

June 1931

Cases on Trusts

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Recommended Citation

Jeff B. Fordham, *Cases on Trusts*, 37 W. Va. L. Rev. (1931).

Available at: <https://researchrepository.wvu.edu/wvlr/vol37/iss4/18>

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element as the leaven of conservatism in the development of constitutional restraints securing private rights. It might be possible to take issue with the author over his terminology. Thus, is not the restraint of due process of law a formal positive check rather than a natural law restraint on legislatures? But none of these objections could impair the fundamental significance and value of the work. Professor Haines has made a substantial contribution to scholarship. His book is a welcome addition to the literature of American public law.

—GEORGE SHIPMAN.

CASES ON TRUSTS. By Austin W. Scott. Cambridge, Massachusetts. The Editor. 2d ed. 1931. Pp. xiv, 818.

In the law school world few, if any, case books have been so relied upon and so thoroughly a part of the course of instruction as Scott's *Cases on Trusts*. It has been a mainstay. Recent currents in legal education have taken a swing that reflects disfavor upon anything not markedly pragmatic. To remain abreast of this movement case books are supposed to picture more clearly such a juristic device as a trust in relation to the uses to which it is put. Artificial classifications of material are frowned upon. Now comes the second edition of Professor Scott's book to meet the present requirements.

Comprehending only 799 pages of case material the new edition, the pages of which are a little larger than those in the first edition, is admirably proportioned for a one semester, four hour course. It is enriched by a comprehensive revised bibliography; an appendix, which includes a brief not on *Modern Uses of the Trust Device* and two forms, one of a deed of trust and the other of an unfunded life insurance agreement; many recent cases; and an amplification of foot-note material in which are to be found extensive references to recent primary and secondary authorities. Although the appendices are of no great consequence the aggregate of these features of the second edition speaks well indeed for the volume.

Doubtless the three most important features of a case book are the selection of cases, its organization of material, and the inclusion of secondary authorities and material. It is in this second feature of the new edition that one might wish that SCOTT'S CASES had undergone more extensive revision. Several helpful changes

have been made. The principal changes include a reclassification of the cases under the section, *A Trust Distinguished from a Debt or Contract* into general material and cases on *The Relation between Banker and Customer* which in turn is subdivided into sections on *Deposit of Money* and *Deposit of Commercial Paper*. Charitable trusts are treated in a separate chapter instead of being treated generally under *The Cestui Que Trust* in the chapter on the elements of a trust. A new chapter, *The Administration of Trusts* contains as sections the old chapters on *The Nature of the Remedies of The Cestui Que Trust Against the Trustee* and *The Investment of Trust Funds* and new sections on *Powers and Duties of the Trustee*, *Successive Beneficiaries* and *Liabilities of the Trustee to the Beneficiary*. This is a distinct improvement. Probably there is no great advantage in segregating the cases under the first and last sections named into two sections but that is relatively unimportant. The significant fact to this reviewer is that the chapter presents a more real general setting for this material for the student since it groups together material on live trust problems in a way in which they are more likely to arise. However, the banking cases though properly set off in a separate group would fit best in the material on constructive trusts. Only at that point do the bank deposit and collection cases have any distinct trust significance. If, as Professor Scott suggests, a separate course in banking is offered this branch of the subject might well be omitted from the trust course. Because of the distinctive function they perform charitable trusts are quite advisedly given an independent chapter.

It would probably be better, where the curriculum permitted, to offer a separate advanced course dealing with specialized uses of the trust device rather than stuff the general trust course. But where no such course is offered, at all events, the general course should be adjusted to the object of giving the student trust law in the realistic perspective of the modern exploitation of the trust idea. Moreover, most law schools do not offer the special course. For this reason the reviewer submits the following comments upon the organization of our book.

The first 125 pages are devoted to distinguishing trusts from bailments, debts, and so on. Whether this is the best way to introduce the student to the subject is, of course, a matter of opinion. And this reviewer is well aware of that fact when he finds himself in disagreement with so eminent a scholar and teacher as Professor Scott. Nevertheless, it is believed that the

approach is too artificial. No doubt a case book on trusts should contain material on the common incidents of the simple express trust as historically developed and now used. Thus the student should be given an understanding of the *use* as developed prior to the Statute of Uses. (This branch of the subject would include Professor Scott's chapters on *The Creation of a Trust*, *The Elements of a Trust*, *The Transfer of the Interest of the Cestui Que Trust*, *The Persons Who are Bound by a Trust*, and *The Termination of a Trust*). But, if after running the gamut of this material the student could not make distinctions between trusts and other juristic devices and relations good for all practical purposes, certainly an abstract consideration of whatever distinctions there may be would do him little good.

After such an introduction to the general subject might well come that division of material comprehended in the use of a trust as a remedial device. In strictness this might be said to cover only constructive trusts but resulting trusts are properly included by Professor Scott since they are in substance more the tools of the courts than otherwise. The chapter on the *Administration of Trust Estates* follows well at this point just as the learned editor has it.

With this general background the student would be prepared for a final major division dealing with various specialized uses of trusts. This might include in addition to such old standbys as charitable and spendthrift trusts, material suggestive of the trust aspects of insurance trusts, corporate trust indentures illustrating the use of the trust as a security device, trusts as instruments to escape taxation, business trusts, voting trusts, investment trusts, and doubtless many others. Would it not be better to devote 125 pages of the case book to such material rather than to refining the theoretical distinctions that may be drawn between trusts and other juristic devices? It is believed that it could be done without great duplication at points over which other courses extend, such as the decidedly proper treatment of the position of the corporate trustee of a bond issue in a course on corporation finance.

—JEFF B. FORDHAM.