

## Interdisciplinary Versus Segregated Study in the Law of Trusts

**Cases on the Law of Trusts (Fourth Edition).** GEORGE GLEASON BOGERT  
& DALLIN H. OAKS. The Foundation Press, Brooklyn, 1967. Pp. xlvi,  
884. \$12.50.

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### I. INTERDISCIPLINARY METHOD IN LEGAL EDUCATION

#### A. *In General*

A burgeoning postwar development, in legal education as elsewhere, is the functional internal arrangement and integrated classroom presentation of certain related areas of knowledge that were given topical organization and taught separately in earlier days. Nothing is necessarily sacred about any particular method of classroom presentation; as knowledge grows and the complexities and interrelationships of modern life multiply, the old, topically arranged casebooks are being replaced gradually by functionally arranged, interdisciplinary collections of statutes, text notes, problems, and other things known generically as "materials."<sup>1</sup>

This makes sense, within limits. The narrow professional isolationism, and trade school spirit, that have beset much of law and law teaching today probably are attributable in part to the earlier, segregated presentation of legal knowledge in artificially isolated groups. Another, more obvious, objection to such presentation is the unrealism and even impossibility of studying any aspect of law in isolation from others that lie upon its immediate borders. Imagine, for example, trying to impart the elements of administrative law without referring to securities regulation or the national transport system; or omitting mention in a course on corporate law of the key role of the corporate device in the creation and control of national wealth!

Two basic types of interdisciplinary teaching have been created. The first joins law with relevant nonlegal subjects; the second involves considering related *law* subjects together. Examples of the former are the numerous, and new "Legal Aspects of . . ." publications which ap-

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<sup>1</sup> The interdisciplinary method and abandonment of case study do not necessarily go hand in hand; nor should they, in "case" areas such as trusts. The most modern interdisciplinary teaching device in trusts, B. SPARKS, *CASES ON TRUSTS AND ESTATES* (1965), is a *casebook*.

pear regularly. Joint consideration of law and medicine is well known,<sup>2</sup> as are law and religion, and law and psychiatry. Human relations and the law now form teaching units in a few schools, and involve the examination of such things as effective interview techniques.<sup>3</sup> Law's relation to human material needs is being studied today in a growing number of schools, in such courses as urban development. Even such comparatively old standbys as taxation and antitrust would be difficult to study meaningfully upon a purely legal plane, and constitutional law is condemned at times by the old-line common lawyers as little but political science.<sup>4</sup>

The other kind of "integrated" law study—the one with which we will be concerned in the balance of this review—involves joint consideration of two or more areas of the law that bear upon one another in dealing with factual problems. Of course, no legal subject can be a completely isolated entity. Try though he may, the casebook editor cannot prevent crimes from spilling over into tort; tort into contract; contract into property; "substance" into "procedure"; constitutional law into taxation; and so forth. Furthermore, such courses as conflicts, equity and agency slash across many areas of "substantive" law, thus making them excellent review courses for teacher and student alike. I am now speaking, however, of deliberate, massive infusion, not unavoidable leakage. Estate planning is an increasingly popular example of this. Another, closely related, involves joint consideration of several aspects of succession to property, principally trusts, future interests, and wills, together with the tax considerations that are relevant to those areas.

This consolidation is worthwhile in some instances, but not all. Pedagogically—and we are concerned principally with pedagogy here—the fragmentation of knowledge is increasingly unsatisfactory because of the multiplying life situations which require joint consultation of

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<sup>2</sup> This relationship has come to public attention recently through discussion in the popular press of the transplantation of hearts and other key human organs. The legal aspects of this important medical activity, long under quiet consideration in law schools and elsewhere, were discussed in the newspapers together with the medical and religious ones.

<sup>3</sup> While working as a research assistant at the Columbia Law School some years ago, the reviewer was introduced to this subject by being asked to prepare a survey of teaching efforts then being made in it. In this way, he became acquainted with the fine pioneer work of Dean Howard Sacks, then Professor at the Northwestern University School of Law, and of Professor Robert J. Levy of the University of Minnesota Law School, two among the many able efforts in this field.

<sup>4</sup> While the reviewer has great respect for "common lawyers" as a breed, he would like to remind them that law as a whole is one of the political sciences, and should be so labelled and—as far as practicable—taught.

several areas of learning.<sup>5</sup> Such consolidation can easily be carried too far, however. A lawyer in practice may have to correlate many different legal considerations when deciding how to deal with a new problem, but law teachers are principally concerned with turning legally untrained students into beginning attorneys. For that purpose, at least, the web of knowledge, seamless though it may be in theory, must be cut artificially in convenient places. The question really is not whether to cut, but where. We should not, and indeed cannot, simulate law practice in the classroom.

### B. *In Succession to Property*

Happily, editors of casebooks dealing with trusts have not been overambitious; they have confined themselves to dealing with trusts either alone or jointly with closely related fields. The book under review, Bogert & Oaks' *Cases on the Law of Trusts*, represents a rather complete adoption of the noninterdisciplinary method of teaching trusts. A comparison of it with other current teaching books on trusts is interesting, for it reveals the variety of approaches to instruction in that central subject. Eight classroom books<sup>6</sup> dealing with trusts have been published since 1951 and are still in print; seven were examined for this review.<sup>7</sup> Some are entirely interdisciplinary, some are partially so, and some, not at all. Altogether, they provide a rather satisfying spectrum of the attitudes of several able contemporary authorities toward the interdisciplinary method of teaching trusts. They show, among other things, that reasonable and informed opinions differ significantly on the matter, and that those differences are shared sufficiently in law schools across the country to maintain eight mutually differing teaching works in the field at the same time.

These books, it should be noted, have a common core of trusts; they differ mutually upon both the interdiscipline issue and whether to emphasize one type of material or another: cases, text notes, straight

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<sup>5</sup> The author of a recent law review article on equity, speaking of the modern trend to "integrate" his pet subject with relevant "substantive" courses, said with bitter irony that all of the curriculum, with the possible exception of criminal law, may be taught some day as a monstrous but logically-interrelated single course.

<sup>6</sup> G. BOGERT & D. OAKS, *CASES ON THE LAW OF TRUSTS* (4th ed. 1967); E. CLARK, *CASES ON TRUSTS* (1954); G. PALMER & R. WELLMAN, *CASES AND MATERIALS ON TRUSTS AND SUCCESSION* (1960); R. POWELL, *CASES AND MATERIALS ON TRUSTS AND WILLS* (1960); J. RITCHIE, N. ALFORD & R. EFFLAND, *CASES AND MATERIALS ON DECEDENTS' ESTATES AND TRUSTS* (2d ed. 1961); A. SCOTT, *CASES ON TRUSTS* (4th ed. 1951, Supp. 1964); E. SCOLES & E. HALBACH, *PROBLEMS AND MATERIALS ON DECEDENTS' ESTATES AND TRUSTS* (1965); and B. SPARKS, *CASES ON TRUSTS AND ESTATES* (1965). Related, but omitted from consideration here because of its limited coverage, is the excellent work, L. SIMES & W. FRATCHER, *CASES AND MATERIALS ON FIDUCIARY ADMINISTRATION* (2d ed. 1956).

<sup>7</sup> E. CLARK, *CASES ON TRUSTS* (1954) was omitted, for want of an examination copy.

text, or problems. The trusts teacher, therefore, has a wide selection of "teaching tools"; one of them is more than likely to fit his tastes, abilities, and needs, as well as the abilities of his students, the curricular requirements of his school, and the possible teaching assignments of colleagues in related areas.<sup>8</sup>

1. *The Segregated Method.* Two books, Scott and Bogert & Oaks, are of the old school.<sup>9</sup> They differ in many relatively minor ways,<sup>10</sup> but neither uses problems to a significant degree, and they are alike in providing a non-integrated, case treatment of trusts alone.

2. *Partial Integration.* The editors of three books adopt partial integration, by combining trusts with decedents' estates or wills. These books are Palmer & Wellman,<sup>11</sup> Powell,<sup>12</sup> and Scoles & Halbach.<sup>13</sup> Scoles & Halbach differs considerably from the other two by adopting the problem as the basic teaching device and including a separate section of fiduciary administration.<sup>14</sup> Palmer & Wellman and Powell resemble one another fairly closely in a number of ways, including the fact that both modify, but refrain from supplanting, the case method with problems, note cases and text.

Powell, while resembling Palmer & Wellman more than Scoles & Halbach, differs from both by raising "red flags of caution"<sup>15</sup> where tax problems may arise. This is done upon the very sound theory that one can hardly plan succession intelligently today without knowing

<sup>8</sup> The latter may well influence choice of a course book. Future interests, or wills, or both, already may be the cherished preserve of a colleague. If so, a book dealing with "straight trusts" is the obvious choice. On the other hand, if trusts, future interests, and wills are assigned to one man, he will then be free to give his class the benefits of interdisciplinary education in these areas.

<sup>9</sup> A. SCOTT, *CASES ON TRUSTS* (4th ed. 1951, Supp. 1964). The third edition of SCOTT was reviewed by Wanneman in 7 OHIO ST. L.J. 118 (1940). The third edition of G. BOGERT, *CASES ON THE LAW OF TRUSTS* (1958), was reviewed by Curran in 8 DE PAUL L. REV. 138 (1958).

<sup>10</sup> For example, SCOTT, but not BOGERT & OAKS, has many textual notes; Bogert and Oaks, unlike Scott, take a functional approach in their organization, and lump liability *re* third persons with "Trust Administration," and charitable (treating *cy pres* separately), constructive, and resulting trusts with trusts generally. Scott's 871 pages (excluding the supplement) contain 252 cases, including many brief excerpts or summaries, and a good deal of text; Bogert & Oaks have 229 rather full case reports in their 809 pages, but less than 100 pages of text.

<sup>11</sup> G. PALMER & R. WELLMAN, *CASES AND MATERIALS ON TRUSTS AND SUCCESSION* (1960).

<sup>12</sup> R. POWELL, *CASES AND MATERIALS ON TRUSTS AND WILLS* (1960). Along with PALMER & WELLMAN this book is reviewed by Joseph in 13 J. LAW & ECON. 529 (1961).

<sup>13</sup> E. SCOLES & E. HALBACH, *PROBLEMS AND MATERIALS ON DECEDENTS' ESTATES AND TRUSTS* (1965), reviewed by Rabin in 18 J. LAW & ECON. 47 (1966).

<sup>14</sup> It will be noticed that the word "cases" does not even appear in SCOLES & HALBACH's title.

<sup>15</sup> Mentioned by Professor Powell at p. ix.

the tax consequences of each alternate route, and in the knowledge that no ordinary tax course serves this particular purpose.

3. *Full Integration.* The last books to be discussed, Ritchie, Alford & Effland<sup>16</sup> and Sparks,<sup>17</sup> are at the other end of the interdisciplinary spectrum from Bogert & Oaks and Scott. Both not only conjoin trusts with decedents' estates and future interests, but also make systematic and substantial efforts to consider the tax problems that may arise in these areas. They differ in many other ways, however. Ritchie, Alford & Effland's 1174 pages contain forty per cent text but only 171 cases, while Sparks is a casebook pure and simple, containing 334 cases in its 1212 pages, but less than six per cent text. There is a statutory appendix in Ritchie, Alford & Effland but none in Sparks.

The two works differ in a more fundamental way, however. While Ritchie, Alford & Effland treats trusts, succession, and future interests sandwich-style, in separate sections, Sparks achieves genuine functional integration of these fields by "homogenizing" them, considering all of them together in a series of fact groupings.<sup>18</sup>

Both of these books can be used to provide basic education in estate planning, a useful thing for students lacking the desire or opportunity for a full-fledged course in that significant area.

4. *Summary.* As we have seen, a wide range of teaching techniques is represented in current casebooks dealing with trusts. These range from the Bogert & Oaks/Scott "trusts-only" case approach through the Palmer & Wellman and Powell text-case method of integrating trusts and wills, and the Scoles & Halbach problem method, to the Ritchie, Alford & Effland sandwich treatment of trusts together with wills and future interests using combined text and cases, and the Sparks "homogenization" of these subjects with the old-time case format. The basic needs of trust teachers, whatever their experience and situation regarding assignment of wills and future interests, can surely be met by one of these fine books. The reviewer, when a beginner, used and liked Bogert's third edition. However, although no longer teaching in the field, he is now strongly attracted to the Sparks approach. The reasons for this are two: It requires the simultaneous consideration of related issues confronting a lawyer practicing in this area, and, in so doing, engenders the habit of broad thinking that is required for really good scholarship.

16 J. RITCHIE, N. ALFORD & R. EFFLAND, *CASES AND MATERIALS ON DECEDENTS' ESTATES AND TRUSTS* (2d ed. 1961), reviewed by Bowe in 57 *Nw. U.L. Rev.* 255 (1962).

17 B. SPARKS, *CASES ON TRUSTS AND ESTATES* (1965), reviewed by Dean in 39 *So. Cal. L. Rev.* 484 (1966).

18 In a gracefully written review, Professor Dean of Cornell said that Professor Sparks' book was "not a sandwich, but a subtle blend." 39 *So. Cal. L. Rev.* 484 (1966).

## II. THE BOOK UNDER REVIEW: BOGERT &amp; OAKS

As shown, Professor Bogert designed his book for a single, clearly defined principal purpose: To teach trusts alone, by a case method that is virtually unmodified by the use of other materials. In the current edition of this durable work, editors Bogert & Oaks have courageously retained the original method and format, and have confined their efforts chiefly to streamlining<sup>19</sup> and updating<sup>20</sup> a book that was already an excellent example of its kind, solid, thorough, well-organized and footnoted. Their obvious goal was thorough refurbishment rather than significant alteration, and that goal was achieved. While many of the individual changes—substitution of text for questions and some cases, updating of footnotes, reduction in size by elimination of cases from areas best covered by text summaries—are barely visible, their cumulative effect is most beneficial.

Comments on this work, apart from those based on pure difference of opinion with the very able editors, are all on the positive side. It is an excellent trusts casebook, made better than its predecessor with unobtrusive but painstaking effort at modest updating and increase in efficiency by summarization or deletion of many cases. Nevertheless, the reviewer feels impelled to register not only his preference for combining trusts with future interests and succession, but disappointment with the omission of relevant tax materials included in other current books from a work designed to train lawyers in an era and area where tax considerations frequently are pivotal. Furthermore, the reviewer would like to have seen a greater attempt to explain the social and economic significance of trusts, together with the tax<sup>21</sup> and non-tax<sup>22</sup> reasons for using them; a discussion of alternatives to the use of a trust, and some reference to the many new variants upon and uses of that uniquely Anglo-Saxon device for the separation of legal from

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<sup>19</sup> They have reduced the number of pages in the prior edition by about 10% and of cases by more than 20%. The rules of some omitted cases are summarized, together with other materials that are intended for general orientation, in text headnotes for each section. Indeed, a few sections formerly containing cases now consist altogether of brief but comprehensive text summaries. These text sections were designed in part to replace the blocks of brief questions that characterized the prior edition and covered much of the same ground in interrogatory form.

<sup>20</sup> The editors dropped about eighty cases from the third edition, replacing them with but twenty-one (nearly half of which, as marked with asterisks, predate the prior edition). The replacement cases appear on the following pages: 25, 54\*, 172\*, 244\*, 249, 262, 291\*, 307\*, 310\*, 313, 413\*, 457\*, 463, 474, 521, 526\*, 533, 566, 579, 637 and 761\*. A few of the retained cases were moved to other sections.

<sup>21</sup> See, e.g., Weinstock, *How to Use the Funded Revocable Trust to Avoid Probate*, 26 J. TAXATION 38 (1967).

<sup>22</sup> See, e.g., Meyer, *The Revocable Trust as a Will Substitute: A Coming of Age*, 39 COLO. L. REV. 177 (1967).

beneficial ownership. From the standpoint of teaching materials, he hopes that the next edition will include some problems as pump-primers for the inexperienced teacher, and the beginning of a path away from the deadly routine of "five cases a day."

It should be emphasized that, tax aspects apart, there is no substantial omission that cannot be supplied readily from collateral materials if desired. With that exception, the reviewer has no consequential quarrel with the editors of this excellent work that is not based upon mere personal leaning toward another method of teaching. The many teachers whose needs and desires are satisfied by the treatment of trusts alone will find this book a good friend, and the present edition a considerable improvement over the prior one. Furthermore, they will find that it permits an energetic teacher and class to cover the subjects involved in substantially less than three hours, leaving them with sufficient time in a four hour total allotment to deal adequately with wills as well. Not to be forgotten, by the way, is Bogert's hornbook on trusts.<sup>23</sup> It is an invaluable companion for the casebook.

### III. CONCLUSION

The eight current casebooks provide an interesting choice of approaches to the teaching of trusts, ranging from isolated treatment to broad integration with future interests, successions and relevant tax considerations; and from the pure case format through cases with text to the full problem style. How shall the teacher choose? On the basis of his personal preferences and teaching circumstances. On the one hand, segregation of trusts permits fine theoretical analysis in depth, best done, in this reviewer's opinion, primarily with cases. On the other hand, full integration is more in accord with the conditions of law practice, and is more conducive to the development of a sense of policy that can be gained from fruitful comparisons with elements and possibilities that lie outside the area of one's immediate concentration.

Mechanical and other less abstract considerations can enter the picture as well. The teacher may not wish to master all of the areas treated in one of the integrated casebooks, or some of these may already be in the hands of jealous colleagues and therefore beyond his grasp. The reviewer inclines toward the interdisciplinary approach, and would employ it were he again assigned to the subject areas in question. Were he to teach trusts alone, however, he would be very comfortable in doing so from Bogert & Oaks' new book. Many colleagues in that position will agree.

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<sup>23</sup> G. BOGERT, *TRUSTS* (4th ed. 1963).