



Case Western Reserve Law Review

Volume 26 | Issue 3

1976

Preface to the Law of Trusts, by Paul G. Haskell

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Recommended Citation

John Ritchie, *Preface to the Law of Trusts*, by Paul G. Haskell, 26 Case W. Res. L. Rev. 765 (1976)

Available at: <https://scholarlycommons.law.case.edu/caselrev/vol26/iss3/10>

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Book Review

PREFACE TO THE LAW OF TRUSTS. By Paul G. Haskell.* Mineola, New York: The Foundation Press, Inc., 1975. Pp. x, 150. \$8.50.

The author tells us "The purpose of this book is to present a brief, readable statement of the legal framework of private and charitable trusts as vehicles for the donative disposition of accumulated wealth which the law student can understand without any assistance from the classroom." Is that purpose worth achieving and has it been achieved? My answer to each of these questions is an emphatic affirmative.

I think that there is a need for the type of book that the author has in mind because under the crowded, elective curricula characteristic of many law schools today there are students who do not take the course in trusts but desire a knowledge of the fundamentals of that subject. Also, some students enrolled in courses on trusts might well find such a book useful for review purposes. And paralegals would, I believe, find it exceedingly helpful.

This brings me to a consideration of whether or not the book achieves the purpose that Professor Haskell had in mind when he wrote it. Is it "brief"? Is it "readable"? Does it provide "the legal framework" mentioned by Professor Haskell?

Certainly the book is "brief." It covers only 150 pages, including footnotes. And in my view it is notably "readable." Professor Haskell writes clearly, concisely, crisply, and incisively. Indeed I think that his literary style is a model of legal exposition.

A determination of whether or not the book provides "the legal framework" mentioned by Professor Haskell requires first an examination of its scope and second an evaluation of the exposition of the topics discussed.

We can best understand the scope of the book by considering a quick chapter-by-chapter summary of the topics covered. Chapter One examines first the purposes served by express trusts in contemporary society with emphasis on gift transactions and then traces the historical evolution of the legal institution that we know as the trust.

Chapter Two discusses the essentials for the creation of express trusts, including formal requisites, the trustee, the beneficiaries, the trust property, the settlor, the division of legal and equitable title in

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the trust device, the trustee as beneficiary, the question of when what purports to be a living trust will be held testamentary under the appropriate statute of wills, and the passive trust.

Chapter Three discusses spendthrift, discretionary, support, and protective trusts and Chapter Four examines savings-account trusts, life-insurance trusts and Pour-Overs. Chapter Five is a trenchant discussion of the use of the trust device "to discourage marriage, encourage divorce, influence religious affiliation, and disinherit a spouse." It also contains a brief — albeit thoughtful — discussion of the application of the common law Rule Against Perpetuities to private express trusts, reference to the permissible duration of private express trusts, reference to the rule relating to the suspension of the power of alienation, and reference to the rule limiting the duration of provisions for accumulation of income. The chapter concludes with a page-long discussion about trusts intended to achieve criminal or tortious objectives.

Chapter Six is concerned with the termination of trusts and with distributive and administrative deviations from the terms of the trust. Chapter Seven discusses the characteristics of the charitable trust, the enforcement of the charitable trust, the doctrine of *Cy Pres*, and the application of the common law Rule Against Perpetuities to charitable trusts. It concludes with a discussion of honorary trusts.

Chapter Eight is by far the longest chapter in the book. Its 48 pages are devoted to a masterful discussion of basic problems arising in the administration of trusts. This discussion is presented under the rubrics duty not to delegate, duty of loyalty, duty to keep trust assets separate, duty to exercise reasonable care and skill, duty to collect all assets belonging to the trust, duty to make the trust property productive, duty to deal impartially with the beneficiaries, duty to keep records of the management of the trust estate, duty to render periodic accountings, the investment function, principal and income determinations, the powers of the trustee, the liability of the trustee to beneficiaries, the liability of the trustee to third persons, and the liability of third persons to the trustee. The chapter concludes with a short summary of some doctrines of conflict of laws applicable to trusts.

The ninth and last chapter in the book is a discussion of resulting trusts and the circumstances under which a constructive trust will be recognized to provide redress when unenforceable express oral trusts are allegedly created.

I hope that the foregoing summary of the topics covered convinces the reader (as I am convinced) that the scope of the book is

admirably adapted to provide the "legal framework" to which it is dedicated. Admittedly, some aspects of the law of trusts discussed in the longer treatises on trusts are not discussed in the book under review. For instance, I find no reference to "precatory trusts," and to the "wait-see" and other modern statutory modifications in the common law Rule Against Perpetuities. Also the discussion of constructive trusts is limited to the unenforceable oral trust.

The omissions which I have mentioned and others that could be mentioned were made wisely, I think, in view of the commitment to a short book emphasizing trust fundamentals. Indeed, given those constraints, I would have been tempted, had I been writing the book, to omit all discussion of the Rule Against Perpetuities and to have referred the reader to a book on future interests for the development of the law of perpetuities.

Let us now turn from a consideration of the scope of the book to an evaluation of its substance. Does Professor Haskell's discussion of the topics he has selected for comment provide satisfactorily a "legal framework" of the law of express trusts?

Obviously a book of 150 pages cannot discuss the "legal framework" of the law of express trusts as exhaustively as the multivolume treatises of Scott and Bogert, or even as fully as Bogert's *Hornbook* or Scott's *Abridgment*. But to be a significant contribution it must eschew oversimplification and black-letter generalization and give a balanced presentation. This Professor Haskell has done by steering a middle course between the Scylla of superficiality and the Charybdis of narrow, in-depth definitive treatment of some topics discussed at the expense of only casual reference to other aspects of the "legal framework" about which he is writing.

Particularly noteworthy is his development of this "legal framework" in terms of specific instances rather than generalized statements. His discussion of these specific instances focuses on policy as well as doctrinal and practical considerations. There are even occasional references to tax consequences.

A minor criticism of the book is the relatively few references it contains to the Restatement. For instance, I should have thought it would be helpful at least to cite in the footnotes the appropriate references to the provisions of the Trust and Restitution Restatements on the unenforceable express oral trust. I hasten, however, to praise the author for the restraint he has exercised in preparing his footnotes. Leading cases and typical statutes are cited, but long "string citations" are omitted. And that's all to the good! Bear in mind that this is not intended as a reference book, but as a

short textbook for students. And it is apparent from what I have written that I think it is a superb textbook in which the author has brilliantly achieved the goals he had in mind in writing the book.

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