

Book Reviews

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Book Reviews

MARYLAND ANNOTATIONS TO THE AMERICAN LAW INSTITUTE'S RESTATEMENT OF THE LAW OF TRUSTS. Prepared by G. Kenneth Reiblich, under the auspices of the Maryland State and Baltimore City Bar Associations. St. Paul. American Law Institute Publishers, 1940. Pp. 267.

This is the third set of Maryland Annotations to Restatements of the American Law Institute which have been published to date; the two preceding ones being the Annotations to the subject of Agency¹ prepared by Professor Casner, and the Annotations to Conflict of Laws² prepared by Professor Reiblich, who has also prepared the present annotations to the Restatement of Trusts. Annotations to three other subjects (Contracts, the two volumes of Property, and Restitution) are in course of preparation, and expected to be shortly published. Professor Reiblich is the only annotator who has been willing, after once carrying through the laborious work of preparing annotations to one subject, to undertake the preparation of annotations to another, and Maryland lawyers, and also law teachers, are therefore doubly indebted to him for having undertaken and so well executed a local work involving so much labor and research.

As is now well known, the publications of the American Law Institute express what it has found, after elaborate research and consideration, to be the sound or prevailing rules selected from the often conflicting decisions in the numerous States of this country; but without citation of authorities. These local annotations (prepared, for Maryland, at the expense of the Bar Associations of Maryland and Baltimore, and published by the Institute) are designed to supply that lack, by making available in each State the existing decisions of its Courts, arranged and stated under headings corresponding to the sections and sub-sections (or comments) of the Restatement itself. How much such annotations add to the practical value of the Restatement to practicing lawyers and law teachers

¹ Also reviewed by Mr. Howard (1936) 1 Md. L. Rev. 99—Ed.

² Reviewed (1937) 1 Md. L. Rev. 364—Ed.

in this State, it is hardly necessary to explain; and the two sets of annotations heretofore published have given a practical illustration of this.

In the preparation of these annotations to Trusts, Professor Reiblich has displayed the same qualities of thorough research, sound and intelligent arrangement and explanation of decisions, and clear though concise presentation, which characterized his former annotations to the subject of Conflict of Laws. In assembling his data he has not relied upon existing digests or text books; but has made an independent examination and collection of all decisions contained in the Maryland Reports, so that his work can be relied on as presenting whatever our highest court has decided, in line with or differing from any of the conclusions announced in the Restatement.

Owing doubtless to the fact that Maryland has until now preserved the old distinction between law and equity, and has not made the radical changes in the theory or principles of Trusts which many States (especially so-called Code States) have adopted, the law relating to Trusts has in this State departed less from common law (or we should say Equity) principles than in most other States; and for that reason there are fewer discrepancies between the rules as laid down in the Restatement, and the rules which have been enunciated here, than might have been expected. But where such differences exist, they have been brought forward and explained and noted with an apparent thoroughness which inspires confidence in the completeness of the work performed.

There is one subject upon which the course of decisions in Maryland has departed largely from the principles which prevailed in England, and which have been recognized in many other States; and that is upon the subject of Charitable Trusts. This departure is discussed, and the history of the decisions as well as of the legislation relating to that subject, briefly and sufficiently explained in an introductory note to the Chapter dealing with the subject of Charitable Trusts.

These annotations constitute a complete and reliable digest of Maryland decisions upon Trusts, but also much more. Being arranged in the order adopted in the Restatement, they are readily available for purposes of comparison with decisions in other States, which are being prepared and published in the same form. And owing to the clearness and discrimination with which Professor Reib-

lich has presented these Maryland decisions, his work, when used in conjunction with the Restatement, on which it is a local commentary, is the equivalent of a local text book upon the same very important subject.

CHARLES MCHENRY HOWARD.*

A TRUSTEE'S HANDBOOK. By Augustus Peabody Loring. 5th ed., Revised and enlarged by Mayo Adams Shattuck. Boston. Little, Brown & Co., 1940. Pp. lxxi, 425. \$5.00.

Anyone familiar with the earlier editions of this work will realize upon examination of the Shattuck revision that a thorough rewriting has occurred. Not only have the footnotes been increased by the addition of many new cases and statutes, but the text has been increased accordingly and has been completely re-arranged.¹ The familiar classification of the material in the older editions into four parts: "The Trustee as an Individual", "The Individual as Trustee", "The Beneficiary" and "Interstate Law" has been abandoned in favor of a series of chapters which fit better into the classification used by the Restatement of Trusts and by the two recent excellent treatises by Bogert and Scott.² For the first time in the *Handbook*, there is brief consideration of the special problem of charitable trusts. There is still no material specially dealing with constructive and resulting trusts; although, this is probably not called for by the purpose of the work. Three appen-

* Of the Baltimore City Bar.

¹ The table of cases has expanded from 30 pages in the 4th edition to 44 pages here, and there is a completely new table of statutes of 13 pages. The text has increased from 254 pages to 322, and there are 57 pages of appendices on material that was formerly in the text.

² The Chapters run: I. Some Fundamentals of the Trust Relationship; II. The Trustee's Office; III. The Beneficiary and His Interest Including the Spendthrift Trust; IV. The Trust Property and the Trustee's Interest Therein; V. The Duties of the Trustee; VI. The Powers of the Trustee; VII. Bills for Instructions; VIII. The Management of the Trust, Custody and Investment of the Trust Property; IX. Principal and Income; X. Liabilities of Trustee and Trust Estate to Creditors; XI. The Trustee's Right to Compensation and Indemnity; XII. Liabilities of the Trustee to the Beneficiary; XIII. Transfer of the Trust Property; XIV. The Charitable Trust; XV. Trusts and the Conflict of Laws; XVI. Termination of the Trust and Distribution to the Beneficiary. The bulk of the material is in Chapters V, VI, VIII, IX, X, and XII in carrying out the purpose of the work as a quick reference for trust officers and lawyers on problems of administration.

dices have been made from material which formerly appeared in the text, giving a picture of the situation in each American jurisdiction with reference to the three problems of trustees' compensation, the investment of trust funds, and restraints on alienation of the beneficiary's interest. The re-arrangement of the material would seem to be an improvement, as is also the separate treatment in appendices of the only topics completely broken down by states.

These appendices cautiously carry a caveat on each page indicating that secondary sources have been relied on and that the practitioner should make an independent check of the cases, statutes, and practice in his own jurisdiction. The wisdom of this is illustrated by a glance at the Maryland material in Appendix III on restraints on alienation. Some of the leading spendthrift trust cases are referred to, but the story is not complete. One would not get from the authorities mentioned the Maryland rule with reference to spendthrift trusts of principal which has been confirmed recently by the Court of Appeals.³ And, while *Fairfax v. Savings Bank of Baltimore*,⁴ discussing the rights of creditors to reach a joint-savings account trust during the lifetime of the depositor, is described, the important sequel, *Hopkins Place Savings Bank v. Holzer*,⁵ discussing similar rights after death of the depositor, is not mentioned.

The revisor has made his new classification of material and has done his rewriting without losing the practitioner's *feel* of the earlier editions. If anything, this has been increased by helpful suggestions and criticisms based on his experience as teacher, practitioner, and annotator in the trusts field.

Throughout, one is impressed with the thoroughness and excellent quality of the work of revision. The book does not purport to be exhaustive in its citation of authority nor in its development of theory. It could not be, without losing its chief value as a quick reference and practitioner's manual. However, there is citation of leading authority for most principles stated in the text, as well as repeated reference to the Restatement and Scott's treatise. From time to time other treatises are cited. On contro-

³ *Medwedeff v. Fisher*, 17 A. (2d) 141 (Md. 1941). And see RESTATEMENT OF TRUSTS, MARYLAND ANNOTATIONS, Sec. 151.

⁴ 175 Md. 136, 199 A. 872 (1938).

⁵ 175 Md. 441, 2 A. (2d) 433 (1938). And see RESTATEMENT OF TRUSTS, MARYLAND ANNOTATIONS, Sec. 158.

versial points, majority and minority views are briefly given, with reference to the Restatement and to Scott where more complete discussion may be found. One could ask for little more from a work with a purpose such as that of the *Handbook*, unless it would be for the revisor to have included more numerous references, at least on controversial points, to the other leading modern treatise by Professor Bogert.⁶ Some readers might regard the general lack of reference to this excellent work as an unfortunate error of omission.

Like its predecessor editions, the Shattuck revision seems to be brief, clear, concise, and reliable. One can predict that it will become a treasured possession of many students and practitioners. Newcomers to the field will find it a simple statement of the principles with which they must become familiar; but they should not mistake its simplicity for completeness or accuracy for all jurisdictions. Experienced trust men will find their reading of it a clarifying review of the leading principles in the field, with particular emphasis on those phases which have been receiving considerable recent attention from the courts and the bar. They, of course, will know the book's chief limitations in their own jurisdictions.

The original *Handbook*, through its several editions, took and maintained its place as an excellent manual beside the leading treatises of Lewin, Perry and Underhill. This revision should take and maintain a similar place beside the Restatement and the later treatises by Professors Bogert and Scott.

G. KENNETH REIBLICH.*

⁶ While recognition is given in the preface to Professor Bogert's "seven-volume treatment", citation of it seldom appears in the footnotes. Reference is made to it for consideration of the relative merits of the so-called "Massachusetts" and "Pennsylvania" rules for apportionment of extra dividends (p. 208). This reviewer observed a few other citations (pp. 58, 60, 307), but judged that consistent reference had not been attempted. Many would consider citation of Bogert along with the Restatement and Scott a valuable addition to the footnotes.

* Professor of Law, University of Maryland School of Law.

TRUSTS IN THE CONFLICT OF LAWS. By Walter W. Land. New York. Baker, Voorhis & Co., 190. Pp. xxix, 440. \$6.00.

Apparently stimulated by study under a fellowship for graduate work at Columbia University Law School, the author of this work dug into a field of ever increasing importance in modern law where the cases were few, the opinions conflicting, and the scattered comments in considerable disagreement. After reducing his first limited effort to article form,¹ he has produced from his broader study a well-organized treatment of the material in a restricted sphere of conflict of laws, a subject where clear and yet fair representation of decided law has been the exception rather than the rule. In his limited sector of that subject, the author has followed approvingly the classification and rules of the Restatement of Conflict of Laws; but, he creates the impression of having analyzed the cases fairly, indicating that they do not always follow (or indicate even) such simple divisions as he has made. However, he has shown that they do fall into order against the background of his scheme and that it represents a useful approach to future problems. In addition to his treatment of the normal problems of trusts in conflict of laws, he has considered carefully the intricate field of state taxation of trusts with interstate aspects. This adds much to the practical value of his book.

After an introductory chapter, delineating the scope of the study, the book divides into two parts. Part I deals with the law controlling the validity, construction, and administration of trusts. Part II deals with State taxation of trust property and the income derived therefrom. Discussion is limited to express trusts created by will or deed and having elements in two or more states of the United States. Questions of international conflict of laws are excluded, as are also problems of constructive and resulting trusts and business or security trusts.

In Part I, the author deals with inter vivos and testamentary trusts according to whether their subject matter be realty, tangible personalty, or intangible personalty. With reference to each, there is separate treatment of problems of creation (formal and essential validity), construction, and administration. The cases are carefully analyzed and catalogued with an explanation of what the judges

¹ *The Conflict of Laws in the Administration of Express Trusts of Personal Property* (1936) 45 Yale L. J. 438.

said, what they held, and how this fits (or fails to fit) into the classification adopted by the author. Little space is devoted to the law governing the creation of trusts of real property (Ch. III) or of tangible personalty (Ch. IV). The cases have been in rather general agreement that the situs of the realty controls the former, and there has been a general paucity of authority on the latter. Accordingly, the bulk of Part I is devoted to the chapters on creation of trusts of intangible personalty (Ch. V), construction of trusts of realty and intangible personalty (Ch. VI), and administration of trusts of realty and intangible personalty (Ch. VII). And, in these chapters, one finds the material indicating where most of the modern battles are being fought. The concluding chapter of Part I (Ch. VIII) deals with the jurisdiction of courts regarding questions of validity, construction, and administration. It is of real significance in that the choice-of-law rule is quite frequently determined (whether rightly so or not) by where and how the matter happens to get into litigation.

Part II considers the problem of State taxation of trusts. Federal taxation is eliminated as not being affected by whether or not the trust spreads over one or more states of the United States. After a chapter (IX) delineating the problem and the author's choice of the various approaches to it, there are chapters dealing successively with inheritance and property taxation (Ch. X), gift taxes (Ch. XI), taxation of income from trusts (Ch. XII), and a concluding chapter (XIII) on planning the trust with the tax problem in mind, and a comparison of the elements of a trust which are important for conflict of laws and for taxation. In Part II, as in Part I, the author segregates carefully the rules dealing with trusts of real property, tangible personal property, and intangible personal property.

One is impressed with the fact that the author's work has been done carefully and patiently. His work would have been valuable had it done no more than collect completely in one volume the material in the two difficult fields delineated. It is of increased worth because of the well-organized, critical treatment of this material with interesting speculations and suggestions as to the results of decided cases and possibilities for the future. The emphasis on the possibility of planning the trust with the conflict of laws and tax aspects clearly in mind should be of interest and value to trust companies and trust lawyers. The awareness that the way the case arises has much to do with the solution of any problem, the recognition that the law

is in such a state that the change of a judge on a court may change the rule, the avowal that one can work out as plausible a possibility for multiple taxation of realty passing in trust as for intangible personalty, and the recognition of the need for sensible co-operative legislation on this problem of multiple taxation are but a few of the things that challenge the thoughtful reader. The ideas expressed are not always new, perhaps not even frequently so. But, they are well handled and are applied in careful fashion to most difficult subject matter. The result is a contribution to the cause of legal science.

A word of praise is due the publishers for an excellent job. The book is carefully proof-read, clearly printed on good paper, and sturdily and attractively bound to match other works from the same source.

G. KENNETH REIBLICH.*

* Professor of Law, University of Maryland School of Law.