

Book Reviews

Select Cases and Other Authorities on the Law of Trusts. By Austin Wakeman Scott. Second Edition. Cambridge: Austin Wakeman Scott. 1931. pp. xiv, 818. \$6.

THE original edition of this popular casebook is herein thoroughly and skillfully revised. One has the impression that each item—almost every word—has been carefully selected and arranged, not merely in the choice of the cases and the construction of the footnotes, but also in the editing of the decisions printed, which have been vigilantly pruned. Perhaps the study of the subject is thus somewhat over-simplified. Perhaps, however, this is counterbalanced by the increase in enthusiasm for reading that able guidance and absence of irrelevancies may well produce. Variations from the first edition, however, while important, are chiefly in details; no substantial departure from its fundamental assumptions is apparent.

There is some rearrangement of the material, especially of that concerned with the administration of trusts, but the basic structure of the book is essentially the same. The total number of cases included has been slightly increased. About one-quarter of those in the first edition have been abandoned; a little less than one-third of those in the present edition are new. Many, though not all, of the latter have been decided since the publication of the first edition, and important and interesting recent decisions have been included in whole or in part.¹ Preference for cases from certain jurisdictions is again manifest. The percentage of English cases has been reduced from fifty-four to forty-three; a far more drastic reduction would seem desirable in the light of student reactions. Cases from Massachusetts, New York, New Jersey, and the Federal Courts have been somewhat increased. The total result is that in this edition, as in the former one, approximately four-fifths of the cases are selected from the five jurisdictions named. The footnotes have been thoroughly revised. Much important material has been published since the appearance of the original edition, including Mr. Bogert's text and a mass of significant comment in the law reviews, notably Mr. Scott's own articles. This has made it possible for the editor in many instances to reduce the footnotes into more compact and attractive form, with discriminating references to law reviews, texts, annotations, the notes of the first edition, and important cases. Those who know where to look in this casebook will find very expeditious leads into the authorities.

There are some minor issues, obviously controversial, on which I disagree. I would prefer not to commence the course by attempting to distinguish "a trust" from "a bailment," "a trust obligation" from "a liability for a tort," etc. The enthusiasm of other teachers for this mode of approach is appreciated. And it would be clearly inadvisable to restrict discussion in this field to trust doctrine alone. But this traditional introduction to the subject

¹ For example, *Chase National Bank v. Sayles*, 11 F. (2d) 948 (C. C. A. 1st, 1926); *Wittmeier v. Heiligenstein*, 308 Ill. 434, 139 N. E. 871 (1923); *Whittemore v. Equitable Trust Company*, 250 N. Y. 298, 165 N. E. 454 (1929); *Foreman v. Foreman*, 251 N. Y. 237, 167 N. E. 428 (1929); *Meinhard v. Salmon*, 249 N. Y. 458, 164 N. E. 545 (1928); *Fur & Wool Trading Co., Ltd. v. Fox, Inc.*, 245 N. Y. 215, 156 N. E. 670 (1927).

seems to me to require comparison on an artificial plane of concepts difficult to define in the abstract. There is valuable material in this first chapter, but it appears out of place. Secondly, I disfavor the use in such a course as this of the time-consuming teaching vehicle of the earlier English cases. However, these questions are perhaps comparatively unimportant. There is ample material in this able book for a course on Trusts, and individual instructors can make such rearrangements as they desire.

There is a more important issue. I definitely disagree with the basic assumption that a separate course on "Trusts" is desirable, and propose to experiment with the contrary hypothesis. The great diversity and scope of the decisions employing trust language are familiar, and a major and highly controversial problem of classification for curricular and other² purposes is presented. Any very intelligible discussion would require much greater elaboration than seems appropriate here. An attempt will be made, however, to suggest some of the reasons for a change. We are primarily interested in the actual results of judicial action in given situations, and it therefore seems that all available factors relevant to a particular prediction or inquiry should be considered at the same time. The existing arrangement seems to prohibit that and to make incomplete the consideration of particular issues both in the Trusts course and in others. In other words, the basis for curricular classification should be the situation rather than the legal concept. A peculiarly convenient general situation on which to focus is that of gratuitous non-commercial disposition of wealth. It involves closely related legal techniques, and no great upheaval in the curriculum at large need be occasioned. Such a change of emphasis would also make it possible to condense the present Wills material and merge it with materials of higher intellectual content. And I do not believe that an adequate appreciation by the student of the broad existing and potential utility of the trust device need be lost in the process. Signs of unrest with the existing order of things are apparent elsewhere. Mr. Carey's recent casebook is an example. And the proposals referred to here are probably harmonious with some of the hypotheses underlying Mr. Richard Powell's developments at Columbia; the tentative arrangement, however, is understood to be quite different. I would favor including in one course the substantive law of intestate succession, outright gifts, wills, and that large part of the existing course on Trusts that concerns gratuitous transfers; and in another and separate course the problems that arise in the management of decedent and trust estates by executors, administrators and trustees. No change in the course on Future Interests is suggested.

Mr. Scott's book is avowedly constructed on different assumptions. The care and skill of the editor cannot be denied. If the validity of its fundamental hypotheses can be assumed, it is one of our best casebooks.

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Cases on the Law of Taxation. By Roswell Magill and John M. Maguire. Chicago: Commerce Clearing House, Inc. 1931. pp. xix, 950.

NEARLY a decade has elapsed since the subject of taxation began to be fairly generally recognized as entitled to a place in the law school curric-

² Compare 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.