

Cases and Materials on Trusts and Estates (Book Review)

Edward J. O'Toole

Follow this and additional works at: <https://scholarship.law.stjohns.edu/lawreview>

This Book Review is brought to you for free and open access by the Journals at St. John's Law Scholarship Repository. It has been accepted for inclusion in St. John's Law Review by an authorized editor of St. John's Law Scholarship Repository. For more information, please contact selbyc@stjohns.edu.

BOOK REVIEWS

Editor—FLORENCE S. HERMAN

CASES AND MATERIALS ON TRUSTS AND ESTATES. By Richard R. Powell. St. Paul: West Publishing Co., 1932, pp. XX, 1027.

There has never been a period, since the stormy days of Langdell, when legal education, its methods and aims have been so bitterly challenged. The influence of sociological jurisprudence has permeated the lecture hall, and is finally affecting, if not controlling, the content and form of class-room material. The case book of yesterday with its relentless development of rules and principles by selected cases in a given branch of law, is being supplanted, temporarily, at least, by the "Cases and Materials" publications of which the book under review is typical. The scholarly attainments of Professor Powell need no elaboration here; but, they do furnish sufficient reason for giving careful consideration to the new method which has been stamped with his approval.

This new method may be described as a functional rather than a conceptual approach to the study of law. Integration of legal principles rather than isolated development of a single classification of law, is deemed to result in greater achievement. The practicing lawyer seldom encounters a problem which involves but one classification or category of law. Each case brings him into many fields of law, and it has been observed that certain types of problems usually require excursions into the same channels. If this be so, then it would seem that the groupings should be according to problems; and that those branches of the law should be studied concurrently, which experience has been shown are applied in the solution of the given problem.¹ For instance, we have the problem of the distribution of wealth by members of the family. Adequate solution requires a knowledge of the law of trusts, estates, and future interest. Hence, these subjects, according to the new method, should be integrated and developed harmoniously.

Witness, then, the process of development in the book. There is first a treatment of the subject historically² and statistically.³ Then follows a discussion of the will and the trust, the tools adapted to the solution of the problem.⁴ The final discussion in the volume deals with the technique and legal limitations, impressed upon the will and trust, in so far as they effect the disposition of property.⁵ The materials of the discussions outlined consist of carefully selected and edited cases, pertinent statutes, references to leading law review articles, and frequent stimulating and thought-provoking questions.

If we are to regard the social and economic flux as continuous and constant, the process above seems acceptable. However, our experience does not

¹ Charles H. Kinnane, *Changing Materials in Teaching of Law* (1933) 19 A. B. A. J. 240.

² Chap. I.

³ Chap. II.

⁴ Chaps. III to IX.

⁵ Chaps. X to XV.

sustain such a hypothesis. It is true, indeed, that for the last decade or so, we have been becoming more and more "trust-minded" as is indicated quite conclusively by the statistics in this volume.⁶ Nevertheless, it is also true that we are, today, in an era of reevaluation⁷ where recent economic practices are being revised, if not entirely discredited. It is quite possible that "trust-mindedness"⁸ which must assume the constancy, if not the increment, in economic values, may decrease in popularity. The efficacy of the spendthrift trust for those other than the weak and the incompetent, may no longer be apparent. In other words, our problems change. We have seen the improbable happen. Are we going to stress the problem, which has proven itself transitory, or are we going to place our confidence in principles *per se*, trusting that they will be certain enough to avoid chaos, and flexible enough to be adaptable to new problems? Above all, it is important that the usefulness of the lawyer as a detached thinker be unimpaired. Such detachment, it would seem, is not acquired by an over-emphasis on problems.

No one appreciates more keenly than the reviewer the necessity and possibilities of experimentation in legal education. It may be that the present experiment will become the orthodoxy of tomorrow. But, as yet, I remain unconvinced that a reclassification of legal topics based on the problems to be confronted will make for ultimate betterment in instruction and practice. Such an arrangement seems to be a misdirection of emphasis, while, in addition, it offers complications of its own in respect to classification. Whether the method so ably presented by Professor Powell be generally adopted or not, law teachers owe him a debt of gratitude for his skillful, exhaustive and masterly treatment of *Trusts and Estates*. Only a pioneer of his ingenuity and scholarship can make such noteworthy explorations in the field of legal education.

EDWARD J. O'TOOLE.

St. John's College School of Law.

CASES ON PLEADING AND PROCEDURE: VOLUME II. By Charles E. Clark. St. Paul: West Publishing Co., 1933, pp. XVI, 698.

Let the dead past bury its dead! This is the teaching of our sages.

On examining an orthodox case book on common law pleading, one is apt to exclaim that much ancient learning on the subject is now obsolete.¹ Inertia is our only alibi for continuing to pass it on—or, perhaps, our interest in legal antiquities! History has many sins to atone for. Not the least of them is the idle resurrection of the interred.

⁶ P. 46.

⁷ See Inaugural Address of President Franklin D. Roosevelt, New York Times, March 5, 1933.

⁸ P. 41.

¹ Cf. Judge Andrews' comment in *Martin v. Peyton*, 246 N. Y. 213 (1927), "Much ancient learning as to partnership is obsolete."