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### Book Review (reviewing George P. Costigan, *Select Cases on the Law of Trusts Selected from Decisions of English and American Courts* (1927))

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that this nation of ours was readily able to join in establishing the Egyptian court fifty years ago, but is paralyzed now at the proposal to join the World Court!

The times have with us seen a progress backwards. Owing to the venomous jealousy of one statesman, and the obstinate egoism of another, our government keeps this nation out of its natural "place in the sun." To the rest of the world we are made to appear like a moron with a timidity complex—reluctant to enter a club of respectable gentlemen, for fear we shall be fleeced or sandbagged in the public lounge.

JOHN H. WIGMORE.

CASES ON TRUSTS. By George P. Costigan, Jr. St. Paul: West Publishing Co., 1925. Pp. xxii, 997.

Use of this book by the reviewer for the past four months has proved to his satisfaction that the material is interesting, provocative of discussion and leads to an examination of the main principles of the subject of trusts.

There are three hundred cases, covering about 813 pages. The remainder of the book (that is, about one-fifth) consists of notes. In approximately sixty class hours it has been found possible to discuss all the cases. Two-thirds of the cases are new to casebook use. This brings a welcome freshness to the course. Although there are many English decisions in the collection, the predominating elements are American and many of these adjudications since 1900.

The following table shows Professor Costigan's chapter analysis and allocation of space:

Distinctions between Trusts and Other Relations.....	79 cases
The Elements of a Trust.....	43 cases
The Remedies of the Cestui, His Interest and His Creditor's Rights .....	29 cases
Some Duties, Powers and Liabilities of the Trustee.....	27 cases
Priorities and Purchaser for Value.....	35 cases
The Statute of Frauds .....	3 cases
The Statute of Wills .....	4 cases
Resulting and Constructive Trusts.....	71 cases
Modification and Termination of Trusts.....	9 cases

The subjects treated are in the main the same as those discussed in Professor Scott's book. There is a difference, however, in analysis, location and order of presentation. For example, Resulting and Constructive Trusts are placed at the end in Costigan and in the middle of the book with Scott. Much can be said for treating implied trusts after the student has acquired a full background of knowledge with respect to express trusts.

If one were to venture a criticism of Mr. Costigan's allotment of space, one might suggest that there is a possible overemphasis on "distinctions" and on implied trusts. Exactly half of the book is given up to these two topics. In Dean Ames' casebook the subject of "distinctions" was divided into five parts and received seventy-six pages; in Professor Scott's book nine distinctions have

consumed 122 pages; and in Professor Costigan's work we find 266 pages given to the illustration of fifteen distinctions. To the writer this seems a progressive overemphasis. With a little effort one might double the number of distinctions, close or wide, and give half the course to this interesting exercise. For example, one might contrast the equitable right to subrogation,<sup>1</sup> and again the equitable easement.<sup>2</sup> In the writer's opinion, if "distinctions" is to kept as a separate topic, it should be reduced in size and not increased. But the writer is willing to argue for a trial at abolishing "distinctions" as a separate introductory section and distributing its material throughout the book. The cases in this section on contrasts inevitably involve much discussion of topics which follow, as, for example, the classes of trusts, methods of creation, trust essentials, administration, rights and duties of trust parties, etc. The discussion of seventy-one cases on contrasting relations somewhat skims the cream from the later topics. These latter sections, unfolding the trust in its logical order of development, are not fresh when they are reached. In order to satisfy the class on the cases about "distinctions" the teacher has had to anticipate and lecture. The writer has tried placing "distinctions" at the end of the course but found that method unsatisfactory because the material was then too elementary to be interesting to the class.

Would it not be worth while to attempt to build a casebook with "distinctions" scattered through the book at places where the reasons for making the distinctions arise? If, for example, one is treating the trustee's liability for the loss of the trust res, he might advantageously insert a case on the liability of the bailee or debtor with respect to a particular res. And in the chapter on the cestui's remedies one might add *Lasich v. Trust Co.*,<sup>3</sup> to illustrate the difference between specific performance of a contract and a bill to enforce a trust.

If "distinctions" were cut and distributed and implied trusts reduced, there would be more room for cases on the rights, duties and liabilities of trustees and cestuis of express trusts. There might also be added a small chapter on the practical utility of trusts in the accomplishment of certain modern business aims. The employment of the trust to reduce income and inheritance taxation, in the disposition of life insurance, as a substitute for corporations, as an aid in the control of corporations, and for conveyancing purposes, might be shown in a dozen cases. Through the study of such decisions students would not only get excellent insight into some of the fundamental rules of the subject, but also obtain an inkling of the service which the trust renders present day society.

One is tempted also to urge that charitable trusts be given a separate chapter, instead of being discussed under the heading of the trust beneficiary. When a trust is charitable, *cy pres*, and the

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1. See, e. g., *Equitable Fire & M. Ins. Co. v. Holland Banking Co.* 262 S. W. (Mo.) 444.

2. See, e. g., *Com. of Franklin Co. v. Lathrop* 9 Kan. 453.

3. 152 N. E. (Ohio) 394.

methods of enforcing charities are not primarily questions of the qualifications of the cestui or of the nature of his interest. The charitable trust is so distinct from the private that the whole topic might well be treated apart.

It is pleasing to note Professor Costigan's insertion of a liberal sprinkling of the opinions of living judges of the highest rank. For example, there are decisions from the pens of Holmes (89,397), Taft (968), Brandeis (491), Hough (947), Learned Hand (706, 954, 965), Cardozo (263, 377, 571), Pound (744), Von Moschisker (984), and Rugg (989).

Out of a realization of the variance of taste in the selection of cases, no criticism is offered of the decisions chosen, except that *Primeau v. Granfield*<sup>4</sup> seems much too complicated and cumbersome for class use.

Into his footnotes Mr. Costigan has brought the harvest of many years of diligent and intelligent study of the subject. They are packed with relevant quotations from judge and author, collections of the authorities for and against main cases and on related questions, and the author's own analyses of certain problems. This material goes far to accomplish the author's stated aim of furnishing in small type information which will save time for class exposition. It is also useful in many other ways. In some instances possibly the notes go too far in explanation of the principles which the main cases are believed to exemplify. There is a slight tendency to place matter in the notes which relieves the student from thinking out the theory of the cases. Perhaps also more problem cases added to the footnotes would have been an improvement. The references to law review articles are extremely full and very valuable.

The great bulk of the editing seems to be well done. One ventures to offer as memoranda for the preparation of the second edition the following observed errors: on p. 667 Vice-Chancellor Pitney should be quoted as saying "insoluble" instead of "soluble;" on p. 647 in the second line of the quotation from Professor Williston the word "undeniable" should be changed to "undesirable"; on p. 649 in the quotation from Stirling, L. J., the second line is inserted by error; and on p. 3 in the quotation of the writer's definition of a trust there should be inserted the words "the title to."

Law teachers and students are greatly indebted to Professor Costigan for the preparation of this highly useful and comprehensive collection of material on trusts.

University of Chicago Law School      GEORGE G. BOGERT.

CASES AND AUTHORITIES ON PUBLIC UTILITIES. By G. H. Robinson. Chicago: Callaghan & Co., 1926. Pp. xxiv, 976.

During the past four or five years it has been known to teachers in the field of public utility law that two new casebooks upon that subject were in the course of preparation. The advent of these volumes has been awaited with interest. They appeared almost simultaneously during the latter part of the summer of 1926.

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4. P. 954, 184 Fed. 480.