

5-1-1928

The Insurance Commissioner in the United States, by Edwin Wilhite Patterson (1927)

Vernon A. Mund

Follow this and additional works at: <https://digitalcommons.law.uw.edu/wlr>



Part of the [Insurance Law Commons](#)

Recommended Citation

Vernon A. Mund, Book Review, *The Insurance Commissioner in the United States*, by Edwin Wilhite Patterson (1927), 3 Wash. L. & Rev. 105 (1928).

Available at: <https://digitalcommons.law.uw.edu/wlr/vol3/iss2/5>

This Book Review is brought to you for free and open access by the Law Reviews and Journals at UW Law Digital Commons. It has been accepted for inclusion in Washington Law Review by an authorized editor of UW Law Digital Commons. For more information, please contact cnyberg@uw.edu.

(1892). The election may consist of the retention of money where its payment can only be referred to provisions of the will. *Sherman v. Flack*, 283 Ill. 457, 119 N. E. 293, 5 A.L.R. 496 (1918) *Martien v. Norris*, 91 Mo. 465, 3 S. W. 849 (1887). Where the payment of money can be referred to some other obligation it will not constitute an election under the will. *In re Beck's Estate*, 265 Pa. 51, 108 Atl. 261 (1919). If payment can be referred to a gift it will not constitute an election. *May v. Jones*, 87 Iowa, 188, 54 N. W. 231 (1893). It is a general rule that if the legacy is equal to or greater than the debt it will be deemed to be in satisfaction of the debt. *Fetrow v. Krause*, 61 Ill. App. 238 (1895) *Buckner v. Martin*, 158 Ky. 522, 105 S. W. 665, L.R.A. 1915B, 1156 (1914). The general rule will not be applied where the language of the will excludes the inference that the testator intended the legacy to go in satisfaction of the debt. *Reynolds v. Robinson*, 82 N. Y. 103 (1880). Where the legacy is smaller than the amount of the indebtedness there will be no presumption that the legacy was in payment of the debt. *Fetrow v. Krause*, *supra*, *Rusling v. Rusling*, 42 N. J. Eq. 594, 8 Atl. 534 (1887) *Matter of Sherman*, 53 N.Y.S. 376 (1898). The view adopted by the Washington court in the principal case is, therefore, in accord with the authorities. G. F. A.

BOOK REVIEWS

THE INSURANCE COMMISSIONER IN THE UNITED STATES. By Edwin Wilhite Patterson. Cambridge: Harvard University Press, 1927. pp. xviii, 589.

This book is the first of a series of Harvard Studies in Administrative Law.

In the introduction, Professor Frankfurter ably establishes a concept of Administrative Law. He concludes that, "administrative law deals with the field of legal control exercised by law-administrating agencies other than courts, and the field of control exercised by courts over such agencies."

The development of this field, Professor Patterson points out, is perhaps the most conspicuous contemporary trend in the legal world. As the concepts established in most fields depend upon the problem of the time and place of the thinkers, it is probable that the development of administrative law is the result of our machine processes, technical specialization, scientific prevention, and social responsibility. In the dynamic world of today, judicial procedure was found to be too rigid and ritualistic, and so we have the development of such administrative agencies as the Interstate Commerce Commission, the state public service commissions, the state insurance commissions, and the Federal Trade Commission.

In this volume Professor Patterson presents a scientific analysis of the complicated system of administrative control of the business of insurance, through the office of the insurance commissioner. The way in which the author tells the story of the insurance commissioner is through an exhaustive analysis and summary of the activities of the insurance departments of the forty-eight states. He obtained his data from three sources: statutes and constitutions, judicial decisions, questionnaires and interviews with the officials of the insurance departments.

The results of his studies are grouped into six parts with a chapter devoted to each.

In Chapter I Professor Patterson gives a summary of his conclusions. He intends this summary to indicate what is on the menu, and also to give cafeteria service to those who have not the time or digestion for the larger meal. In this chapter is also an able criticism of some of the activities of the insurance commissioner.

Chapter II deals with the organization and personnel of insurance departments. In organization, most of the insurance departments resemble a cabinet department of the Federal Government. A single official is at the head of the department, who in theory makes all decisions and controls all official actions of the department. Beneath him are corps of examiners,

actuaries, deputies and clerks. The commissioner is usually an appointed official and is invariably chosen for political reasons. The chapter also includes an interesting summary of the practices of the states in regard to the titles of the officials, methods of selection, qualifications, term, compensation and subordinates.

The next subject which Professor Patterson discusses is the insurance commissioner's activities in the licensing of those engaged in the business, the control of the financial conditions of the insurers, the control of policy forms, the control of rates and premiums, the control over payment of private contract claims, and the control over business-getting methods. This chapter would prove the most interesting and informative to a reader with a limited amount of time.

Then in Chapter IV the author gives a descriptive account of the inquisitorial and visitatorial powers of the insurance commissioner, as legal devices which he uses to attain his ends. The commissioner has a liberal use of power in this capacity. He may lawfully demand of insurers voluminous reports of their financial standing, or he may enter the office of a domestic company and examine whatever he may desire. Moreover, he has the power to collect from the insurers the expenses of such examinations.

In Chapter V is an excellent discussion of the administrative procedure in regard to complaints, hearings and decisions. In general this procedure is very informal, and depends usually upon the discretion of the commissioner. The enforcement of the commissioner's decisions, rules and orders is accomplished through administrative and judicial action. The author gives a complete discussion of these two methods from a legal standpoint.

In the last chapter the author tells of the control of administrative action from non-judicial and judicial sources. Under non-judicial control is considered the influence of the public. As a rule, the commissioner is immune from executive control. On the legislative side he is bound by detailed regulations, although he generally helps to make them. Also, there is a control exercised by the commissioners themselves through the activities of the National Conventions of Insurance Commissioners. Judicial control is the most direct and effective check on the insurance commissioner. This control is in the nature of a brooding omnipresence, rather than a ubiquitous censor.

The book has several interesting appendices. Appendix A contains a short history of the administrative control of the insurance business. In Appendix B is an interesting discussion of how the author obtained the material for the book. A complete table of cases is also included.

VERNON A. MUND.

BOOKS RECEIVED

- CASES ON FUTURE INTERESTS. By Richard R. Powell, assisted by Lewis M. Simes. St. Paul: West Publishing Co., 1928. pp. xxviii, 968.
- CASES OF THE LAW OF CARRIERS. By Frederick Green. Second edition. St. Paul: West Publishing Co., 1927. pp. xxv, 851.
- EQUITY JURISPRUDENCE. By Sherman Steele. New York: Prentice-Hall, Inc., 1927. pp. xii, 897.
- HANDBOOK OF FEDERAL JURISDICTION AND PROCEDURE. By Armistead M. Dobie. St. Paul: West Publishing Co., 1928. pp. xiii, 1151.
- HUMAN JETTISON: A SEA TALE FROM THE LAW. By Frederick C. Hicks. St. Paul: West Publishing Co., 1927. pp. xv, 414.
- LECTURES ON LEGAL TOPICS. Volume IV, 1922-23. By Simon Flieschmann and others. New York: The Macmillan Co., 1928. pp. viii, 393.
- REAL ESTATE TITLES AND CONVEYANCING. By N. L. North and DeWitt Van Buren. New York: Prentice-Hall, Inc., 1927. pp. x, 719.
- THE ART OF ARGUMENT. By Harold F. Graves and Carle B. Spotts. New York: Prentice-Hall, Inc., 1927. pp. iv, 298.