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Book Reviews

Charles Liebert Crum

David Kessler

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BOOK REVIEWS

ADMINISTRATIVE LAW. By Kenneth Culp Davis.* St. Paul: The West Publishing Company, 1951. Pp. xvi, 1024.

As a subject, administrative law presents peculiar obstacles for the text writer. The field is vast in scope. There are a tremendous number of administrative agencies. Most of them are highly diversified in structure and operation. Ordinarily they operate in complex areas of the economy—the regulation of securities exchanges, communication and transportation media and the like. In addition, they handle sensitive issues of social, legal and economic policy in which formidable organized interests are often vitally concerned. As a result they operate in the midst of controversies which are not always confined to the field of law alone.

Because of these factors, the task of presenting a comprehensive treatment of the peculiar legal problems which surround administrative tribunals is a difficult one. Professor Davis's new text on *Administrative Law* meets the dilemma by a process of careful selectivity in treatment. Material on state administrative agencies is excluded or kept at a minimum. In several parts of the book, recognizing the futility of attempting an exhaustive presentation, the author has discussed problems in terms of a particular agency or agencies, allowing this discussion to simply illustrate the problems faced by administrative tribunals in general.

The surprising thing is that the compromises upon the range of material included in *Davis on Administrative Law* which have been forced by the tremendous scope and the fluidity of the field have not prevented Professor Davis from turning out a really first rate text upon the subject. The book fills an obvious and long felt gap. Really worthwhile texts upon the subject of administrative law have been few and far between. To their number, *Davis on Administrative Law* must now be added.

The book begins with an introductory chapter devoted to a general appraisal of the administrative process. After discussing the reasons for the growth of administrative agencies, Professor Davis takes up the reasons behind the opposition of large segments of public opinion to them.

Basically, Professor Davis believes the development of administrative agencies to be the result of the organizational inadequacy of the traditional judicial system in dealing with

* Professor of Law, University of Minnesota.

the problems of a technological age, coupled with an inherent conservatism on the part of the courts which has prevented them from keeping pace with the times.¹

The difficulty which the courts have experienced in dealing with problems now handled by administrative agencies he attributes to several factors. The federal courts do not have at their command the fact finding instrumentalities available to the administrative branches of government. Moreover, their activities are loosely coordinated. One district court can reach a decision with which other district courts are in complete disagreement, and there is no way in which the resulting discrepancy in result can be corrected save by a long and expensive appeal. Moreover, the courts are passive. Until a problem is presented to them on the initiative of an outside agency—either a private litigant or a non-judicial agency—they can take no action.

From these defects most administrative agencies are free, though the author makes it clear that he feels excessive formalism and a lack of clearly defined goals are beginning to creep into many of the present administrative tribunals, notably the ICC.

Following the introductory appraisal of the administrative process, the book launches into a discussion of such topics as the delegation of administrative functions, the investigatory powers of administrative tribunals, and their supervisory, prosecuting, advisory, and informal adjudication functions. The selective technique used in the book is manifest in the discussion of the supervisory powers of administrative agencies. Instead of a generalized presentation, the reader is given an analysis of the techniques used by selected agencies, particularly the FCC and SEC. Since these are typical administrative agencies, the areas of difficulty or outstanding interest can thus be indicated.

Subsequent chapters deal primarily with what have become established as the "basic" topics involved in the study of administrative tribunals, e.g. rule making and interpretation, institutional decisions, separation of functions, the relaxation of common law rules of evidence in administrative proceedings, the application of the doctrine of *res judicata*

¹ "Judges, influenced by legal training toward conservative thought and accustomed through experience as advocates at the bar to favoring interests of property, often manifest a bias (proper or improper, depending on the point of view) in favor of protection of private property against governmental interference . . . Right or wrong, this attitude is historically one of the prime reasons for the growth of the administrative process." Davis, *Administrative Law* 15, (1951).

to administrative decisions, exhaustion of administrative remedies and the like. The discussion of these is scholarly and thorough.

As a supplemental text, designed to help introduce the student to the complexities of administrative law, *Davis on Administrative Law* will undoubtedly receive a warm reception in many law schools. But the book appears to be more than an exposition designed for students. In the preface, the author states that the "many unsettled areas have often turned summary into critique." This factor will undoubtedly make it in some respects controversial, but it will also insure the book's future influence on the development of the law.

One omission seems regrettable. Discussion of the relationship between the executive branch of the government, the courts, and independent administrative agencies appears only incidentally in the book. Although mention of such cases as *Humphrey's Executor v. United States*² is made, they are dismissed on the ground they do not "necessarily involve problems of administrative law."³ An outline of the author's views on the subject would nevertheless have been, in the opinion of the writer, a valuable addition to an already valuable book.

Charles Liebert Crum†

ESTATE AND GIFT TAXATION, CASES AND MATERIALS. By Boris I. Bittker. New York: Prentice-Hall, Inc., 1951. Pp. xviii, 494. \$7.00.

The author of this casebook is to be commended for his splendid job of organization. He has made understandable the complex estate and gift tax provisions of the Internal Revenue Code. Judicial, administrative, and legislative interpretations of the statutes are skilfully presented thru illustrative cases and other materials so arranged that the law student or practitioner can easily glean the basic principles of the two taxes.

Quoted sections of the Internal Revenue Code are followed with pertinent cases and materials which generally indicate the situation met by the code and which specifically focus upon the most significant phrases of the code provisions. Particularly thorough treatment is given the phrase "... intended to take effect in possession or enjoyment at or after

² 295 U.S. 602 (1935).

³ Davis, *op cit. supra* note 1, at 31, n. 91.

† Assistant Professor of Law, University of North Dakota.

... death." The reader feels that he is looking at the estate tax through a magnifying glass.

This work is divided into Parts One, Two and Three. Part One in forty-four pages sketches a bird's-eye view of the basic outlines of the Federal Gift Tax.

Part Two treats with gratifying thoroughness and clarity all the ramifications of the more important Federal Estate Tax. There are five chapters together totalling nearly four hundred pages, which in succession examine the gross estate, the net estate, computation of the tax, estate and gift tax procedure, and apportionment of the estate tax. Wherever pertinent, the author illustrates the effect of the gift tax in a related situation, so that the gift tax is skilfully shown as it truly is—a "back-stop" for the estate tax. The reader soon realizes that there is a definite need to correlate and integrate the income, estate, and gift taxes; he is shown by the illustrative cases that these three separate tax statutes as now written sometimes produce weird and inconsistent tax results.

Part Three is the only portion of the book which does not directly analyze federal taxes; instead it covers the problem of state jurisdiction to levy transfer taxes. Because it is generally conceded that the state where the land lies has jurisdiction to tax realty, this phase of taxation is not presented. Instead, attempts by the domiciliary jurisdiction to tax tangible and intangible personalty located outside the state, are illustrated and compared. Since competing state claims for death taxes are definitely a national problem, the twenty-seven pages devoted thereto are appropriately included in this volume on Federal Estate and Gift Taxation.

This book is earnestly recommended to all law students or practitioners who expect to come in contact with estate or gift tax problems. A thorough mastery of the materials presented in this volume will enable one to recognize the nature of the problem confronting him, so that he can intelligently pursue his research into the more detailed tax services and materials.

*David Kessler**

* Member of North Dakota Bar

BOOKS RECEIVED

ANNUAL SURVEY OF AMERICAN LAW. Edited by Ralph F. Bischoff, Sylvester Petro, Laurence P. Simpson, William Tucker Dean, Jr. New York: Prentice-Hall, Inc., 1951. Pp. x, 915. \$10.00.

INTRODUCTION TO BUSINESS ASSOCIATIONS, CASES AND MATERIALS. By Elvin R. Latty. New York: Prentice-Hall, Inc., 1951. Pp. xxi, 646. \$7.50.