CASES ON THE LAW OF TRUSTS. George Gleason Bogert. Second Edition. Brooklyn: The Foundation Press, Inc. 1950. Pp. L, 1041. Price, $6.00.

In one sense this is indeed a new book; not only is it newly printed, but, more important, many of the cases in it are recent cases. Out of the approximately three hundred cases in the text, thirty-four (or better than one in ten) were decided in the last decade, 1940-1949.

Nevertheless, at least to this reviewer, this is an old-fashioned book. The organization of the material is entirely according to typical arrangements; there is no section in the book especially intended to point out the multitudinous uses of the trust device as an expanding, dynamic legal device. The constructive trust, and its widespread use as an equitable remedy, is given merely incidental treatment. The business trust, which surely is not a new device, and is frequently used, is given no special attention whatever. Nothing in the book mentions the insurance trust specially. There is nothing in the book to talk of the expansion of the trust concept by statutory and judicial changes, into fields which are not truly trust matters at all, but yet have the trust concept widely applied to them.

In short, this is a book which deals with A to B for the use of C. It concerns itself chiefly with the traditional trust, and the traditional trust concepts. It may be granted that, scholastically, this allows for adequate discussion of the substantive law of trusts; and, certainly, Mr. Bogert is a thorough expert in the field, as fully familiar therewith as anyone could be.

Nevertheless, in this traditional scholasticism of the book lies its chief fault.

Or, perhaps, it would be more accurate to say that whether there is a serious fault in this book depends chiefly on the user's philosophy of approach to the subject of trusts. At least to this reviewer, it seems that this book is modern in cases, and old-fashioned in approach; and, moreover, that it is scholastic in approach, and not practical in the sense that a practicing lawyer must be practical.

Thus, there are valuable appendices of various uniform acts relating to trust and fiduciaries; they occupy some seventy-six pages, more or less. There is also a suggested form of trust, and some supplemental form material; but there are only some thirteen pages of these. At least to this reviewer, it would have been far better to reverse the numbers, and to apply considerable space to the question of the technique of drafting, and suggested forms for trust use, allotting fairly small space to uniform acts. The acts, after all, have been adopted only in some jurisdictions, and so are not of major importance to every lawyer; but the suggested forms could well be of most practical use to any lawyer. Undoubtedly, the scholar would rather consider the theory of the uniform acts as aspects of the law of trusts; but law schools make more lawyers than scholars. In the belief that this is a proper function of law schools, and in the further belief that lawyers may also be scholars, but only secondarily to their practical abilities, this reviewer suggests the greater value of these appendices in reverse assignment of space.

Scholasticism, too, gives rise to another, probably more serious, fault in this book. The material is very thorough; there are many cases dealing with very many phases of substantive trust law. But in this very thoroughness lies objection: first, because there is too much bulk; and, second, because, for all the bulk, there is insufficient detail.

That is, in an assumed law school course, of from twelve to fifteen weeks of three hours per week, there would be perhaps thirty-six to as many as forty-five class hours. If the maximum of forty-five class hours is assumed, even so the approximately three hundred cases in this book would mean that, at each class, an average of seven cases would have to be covered—plainly, too many. Yet, if these cases are not covered, something must be omitted; and if we omit, the very thoroughness of coverage which has just been praised, is impaired. So, the book again is scholastically proper, but impractical.

In the same way, for all of its thoroughness of case content, the book is impractical in another way, in that it lacks detail of facts. The cases stated are essentially discussions of law, so far boiled down by the editor, that many of them amount to little more than a restatement of hornbook law. If it is assumed that trust law is not a matter for study as hornbook rules, but by factual analysis, by heavy application of the case discussion method, then many of these cases are too far boiled down, and inadequate. If, on the other hand, it is assumed that the function of the class discussion of trust law is merely to reiterate and repeat and commit to memory hornbook rules of trust law, then these cases are excellent. In the personal opinion of this reviewer, the first approach is the proper approach; and the second is merely of subsidiary importance. Accordingly, it follows that to this reviewer the book is inadequate; the author would have done far better, had he used less cases, cases selected not so much for their concise statement of rules of law as for their factual situations, indicating and requiring fine analysis by the student, and that careful legal thought by him which is essential to the proper study of trust law.

From this latter approach, too, the book is lacking in one important item. Nowhere is there any mention at all of the historical background of the trust device. There is no introductory material to give the student an awareness, at the very beginning of his course, of the difference between the trust concept, and ordinary legal concept of property. There is nothing to give him consciousness of the function of the trust, in its origin, as an equitable avoidance of legal titleholding, or the special advantages to be gained by such avoidance. Instead, the student is precipitated directly into the deep water of determining decisions of cases relating to intent to create a trust.

To this reviewer, too, the book is not practical in one other major aspect, in that it totally fails to make any point of the tax question. Undoubtedly, tax law is not within trust law, from the strict scholastic approach. But the practicing lawyer must consider tax law as part of his consideration of trust creation. Is it too much to ask the law school to equip the law student for his work?

In spite of the criticism herein leveled, this is unquestionably a good casebook for one whose approach to the trust subject is different from this reviewer's. Mr. Bogert is too much an expert in the field of trust law to have done other than an excellent job of compiling many most adequate cases for the discussion of rules of trust law. The editing is careful, the work thorough, the coverage of subject matter complete.

In the real essence of the matter, then, the basis of criticism of this book in this review is not as to its quality, but only as to its philosophy of approach. To those whose philosophy of approach to the field of trust law is different from this reviewer's, this will be an excellent casebook, useful to the student not only during his law school course, but also thereafter, for office reference.

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