

University of Chicago Law School

## Chicago Unbound

---

Journal Articles

Faculty Scholarship

---

1937

### Book Review (reviewing Erwin N. Griswold, Spendthrift Trusts (1936))

George Gleason Bogert

Follow this and additional works at: [https://chicagounbound.uchicago.edu/journal\\_articles](https://chicagounbound.uchicago.edu/journal_articles)



Part of the [Law Commons](#)

---

#### Recommended Citation

George Gleason Bogert, "Book Review (reviewing Erwin N. Griswold, Spendthrift Trusts (1936))," 37 Columbia Law Review 334 (1937).

This Article is brought to you for free and open access by the Faculty Scholarship at Chicago Unbound. It has been accepted for inclusion in Journal Articles by an authorized administrator of Chicago Unbound. For more information, please contact [unbound@law.uchicago.edu](mailto:unbound@law.uchicago.edu).

mensurate with Professor Frey's, as he might well have done without enlarging his product anywhere near to the dimensions of the latter's.

This suggests the most serious obstacle to the adoption of Professor Frey's casebook. As already indicated, it is as usable for a course in corporations proper as for a professed combination; but this assumes that at least six semester-hours are allowed for a course that even then does not include problems either of long-term finance or reorganization. Although teachers of corporations everywhere would welcome additional class-room time, securing it invites them to a battle with deans and colleagues that even the conceded importance of their subject does not assure of success in schools still not purporting to train specialists.

It has become trite that Langdell would not recognize as his brainchild, the modern casebook. In case selection, thoroughness, and citation of legal literature, Professor Frey's materials are above criticisms that would not be based upon a reviewer's personal predilections.<sup>9</sup> But if the purpose of a casebook has come to be to provide a compendious digest of leading cases and legal literature, perhaps there is more to be gained than lost by going the whole way as Professors Morgan and Maguire have done in the field of evidence,<sup>10</sup> and for the sake of completeness multiplying materials by fewer reproductions of opinions. Occasionally Professor Frey has used a principle case only to illustrate a point already sufficiently covered by dicta in a preceding one,<sup>11</sup> or a variation the significance of which might have been shown sufficiently by a summary statement of the facts accompanied by the holding and citations in accord and contra. There are many who will regard it as a point of merit that he has not made much use of problem cases. But had he done so the result might at least have been more plastic in the hands of individual instructors, and its mere size a less serious impediment to its use in an ordinary course of four semester-hours. All in all, the most striking feature of Professor Frey's casebook is the indication of a swing-back from some of the excesses of earlier experimentation, and justification of the expressed belief of another reviewer that with its appearance a new teaching technique may fairly be said to have "reached its majority."<sup>12</sup>

EDWARD G. JENNINGS\*

---

SPENDTHRIFT TRUSTS. By ERWIN N. GRISWOLD. Albany: MATHEW BENDER & Co., 1936. pp. lxxv, 551.

It is now more than forty years since the second edition of Professor Gray's classic book, *Restraints on Alienation*, was published. The subject is ripe for re-treatment because of the volume of statutes and decisions which have passed through the mill during the intervening period.

Professor Griswold is well qualified to perform the task. His elementary law training was under the guidance of pupils of Gray and Ames. His graduate studies

---

\* University of Minnesota School of Law.

<sup>9</sup> A minor point of criticism directed to the citations of legal literature is the too frequent reference to the tentative drafts of the RESTATEMENT OF BUSINESS ASSOCIATIONS without disclosure of their content, in apparent forgetfulness, at the seat of the Law Institute, of the growing scarcity elsewhere of these relics of an abandoned attempt at restatement.

<sup>10</sup> CASES ON EVIDENCE (1934).

<sup>11</sup> As is true, for example, of the case on page 9.

<sup>12</sup> See the earlier review by Sayre (1936) 24 CALIF. L. REV. 363.

were devoted to producing two valuable articles on spendthrift trusts. His work as assistant to Professor Scott in the Restatement of Trusts still further extended his training in this field.

Mr. Griswold's work is not a revision of Gray's *Restraints*. It is an independent undertaking, much more comprehensive in scope. It is prepared with thoroughness, accuracy, and scholarly attention to history and background. It discusses not only the creation and incidents of spendthrift trusts, strictly speaking, but also related matters, such as restraints on legal interests and on insurance contract proceeds, and also trusts for support, "protective" trusts, "blended" trusts, and gifts on condition.

The footnotes give extensive citations to cases, with dates and alternative citations, references to Gray, the Restatement on Trusts, and law review articles. English cases are developed where comparison is useful.

The book is especially rich in its exposition of the historical development of the subject, state by state, including the enactment and construction of statutes. The minor court decisions in Pennsylvania, New York and other states have been examined and digested.

The work also contains a table of cases, a good index, and forms for the creation of spendthrift trusts either approved by the courts or drawn by the author.

Matters of policy and principle are treated with discrimination, as, for example, the social utility of spendthrift trusts and the probable future of such trusts in America. In the latter connection a model statute is suggested for states desiring to codify and reform the law. It limits the spendthrift *cestui* to \$5,000 a year and clarifies the law as to details. This statute may be subject to criticism in some states in that its title relates to spendthrift trusts only, whereas its body covers insurance policies where the relation is admittedly that of debtor and creditor.

In a later edition Mr. Griswold may care to consider including all the material on rights and remedies of creditors of *cestuis que trust*. The problem of satisfaction out of the equitable interest of a beneficiary of an ordinary trust is closely related. If a lawyer is in doubt whether the trust he is construing is a spendthrift trust, he will want to know what are the remedies of the creditors in both cases.

Two possible adverse criticisms occur to the reviewer. One represents the probable attitude of some narrow minded practitioners, namely, that the book contains too much history and comparative law. This objection is a short-sighted one. A thorough brief or opinion will be the better for all the background and sidelights which Mr. Griswold gives us. The second complaint is that the book is too condensed, its style too compact and compressed. There is little explanation or amplification. This is believed to be a slight defect. More discussion, clarification and illustration would make the book easier and safer for use in the hands of the average reader.

GEORGE G. BOGERT\*

---

CASES AND OTHER MATERIALS ON INTERNATIONAL LAW. Edited by MANLEY O. HUDSON. Second Edition. American Casebook Series. St. Paul, Minn.: WEST PUBLISHING Co., 1936. pp. xl, 1440.

It is in the text, rather than in the Table of Contents, that one finds the revision in this well-known casebook. Except for the first section, the headings are much the same, though they have been rearranged and restated. Always careful

---

\* University of Chicago Law School.