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## Book Reviews

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## BOOK REVIEWS

### ESTATE PLANNING AND ESTATE TAX SAVING

By Edward N. Polisher,

1948 Edition, 923 Pages, 2 Volumes, \$20.00

Geo. T. Bisel Company, Philadelphia.

The lawyer who takes the time to go over Mr. Polisher's "Estate Planning and Estate Tax Saving" will be amply rewarded for the effort involved. The 682 page text is a splendid blend of tax theory and helpful tax savings suggestions. This, however, is only half of the story. While the author gives us a comprehensive and profound treatment of estate, gift and income tax (from the trust and estate standpoint) analysis as applied to every day situations, the estate planning feature of the work is equally important. The author never permits us to forget that "it must be borne in mind at all times that the equitable distribution of the testator's estate in the most flexible manner possible is the cardinal principle of estate planning".

The first two chapters covering "Estate Planning" and "Disregarding Common Law Concepts in Federal Taxation" are especially useful in setting the course and bracing the common law lawyer for the frustration that is inevitable when he bumps against "the disconcerting fact that fundamental concepts generally accepted as part of the organic body of common law are often disregarded for federal taxation purposes". The necessity of protecting the public revenue often compels a disregard for common law principles. The author capably points up the problem and the reasons for its existence which flow from tax law definitions that alter accepted definitions in local law, and the perpetual dilemma of the Courts in attempting to impose what it regards as Congress intended tax consequences in situations where the statuted language if applied in the ordinary business sense would be ineffective for this purpose.

Lest it be thought that this is an abtruse, philosophical work, let us quickly get down to cases. Two chapters are devoted to life insurance and its integration with estate planning. There is an excellent treatment of trusts with separate analysis of the tax consequences to the grantor of a trust with respect to Sections 166 and 167 of the Internal Revenue Code which treat specifically with the circumstances under which trust income is taxable to the grantor with a final chapter explaining the all embracing nature of Section 22 (a) and the pitfalls which careful draftsmanship must take to avoid taxation to the grantor. There is an exhaustive treatment of gross estate valuation and federal estate tax rates and credits. Irrevocable trusts, transfers to take effect at or after death, joint property, property held by the en-

tirety — all are specifically covered. Lawyers, in drafting wills and trust agreements, have in the past freely used invasion of corpus powers. There are dangers here, and the author ably points them out in at least three places. Incidentally, this is one of the valuable aspects of the work. The author approaches his problems from all angles and is not hesitant to point out the problems in, for example, "Tax Saving Mechanisms" that has already been covered in "Trusts".

The author is a successful practicing attorney in Philadelphia and his writing everywhere evidences an awareness of real every day problems. For example, all of us realize that there are certain advantages to a taxpayer in a high income bracket giving away property to those in lower income brackets whom he wishes to favor; the author points out that these conditions being present, the prudent amount of the gift is almost in inverse ratio with the life expectancy of the donor.

The problem of the successful businessman and the disposition of his property whether it be in the form of a sole proprietorship, as a partner, or in the form of a closed corporation, is approached from the standpoint of valuation, purchase agreement, with or without insurance, and the appropriate tie-in with the will. The author shows how the profit sharing trust established by the business owner for his employees and intended to meet the requirements of 165(a) of the Internal Revenue Code may provide a device whereby the trust will on the death of the employer provide the funds to acquire all or part of the business. In this way the estate disposes of its interest at a fair price, and the faithful employees are rewarded at little expense; this for the reason that if such a plan meets the requirements of the Internal Revenue Code relating to profit sharing trusts, the deposits made by the employer will be income tax deductions to the Company, the trust income itself is tax free, and the employees are subject to income tax only on the sums actually disbursed to them, in the year of disbursement.

The 1948 Revenue Act is analyzed and discussed and amply integrated with that portion of the text that was written before the passage of the Act. There is a full discussion in a separate chapter concerning the effect of the changes made by the 1948 Revenue Act upon existing estate plans, wills, trusts, and life insurance programs. The text is well fortified with up-to-the-minute citations and shows the result of painstaking, scholarly research. The index is adequate and the print very satisfactory. Many lawyers will use this excellent work purely for reference purposes. Those who do so without reading and rereading approximately one hundred pages covering chapters on "Tax Saving Mechanisms", "Life Insurance to Implement the Estate Plan", "The Last Will and Testament in Estate Planning", "The Charitable Foundation", and "Some Tax Implications of Tenancy by the Entireties" will be doing themselves and their clients a disservice.

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## PENNSYLVANIA NEGLIGENCE INDEX DIGEST

By Glenn A. Troutman, Philadelphia, Pa.  
George T. Bisel Co., 1948. Two vol. pp. 1676.

Mr. Troutman has ventured to arrange "in alphabetical order a descriptive word index-digest based on the salient facts of the particular case." Admittedly, "no analytical or philosophical study has been undertaken, nor has any effort been made to explain, to classify logically, or to discuss the principles involved." His classification reduces the subject matter of the cases to (1) type of action or actor, (2) locality place of occurrence, and (3) agency or instrumentality involved. The reduction of facts of a case of these categories is recommended as the most satisfactory method of employing the book.

Factual situations are emphasized as the basis of analysis and classification throughout the book. The preface asserts that negligence law involves largely matters of degree which do not lend themselves readily to generalization. This is true within defined limits of principles which can be determined, at least in some degree, from negligence cases and which are recognized by lawyers and writers. But, it does not justify rambling from Abdominal Injuries through Bull, Beer, Brittle Bones, Funeral Cars and Stagnant Water to Zigzagging, unless this is a more efficient method to find a case in point. Frequently, the satisfaction of finding the case by that route results in nothing more than learning that someone else had a case involving Brittle Bones or a Wedged Foot. The theory of the action and the legal principle involved are unrelated to the common fact. There are repeated instances in which the inadequate explanation of the digest is exasperating — For example, on page 317, under CURVE: "Riding around curve—duty to keep to the right—failure to do so—collision—no recovery," again, under BELL, at page 113, "Bell of street car — ringing same — rounding curve — frightening horse — no recovery." Even when the digests are explanatory, there remains a doubt as to what is accomplished when you have a case involving Beer and you discover in the Digest the three cases on page 113. One case holds evidence that the fact the driver drank three glasses of the stimulant before starting is not sufficient to indicate contributory negligence on the part of the passenger riding with him if he was pronounced sober by the police surgeon. The second case tells you a beer barrel falling from an overloaded wagon striking a plaintiff pedestrian is for the jury. The third case informs you that beer barrels piled on a sidewalk with children playing about the same is for the jury.

Mr. Troutman has done a commendable job of assorting the cases on a factual basis. I question whether the work is worth the effort. To achieve a complete coverage, digests of the minute segregations must be brief. As noted, they are brief to the point of merely being indicators that the particular fact was an element of the case without any other point of reference and sometimes sacrificing clarity for brevity. There is a marked contrast between the parts of the book devoted to principles or

established categories of fact and those dealing with isolated facts. When Mr. Troutman works with Children, Proximate Cause, Falling Cases, Attractive Nuisance, to mention a few, the digests are informative and useful. Let the book speak for itself. Indexed and digested under the word Dynamite, at page 415, is the case of *Taylor v. DiSandro* 102 Pa. Super. 156 A. 569 (1930):

"Dynamite caps—left lying around by contractor—boys picking up and injured—for jury."

Under Proximate Cause, at page 1194, a digest of the same case appears,

"Dynamite caps found by small boys near sewer construction—evidence that sewer contractor used same type of caps—boys subsequently injured in handling caps—contractor's negligence still proximate."

Pennsylvania has been in need of a good negligence digest. The one being reviewed shows careful preparation. Its effectiveness as a tool for student and practitioner is weakened by the emphasis on fact situations divorced from principles and established fact categories, such as Carriers, Guest cases and the like. The treatment used in Duty of Care under which detailed classifications of age, animals, carrier, children, firearms, etc. are made is the type of approach which commends the book. Here detailed fact segregation makes sense because it is in relation to a principle known to the profession. A digest should supply an orientation and be complete enough to prevent a waste of effort by supplying sufficient data and explanation to permit a selection of cases relevant to the facts and issues of the problem case. The negligence lawyer for whom the work is written is familiar with the principles of negligence law and the recurring type of accident. The author need not fear that his readers will emulate the irate citizen, who, when he paid a fine for obstructing the sidewalk with a pile of rock, upbraided the city clerk because of the inadequacy of the index of ordinances which referred to Rock but not to Piles.

The compilation of a Negligence Index-Digest involves a choice of method which has troubled negligence law since its coming of age as a system within the framework of tort law. To breakdown the cases into fact situations without relation to some established category, either of principle or recurring fact, is not the most effective search method. Sometime, if not at the inception of the search, the lawyer or investigator must correlate his facts to established categories, even if only to argue his reason for departure from them, or to show that his case is not within them. The correlation can be achieved either by organizing the myriad fact differences under the established categories or by treating each fact as an entity and indicating its relation to the established categories in the digest of the case under the fact index. When Mr. Troutman adopts the latter technique his digests are not sufficiently informative, when he uses the former, he is at his best. A table of cases and a summary index, which are omitted, would facilitate the use of the book.

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**NACCA LAW JOURNAL, VOLUME 1, NUMBER 1, MAY, 1948**

Official Publication of the National Association of Claimants' Compensation Attorneys; Editor-in-chief—Samuel B. Horovitz; The Lavelle Press, Boston, Mass., to be published twice yearly in May and November.

This periodical, as its fly leaf states, is devoted to current trends in personal injuries and deaths under the Workmen's Compensation, Railroad, and Admiralty Laws. It is by no means an attempt to give an over-all picture of the law applicable to these three fields, but merely attempts to give the reviews of certain leading current cases on the subject above mentioned. Perforce the periodical would be of interest only to the specialist in one of the fields mentioned, and is of very little interest to the profession as a whole. Although it purports to be written for the use of the general public as well as the profession, it is difficult to see how this would obtain.

The publication does not attempt to compare the statutory differences between the different Workmen's Compensation Acts, but mainly discusses unusual cases with some editorial comment on the holding or reasoning of the decision. Throughout this first issue it is evident that it is written by and for the association of compensation claimants, without any particular discussion or thought as to whether the holding is within the original intendments of the Workmen's Compensation Act or whether the decision is judicially sound.

The periodical should prove most helpful in its array of cases discussing the right to compensation for injuries sustained in any of the three fields that the articles undertake to review. The references to legal articles, law reviews and similar periodicals will be of inestimable value. As a work of general interest to the legal specialist in the fields covered, it should have great value.

By way of suggestion, the editor should include not only the name and address of successful counsel in reference to the cases reviewed, but also the names and addresses of all counsel because attorneys with similar problems frequently desire to secure briefs in these cases.

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