Book Reviews

CASES AND MATERIALS ON TRUSTS AND ESTATES. By Richard R. Powell. St. Paul: West Publishing Co. 1932. Vol. 1, pp. xliii, 1027. 1933. Vol. II, pp. xxxvii, 1040.

THIS important and novel casebook by an experienced authority has already received, both before and after final publication, the widespread attention which it clearly deserves. It is obviously the product of intelligent original hypotheses, tested by classroom experience, and of much careful and constructive thought and industry. The difficulties usually inherent in casebook construction have been greatly increased by the ambitious magnitude of the task. One may imagine the expenditure of time and effort required by the formulation of the plan, the writing of text material, the construction of the unusually extensive and detailed notes, and the briefing of many of the cases used. At least those who have written casebooks themselves will appreciate the significance in this respect of Mr. Powell's statement that "fully three-quarters of the thirty-five hundred cases referred to in these two volumes have sufficient given of their facts and results to enable the student to appraise their contributions."[1] The book obviously deserves respect. Beyond that, it is alive and significant in its novelty. It is too early to predict its influence upon instruction in the field. The value and utility of any casebook of course depends in large measure upon the instructor using it, and upon the objectives and curricular arrangements of his school. It will be interesting to see how many will wish to follow in the classroom the trail that Mr. Powell has blazed; I am not at present convinced that I would want to do so. But this book, even if it is not actually adopted by a teacher, should at least interest or disturb him and provoke reexamination of his own existing postulates. And the teaching profession should welcome such a constructive attempt to demonstrate that there may be a route through this particular area of the law that is more lifelike and stimulating than the carefully cultivated paths of the traditional scheme. For the present, however, a reviewer can only state his personal reactions.

I am heartily in accord with Mr. Powell's discontent with the usual curricular arrangements in this field in so far as it is caused by the courses in Wills and Trusts. I found[2] the traditional course in Wills and Administration unsatisfactory for at least two reasons: First, much of the material in it seemed to me too simple to provide proper intellectual fare for mature students. Such matters as the details of the execution, revocation and revalidation of wills, granting their obvious practical importance, can be greatly condensed without serious loss. Such condensation is more likely to occur if the material is merged and therefore contrasted with other matter of higher intellectual content. I personally deal with it largely in textual form. Conceding the general value of the case method, do we not approach a reductio ad absurdum when the investment of time which it requires yields such a slight return as it does when used for simple informational matters? Secondly, this course seemed to me to set up artificial barriers that cramped understanding, because it excluded related questions of the substantive

1. Preface, Vol. I, p. viii.

2. The past tense is used because these courses disappeared from the Yale curriculum two years ago.

law of gifts and trusts and, in so far as administration of decedent estates really received attention,[3] of the management of estates by trustees.

The pros and cons of the controversy over the desirability of the use of the trust[4] as a basis of classification for curricular and other[5] purposes have probably by now been sufficiently aired. I will merely say briefly that the traditional Trusts course left[2] me, even more than the Wills course did, with a sense of incompleteness of understanding and perspective, due again to barriers set up by a synthesis based on a legal concept, however fully the course might outline the doctrinal structure of its subject matter. This course is presumably based on the assumption that it is desirable to group together for teaching purposes cases of which the common factor is the use of the trust by the parties, by the court, or by both. To accompany the trust on its peregrinations through varied and not necessarily related types of human activity may be interesting and important for some purposes, but does not seem to me to be the most efficient teaching arrangement. I believe that it renders incomplete the consideration of particular issues both in the Trusts course and elsewhere. I think that students will be better able to handle and to understand the trust, either as a consciously adopted form of transfer or as an argumentative device, if it is treated in combination with other materials in connection with the situations to which it and they are relevant. I suspect that students will be sufficiently impressed with its ubiquitous utility if they meet it constantly in the curriculum. I am willing to take a chance on sacrificing the ideal of an integrated comprehensive view of the varied uses of the trust, particularly since this ideal has become somewhat theoretical. The commercial uses of the trust have, in at least some curricula, been largely assimilated by other courses. Much of what remains concerns the gratuitous disposition of wealth, and may profitably be merged with wills and other materials affecting that general field. I believe that, after such a merger, the materials should be redistributed into two courses, one on the substantive law and the other on management of estates.

I am not convinced of the desirability of Mr. Powell's proposal that materials on future interests be included in this merger. I make this statement with some diffidence, because dissatisfaction with the Future Interests course seems to have been Mr. Powell's original stimulus,[6] and very likely he and his students see relationships that are not apparent to a reviewer with only the casebook before him. That trusts, wills, and future interests are factually related subjects is clear enough. It may be advisable to require students of future interests to have some previous acquaintance with the law of wills and trusts, which can be accomplished by a prerequisite requirement under an arrangement of separate courses. But I believe that contemporaneous treatment is unnecessary, and that the materials involving trusts and wills can be properly understood without a knowledge of future interests. I think that a course focused on the drafting, validity and effect of dispositive provisions in instruments of transfer is a satisfactory teach-

3. Such attention should surely be encouraged by the intelligent emphasis on and treatment of administration in MECHEM AND ATKINSON, CASES ON WILLS AND ADMINISTRATION (1928).

4. To simplify the form of statement, the term "trust" is used in the singular without attempting to enumerate the different ideas connoted by its varying content.

5. See Arnold, *The Restatement of the Law of Trusts* (1931) 31 COL. L. REV. 800; Scott, *The Restatement of the Law of Trusts* (1931) 31 COL. L. REV. 1266.

6. Preface, Vol. I, p. v.

ing vehicle by itself. Perhaps "Future Interests" is too restrictive a title, since the problems of restraints on alienation and of accumulations, included by Mr. Powell in his casebook, also belong there. The most important consideration is that such a course seems to have intellectual unity. But, in addition, it probably suits the emotional attitude of instructor and student toward that rara avis, future interests. I suspect that at least a slight addiction to the mania referred to by Mr. Mechem[7] is essential to successful teaching of this subject. A teacher so affected may well prefer to direct his drive and enthusiasm toward overcoming the obstacles of a single though complicated job, rather than to dissipate his energies over a broader field. If giving the course recommended by Mr. Powell, will he not tend to overemphasize future interests at the expense of the other materials?[8] And I am not sure that the teacher who likes future interests will like trusts or wills, or vice versa; or that this course would not raise difficulties of instructional assignments in some faculties.

The length of Mr. Powell's course will be considered by some a serious objection to it. According to Mr. Powell's statement[9] he and Mr. Cheatham covered these materials in 112 class hours, with the assistance of what is probably a good deal more than the average amount of outside work by the students. I doubt very much if other instructors could proceed as rapidly through over two thousand pages of very closely packed material. Assuming that they could, the curricular arrangements of most schools indicate a general opinion, in which I concur, that shorter courses than this are preferable for both student and instructor. No doubt in anticipation of this objection, Mr. Powell has outlined arrangements for shorter courses, saying that "such curtailment is not recommended but is possible."[10] With the constant growth in the possible subject matter of law school instruction, a school may wish to employ such a compression of existing subjects into a single course. On this basis, presumably the plan would appeal to schools which, unlike Columbia, have a limited teaching force, and wish to decrease or avoid an increase in teaching hours. I personally prefer a sequence of several courses, permitting specialization and flexibility of schedule, to a long single course which will compel the individual student to take everything or nothing. Under the present arrangement at Yale, there are three courses in this field. The first deals with the general substantive law of intestate succession, wills, gifts inter vivos and causa mortis, and non-commercial trusts; the second with management of estates by executors, administrators and trustees; and the third with future interests. In addition, there is honors work available. This makes it possible for a student to take anything from a minimum of three semester hours, sufficient to acquaint him with the more common terms and concepts, to an indefinite maximum.

---

7. "It is a matter of common knowledge that Future Interests is not properly a course but an obsession, and that teachers of it in time develop a complex, akin perhaps to the Jehovah-complex, which leads them to think that the law school exists for the sole purpose of teaching Future Interests." Book Review (1933) 19 IOWA L. REV. 146, 149.

8. According to my calculations from Mr. Powell's schedule, printed in the Appendix (Vol. II, p. 1013) he devotes about one-half of the classroom time allotted to this course to future interests, and slightly more than one-half of the outside reading required of students concerns that subject. Perhaps this proportion might be reduced if Mr. Powell were not teaching so many prospective New York practitioners.

9. Vol. II, p. 1013.

10. *Ibid.*

Mr. Powell's course, again assuming that other instructors will not need more time than he allots to it, effects a substantial reduction in the classroom hours usually consumed by the merged courses. If it did not do so, it would be quite unmanageable in length. This is of course commendable in so far as it results from elimination of duplication. But the share of this important field in the curriculum should not be reduced to the point of requiring the omission of significant matters. I feel that, in selecting his materials, Mr. Powell has somewhat over-emphasized the approach, important though it is, to the problem of drafting instruments so as to care for comparatively large estates. Clients are unfortunately not always wealthy. And lawyers are not always able to guide in advance the actions of their clients or of opponents of their clients. Some of the matters entirely or virtually omitted in this casebook seem to me not merely independently important but also valuable in their contribution to understanding and perspective because of their close relationship to the subject matter of the course. I believe the subject of intestate succession to be quite basic in this field, particularly when joined with the restrictions imposed on alienation by the rights of the surviving spouse. It is involved, not only in actual distribution of estates that are wholly or partially intestate, but also in other issues, such as the construction of some testamentary gifts and the determination of the right to contest. And a transferor should know the extent to which the rights of his family furnish an alternative to, or a restraint upon, his disposition. In view of Mr. Powell's emphasis on "the constant core of the familial function,"[11] one would expect to find more attention given to this matter. But, although the historical antecedents,[12] relative frequency,[13] philosophy,[14] and comparative law[15] of intestate succession are included. the details of the modern American law on the subject are only incidentally referred to.[16] Mr. Powell states:[17] "Little as to the handling of intestate estates has been included herein. Such estates are typically small;[18] the law applicable is simple;[19] there are reasonably adequate text discussions of the field; and the editor has observed that in law schools announcing a course on 'Wills and Administration' few days of the term remain when the class begins the topic of 'Administration'."[20] Again, consideration of the law of gifts inter vivos and causa mortis seems to me to shed considerable light on the law of wills and trusts, as well as to involve interesting and difficult problems in the application of the doctrine of delivery to

11. Vol. I, p. 53.

12. Vol. I, p. 3.

13. Vol. I, p. 39.

14. Vol. I, p. 234.

15. Vol. I, p. 248.

16. See, in addition to the above, Vol. I, p. 257, note 24; p. 314, note 74; p. 867 *et seq.*

17. Vol. I, p. vi.

18. But they are numerous. See Vol. I, p. 39. And, even in testate estates, there is often the possibility of a claim by the surviving spouse.

19. This is probably true of the ordinary questions involved in determining intestate successors (e.g. computation of degrees, representation, effect of adoption, etc.) but not of the rights of the spouse, which Mr. Powell no doubt does not intend to include in his statement. And, if the law is simple, it can be worked into the course without much expenditure of time.

20. I wonder if this is generally true. It was not so in the course that I gave, using the casebook by Mechem and Atkinson. If it is true, it does not appeal to me as a particularly important reason.

the transfer of choses in action. Mr. Powell has only one case on gifts causa mortis[21] and a few indirect references.[22] He says:[23] "Logically, inter vivos gifts unaccompanied by a trust constitute a part of this same picture. Practically they play a small role." I do not understand the latter statement. Possibly it is due to his emphasis on drafting, since many gifts are made or attempted without benefit of legal advice. But the reports are full of cases of such inter vivos and causa mortis gifts; they often base claims against decedent estates; and they may and sometimes do involve large amounts.[24] Further, the virtual omission of materials on administration of decedent estates by executors and administrators[25] seems surprising, in view of its practical importance and close relationship to the management of estates by trustees. For these and other[26] reasons I believe that Mr. Powell's conception of the objectives of merger in this field is, in many respects, different from my own.

In conclusion, to offset the perhaps disproportionate amount of space devoted to disagreement in this review, I wish to incorporate here by reference my first paragraph. Replete with important information intelligently treated, Mr. Powell's casebook is an extremely valuable contribution to the legal literature of this field.

Yale School of Law. ASHBEL GREEN GULLIVER.

THE PORTUGUESE BANK NOTE CASE. By Sir Cecil Hermann Kisch. London: Macmillan and Co. 1932. pp. ix, 284.

THE Portuguese Bank Note Case[1] arose out of a gigantic financial swindle, notable alike for its ingenuity, daring, and success. During 1925 Messrs. Waterlow & Sons, Ltd., a well known London firm, which held a contract for the printing of notes for the Bank of Portugal, was tricked into supplying a group of crooks, among whom figured the Portuguese Minister to the Hague, with a considerable mass of so-called Vasco de Gama notes of 500 escudos each. The firm acted under the belief that the notes were intended to be put into circulation in the Portuguese Colony of Angola as a part of scheme for instilling health into its finances, then in a very sorry condition. From time to time the conspirators produced forged documents purporting to convey the authority of the Bank for the printing of the notes and for their delivery to an agent of the gang. Poor Angola was never given the chance of testing the magic restorative power of a heavy administration of fresh paper money, for the swindlers, having through an extraordinary combination of circumstances succeeded

21. Vol. I, p. 108.

22. Vol. I, p. 116; Vol. II, p. 27.

23. Vol. I, p. 1.

24. *Cf.* Chase Nat. Bank of New York v. Sayles, 11 F. (2d) 948 (C. C. A. 1st, 1926) ($1,500,000).

25. Perhaps on the assumption that the student can assimilate the procedure after leaving law school. The ease of assimilation will depend on his location.

26. For example, I would prefer dealing with the interrelationship of the forms of transfer after, rather than before (Vol. I, p. 108), considering them separately. There are many other details of form and arrangement that I am interested in but refrain from discussing in order to keep this review within bounds.

1. Banco de Portugal v. Waterlow and Sons, Ltd. [1932] A. C. 452.