CONTENTS

Articles

Introduction

The Unfinished Business of the Warren Court

Charles L. Black, Jr. 3

The question we should ask of the Warren Court is not whether it succeeded, but whether we want to make it succeed. With the issue thus defined, Professor Black examines the work of the Warren Court, the foundation it has laid in substance and methodology, and the direction future advocacy must take to secure and enlarge upon those foundations.

Professor Black compares the Warren Court favorably to the Marshall Court, noting that where the Marshall Court's unique contribution was defining nationhood, the Warren Court's unique contribution was defining citizenship. He urges strong and continuing advocacy to fulfill the Warren Court's vision of citizenship in order that it not be clouded by the type of retrenchment that followed the Marshall Court.

Borrowing from the Civil Law, Professor Black suggests the use of analogy in interpreting the Constitution in those instances when the results sought by textual interpretation can only be reached by transcending all feasible lexicographic operations. Such a methodology sees in the Constitution certain positive commands and values which do not for their validity depend upon a particular phrase in the Constitution.

Comments

Nuisance as a Modern Mode of Land Use Control 47

Recognizing the inflexibility inherent in present zoning mechanisms, this comment analyzes the concept of nuisance as an additional, more versatile means of land use control. In an exhaustive categorization and evaluation of Washington cases and those from other jurisdictions, the author sets forth the principles of nuisance law and the factors affecting court decisions on nuisance. Both private and public actionable nuisances are discussed, along with available remedies, within a concise analytical framework.

Transfer of Decedent's Basis at Death: The Allocated Carryover Approach 121

Congressional dissatisfaction with the effects of IRC 1014(a) which, although death is not treated as a taxable event for income tax purposes, grants a stepped-up basis in inherited property resulting in gains tax forgiveness on appreciated property held at death, has prompted suggested legislation aimed at the at-death taxation as capital gains of all appreciation on property held at death. This comment urges, instead, that the decedent's tax basis in non-cash assets should be carried over to his successors and allocated on the basis of the market value of the transferred assets. The required legislation and mechanics for implementation of the proposed alternative are also presented. This proposal would avoid the overwhelming liquidity and valuation problems inherent in at-death taxation while ending complete tax forgiveness.
Condominiums in Washington

The development of the condominium concept is a direct response to the problems of urbanization, increased costs of land ownership and the necessity of utilizing the diminishing resource of land in an efficient fashion. This comment surveys problems of management, taxation, financing, liability and insurance, and the relationship of these problem areas to Washington's 1963 Horizontal Property Regimes Act. The author concludes that, though the ramifications of the Act have not as yet been tested in the courts, and though the task of drafting condominium documents is made difficult by significant areas of uncertainty in the law, hazards can be largely anticipated by the careful draftsman. The condominium appears to be a promising response to a number of current housing problems and, because of its versatility, shows promise of being the best method by which lower-income families may experience the advantages of home ownership.

Recent Developments


Reviews

Douglas, Points of Rebellion.

Hayden, Rebellion and Repression:

Hoffman, Revolution for the Hell of it.

Donald H. J Hermann

La Forest, Natural Resources and Public Property Under the Canadian Constitution

A. R. Lucas

Book Notes