BOOK REVIEWS

Cases on the Law of Trusts. By George Gleason Bogert. Chicago: Foundation Press, Inc., 1939. Pp. xlvii, 879. $6.00.

This book and the monumental treatise *Trusts and Trustees* are the fruition of the lifelong work of Professor Bogert in trusts, as teacher, counsel, and statutory draftsman.

In organization and in direction of stress, the present volume departs markedly from most of its predecessors in the field. In the latter, the core has generally been the nature and use of the trust concept and the creation of trusts, with the details of settlement trusts given secondary, though considerable, emphasis. In Professor Bogert's casebook, the main theme is the creation and management of the express settlement trust today, with all other matters introduced as developments of, or digressions from, this line. After a brief chapter on "History," the book is divided into three chapters, entitled, respectively, "The Creation of Trusts,"[1] "Problems of Trust Administration,"[2] and "Remedies Available for Trust Enforcement."[3] Nearly five of the eight hundred pages of cases are devoted explicitly to administration and enforcement, and some of the topics taken up in the chapter on creation, such as the powers of the settlor and acceptance and qualification by the trustee, may be deemed matters of administration.

The main theme is reflected in the cases used. They were selected to develop in the student a knowledge of the contemporary fundamentals which the lawyer engaged in a trusts practice must have. There is no specious modernity about them, but most of them are recent; and nearly all are American, with no special favor shown to the reports of a few states.

The cases, the majority of which are new to casebooks, are excellently chosen and exceptionally well edited. They are crisp and rarely run to more than three pages in length, with the facts and issues always so fully given that the exact scope of the decision can be ascertained by the reader. The notes are terse and informative to the last degree. Although occasionally in question form, they generally indicate by explanatory citation of cases or statutes a development or limitation of the doctrine of the main case, or the state of the authorities on the point. At the head of each section there are references to the relevant sections of the *Restatement of Trusts* and the treatises of Professor Bogert and Professor Scott; occasionally other books, such as the treatises of Professor Gray and Professor Griswold, are referred to. There is no concession to the practice of using introductory or scope notes, digested cases, or economic or text material; this is strictly a casebook.

Each chapter is broken up into from ten to twenty sections with descriptive headings to direct the attention of the student to the major problem in each subdivision. A useful appendix of nearly one hundred pages gives the five Uniform Acts relating to

[1] Pp. 4–332. [2] Pp. 333–635. [3] Pp. 636–798.

Trusts, regulations of the Federal Reserve Board, sections from the English Trustee Act, 1925, and some forms.

Despite the general excellence of the work, there remains a question as to the desirable organization of the subject for teaching purposes. The question may be briefly indicated: On which aspect of the trust should the emphasis be laid—on its affinity with property or on its affinity with equity?

Throughout English history the major use of the trust has been in connection with settled property. In this country, at least as far back as Kent's Commentaries, some teachers and writers preferred to deal with the trust alongside the other aspects of property law. Two seemingly distinct recent developments have led the trust to a closer association with property. In the practice of law, the development of an important section of the bar concerned principally with settlement trusts has led to a recognition by the bar of the essential unity of the complex of problems involving settlement trusts, usually with a future interest involved. In England, the recognition of this unity has brought about a somewhat curious procedural result. Lord Wright recently pointed out that while formerly a large part of the work of the common law courts was concerned with the land law, the chancery courts came to monopolize in practice that part of the law, and by the acts of 1925 it has been for all practical purposes removed from the common law courts.[4] The extension of the jurisdiction of the probate court has made it possible in many states to deal with most of the problems arising out of testamentary instruments in the one court. In legal education, another development has called for a re-examination of the curriculum along functional lines—lines which may be socially or professionally functional. This is accompanied by greater caution in the use of wide-reaching conceptions, like trusts, which though suitable to one field may be unsuitable to another.

There have not been wanting those, however, who have emphasized another aspect of the trust. From an early date in university legal education—if one may judge from the treatises of Story and Bispham—the trust, regarded as the major creation and still the favorite child of equity, was treated as a part of equity. When it first appeared in casebook instruction as a separate subject, it was the course of men, like Dean Ames and Dean Stone, who were teachers of equity and who continued to regard the trust as having the flexibility and variety of the larger instrument of which it was a part. As most teachers of equity are apt to emphasize the history of the subject and its present variety and readiness to meet new conditions, a similar treatment of trusts naturally followed. Our law has usually grown through the development of old forms and conceptions to meet new situations, and in this work the trust has been outstanding. Some of these conceptions, of the greatest usefulness in their time, have had their day or century and now have given way to new agencies of development. Such has been the fate of the action on the case. Is this true of the trust? Maitland thought we were in danger of losing the benefit of the flexibility which the trust and, indeed, equity offers, and he sounded a call, "We must fight for our Equity." In the wide discussion half a generation ago as to the nature of the interest of a beneficiary, a similar view caused the emphasis to be laid by some on the in personam elements.[5]

[4] Lord Wright, The Future of the Common Law 73 (1937).

[5] Stone, The Nature of the Rights of the *Cestui Que Trust*, 17 Col. L. Rev. 467, 500 (1917); Costigan, Review of the book *The Enforcement of Decrees in Equity*, 10 Ill. L. Rev. 240 (1915).

After all, it is necessary for the law student to acquire an understanding of at least two aspects of the trust: the trust as the administrative agency of settled property and as an instrument of wide and developing usefulness. Every teacher of trusts will agree with this. He will ask himself how this task can best be performed or, to recur to a question raised at the beginning of this review, which shall be the main subject and which that of subsidiary stress.[6]

Various emphases are possible with the present volume; and Professor Bogert, recognizing the lack of agreement on organization, suggests in his preface how those preferring another type of organization may change the order of the cases.

The question as to the emphasis and stress of the course, inevitable as it is, does not detract from the great merits of the principal work. This is a book with a coherent theme, resting on a most thorough knowledge of the cases, and built up with exceptional care and skill.

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Neo-neutrality. By George Cohn. Translated from the Danish by Arthur S. Keller and Einar Jensen. New York: Columbia University Press, 1939. Pp. x, 388. $3.75.

This is a provocative book, written by the Chief of the International Law Section of the Danish Foreign Office. In the conflict that has raged between "isolationists," the adherents of traditional neutrality based on impartiality and non-participation, and the advocates of collective security, Dr. Cohn has injected a novel and thought-inspiring idea: that of "neo-neutrality." To be exact, the idea is not wholly new, for the author has written extensively on the subject in various European legal periodicals since 1924[1] and defended his thesis energetically at the International Studies Conferences on Collective Security held in Paris and London in 1934 and 1935. It is the first time, however, that his system has been fully expounded in the English language.

The first chapter of Dr. Cohn's treatise is an analysis of traditional neutrality, that is to say, neutrality as it was conceived prior to the first world war and culminating in the Hague Conventions of 1907 and the unratified Declaration of London of 1909. He then proceeds to an examination of the collective security system, built upon the Covenant of the League of Nations and other post-war treaties, and of the attempts to blend traditional neutrality with collective security. Dr. Cohn's conclusion is that neither neutrality nor collective security is helpful in localizing, much less in eliminating, wars. Traditional neutrality, according to him, was wholly a passive attitude, perhaps the most practical and rational under the conditions then prevailing, for states desiring to stay out of a war to adopt, but incapable of bringing effective pressure on belligerents not to resort to or to discontinue the war. The objective of preserving one's own peace was viewed from the position not of the neutral but from that of the belligerent. Collective security, on the other hand, by legalizing "defensive"

[6] Jacob, Trusts, Future Interests, and All That; Being again a Review of Reviews; To Which Are Both Prefixed and Appended Certain Thoughts on the Present Discontents, 18 Corn. L.Q. 351 (1933).

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[1] See his writings in the Bibliography, p. 355.