



January 1951

Book Reviews

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Recommended Citation

Arthur L. Harding et al., *Book Reviews*, 5 Sw L.J. 120 (1951)
<https://scholar.smu.edu/smulr/vol5/iss1/11>

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BOOK REVIEWS

THE LAW OF CADAVERS AND OF BURIAL AND BURIAL PLACES. By Percival E. Jackson. New York: Prentice-Hall, Inc. Second Edition, 1950. Pp. lxxxvii, 734. \$12.50.

Obscure and outside the experience of many lawyers, the law governing sepulture of dead bodies is one of exceeding complexity in which the judicial process has been somewhat less than effective. The problems are formidable. Burial normally cannot await the delays of litigation. Even where litigation arises subsequent to interment, it deals with acts done and transactions entered into during a time of emotional strain, usually before there is an executor or administrator of the deceased qualified, and often in ignorance of the testamentary acts of the deceased. Litigation concerning burial is likely to mark the culmination of a long-standing bitter family feud, and to subject court and counsel to an experience none would care to repeat. Here the court is called upon to act summarily, albeit with the greatest of wisdom and of human kindness.

Apart from such practical problems, one finds much to be desired in the substantive law of the subject. Involved is the human claim which receives the poorest protection in the law: that to remain free of injury to emotional sensibilities. Seemingly mistrusting its ability to act effectively in so nebulous a territory, the judiciary generally has declined to enter the field save over the bridges of trauma to person or of trespass to property. The "right of privacy" doctrine developed in some courts affords a new and exceptional pathway to the protection of the interest of emotional tranquillity, but there appears to be no case in which its analogy has been extended to interment disputes. To resolve such litigation, the courts have been able to do no better than to devise an inapposite fiction of a property interest in the human corpse, inapposite since the property interest seems to involve few if any of the normal incidents of ownership. The fiction more-

over may produce results which take little heed of the human factors involved.

In a field in which judicial ineptitude is so marked one turns to legislation and to the administrative process. Fortunately, by now the statutes are fairly complete, and coroners, medical examiners, and health departments afford speedy administration.

It is high time to turn to Mr. Jackson's book. It is devoted about thirty percent to the duties and privileges of interment or other disposition of human bodies, exhumation, and liability for burial expense, five percent to the legal position of undertakers, and some sixty-five percent to cemeteries, cemetery corporations and burial plots. The first portion is the most interesting. The author has performed an exhaustive job of research, presenting not only what appears to be a complete collection of cases but also the ecclesiastical background. For a long period in England these matters fell within the competency of the Church of England, and Mr. Jackson outlines the Church doctrine and also the Roman law on which the canon law was in large part based. These things do affect the common law. Statutory citations are copious. The lawyer needing help in a sepulture dispute will find it here.

The material concerning cemeteries and cemetery corporations appears to have been written for the New York market, although the citation of cases and statutes from other states is full and will aid in the solution of local-law problems elsewhere.

The author has provided an index in sufficient detail, together with tables of cases and statutes. Typography is good and format is acceptable.

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THE CHALLENGE OF DELINQUENCY. By Negley K. Teeters and John Otto Reineman. New York: Prentice-Hall, Inc., 1950. Pp. 819. \$7.35.

To quote the authors in their Preface:

"This book is primarily for use in colleges and universities. But it is not meant to be an exclusively academic presentation. It attempts to combine a critical appraisal of theories, particularly regarding causation of delinquency, with a description and an evaluation of the machinery that society has set up to deal with the delinquency problem."

The present reviewer would agree, with the inevitable reservations, that the authors have accomplished their purpose in quite a satisfactory manner. Dividing their outline into three major divisions—Scope of the Problem, Control and Treatment, and Community Responsibility—they develop each topic in careful fashion and with a wealth of detailed information concerning each phase of the subject.

A healthy skepticism pervades the analysis of causation and the descriptions of treatment and prevention. To persons unfamiliar with present day trends of thought and research the chapters on the nature of delinquency and theories of its causation should be especially informative. The authors examine and reject (as they should) each of the particularistic and presently popular theories of the "causes" of delinquency; their analysis of the effects of movies, radio, comic books and other elements entering into the child's world should be required reading for the layman.

Probably of more importance for the legal profession, however, is the extensive and detailed treatment of the backgrounds, philosophies and present day procedures in the treatment of the delinquent. There is a wealth of information accompanied by detailed description of selected illustrative plans of treatment in existence at present. For those seeking wider acquaintance with the field

there is appended an extensive bibliography; the text itself is well annotated with footnote references to special research sources.

A feature of the text is the presentation of fifteen summary case studies, each of which illustrates some different aspect of the whole problem with which the text deals.

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LIFE INSURANCE AND ESTATE TAX PLANNING. By William J. Bowe. Nashville: Vanderbilt University Press, 1950. Pp. 90. \$2.10.

This short volume should serve as an excellent introduction to the tax problems created by the presence of life insurance in an estate for one unversed in the tax aspects of estate planning. Though the book cannot be considered a critical analysis, it may serve to orient the reader to the general problems existing in the field and point to sources from which a more definitive answer may be obtained. However, it is doubtful that the individual who has a working knowledge of the estate tax provisions of the Internal Revenue Code and the pertinent regulations will find anything new in this volume. The book reviews the history of the positions taken by the Bureau of Internal Revenue on the tests to be applied in determining whether insurance is to be included in the gross estate; and it sets out in clear style the problems involved in qualifying insurance under the marital deduction provisions of the Code. In treating the other aspects of insurance-estate planning the author apparently intends to emphasize the utility of insurance in survival-purchase agreements; yet the brevity of the work forces him to generalize, thereby omitting detailed statements of the agreements which have been before the courts and the reasoning used by the courts in interpreting the agreements as they have.

The book is subject to the almost universal criticism that may be leveled at all tax treatises so far as practitioners in community property states are concerned, *i.e.*, it contains no discussion of the effect of community property law on insurance as used in estate planning. The format appears to be unsatisfactory in one respect. In Chapters II and IV, certain relevant material has been inserted in very long footnotes which have been moved to the end of the chapters, when it appears that the material contained therein could more appropriately have been treated in the body of the chapters.

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