



UNC
SCHOOL OF LAW

NORTH CAROLINA LAW REVIEW

Volume 36 | Number 1

Article 10

12-1-1957

Book Reviews

North Carolina Law Review

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Recommended Citation

North Carolina Law Review, *Book Reviews*, 36 N.C. L. REV. 114 (1957).

Available at: <http://scholarship.law.unc.edu/nclr/vol36/iss1/10>

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BOOK REVIEWS

Family Estate Planning Guide. By Homer I. Harris. Mount Kisco, N. Y.: Baker, Voorhis & Company, Inc., 1957. Pp. xix, 771. \$17.50.

Practicing attorneys are constantly confronted with the problem of furnishing advice to their clients on the proper disposition of their estates. Familiarity with the tax effect of estate planning is no problem to the tax expert; but the general legal practitioner is usually not so fortunate. Today, the effect of the income, gift and estate tax laws (both federal and state) must be considered in proposing a solution to "estate planning." Estate planning encompasses more than the preparation of a will. The handling of property and the conduct of business during life must also be considered. All too frequently, the local practitioner finds that his client has already consulted with the trust officer of the local bank, and "suggestions" have been made—usually involving the establishing of a trust or trusts, either inter vivos or testamentary or both. Many legal practitioners, fearful of their ability to cope with the problem, adopt the suggestions of the trust officer without attempt at analysis or advice as to a proper estate plan. In other instances, unfamiliarity with basic tax laws results in the drafting of wills or trusts which result in excess tax liability, or which fail to take advantage of tax saving devices available to taxpayers.

It is true that proper estate planning requires a comprehensive acquaintanceship with income, estate and gift taxation, probate and trust law, an understanding of insurance, and a knowledge of business organization. The general legal practitioner would be performing a prodigious feat to be expert in all fields necessary for good estate planning; but a good, basic working knowledge of these areas is a necessity for the practicing lawyer of today. The non-specialist in taxation has been seeking a publication comprehensive enough to act as a guide, sufficiently condensed to be a ready reference, and with sufficient detail to be authoritative. The text just published by Homer I. Harris of the New York Bar fulfills this need.

This book cannot be of equal service to all lawyers. It cannot make a specialist of a non-specialist; but it does discuss and interpret in non-technical language the problems of estate planning. The book is divided into fourteen chapters beginning with a basic introduction to what is estate planning and concluding with typical estate plans. General discussion of the various tools available in estate planning; to-wit, gifts,

marital deductions, trusts, insurance, powers of appointment and business plans, is followed by a comprehensive analysis of each topic. As each of the various aspects of estate planning is discussed, liberal use of illustrations to explain highly technical terminology is employed. Examples are constantly employed to illustrate the text. Drafting of documents to accomplish desired results is not overlooked, and proposed forms are suggested throughout the book. An entire chapter is concentrated on the problems arising for consideration in drafting wills and testamentary clauses. In addition to numerous footnote citations to statutory references, litigated cases, publications, etc., the book is unique in the inclusion of a bibliography at the end of each chapter to facilitate research on the problems therein presented.

Although the table of contents furnishes a comprehensive guide to the material covered, the necessity for an index which describes the subjects covered with sufficient particularity and in terms of ordinary usage is fulfilled in a 50-page index.

It is doubtful that this book will replace the specialist's library, but it should be a valuable addition for the general practitioner as an introductory text and reference guide in a complicated area.

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Freedom, Virtue and the First Amendment. By Walter Berns. Baton Rouge: Louisiana State University Press, 1957. Pp. xiii, 264. \$4.00.

Walter Berns, the author, is an assistant professor of political science at Yale University. He has interpreted the First Amendment of the American Constitution in the light of political science rather than from a legal standpoint. In doing so, he is most critical of the U. S. Supreme Court's interpretation.

Three chapters are devoted to debunking legal tests employed by the Supreme Court in determining the constitutionality of congressional acts and state laws in the light of the First Amendment. Of the Supreme Court, he states: "It has lacked, however, a wise principle to guide its decisions and is fearful of establishing a precedent of abridgement." In one instance, he concludes that, "Our legal thinking is incapable of solving the problem . . ." He berates the Supreme Court as well as the individual members of the Court for having followed these theories instead of completely discarding them. Analyzing many decisions of the Supreme Court regarding the First and Fourteenth Amendments of the

Constitution, Mr. Berns again concludes the court has failed to recognize ". . . that the purpose of law is and must be to promote virtue and not to guarantee rights of any description." He accuses the Supreme Court and its members of adopting what he calls a liberal theory which in effect promotes freedom for freedom's sake only—in total disregard of virtue, character, wisdom and prudence. In other words, the Supreme Court, according to the author, has made a graven image out of the First and Fourteenth Amendments in order to protect what the author considers to be false gods: absolute right of freedom of speech, press and religion.

To chastise the justices he states: "Thus, the justices refuse to distinguish between the inherent worth of ideas expressed" and fail to recognize that "the First and Fourteenth Amendments permit, but do not guarantee, a further opportunity for wisdom and prudence to be introduced into the American Constitution, that is, into the American way of life."

Among some of his many observations the author states: "The problem we have discussed in these pages is not really the problem of free speech at all; it is the problem of virtue." He further concludes: "Under the influence of the liberal theory we have denied or over-looked what ancient wisdom declares to be the primary function of law: the formation of character."

As a practicing attorney, more often accused of conservatism than liberalism, this reviewer has not found, and by his own admission, the author has not offered the Supreme Court any answers to replace the answers of the "liberals." Instead, the author's avowed purpose has been to show that the liberals have been answering without knowing what the true questions are. The book has been truly a political science approach to what most lawyers consider a legal problem of interpretation of a very important amendment to our American Constitution. Granted that the Supreme Court and its justices may have gone more to the left than right in preventing the abridgment of freedom of speech, press and religion, to interpret the First Amendment in the light of virtue, wisdom, prudence, loyalty and character certainly furnishes no positive test upon which to lay the foundation of a legal decision.

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