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DePaul Law Review

Volume 8
Issue 1 *Fall-Winter 1958*

Article 21

Bogert: Cases on the Law of Trusts

John W. Curran

older Supreme Court decisions is of immeasurable value in furnishing the historical background important to a fuller understanding of these cases.[6] Alan Westin has broadened and modernized the base in this factual and objective approach to the results reached in a single Supreme Court decision.

ROBERT G. WECLEW
Assistant Professor of Law
De Paul University

[6] Warren, The Supreme Court in the United States (2d ed., 1922).

Cases on the Law of Trusts. By GEORGE GLEASON BOGERT. 3d ed. Brooklyn: Foundation Press, Inc., 1958. Pp. 983. $10.50.

Twenty years ago the first edition of this casebook was published. Its format was regular. But the second edition in 1950 added a new feature; viz., a number of introductory questions at the beginning of each section. The present edition has retained this feature and also (I hope) started a new trend by not being as large as the second edition.

Forty-four new cases (some recent, some older) have been added and many recent decisions have been briefly discussed in the footnotes.

Among other new cases are *In re Wacht's Will*[1] involving a corporate co-trustee associated with individual co-trustees, who sought to resign; *Ray v. Tucson Medical Center*,[2] which held a charitable hospital is liable for the torts of its servants from which injury proximately results to a third person, whether stranger or patient, and whether the patient is a paying or non-paying patient; *Avery v. Bender*,[3] in which a living trust instrument provided that it might be amended but not revoked by the settlors or the survivor of them. They purported to amend the trust by changing the beneficiaries. A beneficiary thus excluded claimed that the exercise of the power to amend was in substance a revocation and so was unauthorized; *In re Loree's Trust Estate*[4] involved a trustee who stipulated for two per cent compensation. For years the trustee received two per cent upon the income so the court refused to permit the trustee to include the *corpus* in figuring its compensation; *In re Mershon's Estate*,[5] on Records and Accounting, the court said, "It is the affirmative duty of competent beneficiaries, upon receiving notice of the filing of an account, to make diligent inquiry concerning the fiduciary's conduct and management of the affairs of the estate. All beneficiaries are chargeable not only with such information as was known to them at the time of the audit but also with what they could have discovered by exercising reasonable diligence"; *Mosser v. Darrow*,[6] involving the trustee's duty of loyalty. In this case the trustee was not guilty of bad faith and as a result of his administration, large profits accrued to the estate. "Nevertheless, the court now holds that respondent (trustee) must be surcharged $43,000.00 solely because two of the trust's employees profited to that extent from trading in trust securities with his knowledge," said Mr. Justice Black, dissenting; *Swon v. Huddleston*,[7] said that with refer-

[1] 285 App. Div. 402, 137 N.Y.S. 2d 876 (1955).
[2] 72 Ariz. 22, 230 P. 2d 220 1951).
[3] 119 Vt. 313, 126 A. 2d 99 (1956).
[4] 24 N.J. Super. 604, 95 A. 2d 435 (1953).
[5] 364 Pa. 549, 73 A. 2d 686 (1950).
[6] 341 U.S. 267 (1951).
[7] 282 S.W. 2d 18, 26 (1955).

ence to public or involuntary sales in Missouri the rule is ". . . that where the equitable owner or one having an interest in land is induced to refrain from protecting his interest at such sale by reliance upon the oral promise of another to buy in the land and to reconvey it to such beneficial owner upon being reimbursed, such a purchaser will be charged as a constructive trustee if he subsequently fails or refuses to carry out his promise"; *Farkas v. Williams*,[8] an important Illinois case on the amount of power one can reserve in a trust and not run afoul the Statute of Wills, even though it had a "testamentary look." The court said, "we conclude therefore, in accordance with the great weight of authority, said powers which Farkas reserved to himself as settlor were not such as to render the intended trusts invalid as attempted testamentary dispositions"; *Neiman v. Hurff*,[9] "The question here presented is whether or not a murderer can acquire by right of survivorship and keep property the title to which he had held jointly with his victim"; *In re Hummeltenberg*[10] involved the question of whether a gift to establish a college to train spiritualist mediums is a charitable gift; *In re Byrne's Estate*[11] raised the question of whether the erection of a tomb on a family cemetery lot is a charitable purpose; and *Hardage v. Hardage*[12] involved a devise for blood relatives of the testator and the question whether it constituted a public charity.

There is a section on the effect of future interest law on the drafting of trusts. This enables the teacher to mention the three famous cases involving (1) the unborn widow, (2) the precocious toddler, (3) the fertile octogenarian.

Professor Bogert states, "Thus, in the 1958 edition the object has been to retain the principal features of the 1950 book, but to add thereto sufficient new and interesting materials to freshen up the book for teachers who have previously used it and to improve its capacity for stimulating thought and discussion in both instructors and students."

Having found the 1950 edition a teachable book, I look forward to using the 1958 edition.

JOHN W. CURRAN
Professor of Law

De Paul University

[8] 5 Ill. 2d 417, 425, 125 N.E. 2d 600, 605 (1955).

[9] 11 N.J. 55, 93 A. 2d 345, 346 (1952).

[10] [1923] 1 Ch. 237.

[11] 98 N.H. 300, 100 A. 2d 157 (1953).

[12] 211 Ga. 80, 84 S.E. 2d 54 (1954).