

## BOOK REVIEWS

**THE LAW OF TRUSTS.** By Austin Wakeman Scott. Boston, Toronto: Little, Brown and Company, 1956. 5 Volumes, Pp. Lii, 802; xii, 806-1654; xv, 1658-2543; xv, 2548-3440; 3443-4056. \$100.

There can be no dissent from so self-evident a proposition as that the publication of the Second Edition of *Scott on Trusts* meets the very real needs of the legal practitioner.

Many have been the changes in the law of trusts since the First Edition appeared in 1939, most notably in the area of legislative action on various facets of trust law. Thus, among the features of the new edition is an extensive table of statutes appearing in volume V. There are as many as 227 references to Pennsylvania statutes listed, and the advantage of using this table as an index to relevant discussions is obvious. Naturally, not all of the statutory material is making its initial appearance in this work; the 1954 pocket supplement to the first edition represented in part an attempt to present relevant statutory material through the 1953 sessions of the various legislatures, and in many instances, *e.g.*, § 396 n.6, the statutory references already existed in the pocket supplement and are simply expanded to recognize similar legislation in other states. In other instances, the citation of statutory authority is completely new, *e.g.*, § 397 n.2, regarding the non-failure of a charitable trust where there is no trustee. In any event, if the new edition were no more than an integration of the material heretofore divided between treatise and pocket parts, that alone would constitute it a valuable aid to the attorney, providing him with a tool infinitely more workable than had previously existed.

However, the Second Edition is much more than an integrated version of the 1939 edition and its latest supplement. Although adhering to his original position that certain problems, while relating intimately to the law of trusts, are better dealt with by themselves or in connection with other areas of the law (p. xi), Professor Scott in the new edition of his treatise relaxes his concept of "trust law" to some degree. Thus, the Second Edition takes on a more comprehensive appearance in many respects, although the discussion of these "related" subjects is necessarily—and properly—brief. Among these additional discussions are those concerning the identity of the beneficiaries under a class gift (§ 127.4) and the existence of a requirement that the beneficiary under the trust survive until the time when his enjoyment of a future interest therein commences (§ 128.8). Each of these new sections represents a concise statement of the various problems involved and the rules applicable thereto, with no citation of cases; reference is made only to the relevant sections of the *Restatement of Property*. These additions to Professor Scott's treatise

will prove of value, both as a reminder to the reader that certain facets of his "trust" problem involve "non-trust" law and as a concise summary and cross-reference to the relevant material appearing elsewhere. One can regret, however, that there is little discussion in § 127.4 of the time for determining the class, and that the format of exclusive reference to the *Restatement of Property* results in the complete absence of discussion of statutory provisions such as § 14(1) of the Pennsylvania Estates Act of 1947 and § 14(4) of the Pennsylvania Wills Act of 1947.

Other additions in the scope of the treatise are sections dealing with the problem of retroactive application of legislation and its constitutionality (§ 1.11, which is new, and is accompanied by expanded §§ 152.1 and 157.4 (and see § 337.7 n.3) dealing with retroactivity in relation to spendthrift trusts), and with federal estate and gift taxation (appearing, appropriately, as § 16B, at the outset of the chapter on Creation of a Trust).

Nor is the increased coverage of the Second Edition limited to forays into related but distinct problems. New "trust law" material makes its appearance, for example, in § 147.3, which discusses the position of creditors of the donee of a power of appointment, in amplification of the existing discussion of the problem as it is involved in spendthrift trusts (§ 158.1). There also appears a discussion of impossibility (§ 65A) and indefiniteness (§ 65B) as reasons for the failure of an intended trust, as opposed to the relevance of these factors in justifying, or requiring, deviation from the terms of a trust, or termination thereof (which aspects of the question appear in both the First and Second Editions at § 165 and § 335).

A new § 367A, dealing with termination of charitable trusts, is characterized by liberal references to Pennsylvania cases and to § 2 of the Estates Act of 1947, and an expanded § 212A, dealing with surcharge for improper investment in retention of securities, as affected by general market fluctuations, has grown from the former § 212.3.

There are, to be sure, topics whose apparent absence may be regretted by some. For example, this reviewer would have been pleased had the problems presented by cemetery trusts been discussed. Professor Scott does note §§ 991 and 992 of the Fiduciaries Act of 1949 (§ 179.2), and briefly notes some problems of administration (§ 374.9); but PA. STAT. ANN. Tit. 15, § 2851-315(c) (Purdon Supp. 1957) which authorizes the delegation of management of such funds to corporate fiduciaries, is noted only as authority (together with § 4(b)(2) of the Estates Act of 1947) for the validity of perpetual cemetery trusts (§ 374.9 n.13). In this connection, it is also to be regretted that the discussion of the Rule Against Perpetuities (§ 62.10) deals with only two facets of § 4 of the Estates Act of 1947: § 4(b)(2) concerning cemetery trusts is recognized through a cross reference to § 374.9, and § 4(b)(3) concerning employee trusts appears by way of cross reference to § 112 n.21.

Other occasions occur where amplification of the material cited would seem to be in order. Again using Pennsylvania as an example, §§ 902 and 903 of the Fiduciaries Act of 1949 are cited (§ 94 n.2) for the require-

ment that a non-resident trustee appoint a resident or public official as agent for service of process, without any indication that § 903 deals with appointment *by the court* of a resident *co-trustee* to serve with the non-resident trustee.

Or take as an example the citation of *McKee Estate*<sup>1</sup> as a case where "the doctrine of cy pres was applied after the death of the life beneficiaries although at the time of the testator's death the statutory law of cy pres was unsettled." (§ 399.3 n.12). This is of course true, but neglects to mention that the court applied the pre-1948 law of "general charitable intent" (not the rule of § 10 of the Estates Act of 1947), which was the law as it existed when the testator died in 1902.<sup>2</sup>

Section 146A, dealing with the statutory share of the surviving spouse, will prove of lesser value to the Pennsylvania reader than will most other sections of this treatise. The discussion is limited to the surviving spouse's rights in equitable interests, and is accomplished by citation (§ 146 An.1) of § 10 of the Pennsylvania Wills Act of 1947 (although one may wonder why the reference is to § 10 rather than to § 8, and why the provision of the 1917 act is also cited), and by cross reference to §§ 57.5 and 58.5, dealing with § 11 of the Estates Act of 1947 in notes 6 and 11, respectively. Unfortunately, the 1956 amendments to the Estates Act and the Wills Act regarding the spouse's election against certain conveyances will have to await mention in the first supplement to the Second Edition. It is to be hoped that the citation (§ 58.5 n.11) of *Iafolla Estate*<sup>3</sup> as containing a dictum contrary to the holding of *Black Estate*<sup>4</sup> will be corrected in the first supplement. It is true that the supreme court indicated that § 11 of the Estates Act of 1947 could be applied to tentative trusts created before January 1, 1948, when the decedent depositor died after that date, and it is true that the holding of *Black Estate* was to the contrary. However, Professor Scott is here discussing the surviving spouse's right to reach tentative trusts upon her election against the depositor's will, not the effective date of the Estates Act of 1947. *Black Estate* found such right even without the application of § 11, and nothing in the supreme court opinion in *Iafolla Estate* indicates anything but approval of that result. It is also to be hoped that note 5 to § 146A will recognize that the rule of § 11 of the Estates Act of 1947 is contrary to the New York rule which prevents the spouse from reaching property subject to a power of appointment *reserved* by the deceased spouse.

These complaints are of course very minor ones. If discussion which the reader desires is absent in these respects, he cannot complain that the citations to relevant materials are not present, and he can look forward to future supplements and editions which doubtless will embody a further increase in scope and detail of subject matter.

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1. 378 Pa. 607, 108 A.2d 868 (1954).

2. See *Philadelphia v. Girard's Heirs*, 45 Pa. 9, 28 (1863).

3. 380 Pa. 391, 110 A.2d 380 (1955).

4. 73 Pa. D. & C. 86 (Orphans' Ct. 1950).

As was the case with the First Edition, the sections of the treatise are numbered to correspond to the provisions of the *Restatement of Trusts* (which Professor Scott is now engaged in revising), and chapter 13 dealing with constructive trusts is accompanied by a table of cross references (p. 3099) to the *Restatement of Restitution*.

Professor Scott's new edition is without doubt an indispensable tool for the attorney. Citations of authority are remarkably current, considering the size of this treatise and the ever-increasing number of statutes and cases concerning trusts. This comprehensive collection of authority and well-reasoned discussion cannot do other than inspire admiration and gratitude in the reader.

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**CHURCHILL-ROOSEVELT-STALIN: THE WAR THEY WAGED AND THE PEACE THEY SOUGHT.** By Herbert Feis. Princeton, New Jersey: Princeton University Press, 1957. Pp. 692. \$6.95.

"The will to write this book came from a desire to find out for myself what happened and why," states Herbert Feis in his introduction to this narrative of the coalition which thwarted the Nazi quest for world domination. The result is a masterful account of the diplomacy of the second world war, of the problems, policies and personalities of the victorious powers. *Churchill-Roosevelt-Stalin* is undoubtedly the best single volume written on the struggle as a whole. For scope, insight and lucidity, it must rank with Sir Winston Churchill's classic six volume study and Robert Sherwood's *Roosevelt and Hopkins*. With an ever-growing number of reminiscences, memoirs and second thoughts being written by key participants in that struggle, our detailed knowledge of certain subsidiary issues and areas may be augmented. But the essentials of that period are known and are brought to the fore in superb fashion. Utilizing official documents, the memoirs of principal actors in the wartime drama, as well as the skill, imagination and sensitivity of the accomplished historian, Mr. Feis has digested mountains of data, pruned their essences, and developed the main themes with sophistication and care.

In approaching his subject, the author chose to organize and develop his material according to periods, thus paralleling the approach adopted by Churchill. As a result there is a blending of the military and the political within a broad chronological framework. The real narrative begins with the Nazi invasion of the Soviet Union. Churchill, the arch-foe of Bolshevism since 1917, moved without hesitation to offer Stalin the fullest coopera-

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tion, seeing quite clearly that whatever his personal predilections, the struggle against Hitler was of paramount importance for the survival of western civilization. He sought to enlist Roosevelt's support in this enterprise and found in him a firm ally. Pearl Harbor made the United States an active partner in the coalition against Hitler and the die was cast.

In 1942, a year of disastrous defeats, the coalition was occupied primarily with the imperatives of survival. As a result military considerations dominated the scene. But the outline of political differences, conflicting objectives and strategic concepts appeared quite early, growing in importance as the defeat of the Axis became assured, and, in time, overshadowing the military concerns. The canvas is broad, the pattern varied, complex and often confused. Yet certain constants are evident throughout: Stalin, engaged in a titanic struggle for survival, continually raising political issues and seeking to improve Russia's bargaining position in the final settlement—as early as July 1941 the United States and Great Britain were aware of the Soviet desire for recognition of its 1941 frontier, of the ill-gotten territorial gains acquired during the 1939-41 interregnum; Churchill's pervasive political sense, his appreciation of the political implications stemming from a particular line of strategy and above all his keener understanding of Stalin's strategic objectives; Roosevelt, a towering figure with a vision of organizing the peace for which they were fighting, seeking to function as the mortar binding the three great powers together, but floundering in his attempt to develop a personal relationship with Stalin which would overcome deeply rooted and fundamental suspicions because of the historically persistent ambitions of Russian rulers—ambitions now fostered by circumstances of power and an underlying ideology of antagonism toward the rest of the world.

Of the three leaders, Stalin seemed to know most concretely the scope and character of his postwar objectives. For example, he insisted that the part of Poland annexed by the Soviet Union after the 1939 partition was now an integral part of the U.S.S.R. and vital to the safety of its strategic frontier. The Polish question, never satisfactorily resolved, recurred frequently even in the darkest days of 1941-42. In the interests of amity and the effort to strengthen their relations with Stalin, the Western powers postponed negotiation of the issue with the result that no compromise proved possible once the advance of the Red Army carried it into the heart of Eastern Europe. In addition, the intransigence of the Polish Government in exile toward the Soviets and their offers served to complicate an already strained situation.

Another important and persistent source of difference and difficulty centered on the question of a second front. From the first, Stalin entertained a grievance over the failure of the West to launch a cross-channel invasion which would relieve the pressure on the Red Army. He seemed indifferent to the West's logistics, manpower and material problems, and of their additional burden in the Pacific with the attendant drain on available resources. Churchill's "peripheral" strategy of invasion through the

Balkans met with Stalin's suspicion; Allied efforts in North Africa and Italy were greeted with fluctuating mixtures of implied scorn and restrained satisfaction. When the invasion of France finally came in June 1944, Stalin sought to negotiate for "zones of occupation" thereby indicating his desire to extend Soviet power as far into the center of Europe as he could. As the defeat of Germany drew nearer, the political significance of the military strategy adopted became increasingly evident. In this respect Churchill was more prescient than Roosevelt. He appreciated the fact that the emerging situations in Central and Eastern Europe would be dominated by the ally whose troops were on the scene at the time. "Stalin expounded no theories; he seemed willing either to make a deal or to rely on Soviet ability to see that Soviet interests did not fare badly." (p. 343). America's period of apprenticeship in the intricacies and uses of power was still to be completed.

Space does not permit discussion of the many vital facets of the period which are so ably treated in this narrative. The author guides us through the major wartime conferences at Casablanca, Cairo, Teheran, and Yalta, developing all the while the key issues involved, their significance and ultimate fate. Certain developments stand out: The important role played by Cordell Hull in laying the foundations of the United Nations; America's friendship for China, and the rather exaggerated view of China's capabilities which it engendered and perpetuated; the negotiations for the occupation of Germany; General De Gaulle's efforts to regain France's former position as a great power; and the ever-widening cleavage between East and West which appeared with the coming of victory. Victory did not bring peace, but only the start of a new struggle. Mr. Feis does not second-guess the key actors. But he does conclude with the following:

"Roosevelt and his colleagues were right: the nations needed moral law and freedom. Churchill was right: the nations needed magnanimity and balance of power. Stalin was sullyng a right: the Russian people were entitled to the fullest equality and protection against another assault upon them. But under Stalin they were trying not only to extend their boundaries and their control over neighboring states but also beginning to revert to their revolutionary effort throughout the world. Within the next few years this was to break the coalition and, along with the spread of nationalist passion in hitherto passive parts of the world, create the turbulence in which we are all now living." (p. 655).

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