

## Book Reviews

Follow this and additional works at: <http://digitalcommons.law.umaryland.edu/mlr>

---

### Recommended Citation

*Book Reviews*, 17 Md. L. Rev. 186 (1957)

Available at: <http://digitalcommons.law.umaryland.edu/mlr/vol17/iss2/12>

This Book Review is brought to you for free and open access by the Academic Journals at DigitalCommons@UM Carey Law. It has been accepted for inclusion in Maryland Law Review by an authorized administrator of DigitalCommons@UM Carey Law. For more information, please contact [smccarty@law.umaryland.edu](mailto:smccarty@law.umaryland.edu).

## Book Reviews

---

**Probate Law And Practice** (Maryland Practice, Vols. I and II). By Philip L. Sykes, former Chief Judge of the Orphans' Court of Baltimore City. Washington, D.C. Washington Law Book Company, 1956. 2 Vols., ps. XLII, 798. \$40.00.

The general practitioner who is caught in the seamless web of Maryland testamentary practice may at last find hope for escape. For in Judge Philip L. Sykes's new treatise, "Probate Law And Practice", he will find a clear statement of this branch of the law as it has developed over the years.

This is at once a work of scholarship and a well fashioned tool of the legal trade which no lawyer in this state can afford not to have at hand. Most significantly, perhaps, it is a restatement of the law as it is, not as the author thinks it ought to be. If the Legislature or the Court of Appeals has spoken on any particular subject in the field of probate law, one may expect to find a discussion of the point in this book; if neither the Legislature nor the Court of Appeals has spoken, the point will probably not be covered.

In adhering to this policy, the author has assured the usefulness of his treatise to bench and bar as a trustworthy compendium of legal principles comprising the corpus of Maryland probate law. By the same policy, however, the work has forfeited to a considerable degree its opportunity to influence the future development of probate law in this state. Whether or not this is a desirable result is a debatable point, depending on the importance one may attach to the views of commentators and text writers in the field of jurisprudence. At all events, and despite his eminent qualifications, Judge Sykes has elected for the most part not to speculate on the future but to confine himself to the settled law of Maryland, particularly as set out in the opinions of the Court of Appeals, as the source of final authority and his primary point of reference.

He has also digested and skillfully catalogued these court decisions — more than 2600 of them. One has only to thumb through the seventy-two pages of the table of cases to comprehend the exhaustive scope of this study. And those of us who have struggled in the impenetrable jungle of the Maryland Digest can rejoice that the sympathetic

publisher has at last rewarded us with a workable and well indexed source of reference for at least one branch of the law. Perhaps other volumes on other subjects are to follow in the same series, a possibility suggested by the introductory title, "Maryland Practice, Volumes I and II". One can only hope that the succeeding volumes will live up to the high standard of their predecessor.

In his preface, Judge Sykes confesses that this treatise is the result of work begun "many years ago" when he undertook by intensive study to qualify himself for service as Judge of the Orphans' Court of Baltimore City. Because of the time consumed in its writing, it is understandable, but somewhat regrettable, that the work contains in several places material which, on more careful editing, could have been qualified or eliminated as obsolete. Thus, for example, in Sections 74 and 101, the statement is made that gifts for religious purposes "must be sanctioned by the Legislature", citing in each instance Article 38 of the Declaration of Rights. These statements were doubtless written prior to the adoption of a constitutional amendment set forth in the Acts of 1947, Chapter 623, approved by the voters on November 2, 1948. This constitutional amendment eliminated the requirement of legislative sanction for gifts made after the date of that election.

Another and less noticeable example of an obsolete provision is the citation and extended footnote discussion in three different places of an opinion of the Attorney General reported in 24 Opinions of the Attorney General 943, holding that an overpayment of Maryland estate taxes may be treated as a payment on account of Maryland inheritance tax. This opinion was expressly overruled in 1954, in 39 Opinions of the Attorney General 284. The later ruling is not cited at all.

Anyone who has shared the rewarding experience of this reviewer in reading Judge Sykes's treatise must feel somewhat sheepish in publicly emphasizing these minor defects which do not materially detract from the over-all usefulness and merits of this work. More than anything else, these minor errors and omissions, impossible to avoid in so massive an undertaking, confirm the author's claim that these volumes are the product of many years of individual human labor.

The author's humanity is also manifested in occasional touches of humor, usually buried in a footnote to be discerned only by the careful reader. For example, in discussing the subject of issues to be framed in the Orphans' Court

for trial by a jury in a court of law, Judge Sykes defines the term "issue" as a single, certain and material question framed from the allegation of a petition and the answer thereto. After noting three decisions in the Court of Appeals which support this definition, the author inserts the following additional footnote:

"The late Professor Joseph C. France, a leader of the Maryland Bar in the early decades of the century, pointed up the qualities of an issue by telling his students at the University of Maryland that he once knew a young woman who was unmarried, positive and buxom. She illustrated the qualities of an issue perfectly. She was single, certain and material" (231, fn. 4).

From beginning to end, this two-volume work is well organized, and its component parts are arranged in a logical and readable sequence.

Following an interesting summary of the historical background of probate law and practice in Maryland, the first main subdivision of the work begins with a discussion of the *raison d'être* for this branch of the law; i.e., the devolution of property upon the death of the owner. This subject, in turn is subdivided into two principal sections, devolution by act of the owner and devolution by operation of law. These sections cover a wide range of legal topics, most of which are embraced within the terms "Testamentary Law" (including a chapter on Construction of Wills) and "The Law of Intestate Succession".

The succeeding sections concern the judicial instrumentalities through which devolution is effected — i.e., the Orphans' Court, the Register of Wills and Courts of Equity. After this, Judge Sykes takes up the practical problems of the administration of decedents' estates, beginning with matters relating to the probate of Wills and the qualification of the personal representative. Then follows a section dealing with the assets of a decedent's estate and the management thereof, a section dealing with claims, debts and taxes, a section dealing with accounting and distribution, and a final section dealing with actions by and against Executors and Administrators. The substantive part of the treatise concludes with a section dealing with Guardian and Ward.

The chapters on Maryland inheritance and estate taxes deserve more than passing comment. So far as this reviewer is aware, they comprise the only authoritative

discussion of this subject available to the general practitioner in Maryland other than the loose-leaf tax services.<sup>1</sup> Most of the vital information in this part of the work is set forth in the footnotes, and no better example could be found of the author's meticulous attention to detail. These notes contain a treasury of citations to case law, statute law, and innumerable opinions of the Attorney General. Unlike many commentators, Judge Sykes does not merely "stack" his cases, but, in most instances, he gives a brief summary of their salient features, a summary which will prove invaluable and time-saving to anyone engaged in legal research. These chapters on inheritance and estate taxes also contain subheads in the footnotes, an editorial detail which could, with profit, have been more widely used throughout the rest of the work.

Those who expect a legal treatise to explore in a factual vacuum a wide variety of legal questions which have not been settled in the courts will be disappointed with these volumes. This work is not and does not profess to be an original work of art or to lead the way into uncharted fields of the law. As noted above, the author has modestly foregone the opportunity of using these volumes as a medium for expressing his own theories as to what the law should be. Instead, this work is a comprehensive and skillfully compiled catalogue of the law of Maryland as it exists today. As such, it will prove a most valuable addition to every library.

ARTHUR W. MACHEN, JR.\*

---

**Freedom In Contemporary Society.** By Samuel Eliot Morison. Boston: Atlantic — Little, Brown, 1956. Pp. 156. \$3.50.

Here are three lectures delivered at Queen's College, Kingston, Ontario by Samuel Eliot Morison, the Admiral with a Pulitzer Prize, whose greatness would have been quite secure if he had confined his energies to teaching and writing history at Harvard. His muscular intellect brings the understanding of a sensitive historian into line with the common sense of a competent deck officer and proceeds to bracket with startling accuracy the most elusive of philosophical targets.

---

<sup>1</sup> Ed. Note: See herein contemporaneously written article, Eney, *Death and Taxes — Maryland Style*, 17 Md. L. Rev. 101 (1957).

\* Of the Baltimore City Bar.

Since these studies in political, economic, and academic freedom come to the reader as printed lectures, they necessarily lack the clean organization of essays — they ramble. But they read easily and carry a message which has the virtue of being suggested rather than hammered: beware of the professional administrators, for, though they will never inherit the Kingdom of Heaven, they are well on the way to seizing the earth.

The quality of both presentation and critical insight improves with each lecture. The first, on political freedom, is mostly an unseasoned historical potpourri. The much needed pepper and sage come at the very last, when Professor Morison moves to the problems created by Communism. No friend of the "soft line" attributed to the members of his profession as a class, he states bluntly that he is not "one of those who call the anticommunist crusade of the decade 1945-1955 a 'witch hunt', hysterical though much of it has been. There were no witches in 1691 or any other time; but there are real communists in 1956. . . . *Le flegme britannique* as an attitude toward the problem may in the long run have worse consequences than the American method of roaring, bellowing, and tramping about like an angry hippopotamus."<sup>1</sup> The real danger to political freedom, as he states it, comes from the interaction of popular complacency, red-hunting, "[t]he menace of a bloated and irresponsible administrative arm",<sup>2</sup> and guilt by association (with specific reference to the Attorney General's list of Subversive Organizations and New York's famous Dr. Edward K. Barsky). He is quite willing to let the government hound real Communists, good and hard, since they expect a double-standard when playing the freedom game, but he is hornet-mad about the shoddy treatment given those of slight indiscretion whose names have appeared on the wrong subscription lists. Lest the Canadians get smug over any notions of superior political freedom, Professor Morison takes a closing poke at the devious Maurice Duplessis, petty king of Quebec's federally immune provincial government.

The second lecture, devoted to economic freedom, is again predominantly historical, but adherence to chronological development gives it better organization than its predecessor. It is incisive, instructive, and optimistic. "Our mixed system of semicontrolled free enterprise, squeezed between the upper millstone of the state and nether mill-

---

<sup>1</sup> MORISON, 34, 35.

<sup>2</sup> *Ibid.*, 36.

stone of the labor union, is still grinding out far greater benefits in terms of the good life than any other system known to us in the present or the past."<sup>3</sup> Equally unhappy with widespread devotion to "cradle to grave" security and with manufacturers' "fair trade" schemes, his optimism rests on an unswerving conviction that economic freedom cannot mean *laissez faire*, that "the measures known as the New Deal — haphazard, wasteful and uncoördinated though they were — saved the capitalist system in the United States, and democratic government as well".<sup>4</sup> Lurking but inarticulate is the fact that the governmental agencies which saved economic freedom were the parents of "bloated and irresponsible administrative arm" which is currently doing its darndest to strangle political freedom.

The lecture on academic freedom ("the newest of the freedoms"<sup>5</sup>), is the best of the lot. It has the marks of a labor of love. It is tough, tart, and immensely entertaining. In his rumble against the professional pedagogues turned out by the Columbia Teachers College, Professor Morison takes the literary broadsword and chops about with a neatness of powerful stroke reminiscent of H. L. Mencken in the high days of his assault on the bastions of boobery. And he doesn't stop at Morningside Heights. No friend of indiscriminate loyalty oaths, he still has no sympathies for Communist teachers, present or past. "Former membership in a communist cell may well indicate a defect in character or feebleness of intellect which should disqualify the ex-communist from becoming a university teacher."<sup>6</sup> Finally, he is so revolted by the expansion of third-rate colleges to accommodate some American shibboleth that would guarantee four-year courses in band leadership and fly-casting to every fifth-rate student in sight that he bluntly admits most colleges are undeserving of academic freedom.

To the gentleman in smoking-jacket and slippers who wants an evening's refreshing and provocative reading, this book is warmly recommended.

ROGER D. REDDEN\*

---

\* *Ibid.*, 105.

\* *Ibid.*, 70.

\* *Ibid.*, 111.

\* *Ibid.*, 138.

\* Of the Class of 1957; Editor, Vol. XVII.