

# Washington Law Review

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Volume 16 | Number 1

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1-1-1941

## *The Law of Trusts*, by Austin W. Scott (1939)

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### Recommended Citation

R. H. Nottlemann, Book Review, *The Law of Trusts*, by Austin W. Scott (1939), 16 Wash. L. Rev. & St. B.J. 55 (1941).

Available at: <https://digitalcommons.law.uw.edu/wlr/vol16/iss1/6>

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# BOOK REVIEW

THE LAW OF TRUSTS. By Austin W. Scott. Boston: Little, Brown & Company, 1939. 4 vol., pp. xlv, 2981. \$35.00.

Mr. Scott's treatise on Trusts consisting of four volumes, three of text and one of index, has fulfilled the high expectations with which it was awaited. In an interesting epilogue he says, "This I understand is the Anglo-American law of Trusts. In a sense there is no such law. There is nevertheless an Anglo-American system of law which consists of legal concepts and principles and traditional techniques. It is this system in so far as it relates to trusts which I am dealing with in this treatise . . . The law of trusts is a living law."<sup>1</sup>

The principles to which he refers were stated in the Restatement of Trusts which, although declared by Mr. Scott to have been a co-operative enterprise,<sup>2</sup> was nevertheless largely the author's own work. It serves as the pattern and guide for the present volumes. Chapter headings and section numbers correspond with the Restatement. Whenever it was thought necessary to present additional material expressing views on certain sections, it has been done with a decimal numbering system that in no wise interferes with the normal sequence. Each section is fully developed by carefully chosen material. The method is chiefly an analytical discussion of actual and possible cases. There is a presentation of conflicting theories with authorities and often the statement and analysis of cases is followed by the author's own view together with the reasons for his choice. Although agreeing with the Restatement view in most instances, whenever he does not, he has been free to criticize that position. He has made very effective use of actual cases which have obviously been selected with great care and stated in the clear, vigorous manner which is the gift of the author. The conclusions and reasoning of the court are set out in a clear-cut fashion.

There has been no attempt to list all of the authorities. This is due in part to Mr. Scott's conception of the enterprise as stated in the epilogue and also to a statement in the preface that he is not writing a corpus juris.<sup>3</sup> This qualitative rather than quantitative selection seems highly proper, especially for his purpose. After all representative, well reasoned cases that expound principles are far more valuable than weight of number.

Mr. Scott's ability to write concisely, clearly and entertainingly and with a personal touch to which he often resorts, makes certain the truth of his statement in his epilogue that "the law of trusts is a living law." Even though there must necessarily be repetition of Restatement phrases, he nevertheless maintains throughout the entire treatise the vigor of writing which has always been characteristic of his various articles. He has indeed given life to the principles of the Restatement in a manner that should satisfy those who complained that it was a mere lifeless statement of rules.

Using the Restatement as the outline for this work meant that if he kept to that pattern only, there would be no treatment of matters not therein included. In the introduction these limitations are set out clearly by the statement, "There are certain problems in the law of trusts with

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<sup>1</sup> Vol. III, p. 2603-2604.

<sup>2</sup> Vol. I, p. viii.

<sup>3</sup> Vol. I, p. ix.

which I have not dealt. The reason is that although these problems relate to trusts they equally relate to other branches. For these reasons I have not dealt in systematic detail with questions of taxation or questions of business trusts or questions of the use of the trust in security transactions or questions of the application of rule against perpetuities or questions of conflict of laws. In the Restatement these matters were allocated to other subjects than that of Trusts. It may be thought that a treatise on law of trusts is incomplete without a consideration of these matters. But I believe that no treatise on trusts could be wholly complete unless it dealt with any matter in which a trust might be involved.<sup>4</sup>

One cannot quarrel with the reasons given for the exclusion of these subjects. They are particularly applicable to the Restatement and the limitation there seems justifiable. However there seems to be reason for treating in detail some of these subjects in a work of the kind Mr. Scott has undertaken. Especially in the field of taxation such procedure would have been desirable, and more reference to statutory material might well have been made throughout the treatise.

The one real deviation from the pattern set up is the inclusion of constructive trusts. This material is covered in the Restatement of Restitution for which, at least as to this portion, Mr. Scott was also the reporter. To cover it in this treatise is justified according to his own statement by common practice if not by logic.<sup>5</sup> This material found in sections 461-552 does not follow the same numbering as the Restitution sections, although it does follow the same topical order. One may disagree with Mr. Scott as to the true nature of the constructive trust but one will be forced to concede that this section is exceedingly well done and presented with adequate discussion of the controversial and borderline cases. The last sections from 538-552 deal with the claims of creditors against failed banks, with special emphasis on the problem of tracing. This is ably handled and amply documented.

Although every section of the treatise is skillfully done, the portion devoted to administration of trusts, 163A to 261, seems to the writer to be particularly extensive and searching.

The accuracy of this treatise is noteworthy. The meticulous treatment and skill of Mr. Scott have produced a work that in actual use always proves to be reliable. The make-up of these volumes, too, should set a standard for others. Good paper and large print make it extremely easy to use and the index, which is the entire fourth volume, is thoroughly accurate and comprehensive.

Disagreement, if any, with the conclusions in these volumes is largely a matter of opinion and even there one finds the engaging style and clarity of presentation difficult to resist.

Mr. Scott has indeed made trusts "a living law." This treatise as a working tool is invaluable to all interested in this field. A scholar and master craftsman has given a lasting, stimulating treatise to the field of Trusts.

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<sup>4</sup> Vol. I, p. ix.

<sup>5</sup> Vol. I, p. ix.