

# Michigan Law Review

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Volume 55 | Issue 8

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1957

## Scott: The Law of Trusts (second edition).

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### Recommended Citation

Lewis M. Simes, *Scott: The Law of Trusts (second edition)*, 55 MICH. L. REV. 1209 (1957).

Available at: <https://repository.law.umich.edu/mlr/vol55/iss8/21>

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## RECENT BOOKS

THE LAW OF TRUSTS (second edition). By *Austin Wakeman Scott*, Dane Professor of Law in Harvard University. Boston: Little, Brown & Company. 1956 (5 vols.) (Pp. vol. 1: liii, 1-802; vol. 2: xii, 803-1654; vol. 3: xv, 1655-2543; vol. 4: xv, 2545-3440; vol. 5: 3441-4056). \$100.

When I reviewed the first edition of *Scott on Trusts*,<sup>1</sup> I suggested that this work would take its place with such masterpieces as *Wigmore on Evidence* and *Williston on Contracts*. Without doubt this prediction has been realized. It is, therefore, an event of no small significance that Professor Scott has brought out a second edition of his monumental treatise. And, while second and subsequent editions of most law books rate no more than passing comment in the book review sections of law reviews, this treatise deserves something more.

At the outset, one may well inquire just what sort of new edition this is. Is it essentially a new treatise under the old name? Or is it, on the other hand, merely the old edition with pocket supplement material interspersed through its pages at appropriate points? Or is it the old treatise thoroughly revised, both in its text and footnotes, and brought abreast of all the newest developments in the law of trusts? Definitely it is the third of these three. While it combines with scholarly precision the same clarity and simplicity of style as the first edition, it can be truly stated, as does the author in his preface, that the whole of the text has been re-examined. Old section numbering, which followed the sections of the American Law Institute *Restatement of Trusts*, has been retained. But some 25 or 30 new sections have been added. Moreover, the practice of inserting unnumbered sub-titles in italics for subdivisions of sections has been much extended. The total number of pages of actual treatise is 3440 in the new edition as compared with 2604 pages in the old. In each edition, this is exclusive of the index volume, which in the new edition contains 616 pages and, in the old, 377 pages. Although there are some differences in format, it may be said that, disregarding indices, the new edition is approximately 30 percent larger than the old.

The statement that 25 or 30 new sections have been added fails to indicate the extent of the additions which have been made. Old sections are sometimes entirely rewritten, or completely new paragraphs are inserted within old sections. On the other hand, a few of the sections bearing new numbers merely constitute revised portions of old sections which have become so important as to deserve separate treatment. Footnote citations of cases, when extensive, are classified in separate paragraphs under the names of the respective jurisdictions. In citing cases, brief statements of the facts involved are made in the footnotes more frequently than in the former edition. Moreover, the substance of statutes is sometimes summarized in footnotes.

<sup>1</sup> 38 MICH. L. REV. 1255 (1940).

So much for a general survey of the form of the new edition. Let us now direct attention to changes of substance. First of all, its scope has been expanded in certain particulars, most important of which being the extensive inclusion of statutory materials. The first edition rarely cited statutes. Even when the author was dealing with a section which discussed statutes as such, he would often merely list the states in which such statutes had been enacted, or add a footnote to the effect that they could be found in the loose leaf services on trusts. In the preface to his second edition he says: "I have attempted to cite all the statutes, federal and state, dealing with the subject matter of this treatise." An examination of the book indicates that the coverage of statutory materials is very complete indeed. The old edition contained no table of statutes; the new includes an index of statutes 42 pages long. Section 1.11, a new section of the introduction, gives a preview of statutory materials which are to follow.

The following sections, selected at random from volume 1 of the new edition, illustrate the character of the statutory additions. In the old edition §40.1, dealing with the Statute of Frauds as applied to trusts, and entitled "The American Statutes," included not a single statutory citation. This section of the new edition cites statutes in 36 states plus Alaska and the District of Columbia. In §59.1, entitled "Statutory Restrictions on Purposes for Which Trusts Can Be Created," the old edition cited New York and California statutes and listed the names of other states in which legislation was found. In the new edition, this section cites statutes of eleven states and includes a summary of a Georgia statute not referred to in the first edition. The new §68.1 lists 17 statutes which execute uses. The old section cited only the New York legislation. Similar observations can be made concerning the new §96.5, listing legislation in all states and territories as well as federal statutes, concerning the organization of trust companies, no American legislation other than the Federal Reserve Act being cited in the old section.

The other three volumes are just as complete in the citation of statutes. Moreover, in some instances entirely new sections have been added to include textual discussions of legislation. Thus a new section, 241A, is added on the Uniform Principal and Income Act, in which the act is fully discussed and all state legislation enacting it is cited. In the old edition, the act was referred to several times in the text, but state legislation was not cited, and the act does not appear to have been referred to in the old index. In the new edition there is a full citation of the voluminous body of legislation on charitable trusts, as well as a reference in footnotes to the Uniform Supervision of Trustees for Charitable Purposes Act adopted by the National Conference of Commissioners on Uniform State Laws in 1954.

In addition to the expansion into the statutory field, the new edition also includes some additional discussions of problems in the fields of tax-

ation<sup>2</sup> and future interests.<sup>3</sup> While, of course, no one expects a treatise on trusts to deal fully with these subjects, Professor Scott has not hesitated to refer to them at some points where this would add to the value of the book.

No review would be adequate which did not indicate how fully Professor Scott has brought his readers up to date on the newest developments in the law of trusts. Merely by way of citing a few examples, the discussions of the following subjects in the new edition may be noted: pension and profit sharing trusts for employees;<sup>4</sup> optional settlement provisions in life insurance policies;<sup>5</sup> *Matter of Halpern*<sup>6</sup> in its relation to savings bank trusts and the doctrine of illusory transfers;<sup>7</sup> *City Bank Farmers Trust Co. v. Cannon*<sup>8</sup> with particular reference to the investment in shares of stock of a corporate trustee;<sup>9</sup> liability of the trustee for payments made under an invalid trust,<sup>10</sup> with particular reference to the *Diplock* case;<sup>11</sup> investment in investment trust shares;<sup>12</sup> rights of successive beneficiaries in U.S. savings bonds<sup>13</sup> and in shares of investment companies.<sup>14</sup> I have not found any discussion of the device called a "land trust" or a "land title trust," which appears to be coming into popularity in Illinois and Florida,<sup>15</sup> although cases relating to it are cited.<sup>16</sup> Perhaps the author felt that, because so little has been decided by the courts concerning this device, any extended discussion of it would be premature.

Reference should be made to the occasional change of view by the author. As the concluding sentence of the Epilogue, repeating the words of the first edition, states, "The law of trusts is living law." Being living law, we would expect a great scholar such as Professor Scott sometimes to change his views in recognition of the evolution of this branch of the legal system. An examination of the treatise shows that he has done so. The most important instance of this sort of revision, which I have noted, is found in §54.3

<sup>2</sup> See, for example, a new section, 16B, on "Tax problems in creating a trust."

<sup>3</sup> A new section, 128.8, has been added, entitled "Whether a beneficiary's interest is conditional on his survival." Section 62.10, on "Remoteness—the rule against perpetuities," has been greatly expanded.

<sup>4</sup> See §§62.10 (6), 112.

<sup>5</sup> See §§87.1, 227.8.

<sup>6</sup> 303 N.Y. 33, 100 N.E. (2d) 120 (1951).

<sup>7</sup> See §58.5.

<sup>8</sup> 291 N.Y. 125, 51 N.E. (2d) 674 (1943).

<sup>9</sup> See §170.15.

<sup>10</sup> See the new section, 226.1.

<sup>11</sup> *Chichester Diocesan Fund v. Simpson*, [1944] A.C. 341, affg. In re *Diplock*, [1941] Ch. 243.

<sup>12</sup> Section 227.9A (new).

<sup>13</sup> See §233.1.

<sup>14</sup> See §236.14.

<sup>15</sup> See Garrett, "Land Trusts," (1955) UNIVERSITY OF ILLINOIS LAW FORUM 655; REEVE, THE INFLUENCE OF THE METROPOLIS ON THE CONCEPTS, RULES AND INSTITUTIONS RELATING TO PROPERTY (Columbia University bicentennial, 1954), p. 176; FEATURES AND LEGAL ASPECTS OF LAND TITLE TRUSTS, published by the Central Bank and Trust Co., Miami, Florida (1956).

<sup>16</sup> See footnotes to §§69.1 and 131.

on "Dispositions by will in accordance with inter vivos trusts." Not only is the section completely rewritten, but a different view is expressed as to the application of the doctrine of incorporation by reference.

In sum, Professor Scott has given us, in his new edition, an improved and enlarged first edition, with a full analysis of the past eighteen years of developments in this important segment of the legal system. No student of the law of trusts can afford to be without it.

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