

SELECT CASES AND OTHER AUTHORITIES ON THE LAW OF TRUSTS, 3rd Edition, XVI, pp. xvi, 806. *Austin Wake-man Scott*. Cambridge, Mass.: Published by the Editor, 1940.

There is no occasion for a review of a book which is so well-known as Scott's Cases on Trusts. The appearance of the third edition, however, would seem to justify a statement of the more important changes from the former edition which have been made. They were caused probably in part by Professor Scott's long and intensive work as the Reporter for the American Law Institute on the Restatement of Trusts, in part by the preparation of his recent four volume treatise and also by the volume of litigation and resulting decisions in certain areas of the subject growing out of the long depression.

One taking up the book will observe at once that there has been no sacrifice of the historical material. The earlier cases are retained and the student will continue to secure the understanding which can be secured by this method. After all, the flood of new cases coming from the courts has in the main but restated old principles and oftentimes not so well as had been done before. One gets a feel of the stability of the law of trusts from this volume which in 1940 can bring the book up to date with addition of relatively few modern cases. Only fifty-three of those chosen were decided since the second edition in 1931 and twelve of these will be found in the section on Successive Beneficiaries. Great development has been made in this topic which is evidenced in the cases used, only one case is retained which was in the section in the earlier edition.

"Uses and Trusts" have been made a separate chapter instead of being included, as before, in the chapter on "The Nature of Trusts," where the trust is distinguished from other jural relationships. There has been a saving of thirty-four pages in presenting this material in the new volume.

Some significant changes have been made in the chapter on "The Creation of a Trust." The cases dealing with the transfer of land upon oral trusts and those involving secret testamentary trusts have been taken out of the chapter on Constructive Trusts and are placed, respectively in the section on the Statute of Frauds and the section on the Statute of Wills. A fifth section has been added, "The Purposes for Which a Trust May be Created." It consists of an introductory note which includes much of the material found in Appendix A of the second edition.

*The Liberman Case*¹ and a note on Statutory Restriction upon the Purposes for which a Trust May be Created.

Chapter IV, "The Elements of the Trust," aside from some substitution of cases is virtually unchanged save for a subdividing into two topics the section on The Trustee. "The Beneficiaries" have supplanted "The Cestui que Trust," a change in terminology traceable to the Restatement of Trusts.

At Chapter V one encounters the first major change in the arrangement of this volume. Instead of "Charitable Trusts" in Chapter V one now finds "The Transfer of a Beneficiary's Interest." This is the arrangement found in the Restatement and in Professor Scott's new text. The reason for displacing Charitable Trusts and the chapters on Resulting and Constructive Trusts was the desire to present the problems of Administration earlier in the course. Those administration problems follow in Chapter VI. In that chapter one notes certain important modifications. Old section three "The Investment of Trust Funds" has become "Duties and Liabilities of the Trustee," which includes the investment problem along with other problems, among them the materials which were in section five in the second edition under the "Liability of Trustee to the Beneficiary." Section five is new and has to do with "The Trustee's Right to Compensation and Indemnity," as is also section six on "Liabilities of the Beneficiary," and section seven which deals with "Instructions and Accounting." This newly constructed Chapter VI is on the whole a very much enlarged treatment of the problems of Administration, and is entirely justified by the developments which have taken place in that field.

Then follows a completely new shuffling of the chapters, the reason for which is not so easily discerned. At least it is not an adoption of the order utilized by the American Law Institute in the Restatement of Trusts. Chapters VII and XII are in the following order: "Termination and Modification of Trusts," "Liabilities to Third Persons," "Liabilities of Third Persons," "Resulting Trusts," and "Constructive Trusts." In the Restatement the Termination and Modification chapter follows the chapters on Liabilities to and of Third Persons, and they in turn are followed by Charitable Trusts, Resulting and Constructive Trusts. This seems a preferable order and, of course, can be followed by the instructor if he wishes.

Considerable use is made of other materials than cases. Text authority is quoted seventeen times, and sixty times text material prepared by the author is used. These statements vary in length from a brief para-

¹ Matter of Liberman (1939) 279 N.Y. 458, 18 N.E. (2d) 658.

graph to five and one quarter pages. Nine of the chapters and seventeen sections are introduced with a text note. There are seven instances of quotations from statutes and regulations and seven quotations from the Restatement. The writer believes the use of these materials has greatly strengthened the book. They afford considerable saving of time and entail no important sacrifice in case drill and they usually deal with problems which can be better treated in this manner. In no case, however, has the book changed in character from that of a standard case book.

The Uniform Principal and Income Act is reprinted in the Appendix A. One rather expected to find the Uniform Trust Act also but it is not included. Appendix B and C and the Index remain about the same as in the second edition. It is believed that the many teachers who use Scott's Cases on Trusts will welcome gladly the new edition.

HARRY A. VANNEMAN
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