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Review of “Federal Estate and Gift Taxes,” By Charles L.B. Lowndes & Robert Kramer

Stanley M. Rosenblum

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BOOK REVIEWS

FEDERAL ESTATE AND GIFT TAXES. By Charles L. B. Lowndes and Robert Kramer. Prentice-Hall, 1956. Pp. XXII, 1028. \$25.00.

In this reviewer's opinion the authors have made potentially the most significant contribution to the dissemination of learning in the estate and gift tax fields since those chapters of the Internal Revenue Code became part of our tax laws. It has been our opinion that the lack of an up-to-date scholarly treatise has plagued both the student and the practitioner who for the first time are encountering such problems; recommendations of well-written, though necessarily brief and panoramic, monographs have not always met with the neophyte's satisfaction. Too often, the mere statement of the black-letter rule, we are told, has left those readers still in awe and ignorant of any methods of tax analysis.

This book emphasizes the logic and thought processes by which certain results have been reached under the Code. It demonstrates amply that the tax lawyer's approach and solution to a problem is not born of some vision with which only a chosen few have been endowed, but is the result of the same practical, hard-headed thinking and painstaking research employed in other fields of the law—only more so, because of its emphasis on the realities of the situation and on "substance over form." Most refreshing of all is the thesis throughout that there are many tax problems to which categorical answers *cannot* be given. Often the authors effectively argue both sides of the proposition and leave the correct impression that the tax planner's main function is to apprise himself, and calculate the risks, of the unknown. He then either advises his client to take the risks or to choose another method, even if less satisfactory to his client's purpose.

In their preface the authors tell the reader they have attempted to present to the experienced practitioner "a compact text to refresh his recollection." A careful reading of the text, its numerous hypothetical situations and their reasoned treatment, suggests provocative and fresh lines of inquiry which indicate, at least to this writer, who for five years has taught the subject matter of the work, that the authors' statement is far too modest. For the student these hypotheticals furnish an excellent opportunity not only to understand but also to test and examine critically the Code itself, the Regulations, and the decided cases. By way of example, the authors teach the valuable lesson that the Commissioner's Regulations are not sacrosanct and may not fairly interpret the Code or consider contrary case law. In the chapter on revocable transfers, regulation 105, section 81.20 (b), is flatly characterized as wrong. This is the regulation which would tax a transfer under section 2038 where a contingent power to revoke is retained even though the contingency which must occur before the decedent can exercise the power has not occurred at his death. The Commissioner has uniformly lost every case litigated on this issue, but until the issuance of the Proposed Estate Tax Regulations, section 20, 2038-1(b) (subsequent to the date of publication) he had refused to change his regulation. To the beginning student it is almost heresy to question the Commissioner's Regulations; once he can find an answer in the Regulations, he is willing to accept it without question. It will no doubt be an easier task to dispel this passive attitude now that the suggestion comes from these authors rather than from an antagonist of the Commissioner.

At the outset of this review there is made what might seem an extravagant claim for the potential of the authors' contribution. Primarily in the area of

shaping the law school curriculum of the future, this writer predicts the treatise will have its greatest effect. Estate planning and estate and gift taxation are still relatively new courses in the crowded undergraduate law school curriculum; how many hours of credit should be allotted for their study is a pressing problem. While there are excellent casebooks, by and large it has remained for the instructors to develop a vertical study of the cases and case patterns in any particular phase of the subject matter, and, at the same time, to maintain a horizontal coordination and relationship of the Code sections to each other. There have been no treatises to which the students could be referred in order to shorten the class time spent in surveying where we have been, so that we may know better where we are and are likely to be. In this respect, the authors have admirably succeeded. For the classicist instructor who believes that the implications of sections 2036 and 2037 cannot be understood and appreciated without tracing the problem of the transfers there subsumed from *Shukert v. Allen* through the Technical Changes Act of 1949, valuable time is saved by the thorough historical background in chapter 6. The same is true of chapter 5 concerning transfers in contemplation of death; in fact, as the result of the lesser importance of section 2035 by virtue of the more than three year conclusive presumption against such transfers, it would seem that the study of this excellent chapter plus selected leading cases can readily substitute for classroom discussion. In short, based upon experience both as a student and as an instructor, this writer has until now felt that a combined three hour course in estate and gift taxation and estate planning was too short to be realistic. But with judicious use of this treatise by both student and teacher, utilizing the highly analytical written lectures of Professors Lowndes and Kramer to supplement classroom discussion of the cases, materials, and footnotes of an excellent casebook, such of Surrey and Warren, *Federal Estate and Gift Taxation*, it is diffidently suggested that such a course can be successful and justify its place in the modern curriculum. If this treatise has some small part in encouraging the administrators of our law schools to allot three precious credit hours to such a course, knowing that this and no more is needed, hundreds of the lawyers of the future will enter the practice better equipped for the role of estate planners and tax counsellors in their own communities; a decentralization of estate and gift tax learning will be hastened to accompany the Bureau of Internal Revenue's own decentralization. It may well be this reviewer's present appraisal will then seem too conservative.

STANLEY M. ROSENBLUM†

THE DEVELOPMENT OF CONSTITUTIONAL GUARANTEES OF LIBERTY. By Roscoe Pound. New Haven: Yale University Press, 1957. Pp. vi, 207. \$3.50.

Revised from lectures given at Wabash College, this little volume is a sketch of an idea becoming an institutionally embodied ideal. The idea is the liberty of the individual, even against government. The idea became an ideal when it became a goal of social organization and action. The institutions are legal, but not merely legal. They are the institutions of fundamental law that operate to limit the making, executing, and applying of laws by legislature, executive, and courts.

Pound divides his account into four periods. They are: "(1) medieval England—the Conquest to the Reformation; (2) the era of the Tudors and Stuarts, from the Reformation to the Revolution of 1688; (3) the American colonies down

† Lecturer in Estate Planning, Washington University School of Law; Partner, Rosenblum and Goldenhersh.