


REVIEWS AND NOTICES

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Cases and Materials on the Law of Fiduciary Administration.

By LEWIS M. SIMES. Chicago: Callaghan and Company.

1941. Pp. xx, 533.

Until comparatively recently the use of case books in Canadian law school teaching has certainly not been viewed with any particular favour by the profession. Indeed, it is a matter of doubt how far the profession generally understands the purpose of such books and it is possible that there is still an unreasoning prejudice against them. Certainly the use of American case books would be considered as tantamount to an act of disloyalty to the common law system. As a result of this feeling, it has become necessary for Canadian law teachers to prepare, usually in mimeograph form, their own materials for class purposes. This undoubtedly has merit, since it is doubtful how far a case book prepared by one man can be used to full advantage by any other teacher. At the same time, there should be in Canada some law library, particularly in connection with a law school, where all case books published by persons engaged in teaching the common law, whether in England or the United States, can be found. The advantage in seeing how certain topics are dealt with by other persons in various fields of law cannot be denied. There still seems to be a myth current amongst the profession that the teaching of law is something which can be done by any practitioner. The difficulty is that unless opportunities are afforded of studying the progress and changes made in the teaching of various subjects by individuals devoting their attention to that work, law teaching tends to become stereotyped and to follow the lines along which the practitioner himself was trained.

It has been said over and over again that the work of the American law schools is probably the outstanding contribution that the United States has made to the development of the common law system. Not the least important product of this work is the ever growing series of case books which afford an illustration of the ceaseless experimentation in law teaching which is as necessary to the development of law as is the accepted research to medicine or any of the other sciences. There is in Canada a singular lack of awareness of many developments both in law and law teaching which the reviewer believes is due in no small part to a failure to read, or even to examine, much of the material that is produced by the teachers of law in the United States.

A case in point is afforded by the present volume of Professor Simes. Wills, trusts, and the various problems involved in the administration of estates and of trusts, are extremely difficult subjects to integrate for teaching, study or practice. The reviewer speaks feelingly on this subject because for some fifteen years he has been struggling to combine all these topics into one teachable whole. The method of dealing with segregated topics under text book headings seems not only wasteful of time, but degenerates into a series of disjointed and isolated topics, which, while

having a close practical relation, are customarily dealt with in teaching as completely unrelated. Professor Simes, at the University of Michigan Law School, has apparently worked out three courses. The first, which he calls *Trusts and Estates I* (when will we learn that the names of courses on a curriculum mean nothing?), involves intestate succession, execution of wills, and the creation of trusts. The second course he styles *Fiduciary Administration*, and in this course he attempts to combine the problems of administering deceaseds' estates with those problems which formerly were dealt with in a course on trusts, such as apportionment between life tenant and remainderman, duties of trustees, etc. The third course, which he styles *Trusts and Estates II*, involves a consideration of those problems dealing with future interests, class gifts, vesting etc., which the English and Canadian lawyer is accustomed to treat, rather lightly, under the obscuring title of *Wills*.

Every law school must of necessity be faced with the question how these three distinct topics can best be correlated. The present book was designed to cover Professor Simes' second course. The subject matter is difficult to present in a book of cases and materials, since there has been considerable legislation in this field, and in the United States with its numerous jurisdictions the problem of selecting statutes is not simple. The manner in which Professor Simes has dealt with this subject is one with which any law teacher worthy of the name should become familiar. The editor has, in the reviewer's opinion, combined trusteeship and executorship satisfactorily, without obscuring the distinction between them. Within the comparatively small confines of some five hundred pages, he has divided his book into twenty-eight chapters, each chapter purporting to deal with some specific problem of administration, or the appointment and removal, etc. of trustees and executors. It is apparent from this statement that there can not be extensive material offered on any given problem, and the book throughout is suggestive rather than exhaustive. It is, however, for that very reason, that it should be of value to Canadian law teachers, since it opens the door to much helpful statutory and case material in a field which is particularly confused in Canada. With the subject of trust administration crying for reform in this country, one can understand the reluctance of the Canadian profession to attack the seemingly endless ramifications and changes in American jurisdictions. With the accessibility of books similar to the present that task is considerably lightened, since we are referred not only to outstanding state legislation—in many aspects far superior to anything in this country—but we are also brought into contact with various uniform state laws, either advocated or adopted, such as the Uniform Principal and Income Act, the Uniform Fiduciaries Act, etc. It seems to the writer as short sighted to ignore any of these things in the study of Canadian law as it would be for a medical practitioner to ignore progress made in combatting disease in any country in the world.

Professor Simes' case book is one of many books produced by the American teaching profession which should open roads of inquiry to the Canadian teacher, lawyer or legislator who is not completely wedded to that insularity of mind which has been the chief reason why Canadian contributions to the development of the common law have been comparatively insignificant.