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Book Reviews

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BOOK REVIEWS

EFFECTIVE DRAFTING OF LEASES. By Milton N. Lieberman. Newark, New Jersey: Gann Law Books, 1956. 974 pages. Price \$17.50.

An attorney should have the feeling of confidence that comes with knowing that he has pursued all possible aspects in the drafting or the examining of a proposed lease. The use of this book, with its excellent resume and check list, will help the lawyer to achieve that feeling of confidence and will greatly alleviate his fear of having overlooked something of importance. The primary purpose of this book is to serve as a guide for the lawyer when pressed for time so that he will not overlook any consideration in the drafting of a lease. Although not a form book, it does contain various illustrations which the lawyer may use as a foundation for his own instrument.

The objective of the book is pursued in a threefold manner: (1) At the beginning of each section appears a pointed question in regards to the particular subject matter. (2) The question is then followed by a comprehensive comment on the question. (3) Succeeding the comment is a suggested form pertaining to the subject matter of the section. For example, under the section entitled "Date" the question presented is: "Is the date inserted?" This is followed by a comment as to why the date is important. Then the suggested form is inserted: "This agreement made the tenth day of January, 1956 . . ." This vivid portrayal of the subject matter assures every reader of an opportunity to thoroughly acquaint himself with the various problems that may arise.

The work does not contain any footnotes. This is insignificant, however, because it is assumed that every lawyer will acquaint himself with the local law governing leases. Citations to foreign law would be superfluous.

Another interesting highlight of this book is the excellent appendices. Appendix A contains sample leases which are inserted only for the purpose of indicating to the reader what a complete lease might look like, incorporating many of the suggestions and suggested forms that were previously commented on in the book. Appendix B contains a check list of sections in the book for ready, selective reference and review. This check list was inserted so that before drafting or examining a proposed lease, the drafter or examiner may check those things which he feels are of particular use or interest to him. It appears that this list would be highly beneficial

in giving a lease the final check in order to guarantee that nothing of importance has been inadvertently omitted. Appendix C contains many beneficial suggestions as to what both the lessor and the lessee should be prepared to do when closing the lease, so that it may be executed with a minimum of time and trouble.

The book is organized so that it deals with the various points of a lease in the order that they usually appear on a completed lease, thus the reader will not have to weed through superfluous matter to get to the "meat" of his problem. Perhaps the most striking single feature of the book is its clarity, both in content and treatment. It is expertly arranged with much thought given to the various problems that are presented to the lawyer in the everyday drafting of leases. From a draftsman's standpoint it is highly desirable and would be a wise investment for those concerning themselves with leases.

KENNETH ERIE.

FEDERAL ESTATE AND GIFT TAXES. By Charles L. B. Lowndes and Robert Kramer. Englewood Cliffs, New Jersey: Prentice-Hall Inc., 1956. 1028 pages. Price \$25.00.

The authors have addressed this work to readers in three groups: (1) To refresh the memory of the experienced practitioner on the subject; (2) To familiarize the general practitioner who is not an expert on the subject with the tax considerations confronting him in planning or handling an estate; and (3) To introduce the basic principles of the subject matter to one just beginning his studies. This volume is a comprehensive and complete presentation of the subject to anyone who is within these three classifications. Any attorney involved in the general practice of law must at some time during his career be faced with a federal estate tax problem either in the closing of an estate, or in the planning of an estate.

The book is organized in three parts. Part I, which consists of approximately half the text, is devoted to the subject of "the estate tax"; Part II treats the subject of "the gift tax"; and Part III deals with the subject of "tax planning for estates." In Part I, the authors begin with discussions of the nature of a death tax, a brief outline of the federal estate tax law and the constitutionality of the tax. The term "gross estate" is then developed with entire chapters devoted to a particular phase of this term. The statutory requirements, the interpretation of these statutes by the courts and subse-

quent amending legislation is all taken into account. The final chapter in this part, deals with the procedural aspects of filing the returns and making the payment.

Part II involves the "gift tax" which is discussed in much the same manner as the estate tax. The history of the tax, its purpose, its nature and its constitutionality are all considered. The chapters following, discuss the subject in a logical pattern. Part III, on estate planning is especially well worth studying as it affords the reader excellent advice on an increasingly vital portion of an attorney's practice. A lawyer who has a good working knowledge and an understanding of the material in this part will have no difficulty in rendering his client reliable advice in the designing of an intelligent and workable estate plan.

Two appendices are provided and contain "1939 Estate Tax Code References to the 1954 Code" and "1954 Code References to the 1939 Code." In an effort to relate past decisions to the current law the section of the statute in issue in a case which may be discussed is often designated by the 1954 Code equivalent of the 1939 statute, although as a matter of fact the case may have been decided under the 1939 Code.

To illustrate in more understandable terms the proper application of the treasury regulations, court decisions and the statutory provisions, examples are used extensively which are sufficiently simple to avoid distortion of the principle illustrated. It appears that the authors have made an effort to include only the latest decisions except on well settled principles where the leading case is generally cited. Also it is to be noted that the book is designed to accept pocket supplements which will be furnished regularly to keep the work current.

This handbook is recommended to the general practitioner who necessarily encounters a number of estate and gift tax problems not sufficient to justify the expense of a comprehensive tax service.

FRED WHISENAND.

FREEDOM IN CONTEMPORARY SOCIETY. By Samuel Eliot Morison.
Boston: Atlantic-Little, Brown, 1956. 156 pages. Price: \$3.50.

This book consists of a series of three lectures which were delivered at Queens University in Kingston, Ontario, Canada. In it Professor Morison analyzes man's freedoms — political, economic and academic, in present day society. The author traces the develop-

ment of personal rights from their first recognition to their present status and attempts to determine how those rights can be strengthened and preserved in our modern civilization. In the current conflict of political ideologies it is well, the book indicates, to hold up our civil rights for a look at where we have been and where we are now, and more important, where we are going. As would be expected from a Professor Emeritus of American History at Harvard University, the author has treated his subject from the historical point of view.

The author begins by considering political freedom, an area of human rights which he believes to be the most important and all inclusive. For as he says, "political freedom, i. e., liberty in the ordinary unsophisticated meaning of the word, is the prerequisite and framework alike for all other freedoms and liberties — religious, social, economic, academic, artistic and musical." In tracing its development the author discusses the observance of individual civil rights in ancient times under natural law, a concept respecting human dignity before the known existence of codified law. From there Professor Morison takes the reader through the rise of political liberty in early English society to its present day existence in the American democracy.

It was in 18th century England where liberty, as security against absolutism received its first great impetus. The Stuart kings by attempting to check the rise of individual rights instead emphasized their appeal to the people, "and so strong and universal was this conviction in all classes of English society that the need of a written constitution, headed by a formal bill of rights, was never felt." The American colonists, freedom seeking Englishmen, were imbued with English concepts of political liberty. After the American Revolution they took the basic principles, that of government under law and government by consent, and stated the necessary civil liberties essential thereto in written constitutions for their future protection.

During the expansion of this country with its consequent changing and enlarging population, political freedom has undergone periods of peril. The author feels that there are two main threats which exist in our society today, which are as great as any we have encountered in the past. The first of these is the emergence of Communism, the danger of which is aggravated by the general lack of concern for personal rights among our people. A second threat is the growth of the administrative branch of our government

and the establishment of administrative agencies, which make their own rules and regulations, and by so doing threaten an essential freedom, that of government by law.

An offshoot of the communist threat is that of "guilt by association", a trend which the author considers as being one of the most dangerous to our personal freedom. Professor Morison undoubtedly feels strongly in this respect since he, along with two other Harvard professors, found his name on a privately compiled list entitled, "The Harvard Red-ucators", for contributing to a Spanish war orphan relief which was suspected because of a general belief that the Spanish Anti-Francoists were Communist infiltrated.

In his analysis of economic freedom the author explores the paths of free enterprise and collectivism. "Economic freedom means private enterprise and the free market as against statism or socialism, or the rigged market". He begins with the rise of laissez faire and its subsequent decline with the elevation of the small businessman and the worker. Subsequently came the great depression and the New Deal, the effect of which, contends the author, narrowed the scope of free enterprise and limited the freedom to exploit. Professor Morison believes that the New Deal, instead of bringing "creeping socialism" gave us "galloping capitalism", and in the future we will have more free enterprise rather than less. Government control of business during World War II has shown us what we *don't* want, but the power of organized labor and the farm vote will prevent a return to the other extreme, that of complete economic freedom. According to the author, the preservation of our present system of semi-controlled free enterprise depends in part on its ability to justify itself to the people and its co-existence with a religious society of integrity and justice.

Academic freedom is a comparative newcomer to the liberal family and, briefly stated, means freedom of the instructor to teach, to do research and to take an active part in political and social controversies and the freedom of the student to learn. He points out its comparatively slow growth in the United States, and he lists three enemies of academic freedom present in this county today. These are: (1) abuses in university government; (2) the attempts of professional "educators" to control higher education, and (3) the general mediocrity of the teaching profession. Professor Morison asks the question, "do we deserve academic freedom?" In answer he states that changes must be made, and that ". . . only by a restoration of discipline and a raising of standards can the faculties

of our universities deserve the freedom and respect to which scholars are entitled."

Professor Morison's book is valuable to the lawyer and civil libertarian. In it he will grasp the significance of the growth and development of laws and the freedoms they should be designed to protect in their historical context. The work is conversational and entertaining. It is comprehensive but not overly detailed and for those who wish to inquire further the author has included a number of case citations illustrating points discussed plus a four part bibliography of recommended works.

DAVID VAALER.

THE BLESSINGS OF LIBERTY. By Zechariah Chafee, Jr. Philadelphia: J. B. Lippincott Company, 1956. 321 pages. Price \$5.00.

"It is very important to remember that the clauses in the document of 1787 and the amendments of 1791 safeguarding basic human rights are much more than technical rules of law, which judges are sometimes unable to apply to contemporary situations unforeseen by the men who wrote those clauses. Regardless of their precise legal boundaries, the words of the Constitution need to be deeply felt by each one of us as ideals of fairness, sound government, and happiness for our own perplexing times." With this statement the author establishes the tenor and purpose of his book, which is to define and defend the individual liberties which have become a part of the legacy of American citizenship.

This work is essentially an anthology of speeches, published tracts, and law review articles by the author, augmented by extracts from congressional and other public records. As collected and organized these materials comprise a fundamental explanation of the liberties placed in trust for us by the authors of the Constitution and the first ten Amendments. The author expands his explanation by clearly describing certain areas where these liberties have been endangered by governmental reaction to the threat of communist infiltration. Mr. Chafee refuses to concede that such restrictions are necessary or even effective, instead he espouses a conviction that the present proscriptions of liberty are transitory. He predicts that the present official attitude, as demonstrated by the recent investigations under Senator McCarthy and the provisions of the McCarran Act of 1950, will be abandoned when the popular faith in the strength of our institutions is reflected by an official

recognizance of the importance of preserving our individual liberties.

The harmful effects of the current "security" programs upon the liberties guaranteed by the Bill of Rights are discussed in the opening chapter. Special note should be taken to that part of the chapter showing the effect of these programs on the Sixth Amendment as to the provisions for speedy, impartial trials, and for the right of a defendant to be confronted by the witnesses against him. The wide divergence between the announced federal policy in this regard and actual practice is candidly presented by the comparison of a statement made by President Eisenhower in 1953 with an argument of his Attorney General before the Supreme Court. Mr. Eisenhower outlined his convictions in the following statement: "In this country if someone dislikes you or accuses you, he must come up in front. He cannot hide behind the shadows, he cannot assassinate you or your character from behind without suffering the penalties an outraged citizenry will inflict." The author then quotes from the argument of Mr. Brownell in *Peters v. Hobby*, 349 U. S. 331 (1955): "A large area of vital government intelligence depends on undercover agents, paid informers, and casual informers who must be guaranteed anonymity . . ." Mr. Brownell is further quoted: ". . . information obtained under a pledge of confidence — all these vital sources of information, and others, might well dry up, to the detriment of the basic security of the country, if petitioner's contention as to his overriding rights of confrontation and cross-examination were to be honored."

In the chapter entitled, "Freedom and Fear," Mr. Chafee describes three periods of suppression of individual liberties and of struggle for their preservation. These periods followed our Revolution, World War I and the present crisis which has persisted since World War II. Actual and imagined activities of foreign agents within our boundaries have been the excuse for imposing restrictions on individual freedoms in each of these periods. The foreign nemesis of post Revolutionary years, according to our author, was the young and violent French Republic. A temporary statute, the Sedition Act of 1798 was passed to protect the security of the United States. This act was allowed to die upon its expiration in 1801. The second and current periods of suppression and struggle have been dominated by a fear of communist infiltration in our society and government. The author agrees that acts of espionage and sabotage must be vigorously combatted, but he believes that

sacrifices of "normal liberties" should be confined to actual emergencies as defined by the "clear and present danger" test so often applied by the Supreme Court. After World War I Congress steadfastly refused to enact any of the peacetime sedition acts introduced. He lauds the wisdom of that refusal by saying: "The years that followed proved that the law which eminent men said was indispensable to save the country was not needed at all." Yet, he continues, Congress in 1950 passed the McCarran act which was designed to require registration of Communist and communist "front" organizations. The purpose of this act was to protect the nation from their subversive activities, whether they be overt acts or mere ideas. Mr. Chafee voices strong disapproval of the McCarran Act because of its provision for broad control powers over persons who have been remotely associated with some person or organization that has come under the purview of the Act. It is his belief that any guilt based on innuendo or past associations is inherently bad and must be avoided, primarily because subtle suppressions of free speech and association result from the ability to find guilt without proof. Furthermore, freedom of speech and assembly can only be preserved if we rely, ". . . on the good sense of the American people to choose among competing policies after getting the benefit of full discussion unhampered by government officials."

In Chapter Six loyalty oaths are deplored as a totalitarian method of combatting totalitarianism. Loyalty oaths for lawyers are particularly regarded as harmful to the profession. The author contends that such oaths would require a lawyer to take an oath exculpating himself from a suspicion of disloyalty to the nation — the Constitution of which he has sworn to defend.

The closing chapters are devoted to three topics. First, a discussion of the perils to academic freedom under present conditions. Second, an explanation of the historical development of the freedom of religion. And lastly, the methods by which our freedoms can be extended to people throughout the world.

Zechariah Chafee, Jr., has been a professor at the Harvard Law School since 1916. During that time he has become recognized as an eminent champion of civil liberties. He has written and spoken extensively on this subject as a member of the American Bar Association Committee on the Bill of Rights, as an *amicus curiae* to the Supreme Court, and as an advisor to President Truman prior to his veto of the McCarran Act in September, 1950. Mr. Chafee's state-

ment of the philosophy of the right of an accused to be confronted with the witnesses against him has been quoted approvingly by Justice Douglas, dissenting in *Jay v. Boyd*, 351 U. S .345, 375 (1956). Quotations and excerpts of documents in the text are fully cited to footnotes collected in an appendix. The reader may detect a liberal use of examples, analogies and anecdotes throughout the chapters, but their use will be found justified when it is remembered that the instructions and arguments offered by the author were intended to arouse and reaffirm the public faith in our basic liberties to the extent that effective action will be taken to preserve them.

KIRK B. SMITH.