

Missouri Law Review

Volume 33
Issue 4 *Fall 1968*

Article 8

Fall 1968

Book Review

Follow this and additional works at: <https://scholarship.law.missouri.edu/mlr>



Part of the [Law Commons](#)

Recommended Citation

Book Review, 33 Mo. L. REV. (1968)

Available at: <https://scholarship.law.missouri.edu/mlr/vol33/iss4/8>

This Book Review is brought to you for free and open access by the Law Journals at University of Missouri School of Law Scholarship Repository. It has been accepted for inclusion in Missouri Law Review by an authorized editor of University of Missouri School of Law Scholarship Repository. For more information, please contact bassettcw@missouri.edu.

Book Review

PROBATE CAN BE QUICK AND CHEAP: TRUSTS AND ESTATES IN ENGLAND. By William F. Fratcher. New York: Pageant Press, 1968. Pp. xiv+106. \$3.50.

This review is begun with the premise that at least one significant measure of the value of a book is how well it accomplishes its stated purpose. Professor Fratcher's title, "Probate Can be Quick and Cheap: Trusts and Estates in England," immediately strikes the reviewer with an almost pamphleteering tone which invites the reader to a popularization of the subject. Moreover, the assumption that this book was written for an audience, consisting of laymen and lawyers, whose interest in the problems of probate administration in the United States has been quickened by Dacey's recent best-seller *How to Avoid Probate* seems quite justified. In his preface Professor Fratcher states that "This book is a description, written for American readers, of the English system of probate of wills, trust administration, and administration of estates of deceased persons, minors and mental incompetents." After conceding that some phases of the English system would not work well in this country, he emphasizes that the English system can ". . . suggest to Americans ways in which their own system could be improved." Professor Fratcher's concern over the need for reforming the systems of fiduciary administration in the United States are evidenced by his work as Research Director for the Special Committee on Revision of the Model Probate Code of the ABA Section of Real Property, Probate and Trust Law, and as a Reporter for the Uniform Probate Code project. Thus, in his Introductory Note he reiterates his purpose when he says that "Better understanding in the United States of the current English systems of fiduciary administration may aid these efforts by convincing American lawyers of the need for reform and by suggesting specific improvements."

The reader, whether sophisticated layman or average lawyer, who expects a comprehensible overview of the basic elements of the English system, with sufficient comparisons with American procedures to support suggestions for specific improvement, will be disappointed. Using the administration of estates as a specific example, there are probably two fundamental problems, the resolution of which shape the ultimate system. One is providing for payment of the debts of the decedent. The other is securing a fair determination of those persons entitled to succeed to the estate of the decedent. On both sides of the Atlantic the goal is to have the decedent's property distributed to his rightful successors as soon as "possible." But how soon is "possible" reflects value judgments. How certain must we be that the successors present are the right ones, and that all debts have been paid, before we permit distribution? Professor Fratcher does tell us how the English have resolved these root issues. But when he does it is so interwoven with a minute description of the current procedures that it is probably lost to all but a

few lawyers highly conversant with probate reform and its problems. Assuming the risks inherent in all generalizations, the reviewer is inclined to characterize the book as descriptively oriented rather than analytical. That is, the primary emphasis is on an exposition of the current English fiduciary systems, with their rather obvious efficiency, rather than on a critical evaluation of the underlying problems and the resolutions reflected in the English systems. Moreover, the book is not a comparative analysis. To be sure, at least as titled, it does not purport to be. But in the opinion of the reviewer, if the book was designed, as the Preface and Introduction indicate, to stimulate the momentum of reform in the United States, it demands a more knowledgeable reader than it is likely to obtain. Unless the American procedures are examined in context with their English counterparts, any superiority of the latter is unlikely to stand out.

The reviewer's characterization of this work as descriptive is in no sense pejorative. Only so much can be accomplished in 106 pages. Indeed, Professor Fratcher's breadth and depth of coverage is nothing less than remarkable. The book is divided into five chapters, covering, in order, Trusts, Estates of Decedents, Estates of Infants, Estates of Mental Incompetents, and Summary and Comparisons. The inadequacy of the summary and comparisons has already been commented upon. The four preceding chapters summarize virtually the entire law of fiduciary administration in England. Having used many of Professor Fratcher's sources, the reviewer is completely satisfied with the meticulous accuracy of his scholarship. It would be difficult indeed for an author to incorporate more substantive information per page than Professor Fratcher has. If for no other reason, this factor should warn the unwary that the book is not easy reading. Far from crisp, the writing style tends to be ponderous, and probably reflects the author's extreme intellectual veracity. Again, the reviewer has shared the conference table with Professor Fratcher, and has first-hand knowledge of his encyclopedic familiarity with the English law of property and fiduciary administration, and of its historical heritage. For the reader this produces a boon, reliability, and a burden, a style heavy with modifying phrases, and a technical vocabulary which it is believed would foil many well trained lawyers lacking a total recall of certain principles of the common law of property.

What is the pragmatic utility of Professor Fratcher's book? Two potential uses of considerable value come to mind. First, for the lawyer, academician or practitioner, who has already acquired a mental receptiveness to more sweeping, albeit radical, reforms in probate administration, and who has a comprehension of the underlying policy issues, Professor Fratcher has provided a detailed description of a fundamentally different approach which merits serious study. Second, the book would provide an excellent comprehensive summary of the current English law and practice for an American lawyer who had to deal with an English counterpart in handling a case involving English problems of fiduciary administration, and who had to quickly acquire a working knowledge of procedural detail. Moreover, the extensive footnotes would furnish vital bibliographical assistance.

In summary, the reviewer emphasizes that he has no serious criticism of what he conceives Professor Fratcher's book to be; an excellent, comprehensive exposition

of the current English system of fiduciary administration. He does not, however, think that it is what many readers will be led to believe; a simplified overview of the essential concepts of English fiduciary administration with contextual comparisons with the relevant American procedures.

THOMAS W. MAPP*

*Associate Dean and Associate Professor of Law, University of Oregon School of Law.