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Book Reviews

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MISSOURI ANNOTATIONS TO THE RESTATEMENT OF THE LAW OF CONFLICT OF LAWS. BY JOHN COY BOUR AND JAMES LEWIS PARKS, UNDER THE AUSPICES OF THE MISSOURI STATE BAR ASS'N. ST. PAUL: AMERICAN LAW INSTITUTE PUBLISHERS, 1937. pp. 220.

This book review salutes the careful and painstaking completion of one of the most useful yet thankless tasks currently available to lawyers and law teachers. By reason of similar work done in a neighbor state, this reviewer knows that the only way in which it is possible to discover all the Conflict of Laws cases in a state is through a volume by volume, case by case thumbing of all the printed reports in the state. National and local digest systems have key numbers to fit almost every subject in the common law save Conflict of Laws, but heretofore in Missouri and most states the way of the researcher in that subject was either the "hit or miss" of "what law governs" from one end of the digest to the other, or else the hard way of grubbing out the original bushes. From now on Missouri lawyers may be thankful that the grubbing has been done for them.

There has been much controversy[1] among the law teachers and practitioners concerning the general usefulness of the Restatement of Conflict of Laws, many feeling that Professor Beale had built for the law a Procrustean bed constructed altogether according to his own unique measurements. Undoubtedly most of the materal contained in the Restatement, save perhaps in the chapter on Administration of Estates, is based on Bealian views, shared however by a considerable majority of the legal profession. The old straw of that argument will not be rethreshed here. The local annotations have infinite usefulness even if the Restatement itself were not worth two cents. Their usefulness to practitioners who have cases in the field is self-evident. Too often in the past Missouri appellate decisions in the field of Conflict of Laws have completely overlooked prior relevant cases, simply because they were too difficult to find. Hereafter there will be no excuse for that. To teachers and students particularly in state law schools they will be invaluable. As a concrete illustration of an actual body of law in force in a real jurisdiction they should afford an excellent antidote of reality to abstract classroom teaching of the theoretical law of some non-existent 49th common law state.

There are of course a great many questions dealt with in the Restatement which have not yet been decided by Missouri appellate courts. On some of these there

1. Much of the material of this controversy is cited in Harding, *Joseph Henry Beale: Pioneer* (1937) 2 MO. L. REV. 131. See also Lorenzen & Heilman, *The Restatement of the Conflict of Laws* (1935) 83 U. OF PA. L. REV. 555; Goodrich, *Institute Bards and Yale Reviewers* (1936) 84 U. OF PA. L. REV. 449; Arnold, *Institute Priests and Yale Observers: A Reply to Dean Goodrich* (1936) 84 U. OF PA. L. REV. 811.

have been dicta, and frequently reasoning by analogy to related Missouri decisions is possible. Professor Bour and the late Dean Parks have properly employed these devices as a means to making the Annotations as complete as the Missouri law itself is. Where the reasoning employed in the cases seemed bad, they have explained the decisions in terms of result reached, often thus discovering that they were inherently sound despite unfortunate language. Nevertheless Missouri authorities are completely lacking on many important sections. Due to this fact, plus the fact that the Restatement rules are ordinarily not set out in the Annotations but are rather referred to by section number merely, with Missouri case cited as *accord* or *contra,* it is definitely necessary to use the Restatement itself in connection with the Annotations. They do not constitute a separate working tool.

It must not be thought that the annotators have slavishly attempted to bend the Missouri decisions to fit the Restatement in every instance. They have not done so. For example they point out that the Missouri cases saying that there is jurisdiction to divorce in any state in which either one of the spouses is domiciled are definitely in conflict with the position taken in Section 113 of the Restatement.[2] There are, however, other instances as to which a mild warning is not amiss. The sections on contracts furnish an illustration. The Restatement takes the view[3] that practically all matters affecting the validity of contracts are controlled by the law of the place where the contract was made. The Missouri law on that point, like that of other states, is in great confusion. The annotators dutifully emphasize that portion of the Missouri decisions and dicta which is in accord with the Restatement view, and treat the usury cases as exceptional merely,[4] but a careful reading of the annotations reveals their real difficulty with the cases, and they frankly state that the law is far from settled.

Two of the most useful chapters in the volume will be those on jurisdiction of courts (over persons, corporations, things and status)[5] and on corporations.[6] On both of these the complexity of Missouri law is heightened not only by a great many decisions but also by numerous statutes which are by no means clear in themselves, dealing with problems frequently met with in the practice and apt sometimes to be extremely perplexing, especially to the young lawyer. The careful analysis and thoroughness of citation in these chapters should be very helpful indeed. Even at that, these chapters differ from the others only in the amount of material involved.

Lawyers and law students of Missouri should be forever grateful for the long-continuing industry, the thoughtful logic and the thorough classification of materials that have gone into the preparation of this work.

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2. For analysis and criticism of the position taken in Section 113, see Leflar, *Jurisdiction to Grant Divorces* (1935) 7 MISS. L. JOUR. 445.
3. Section 332.
4. Section 347.
5. C. 4.
6. C. 6.

HANDBOOK OF THE LAW OF WILLS AND ADMINISTRATION OF DECEDENTS' ESTATES INCLUDING PRINCIPLES OF INTESTATE SUCCESSION. BY THOMAS E. ATKINSON (HORNBOOK SERIES). ST. PAUL: WEST PUBLISHING CO., 1937. pp. viii, 916.

This is the best one-volume treatise on the American law of wills and administration which has yet appeared; it is the only one-volume treatise which deals satisfactorily with the American law of intestate succession and administration of estates.

As this statement indicates, an outstanding feature of Professor Atkinson's book is its shift in emphasis. In the past, writers on wills have followed the Jarman model and wandered off into problems of construction and of future interests; or else they have strictly limited themselves to the execution and revocation of wills and closely related matters. In either event they have touched lightly or not at all on the subjects of intestate succession and administration. The reviewer has felt that, on the one hand, estates and future interests present too extensive and too distinct a field to be dealt with adequately in a treatise devoted primarily to wills; and, on the other hand, to omit intestate succession and administration is not only to tell but half the story but also to omit by far the more difficult and practical half. Professor Atkinson's plan accords with this view in both particulars. Problems of estates and future interests are pretty generally avoided; and intestate succession and administration for the first time receive their due allotment of space. The contents of the book may be classified as follows: intestate succession, 101 pages; execution and revocation of wills and related matters, 324 pages; probate and administration, 326 pages; construction and drafting, 30 pages.

Such difficult subjects as performance of deceased's contracts, continuation of deceased's business, priority in insolvent estates, election, renunciation, retainer for debts of beneficiaries, and many others are treated in the materials on administration in a clear and illuminating manner. Much of this shows the marks of extensive and original research on the part of the author and includes subject matter not dealt with in other textbooks on wills and administration.

While most of the problems involved in the execution and revocation of wills are not difficult, a few of them are far from easy. The writer of this review has felt that the two fields of major difficulty here are (1) that of integration and incorporation by reference and (2) that commonly referred to as "dependent relative revocation." In both these areas Professor Atkinson gives us a satisfactory treatment. The reviewer would have preferred a more specific consideration of the subject of a testamentary reference to a trust as to which the settlor has reserved a power to revoke or amend; but perhaps the principles involved are sufficiently suggested. On the matter of "dependent relative revocation," Professor Atkinson expresses a view to which the reviewer has long adhered, namely, that a testator rarely has in mind a condition when he revokes, and that, therefore, the problem referred to as "dependent relative revocation" is very commonly one of mistake.

Throughout the book the author has furnished an unusually complete citation of leading cases and law review articles and notes. Indeed, it would appear that scarcely anything of value in the periodical field has been overlooked.

Moreover, the author has not merely given us the weight of authority or the trend of the statutes in a majority of jurisdictions; he has frequently presented a brief summary of the views of leading experts who have written about the problem under consideration.

While the book is evidently designed to give the law student and the lawyer a quick, accurate summary of the rules of law, the treatise is not without its deeper philosophical and functional aspects. Along these lines, Chapter 3 on "Limitations upon Succession" and Chapter 4 on "Testamentary Character and Will Substitutes" are particularly admirable.

Enough has been said to indicate that the reviewer regards this treatise as an excellent piece of work; but he must indulge in a bit of sniping around the edges, just to show his unbiased state of mind. While the author, as has been said, has generally avoided the field of future interests, he has occasionally injected a paragraph in which some branch of the subject is treated in a rather unsatisfactory manner. The reviewer has in mind particularly the author's discussion of the law of testamentary gifts conditioned on death or death without issue (page 360). One is led to believe that the substitutional construction is the accepted one. There is nothing to indicate that there might be a difference between a gift over "if he die" and a gift over "if he die without issue," nor is the possibility of an indefinite failure of issue construction mentioned. The statement as to acceleration on a widow's renunciation (page 88) seems objectionable in that no reference is made to differences in result which may arise from the type of remainder, whether vested indefeasibly, contingent, vested subject to complete defeasance, or vested subject to open. In one or two instances the reviewer has felt that the blackletter may be regarded as misleading but in each case has been reassured of the accuracy of the author when the accompanying text is read. See Section 36, page 78, as to the common law on the descendability of future interests in land, and Section 65, page 156, as to the difference between a gift *causa mortis* and a gift *inter vivos*. But on the whole the blackletter is as simple and accurate as one should expect this type of headline to be.

Indeed, the defects referred to are no more significant than a few fly specks, as compared with the outstanding merit of Professor Atkinson's work. Students and practitioners alike should be profoundly grateful to the author for presenting for the first time within the space of a single volume an accurate summary of the American law of probate and administration and of intestate succession; and for presenting in such a usable fashion an up-to-the-minute summary of the law of wills.

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