

BOOK REVIEWS

Cases and Materials on Trusts and Estates. By Richard R. Powell. St. Paul: West Publishing Co. 1932, 1933. 2 vols. Pp. XLIII, 1027, XXXVII, 1040.

As the reader is informed in the preface, this book is a result of a plan conceived some seven years ago at the Columbia Law School to combine the three courses known as Wills, Trusts and Future Interests, into a single unit. The central theme is stated to be "the methods now functioning in the United States for the distribution of wealth." Doubtless the editor does not use the phrase in the broad sense in which an economist might use it, but rather to refer to the non-commercial distribution of the accumulated wealth of an individual on his death or by an *inter vivos* transaction.

The book is divided into seven parts. The first, designated as the introduction, consists of 140 pages, including an historical sketch of the development of wills, trusts and future interests in English Law; a chapter of statistical data entitled "Some Material Facts and Trends in Current American Life"; a chapter of cases and materials introducing the trust concept, substantive and remedial; a chapter of case material on the types of future interests; and lastly, a chapter devoted chiefly to gifts *causa mortis* and to tentative trusts of savings accounts.

Part two includes a study of the Statute of Frauds as applied to the creation of trusts and the formalities required for the creation of wills as set forth in wills statutes.

Part three is entitled "Disposition of Property—Building an Instrument which Accurately Manifests the Actual Desires of the Disposing Party." Questions as to the trustee, the beneficiary, the nature of the beneficiary's interest, the classification of future interests, the rule in Shelley's case, construction of instruments involving future interests, and future interests in chattels real and personal are all included. Thus ends volume one.

The next two parts are somewhat more unified than the preceding one. Part four deals with questions of income, gift and succession taxes; and part five with social limitations on the disposition of property, such as the common law rule as to perpetuities and rules restricting accumulations.

Part six deals with the functioning of the trust and the future interest after they have been created. Questions of the protection of the trust *res*, and of the future interest, the administration of the trust, the transferability of the future interest and of the interest of a *cestui*, creditors' rights, the termination of trusts and future interests, and a miscellany of problems as to powers of appointment, find a place in this division.

No discussion of the merits of such a volume as this can be entirely dissociated from the writer's views on the desirability of combining the three subjects in question in one course. In brief, the writer feels that such a course is feasible, that it involves some economy of time and some illumination of materials by reason of the problems which are found in more than one course, but that much the same illumination would result if each of the courses were taught simultaneously to the same students by the same instructor, and that, whether one does or does not approve of the combined course is essentially a question of pedagogical convenience, and not at all a matter of his approval or disapproval of a so-called "functional approach."

That Professor Powell has realized the possibilities of effectively combining many portions of the three subject matters is evident. It is true, some few chapters appear to be devoted exclusively to one or the other of the three subjects. But the book is no mere inclusion of three casebooks within one cover. Examples of the editor's success in fusing his materials are found in his treatment of the question of a remainder to the heirs of a conveyer, whether considered as a rule restricting the creation of future interests or as a rule for the termination of trusts, the question of applying the rule as to perpetuities to private trusts as well as to remote future interests, and the question of apportioning benefits between life tenant and remainderman.

A casual examination may not entirely convince one that the shortening process has gone very far. Professor Powell's two volumes contain 2067 pages. If we add together the number of pages in Scott's "Cases on Trusts," Kales' "Cases on Future Interests," and Mechem and Atkinson's "Cases on Wills and Administration," we get a total of 2250 pages, a saving of only 183 pages. And if we deduct the 370 pages which Mechem and Atkinson devote to Administration, a subject not included in Professor Powell's book, still further doubt may be raised. Of course, if Costigan's "Cases on Wills" and Powell's "Cases on Future Interests" were chosen for comparison, the difference in number of pages would be considerably increased. Moreover, a comparison based solely upon the number of pages is not entirely fair. A number of topics have been treated by Professor Powell more intensively than by the other editors referred to, and some topics of importance which Professor Powell includes are not found in any of the other three casebooks. In his appendix Professor Powell suggests a plan by which the book may be covered in eight semester hours, and other plans whereby it may be covered with some omissions, in six, five and even four semester hours. When it is remembered that many schools devote eleven semester hours to the three subjects, the saving in time is apparent.

Outstanding features of the book are the thorough scholarship evidenced throughout, the wealth of accumulated materials presented, and the effectiveness with which contemporary problems in the field of trusts and future interests are portrayed in their social and economic setting. The amount of valuable case, text, and periodical literature cited in the questions and footnotes is enormous. Certainly in the field of future interests, at least, no such complete collection of materials and citations can be found anywhere else. A number of the chapters show the results of the recent researches of the American Law Institute in the field of future interests and present materials which were not organized or available even at the time Professor Powell brought out his casebook on Future Interests in 1927. Such, for example, is the material on limitations involving failure of issue in Chapter 15, the material on transferability of future interests in chapter 33 and the material on subjection of future interests to the claims of creditors in chapter 34.

As to the arrangement of materials, one feels that it leaves something to be desired from the standpoint of logic and simplicity. One suspects that the plan is intended to be pedagogical rather than logical. But from a pedagogical point of view, the writer personally tends to revolt at an arrangement which throws the substance of the course at the student during the first few weeks and leaves him to work out the details later if he survives the initial shock. Such appears to be Professor Powell's approach, and doubtless it is successful in his own classes. The writer would be inclined to make some rearrangement of the cases for his own use.

The inclusion of a separate division of social limitations on the disposition of property is a decided step forward. But the omission from it of the subject of restraints on alienation is open to criticism. It is true, that subject is not peculiar to the law of future interests, and its omission from that course may be justified. But to study spendthrift trusts adequately, one should have that material as a background. In an earlier chapter we find an extract from Gray's "Restraints on Alienation" in connection with a study of powers of termination. And the material on spendthrift trusts appears in the chapter on subjection to the satisfaction of claims of creditors.

The consideration of all types of future interests together is a decided step in advance of earlier casebooks. This is carried even farther than in Professor Powell's casebook on Future Interests. The writer wonders, however, just how it can be said that a power of appointment is necessarily a future interest, though it apparently is so classified in Chapter 13.

Teachers of Future Interests are likely to experience some surprise to find cases on the destructibility of contingent remainders in the last chapter. It is true, the subject is referred to at other points earlier in the course. Of course, the destructibility rule is now recognized in only a few jurisdictions. But, if the student is to grasp fully the historic distinction between contingent remainders and executory interests this subject might well be studied in its entirety before the end of the course.

A teacher of wills who is prone to magnify his own subjects will not accept this book without some criticism. Only 88 pages are devoted to the execution of wills, exclusive of questions of fraud, mistake and undue influence. But, after all, why should students devote weeks of time to the question of determining when a will is signed "at the end thereof" or the question of what constitutes a signing "in the presence of" witnesses or testator? The omission of materials on the administration of decedents' estates is more questionable. But one must stop somewhere, even in admitting materials to a course on trusts and estates; and there is plenty of precedent for omitting most of the material on administration of estates from the course in wills and administration.

The publishers are to be commended, not only for the attractive appearance of the pages and the freedom from typographical errors, but also for undertaking the publication of a book embodying a distinctly new departure in legal education.

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Cases and Other Authorities on the Legal Profession and Its Ethics. 2d edition. By George P. Costigan, Jr. St. Paul: West Publishing Co. 1933. Pp. xxiv, 768.

Professor Costigan's book provides extensive and varied sources for the study of ethical standards in the legal profession. There are excerpts from legal histories to show the development of the profession in England and the distinctions between barristers and solicitors. The greater part of the material consists of opinions by English and American courts in cases of discipline, advisory opinions of committees on professional ethics throughout the United States on questions of conduct submitted to them, and accounts of behavior of lawyers both right and wrong from the biographies or reminiscences of famous advocates and judges.

The author adheres to the same plan of classification adopted in the first edition. He begins with the history and organization of the profession in England and the United States, and the procedure of admission and discipline of lawyers. This comprises