a law book, is the print. The new edition is not lacking in this prime requisite. It has good clear print. Unhesitatingly the styling of this new edition deserves to be complimented.

#### CONTENTS

No matter what the styling, a top notch legal authority must rise or fall on its contents. The original edition of Dr. McIntosh was immediately recognized by bench and bar alike as a masterpiece in the field and a fitting work for the grand scholar who wrote it. Those of us who were so fortunate as to have known and studied under him fully appreciated the product.

The new edition cannot be said to measure up fully with its predecessor. The first volume appears to be considerably better than the second. Possibly the magnitude of the undertaking took its toll of the authors, but no matter the cause the fact, remains, in the opinion of this reviewer, that the second volume does not come up to the first volume.

The work as a whole gives a very adequate historical background where necessary to understand better the present, and then the present rules are set out clearly and the references appear to be quite adequate.

In a work of this kind it is disappointing to find a statement that appears somewhat confused and, in fact, contradictory. In section 325, on page 202, appears a maxim and the section then goes on to say that the maxim was partially abrogated by statute. On page 203 of that section appears: "With certain exceptions the maxim applied to subordinate divisions of the government, such as counties and cities, even before the adoption of the statute." This is clearly a contradiction and the writers apparently intended to say: "With certain exceptions the maxim *did not* apply," etc. This contradiction did not appear in the comparable section 139 of the first edition.

Section 475<sup>1</sup> is especially good and the second paragraph of that section contains a good analysis of the law today. The same is true also of sections 643<sup>2</sup> and 646.<sup>3</sup>

Since the publication of the original edition there have been many changes in the law pertaining to third-party practice and this is well and accurately covered. Section 722 is particularly apt.

This work contains, in readily accessible form, much valuable information. Section 780<sup>4</sup> has embodied useful knowledge which frequently causes trouble for the attorney, especially the younger one.

It is surprising how often service by publication is incorrect. It is well known that, without proper service of process, all that follows may be in vain, and yet so many attorneys are negligent in this respect. The lawyer should always bear in mind that, while it may be human to err, an attorney should never be found doing so. Clients make mistakes and that is why they need lawyers. Lawyers should not make mistakes. It is most upsetting to find lawyers who do not get service by publication correctly. Section 914 should be read, studied and digested by every lawyer who holds himself out as competent in his profession.

An historical background is always an advantage and a stepping stone to thorough knowledge of the present. The discussion on systems of pleading contained in sections 971 through 974 are particularly informative and educational.

The trial of land titles does not occur today with the same frequency as in the past. Section 1065 sets forth the essentials of the complaint. While the essentials are sufficient, I would not recommend to any attorney that he stop there. Many practitioners fail to make use of the tools given them. Frequently, by adroit pleading, admissions can be obtained which avoid the necessity of proof at trial. This saves a great deal of work on the part of the lawyer, speeds up trials and results in better administration of justice. In this regard I am reminded of some advice once received from the Honorable Sam Ervin.<sup>5</sup> He advised that, in a complaint concerning a land title, you should allege your source of title, and also the source of title of the opponent—step by step—and it might then be possible to obtain admissions from the opponent in the answer which would save considerable effort in the trial. In any event, you have nothing to lose and you might obtain considerable help. He had found in the practice that these tactics were worth while.

<sup>1</sup> Concerning the statute of limitations applicable to the usual tort action, and when the statute begins running.

<sup>2</sup> Concerning joinder of plaintiffs in actions for possession of or for injury to property.

<sup>3</sup> Concerning joinder of defendants in general.

<sup>4</sup> Concerning venue of actions for the recovery of specific personal property.

<sup>5</sup> Formerly Superior Court Judge; later Supreme Court Justice; now United States Senator from North Carolina.

It is most unfortunate that in a work of this type, and with such a predecessor as the first edition, there should be any glaring inaccuracies. There are inaccuracies, however, and no matter how insignificant, they are inexcusable. Section 1442 purports to set out how jurors are obtained "from the tax returns of the preceding year" and fails to mention the other sources from which prospective jurors are obtained. Section 1445 is copied verbatim from the original edition and is very inaccurate, as the law in the past thirty years has been changed considerably. In this section footnote 22 is completely erroneous. Payment of taxes is not a prerequisite to jury duty at this time and nonpayment is not a cause for challenge. Section 1464 (2)<sup>6</sup> is likewise erroneous.

Section 1482 boldly declares: "What is the law of another state is a fact for the jury; its meaning and effect is for the Court." This was true at the time of the first edition, but this work should take cognizance of G. S. 8-4, and realize that judicial notice is taken of the law of another state; the jury has no function in this regard. This has been the law since 1931, when G. S. 8-4 was enacted.

Section 1516 implies that it is proper for the judge to charge the jury "that, if they believe the evidence, they may find a certain verdict," whereas in truth this form is not proper and the approved form is set out in footnote 53: "If you find from the evidence the facts to be as all the evidence tends to show, you will answer the issue," etc. It is too bad that the text itself is not completely accurate.

Section 1791, at the top of page 225, sets out that in a case on appeal *seven* copies of the map or diagram may be filed. The correct number is nine and this is set out correctly in Rule 19 (7)<sup>7</sup> on page 574. Thus, again, contradictions are present, which should not be the case in a work of this type.

The justification for this work appears in the preface: "Realizing the need for an up to date authority on North Carolina procedure, we have undertaken a thorough revision of this work." With this in mind, how strange it is to find in section 2458:<sup>8</sup> "The *recent change* in the practice, which requires the pleadings to be made up before the clerk, and the defendant to answer within thirty days after service . . ." [Emphasis added.] It was a recent change when Dr. McIntosh wrote that sentence, but one would think a "thorough revision" would not carry forward such a statement.

Supreme Court rules 5 and 7, on page 568, have been amended with the redistricting of the state judicial districts, yet the changes are not

<sup>6</sup> Concerning challenge for cause, listing nonpayment of taxes for preceding year as ground for challenge.

<sup>7</sup> Rules of Practice in the Supreme Court.

<sup>8</sup> Concerning procedure in quo warranto.

shown. They should have been in a completely accurate treatise, as the amendments were made May 10, 1955.

#### CONCLUSION

While one expects, and is entitled to, a completely accurate work, bearing the name of *McIntosh North Carolina Practice and Procedure*, and this edition has some shortcomings in this regard, nevertheless it is a commendable work. Its good points far outweigh the deficiencies, and the profession as a whole can be indeed grateful to the Wilsons for their undertaking. No library should be without it and many a litigant will be aided by its use, and the administration of justice benefited.

HUGH B. CAMPBELL

Judge of the Superior Court of North Carolina  
Twenty-sixth Judicial District, Charlotte, N. C.