

## BOOK REVIEWS

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**Spendthrift Trusts. Restraints on the Alienation of Equitable Interests Imposed by the Terms of the Trust or by Statute.** By Erwin N. Griswold. Albany: Matthew Bender & Co. 1936. Pp. lxxv, 551. \$8.50.

For the third time within the past few months, the literature of the law of trusts in this country has been notably enriched by the contribution of a formal treatise by an outstanding authority. Early in 1935, Professor Bogert completed his monumental work on trusts, which was followed not long afterwards by the Restatement<sup>1</sup> on this subject by the American Law Institute. Now Professor Griswold<sup>2</sup> publishes his volume on the spendthrift trust. This last named book, however, is intended to cover only a specific and rather restricted branch of trust law.

Fundamentally practical in aim and scope, this treatise on spendthrift trusts is a successful effort to exhaust an important but limited phase of the law of trusts, and for this reason will especially appeal to the research student, and to the general legal practitioner. The jurist might have preferred that a larger part of the book should have been devoted to a consideration of the ethico-sociological phases of the question. The author has suggested, however, the broader cultural implications by cursorily glancing at both the past and future,<sup>3</sup> and has introduced a reformatory element<sup>4</sup> by suggesting to the legislatures and judiciaries of the various states possible curatives for the evils which the spendthrift trust is producing.

Professor Griswold has pointed out that although the spendthrift trust is of rather recent origin,<sup>5</sup> dating from the epoch-making adjudication of *Nichols v. Eaton*,<sup>6</sup> which Justice Miller decided in the United States Supreme Court in 1876, still "a large proportion of all trusts today are spendthrift trusts."<sup>7</sup> Making it clear that the beneficiary need not be a spendthrift, he defines such a trust as one "in which the alienation of the interest of the beneficiary is restrained, although the interest is absolutely owing to the beneficiary and is not subject to any discretion in the trustee as to the amount the beneficiary is to receive, and is not measured by any personal standard, such as the

<sup>1</sup> See 12 Proceedings of the American Law Institute 149 (1935).

<sup>2</sup> Professor of Law, Harvard University; adviser to the American Law Institute on the Restatement of the Law Trusts; counsel in trust cases before the United States Supreme Court; attorney in office of solicitor general and special assistant to the Attorney General, Washington, D.C., 1929-1934. He spoke at the Round Table Conference on Equity of the Association of American Law Schools, Chicago, December, 1934, on the "First Cousins of the Spendthrift Trust." See Chapter VI of his work on spendthrift trusts. See Program and Reports of Committees (1934), Association of American Law Schools, 32d Annual Meeting 15.

<sup>3</sup> See Griswold, Spendthrift Trusts 1-34, 462-476 (1936).

<sup>4</sup> Griswold, *id.* c. IX, and Appendix A, pp. 477-480.

<sup>5</sup> Griswold, *id.*, at 21 ff.

<sup>6</sup> 91 U.S. 716 (1875).

<sup>7</sup> Griswold, *op. cit. supra* note 2, at iii.

support or needs of the beneficiary."<sup>8</sup> Since spendthrift trusts in their broadest sense are rather numerous, and since no systematic presentation of the matter relating to this fiduciary species has been hitherto undertaken, there is an evident need for the book. It simplifies research tasks growing out of the necessity of investigating a very particular spendthrift trust problem, which, if performed by the laborious techniques of consulting the original sources, would involve the expenditure of considerable time.

But is it paradoxical that Gray's Restraints on the Alienation of Property should have been the admitted inspiration<sup>9</sup> for this discussion of the law of spendthrift trusts? In the latter part of the nineteenth century, John Chipman Gray launched a bitter attack against the juristic philosophy of such trusts, condemning it as paternalistic, socialistic, and violative of the sanctity of contract and the liberty of the individual.<sup>10</sup> Acknowledging the futility of this denunciation, in the light of the present validity of this kind of trust, in many jurisdictions,<sup>11</sup> Professor Griswold has gathered and made easily available materials on a juridical institution which was anathema to that jurist whose work was the starting point for this research project. Instead of continuing the assault, by an argumentative dissertation, Professor Griswold yields to the exigencies of the present legal order, and for the most part concentrates upon the expository and analytic, though his sympathies seem to be with Gray's ideology.

Thoroughness is, perhaps, the greatest merit of the work.<sup>12</sup> The whole field is completely surveyed. The book endeavors to answer every question arising out of the spendthrift trust. The impingement of such trusts upon the law of future interests and the conflict of laws is also treated.<sup>13</sup> Not merely the present state of the law is given, but also the historical background, in accordance with the "vertical" method of presentation. Materials not usually scrutinized are included.<sup>14</sup> Since there is a great welter of divergent holdings in different parts of the country, with respect to the spendthrift trust, Professor Griswold has widely grouped his findings according to states. Sufficient attention is given to the federal aspects<sup>15</sup> of the problem, and the attitude of the English courts is delineated.<sup>16</sup>

<sup>8</sup> Griswold, *id.*, at 39. At page 2, he writes: "Although restraints on alienation have long been viewed with an almost pious horror when applied to legal interests, the intervention of a trust has served to change the horror to acclaim." See p. 364: "The validity, effect and consequences of these restraints on the alienation of equitable interests is the subject of the present work."

Related types of trusts are also discussed, such as discretionary trusts, trusts for support, trusts in which the interest of the beneficiary is subject to a condition precedent, trusts involving the problem of separability of the interest of one of several beneficiaries.

<sup>9</sup> Griswold, *id.*, at iv.

<sup>10</sup> Griswold, *id.*, at 29, 30.

<sup>11</sup> Griswold, *id.*, at 34, 45.

<sup>12</sup> See page iii, where it is truly stated that a "thoroughly detailed consideration of the authorities can be given only in a specialized work." Over a thousand cases have been consulted.

<sup>13</sup> Griswold, *id.*, at 18, 80-82, 101, 233-235, 276-279, 281.

<sup>14</sup> See p. iii; material from the lower courts of New York and Pennsylvania is incorporated into the work.

<sup>15</sup> Griswold, *id.*, at 40 (note), 281.

<sup>16</sup> Griswold, *id.*, at 6, 267, 330, 374, 415.

The author dilutes the bread and butter ingredients, however, with some admixture of the jurisprudential when he notes the social, and particularly the economic, effects which result from spendthrift trusts,<sup>27</sup> and when he points out that they are the latest development in an age-old attempt to restrict the alienability of property.<sup>28</sup> He outlines the advantages<sup>29</sup> and disadvantages<sup>30</sup> of such trusts, stating that in themselves, they are not obnoxious, as they oftentimes serve a necessary social purpose, such as the creation of a juridical relationship which will assist the incompetent or weak members of the community, but emphasizing the fact that this device may be, and in fact has been abused in the interests of entrenched wealth, in a manner reminiscent of feudalism.<sup>21</sup> He attributes the origin of the spendthrift trust to the spirit of nineteenth century American individualism,<sup>22</sup> and accounts for its vitality and general acceptance and its present inadequately regulated status, despite the subsequent advent of a more socially minded philosophy of law, by suggesting that judges and legislators have continued to be guided in this matter by legal logic,<sup>23</sup> based upon the fallacious major premise that the owner of property may dispose of it as he desires, rather than by contemporary public policy.<sup>24</sup>

Since the question is purely one of policy, Professor Griswold argues, remedial legislation should be sought, in preference to reliance upon the judiciary, to make necessary jural adjustments.<sup>25</sup> He states, therefore, that "the arguments for and against such trusts may in a large measure be reconciled by legislation expressly authorizing them of a fixed and moderate amount, while allowing creditors to reach all the income in excess of the specified amount."<sup>26</sup> Accordingly he has reduced his legislative solution to the form of a succinct draft of a model statute,<sup>27</sup> which will authorize and regulate spendthrift trusts. Obviously the reader's agreement with this proposed legislation will depend upon a conviction that the spendthrift trust, as it now exists, is undesirable, and ought to be regulated to the extent suggested. But if "with a reasonable limitation, there would seem to be little reason why a spendthrift trust created by a solvent person for his own benefit should not be upheld against subsequent creditors to the same extent that such trusts are upheld when created by another,"<sup>28</sup> and if there is to be a statute which will authorize, at least under certain circumstances, the creation of spendthrift trusts "by another," should the proposed statute contain the provision "nothing in this Act shall authorize a person to create a spendthrift trust or other inalienable interest for his own benefit?"<sup>29</sup>

The structural ordering of the contents aims at accessibility. There are frequent

<sup>27</sup> Griswold, *id.*, at 26, 30, 34, 464-472.

<sup>28</sup> Griswold, *id.*, at 3-9.

<sup>29</sup> Griswold, *id.*, at iv, 469, 470.

<sup>20</sup> Griswold, *id.*, at iv, 25 ff.

<sup>21</sup> At page iv, the author writes: "The legislature of Delaware in 1933 passed statutes under which accumulated wealth may be passed on in spendthrift trusts from generation to generation without regard to anything so old fashioned as the power of alienation or the rule against perpetuities."

<sup>22</sup> Griswold, *id.*, at 25, 26.

<sup>23</sup> Griswold, *id.*, at 462 ff.

<sup>24</sup> Griswold, *id.*, at 464.

<sup>25</sup> Griswold, *id.*, at 472.

<sup>26</sup> *Ibid.*

<sup>27</sup> Griswold, *id.*, at 477, Appendix A.

<sup>28</sup> Griswold, *id.*, at 476.

<sup>29</sup> Griswold, *id.*, at 480, § 7.

summaries of decisions and statutes giving a unity to the book, which it would otherwise lack, due to its necessarily compilatory character. Continuity is sought by the employment of a numerical sequence of key or section numbers. There is in general an adherence to the traditional legal structure relating to reference works on trusts, namely, a division based upon their creation, administration, and termination.<sup>30</sup> Before each chapter, that part of the general table of contents which applies to that particular chapter is repeated. The customary devices of index<sup>31</sup> and table of cases<sup>32</sup> are utilized. There is a table of statutes, both federal<sup>33</sup> and state,<sup>34</sup> plus a summary<sup>35</sup> of statutory provisions dealing with life insurance proceeds in reference to the matter of inalienability, and covering twenty-nine states and the District of Columbia. There is a table<sup>36</sup> which relates numerous points of discussion to the Restatement of the American Law Institute. Numerous collateral readings in current law review articles are listed in the footnotes. The whole work is brought up to date by a list of the latest sources examined.<sup>37</sup>

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American Family Laws. By Chester G. Vernier, assisted by John B. Hurlbut. Volume III (Husband and Wife). Stanford University, Cal. 1935. Pp. xl, 684. \$6.50.

There are not many legal treatises which may properly be called "indispensable," but Professor Vernier's American Family Laws certainly belongs to that small group. It needs little introduction or recommendation. The first two volumes have found the general welcome which they so well deserve. They were devoted to a systematic and critical study of all the existing American legislation on marriage, divorce, and separation. The recently published third volume continues this study for the topic of Husband and Wife. In his already approved manner, the author takes up one group of problems after the other, in systematic sequence, and presents the immense mass of legislation existing in the forty-eight states, Alaska, the District of Columbia and Hawaii. In each chapter this material is presented in a lucid and critical analysis of the statutory provisions as well as their underlying policies.

<sup>30</sup> The first chapter traces the history of restraints on alienation and describes the origin of spendthrift trusts, while the second demonstrates that the question of the validity of these trusts is no longer debatable, since they are now firmly established. With the assumption that their validity is now a postulate, Professor Griswold makes a survey of spendthrift trust cases arranged according to states in the third chapter. The creation of such trusts and the problems arising in their administration are discussed in the fourth. He takes up the problem of how the interest of the beneficiary may be reached in the succeeding chapter, discussing related types of trusts in the sixth. The seventh chapter covers trusts created for the benefit of the settlor. The last two chapters are concluding, the eighth explaining how spendthrift trusts may be ended, and the ninth offering the author's ideas as to the proper status of the spendthrift trust of the future.

<sup>31</sup> Griswold, *id.*, at 513-551.

<sup>32</sup> Griswold, *id.*, at xxv-lix.

<sup>33</sup> Griswold, *id.*, at lxi.

<sup>34</sup> Griswold, *id.*, at lxi-lxxiii.

<sup>35</sup> Griswold, *id.*, at 97-117.

<sup>36</sup> Griswold, *id.*, at lxxiv-lxxv.

<sup>37</sup> Griswold, *id.*, at xxiii-xxiv.