by analyzing in the comments the factors which ought to be considered in determining whether in any specific detailed situation the test of reasonableness is met. Alas! that after the repeated experiences of history, that in the presence of the accumulated demonstration of jurists and legal philosophers, men should still believe that they can tie down the unseen future of the people by reference to what knowledge they have acquired, and what imagination they have developed in the course of their single lives. Even were the political element of legislation settled such a technique would be fatal. How much more so when you are dealing with the life process of a great people whose character is still formative.

"As I contemplate what an eminent Anglo-Saxon has termed the most carefully considered statement of a nation's law ever made, I mean the Civil Code of my Fatherland, when I ask myself how much of the riches which it contained at its promulgation in 1896 would have been irretrievably lost had Thibaut had his way in 1814, I measure to myself the perils for the American law of torts involved in this phenomenally meticulous Restatement. The tremendous learning, the powerful analysis, the unbelievable patience with detail, the wonderful play of imagination on hypothetical cases, combined with a complete unawareness of the lessons of legal history, and but a thin veneer of the lessons of legal philosophy, have reared a structure which cannot help but become rapidly obsolete. It will become a magnificent memorial to the faith of the living in their power to bury the dead, to the blindness of even the most cultivated minds, which cannot see that the living live only through the dead, and those yet unborn through those now living, and that it is as great a folly for the living to make minute dispositions for the world of the unborn, as it would have been for the dead to make minute dispositions for the world you now live in. For it is not the mere absence of potentialities for good which saddens me. I would say to you as I said to my countrymen 121 years ago: 'In your time vigorous developments are undeniably in the making, and it is impossible to say how much good you will detract from the future by confirming your present deficiencies. For *ut corporalente augescunt, cito extinguuntur; sic ingenia studiaque oppresseris facilius quam revocaveris.*' "[5]

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Trusts and Trustees. By George Gleason Bogert. St. Paul: West Publishing Co., 1935. 7 Vols., pp. xi, 3734, 867. $50.00.

Such familiarity with the standard text-books as the reviewer has been able to accumulate in twenty years of use, and with this set of volumes in about as many hours, leads him to the present conviction that Professor Bogert has produced the best text-book in existence on this most complex of subjects. Furthermore, unless this reviewer is greatly mistaken, this set deserves to rank with the text-books of Wigmore and Williston as potential aids to the profession.

The bulk of a seven volume set is rather appalling—especially to a reviewer. Four of these volumes are text material; two of them consist of forms and the last is a table of cases and an index—which the preface correctly states to be "extremely detailed" and significantly points out to have been "prepared by the author." Therein lies a far

[5] Savigny, "Von Beruf unsrer Zeit für Gesetzgebung und Rechtswissenschaft" (3d ed 1840), 52.

from unimportant contribution to the book's helpfulness to the judge, lawyer, professor or trust officer seeking guidance.

Among the many excellencies of the four volumes of text, one stands supreme in the mind of this reviewer. The author has displayed a power of analysis and an ability to write clear exposition which simplifies the extremely complex situations arising in this field and facilitates approach to the existing decisions and statutes. This analytical ability is exhibited to good advantage in dealing with the employment of a non-resident or of a foreign corporation as trustee;[1] in presenting the problems involved in the creation of a trust for persons unborn or for a corporation to be formed;[2] in showing the applicability of the Rule against Perpetuities to trusts;[3] and in clearing away some of the fog which often envelopes discussions of the applicability of the Rule against Perpetuities to charitable trusts.[4] From time to time a section occurs which is almost a perfect vignette of a small segment of the law.[5] This type of writing is not confined to the sections cited as illustrations but is characteristic of the work as a whole. In only two places has this reviewer encountered sections which caused him wailing and gnashing of teeth.[6]

The second excellence of the text became possible because of the first. Vast quantities of detail can create an almost impermeable forest. Abundant detail, when coupled with skillful analysis, becomes the thing most needed in a good text-book. Contrasting the text part only of this set with Perry's excellent treatise, the quantity of Bogert is more than twice that of Perry.[7] A text-book dealing with detail is bound to approach more closely to the instant problem agitating the mind of its user. A good illustration of this is to be found in the twenty pages dealing with a trustee's liability for torts committed in the course of its execution.[8]

The third excellence of the text is its emphasis upon statutes. The physical difficulty of collecting statutory enactments from forty-eight states has deterred most text writers from their inclusion. The result normally is the presentation of a quite unrealistic picture of law as it works. In the field of trusts, a text which failed to include statutory references would be so dangerous as to be almost a menance. These refer-

[1] § 132.

[2] § 163.

[3] § 214.

[4] § 341–9.

[5] See § 116 as to powers in trust and § 129 as to a trustee with a double interest and the resultant problems of merger.

[6] One of these consists of §§ 183 and 184 where the author treats of the cestui's right being in rem or in personam, and fails to appreciate the fact that neither of these explanations is as helpful as a composite of the two. This is a point upon which the reviewer finds it difficult to keep this a review of Bogert rather than an exposition of Powell. The other consists of §§ 689 and 941 where the author fails to differentiate between estoppel operating against a cestui according to whether the cestui has an alienable or an inalienable interest. When estoppel is allowed to operate against a cestui with an inalienable interest, the law permits him to do by indirection what it forbids him to do directly. This distinction has found recognition in the cases (Matter of Wentworth, 230 N.Y. 176, 129 N.E. 646 (1920)) and mention thereof in these sections would have improved them.

[7] The Bogert text consists of 2942 pages each containing approximately 20% more than the 1580 pages of Perry.

[8] § 731–5. Perry deals with this topic on a single page.

ences have been included by Professor Bogert in a profusion highly useful.[9] No one who has not attempted a similar collection can appreciate the expenditure of time and effort which their inclusion evidences.

The comprehensiveness of these text volumes testifies to the usefulness of the days spent by their author in the company of trust officers. By these contacts he learned the problems which arise to vex trust administrators. Consequently many topics never before treated adequately in text form, or never before included in a general text-book on trusts are here set forth with considerable fullness. Such topics include the taxation aspects of trust creation and management;[10] the insurance trust;[11] the investment laws of each state;[12] the recently litigated problems as to participation certificates;[13] and the practical problems of allocating expenditures[14] and receipts between "income" and "capital" accounts.[15] Another inclusion of vital importance to trust experts both in and outside of New York, is the constant discussion of the New York system of trusts.[16] Two other bits of treatment are sufficiently unique to merit special mention. The book does not abound and does not excel generally in its historical contributions but in § 6 it collects some twenty-eight decisions made on this side of the Atlantic before 1800 and dealing with the law of trusts. Thus access is afforded to a too little known area of our background. Chapter 14[17] could profitably be made assigned reading early in the teaching of any course on Trusts. In portraying the "Various Trust Functions" it gives a picture of the social adaptations of this concept better than is elsewhere derivable in an equal number of pages.

The usual features of good text-books have not been neglected in the author's at-

[9] For illustrations, see:

§ 62, fn. 10, statutes reenacting in effect the seventh section of the English statute of frauds;

§ 126, statutes removing an alien's disability to act as trustee;

§ 132, fn. 14–18, statutes affecting the utilization of a foreign corporation as trustee;

§ 216, fn. 2–16, statutes as to accumulations;

§ 240, fn. 69, statutes dealing with the alienability and subjection to creditors of interests created under an insurance trust contract;

§ 592, fn. 1, statutes as to the trustee's ability to bring suits as a representative of the beneficiaries;

§ 677, statutes allowing trustee investment in commingled funds;

§ 687, statutes as to a trustee's duty to convert.

[10] §§ 261–284. This material was written by Professor Arthur H. Kent "in consultation with the author." The reviewer's experience with this topic suggests one caution for the user of the book. Few parts of the law of trusts are in a more violent state of flux than that dealing with the taxability of trusts. Hence any treatment of this topic requires constant checking in order to be certain that the law has not altered. This is no criticism of the inclusion or of the content of the chapter. The task of the lawyer is thereby shortened—but not eliminated.

[11] §§ 235–244.

[12] § 616–663. Here the author could have done even a better job. These statutes, cited from forty-eight jurisdictions are accompanied by citations to cases as to only six states. Cross-references to the places in the nearby chapters where the operations of these statutes are discussed would have been most helpful.

[13] § 676.

[14] §§ 801–805.

[15] §§ 811–857.

[16] Illustrative of this see §§ 212, 219, 467 and 995.

[17] §§ 231–254.

tainment of the unusual. The footnotes include constant references to law review material. Many citations are followed by brief statements giving a glimpse of the facts upon which the decision was made.[18] One criticism of the footnotes is deserved by author and publisher alike. The importance of a case depends greatly on its date. In a field of law so subject to change as this field has been in the past thirty or forty years, the date of a case is almost as vital as its correct citation. This fact must be known to the author and should be known to the publisher. Neither should have allowed the book to be published without giving these dates in each citation, or, at least, in the table of cases in the seventh volume. Their omission is the most serious defect observed by this reviewer.

The two volumes of forms embody great potential usefulness. A form book designed to be employed in forty-eight jurisdictions presents very different problems from one intended for use in a single state. Divergencies of law impose requirements which can scarcely be met by single forms. The author has recognized this, in part, by including a "will with trust for a community property state."[19] The clauses of this will are illumined by interspersed notes dealing with the decisions and statutes of California.[20] But in no state are so many trust instruments drafted as in the State of New York. This state also has the doubtful distinction of having that form of the Rule against Perpetuities with which compliance is most difficult. The restriction of trusts to a "two life" duration is violated by the form in § 1033 and again by Clause 1 in § 1173. In these instances, at least, no caution is inserted so as to save New York lawyers from the yawning pitfall. Another danger is readily discoverable. The form given in § 1038 would also violate the "two-life" rule of New York, if it were not saved by the included power of revocation. Yet no note warns the user that he cannot use *this* form in New York unless he takes it without the deletion of the power of revocation. One more matter of caution is needed for the New York practitioner. The New York decision of *Matter of Rausch*[21] authorizes such an incorporation by reference as is employed in Paragraph Third of § 1032 *when the original inter vivos trust included no power to alter or to revoke that trust.* No New York decision has gone further than this in allowing incorporation by reference. Therefore the employment of the form given in § 1032 can be made safely in New York only in the rather unlikely case of an original inter vivos trust which lacks the settlor's reserved power to alter or to revoke. These difficulties are stressed because they make it necessary for a user of the forms to ascertain for himself the soundness of the form for *his* state. Perhaps an annotation of the forms designed to eliminate this trouble would be too bulky to be useful. Certain it is that the collection here assembled is of great value if used discriminately by the lawyers of the country.

This review is already long, but due justice cannot be done to the product of the

[18] Instances in which this is particularly helpful are § 42, fn. 9; § 193, fn. 20; § 208, fn. 47; § 581, fn. 7.

[19] § 1034.

[20] The reviewer lacks sufficient knowledge of the divergencies between the laws of the eight states having community property to know whether this keying of the form to the California law assures validity in the other seven. Such a conclusion could not be accepted without demonstration and the author fails to assure the user of this fact so vital to the employment of the form in the other seven states.

[21] 258 N.Y. 327 (1932).

author's skillful work over many years in fewer words. He has demonstrated industry, analytical power, expository ability, an appreciation of the needs of the profession, and an originality in meeting these needs which deserve the highest praise.

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Cases on Equity—Jurisdiction and Specific Performance. By Zechariah Chafee, Jr. and Sidney Post Simpson. Cambridge, Massachusetts: Published by the Editors, 1934. 2 vols., pp. xiii, 1619.

A little over thirty years ago, Dean Ames published his casebook on Equity Jurisdiction, on which doubtless most of the present generation of law teachers cut their teeth. The principal volume of the 1904 edition consisted of four chapters, dealing, respectively, with Nature of Equitable Jurisdiction (35 pp.), Specific Performance of Contracts (406 pp.), Bills for an Account (18 pp.), and Specific Reparation and Prevention of Torts (201 pp.). The present volumes are a direct descendant of the first two chapters of that work, expanded to nearly four times the original size. The same general approach is followed, so far as jurisdiction and specific performance is concerned; but there is no material here on equitable relief against torts.

The two volumes contain a most complete collection of principal cases, digested cases, notes, and citations of authorities upon the subject of specific performance. The authors state that over 15,000 decisions are included in one form or another. There is an ample selection of excellent principal cases, well-chosen for teaching purposes, including both modern decisions and English landmarks. Thus, for example, the subject of equitable relief in connection with arbitration and appraisal agreements is amply developed with recent New York decisions under the arbitration law, the pertinent sections of the law being quoted, as well as with earlier English and American decisions on the same topic. But the chief distinction of the volumes is the amazing collection of editorial notes. Thus, in the chapter just referred to, there are notes on contracts to arbitrate at common law, (extending, with case digests, over seven pages), and on arbitration legislation (five pages). In the first fifty pages of the casebook, there are ten notes, commenting upon such topics as *lis pendens*, privity in equity, and actions at law upon equitable decrees. These notes are almost wholly limited to legal material; and are admirable guideposts to the available decisions and law review notes on the topics. The notes go well beyond mere citations of an undigested mass of *accord* and *contra* decisions; they indicate the nature of the cited material by digests, brief or lengthy, and by excerpts, and contain as well, much analysis and comment by the editors. A teacher will obtain more aid from these notes, as I can testify from my own experience, than from even the excellent available texts. In addition to the notes, there are a great number of problem cases, in which facts and citation are given, without the actual decision. Altogether the volumes are indispensable to a teacher and student of this field, whether they are used in the classroom or not. They will further be a very useful tool in a law office.

These scholarly and exhaustive books do suggest a question as to the fundamental purpose of a casebook, and the part it should play in law school instruction. It is quite possible that many an equity teacher may be frightened away from these books by their sheer length, and by an awareness of the long conscientious effort on his part which