

Law of Trusts (Book Review)

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CASES AND MATERIALS ON PARTNERSHIP. By Louis Prashker. Brooklyn: St. John's University School of Law, 1933, pp. vii, 526.

Most of us shy at the "Cases and Materials" publications. They belong on that shelf where various attempts have been made to reclassify legal topics according to the average problem presented and where the factual connection is closest. The shelf is generally the highest in our library and preferably beyond our reach. There never was any real reason why this modern school of legal education should take unto itself the exclusive use of the name. The satisfactory "case-book" today must be supplemented with additional "materials". We note with pleasure, therefore, that in this latest work on the law of partnerships, the title has an entirely different meaning. To be sure, there is a reclassification, but based on the sound reason that the uniform act has supplanted "much ancient learning on the law of partnership."

Taking the Partnership Act as his basis, the author has grouped the cases and materials around its principal chapters. In respect to the cases selected it is apparent that there are two central ideas: first, to include the opinions that have been handed down during the last decade and which interpret the sections of the law and, second, to exclude those cases which have been overruled by reason of the adoption of the statute. The Partnership Act provides that it "shall be so interpreted and construed as to effect its general purpose to make uniform the law of those states which enact it." The author has sensed this object in selecting the recent cases. He has drawn primarily from those states that have adopted the statute. Students and lawyers will note to what degree the object has been attained. The weeding-out process must have been difficult. To understand what is now "ancient" requires knowledge of what the law was. The author solves this problem by including the important early cases in an abbreviated form. The necessary historical background is thus supplied and the transition is easily effected. The material includes "notes" used by the Commission on Uniform State Laws in preparing the Partnership Act. These will be particularly helpful in interpreting those sections not already passed upon by the courts. The text materials parallel the sections of the statute and include matters taken from the author's "Outlines on the Law of Partnerships." The notes contain many references to law-review articles as well as interesting and original questions based on case analysis.

The author's primary purpose in publishing this volume was for the use of law students. In this, he has succeeded. What more could be said in justification or praise?

W. TAPLEY.

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LAW OF TRUSTS. By Edward J. O'Toole. St. John's University School of Law, 1933, pp. xvii, 121.

The supervision of trusts by courts of equity lends itself easily to scientific classification. Trusts are either express or implied, and express trusts are either created by clear language or by necessary inferences from facts and

circumstances. Implied trusts arise by operation of law without regard to the will of the parties and are either in promotion of admitted rights of the parties or are imposed by way of penalty—*ex malificio*.

This readily permissible classification, which is not available in most branches of jurisprudence, makes it possible to treat this subject in the law school more scientifically than other courses, such as Equity or Property, where broad classifications are inclusive and overlapping. Full advantage of this fortuitous circumstance has been taken in this outline, which may therefore be said to be proof against failing memory.

But aside from the necessity of providing a formal basis for teaching the elements of the law of trusts to students and for indelibly impressing upon their minds the established principles which constitute the stuff from which future decisions are made, this Outline is significantly fruitful in having presented opportunities for juristic analysis and close examination of the nature of the judicial process. In the end, law teachers all come to the conclusion that teaching law means not instructing merely in fixed rules but, rather, teaching a process. It is now a commonplace that decisions of the courts depend far more on considerations that are not contained in the case books than they do upon rule and precedent.

This realization, which was new twenty-five years ago and has pervaded academic circles only within the last decade, is now, largely as a result of the vogue of Judge Cardozo's books, the property of all enlightened lawyers. Let us see how this Outline meets the rigorous test of the new requirements for law teaching.

In the first place, there are the historical contributions to the modern law of trusts. I pass over the lucidly stated first chapter which gives an account of the recognized history of the subject matter, including an account of the famous controversy between Ames and Holmes. This of itself would be of small service to the practitioner or the law student, other than to constitute a sort of intellectual springboard from which to jump into the sea of cases. But there are special branches of the subject matter which show the impact of historical forces with great clarity. Thus, our modern division of trusts into passive and active trusts adopted by the New York Legislature would be impossible to understand, were it not for the account of the difficulties encountered by the ancient Statute of Uses. And again, the peculiar New York law created by statute which attempts to destroy resulting trusts, only to revive them under the guise of constructive trusts, constitutes a lesson in legal history which chapters 7 and 8 of this Outline very plainly and clearly teach.

Sociologists of the law will rejoice in the chapter on charitable trusts, which contains an object lesson in law difficult to match in any other field of jurisprudence. The manner in which the courts first limited and then destroyed the doctrine of the *Williams* case, and the final culmination of this process and the popular explosion which resulted from the decision in the *Tilden* case, followed by the legislative reaction as set forth in the legislation of 1893, constitute a unique chapter in the history of the jurisprudence of this state. But even this legislation has left a doubt as to whether charitable trusts may completely defy the rule against perpetuities. This reviewer shares the author's doubts with regard to this matter, but sufficient ground apparently

exists to afford an object lesson in legislative drafting. Whether the law as it stands today permits the creation of charitable trusts in perpetuity is the issue involved, and while this reviewer is of the opinion that such trusts may be created, it is freely recognized that this is only due to judicial interpretation of an ambiguously worded statute. The legislature could have restored the rule in the *Williams* case in more apt language, and thus removed the difficulties encountered by the Court in the decision of *Allen v. Stevens*.

The accounts given in the Outline of the well-known equity problems connected with following the trust *res* and the liabilities of trustees for the co-mingling of funds are analytically perfect, giving an original, constructive and lucid explanation of difficult and contentious principles of equity. Here, as elsewhere, the author has resorted to simplification and sententious statement.

The limits of an Outline preclude debate on diverse points of view, and the author has had to forego the opportunity to criticize opposing views as well as the opportunity to defend his own position. But his students are acquainted with the manner in which he goes about these major problems of the law teacher and the Outline is extremely useful in the classroom, for it affords a constant background for class discussion and co-ordinates the results arrived at by judicial decision. No student who knows the contents of this Outline need fear the most intricate devices of the examiner's skill.

Were there outlines of this character in all courses offered by law schools, the tasks both of teaching and learning would be infinitely simplified.

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THE LAW OF THE PRESS. By William G. Hale and Ivan Benson. St. Paul: West Publishing Co., 1933, pp. 610.

This is the second edition of this book and came from the press last June. The first edition was published in April, 1923. It is a valuable contribution to the literature upon the subject of libel, and should prove particularly helpful to the journalist, for whom it was especially written. The legal practitioner, as well as the student and the teacher in the law school, will find an abundance of material in this volume. The treatment of the subject by the authors is practical. Their purpose to develop a book not only for use as the basis of a course in the law of the press in schools of journalism, but as a manual for active journalists, has been accomplished. Professor Benson is Associate Professor of Journalism in the University of Southern California, and a trained journalist, whose collaboration "has brought about a careful revision and reorganization of materials with a view to their clarification for the lay reader." The author of the first edition, and one of the authors of the second edition, Professor Hale, is Dean of the Law School of Southern California. The preface to the first edition informs us that the book is the fruitage "of a course of lec-