

number of errors.²² One matter arising out of these details is that the "table of foreign case references" should include the *A.L.J.* and care should be taken to see that the Argus Law Reports are not abbreviated A.L.R. (as has been regularly done) as this tends to confusion with the American Law Reports.

In conclusion, therefore, congratulations are due to *Dicey's* new editors. Let us only hope that, while his authority continues to grow more weighty, his shadow may not grow too much longer.

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Cases on Trusts, by H. A. J. Ford, S.J.D. (Harvard), LL.M. (Melb.), Reader in Law in the University of Melbourne. Sydney, The Law Book Co. of Australasia Pty. Ltd. 1959, xvi and 794 pp. with Index. (£4/15/- in Australia.)

Dr. Ford's *Cases on Trusts* is a most valuable contribution to the study of equity in Australia, and, indeed, in the British Commonwealth, including as it does cases, statutes and other materials drawn from English, Australian (both Commonwealth and State), as well as New Zealand sources.

The author has two chief aims, firstly to provide information about the law of trusts, and secondly to include materials of sufficient difficulty (perhaps not too arduous a task in the law of trusts) to cause students to develop a lawyer-like capacity for ordered thought and analysis. As Dr. Ford points out in his preface these two aims are not mutually exclusive.¹ In his view it is possible to include many leading cases which are at the same time "problem" cases, and hence attain both ends at once. His book is striking evidence of the correctness of his view, and of its value as a guide to the nature of a casebook and of the case method of teaching. It will be useful not merely for law students and teachers, but also, to the practising profession.^{1a}

The book has real merit too as a teaching instrument to be used in the case method of instruction. There are probably as many views of the true nature of this teaching method as there are law teachers²—"quot homines, tot sententiae". But whether it be seen as a modern revival of the ancient moot problem approach used so much in the 15th and 16th century Inns of Court, or as a quite distinct, modern (and essentially American) contribution to the teaching of law, whether it be desirable to use it on its own or in conjunction with the so-called "formal" lecture, it is based upon making the student grapple with actual or hypothetical fact situations and apply legal principles to them.

the Empire table; *Robertson v. Robertson* (1905) 30 V. (not Vict.) L. R. 546 (118); Ashanti is now a little out-moded as a description of a place to which an English Act applies (1043); Cabassi (1955) Q.W.N. 71 should be corrected in the Empire table to *Re Cabassi* and the second page reference altered to 391; *R. v. Langdon* (1953) 23 *A.L.J.* 484 is more fully reported in (1953) 88 C.L.R. 158; *The Six Widows* have lost their page reference (12 Straits Settlements L.R. 120) in the Empire table and *The Rita Garcia* (1937) 59 L.L.L.R. 140 has been unkindly aged three years.

²² Pages cxxx and cxxxi, covering parts of M and N in the United Kingdom table of cases. Here *Moncrieff v. Moncrieff* (1934) C.P.D. 208 is an interloper; the reference 9 R. 519 for *Musurus Bey v. Gaaban* (1894) 2 Q.B. 352 proved to belong to *Stavert v. Stavert*—a case from the sixth edition not reproduced in the seventh; *Moore v. Darrell* (1832) 4 Hagg. Ecc. 346 is unusual in not being given an English Report reference; *National Bank of Australia v. Scottish Union Insurance Co.* is given only *A.L.J.* and C.L.C. reference (this latter term standing for Current Law Consolidation) when (1952) 86 C.L.R. 110 and (1951) 84 C.L.R. 177 would have been better. With *National Bank of Greece and Athens v. Metliss* (1957) 3 W.L.R. 1056, the editors bravely prophesied (1958) A.C. in the text (475-482 and elsewhere) but had to go to press without ever getting a page number.

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¹ At iii.

^{1a} But for the practitioner a fuller subject index is necessary.

² See e.g., J. Hall, *Teaching by Case Method and Lecture* (1955) 3 *Jo.S.P.T.L.* 99. H. A. L. Ford, *The Evolution of the American Casebook* (1953) 7 *Res. Jud.* 253. W. Pedrick, *A Case Study in Case Method Teaching* (1959) 4 *Univ. W.A. Ann. L Rev.* 74.

It requires active participation by the student in class work,³ and for this to be effective it requires a set of materials adapted to this need. Dr. Ford has supplied just this.

In approach, Ford's book is probably closest to Scott's famous *Cases on Trusts*, the leading American casebook in this branch of the law. It does not for example, follow the pattern of White and Tudor's *Leading Cases*, where each case is set out at length and then followed by an exposition of the rules which may be drawn from it; nor does it attempt, as does Nathan's *Equity Through the Cases*, to give an exposition of equitable principles directly from the mouths of the judges, continuity being given to the work by the author's own summaries and notes. Further, *Cases on Trusts* is not designed as a companion volume to any other work on the principles of equity, as is Professor Keeton's *Cases on Equity and Trusts*, published in 1959, which is to be used in conjunction with that author's *Introduction to Equity* and his *Law of Trusts*. Dr. Ford's case book is not concerned with the whole field of equity, it does not contain proportionately so many classical authorities as *White and Tudor*, nor yet as much commentary as Nathan, but it is unique within the world of British law^{3a} in that it combines a series of leading and thought-provoking cases together with some comments and a number of useful questions which are included in the body of the text.⁴

So much for the general purposes of the book. In structure it deals only with the law of trusts, as its title indicates, and it does not profess to deal with every aspect of this subject. Some topics, such as the capacity to be a trustee, the appointment of new trustees and the functions of Public Trustees, have been omitted, and wisely so, since they require a detailed study of local legislation in each jurisdiction. For the same reason a bare outline only is given of the powers of trustees. There is only a very short account of the constructive trust, because as Dr. Ford points out "this may be looked on by many as a remedial device rather than a medium of disposition".⁵ Despite this and despite the limitations of space, this reviewer regrets that there is not a rather fuller treatment,⁶ if only because of the inherent fascination of the subject. Further, the constructive trust can impinge on so many areas of law, that there is always a danger that it will never be fully—or for that matter even adequately—treated in any one course, and to include a fuller treatment in this case book on trusts might be some insurance against this happening.

Within these limits, which the author has himself defined, the book gives a very full coverage of cases dealing with the creation and administration of trusts. Chapter I deals with the general nature of the trust idea and contains an unusual and useful section on the history of trusts including a fifteenth century prayer for relief to the Chancellor,⁷ a passage from Bacon's *Reading on the Statute of Uses*,⁸ *Tyrrel's Case*⁹ and *Sambach v. Dalston*¹⁰. Trusts are then distinguished from agency, bailment, debt and company. There follow chapters

³ This object can, of course, be attained by methods of teaching other than the casebook method.

^{3a} A comparable work in relation to American law is that of Z. Chafee and S. P. Simpson *Cases on Equity* (1933).

⁴ Quite frequently the author inserts a short exposition of general rules of law (e.g. at 11 and 17 in relation to the principles of agency) to give meaning to the cases which follow. Sets of questions appear in the text at points where they may conveniently be asked rather than as a collection at the end of the book. (See e.g. at 29, 78, 181 and 210). However, Dr. Ford's own comments are printed in the same type as the rest of his materials, and so are his own summaries within the cases to be found in the book. There should be a clearer indication of what is text, and what is author's comment.

⁵ At iii.

⁶ The cases cited are—
Keech v. Sandford (1726) Sel. Cas. Ch. 61. *In re Barney* (1892) 2 Ch. 265. *Birmingham v. Renfrew* (1937) 57 C.L.R. 666. *In re Hagger* (1930) 2 Ch. 190.

⁷ At 1. *Select cases in Chancery*, Selden Society vol. x, Case no. 117 (1417-24).

⁸ At 1.

⁹ At 2.

¹⁰ (1634) Tothill 188.

on the intention to establish a trust,¹¹ consideration,¹² form,¹³ the objects of a trust,¹⁴ the subject matter of a trust,¹⁵ limitations on settlor's powers of disposition,¹⁶ duties of trustees,¹⁷ the rules of apportionment,¹⁸ the powers of trustees,¹⁹ the consequences of a breach of trust (including some excellent materials on following trust property and the relief available to a trustee who has committed a breach of trust),²⁰ the rights of trustees,²¹ charitable trusts,²² resulting²³ and constructive trusts.²⁴

Chapter XIII gives a very full treatment of charitable trusts, including materials which range from the famous Australian cases of *Taylor v. Taylor*²⁵ and the *Roman Catholic Archbishop of Melbourne v. Lawlor*,²⁶ to a passage from Justinian's Digest which foreshadows the concept of our present *cy-près* doctrine.²⁷ Another reviewer has criticised the lengthy treatment afforded charitable trusts,²⁸ but with respect it is submitted that it is more than justified, in that Australian law has made at least one unique contribution to the law of charities through the enactment in Victoria²⁹ and New South Wales³⁰ of charitable-trust-validation statutes, and further the law of charities is well adapted to class discussion—a most relevant consideration in the compilation of a case book. Unfortunately the Privy Council judgment in the *Attorney-General of New South Wales v. Donnelly*,³¹ the latest decision on the interpretation of the trust-validation statute in New South Wales, was not available when *Cases on Trusts* went to print. But the High Court decision is included, and as events turned out the Privy Council affirmed this decision, upon essentially similar grounds.³²

One technical problem of some difficulty which Dr. Ford has had to overcome in producing this work has been to deal with differing trustee legislation in the jurisdictions from which he has drawn his materials. His solution to the problem has been, for the most part, to use the English Trustee Act of 1925 as a prototype, but to include some prototype legislation from other jurisdictions and refer to the relevant legislation in each of the other jurisdictions concerned.

All in all, Dr. Ford's *Cases on Trusts* is a most valuable contribution to the study of this branch of the law. Australian students, teachers and practitioners should all find this work of immediate utility. For those overseas it should provide a most interesting basis for comparative study.

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¹¹ C. ii, 36-69.

¹² C. iv, 170-210.

¹³ C. vi, 252-268.

¹⁴ C. viii, 322-427.

¹⁵ C. x, 528-533.

¹⁶ C. xii, 611-633.

¹⁷ C. xiv, 744-771.

¹⁸ (1910) 10 C.L.R. 218.

¹⁹ C. iii, 70-169.

²⁰ C. v, 211-251.

²¹ C. vii, 269-321.

²² C. ix, 428-527.

²³ C. xi, 534-610.

²⁴ C. xiii, 634-743.

²⁵ C. xv, 772-787.

²⁶ (1934) 51 C.L.R. 1.

²⁷ At 719. Digest 33.2.16. In dealing with the origins of *cy prè*s Dr. Ford might well have included some further references to the influence of Roman law. As Lord Thurlow said in *White v. White* (1778) 28 E.R. 95 at 98, "The cases have proceeded upon notions adopted from the Roman and civil law, which are very favourable to charities, that legacies given to public uses not ascertained shall be applied to some proper object". And see H. F. Jolowicz, *Roman Foundations of Modern Law* (1957) 138-39, E. Fisch, "Cy Près Doctrine and Changing Philosophies" (1953) 51 *Mich. L.R.* 375, J. Willard, "Some Illustrations of the Origins of Cy-près" (1894) 8 *Harv. L. Rev.* 67, 72. Perhaps in future editions of *Cases on Trusts* further references to review literature on this and other topics might, with advantage, be added.

²⁸ See R. Else-Mitchell, in (1959) 33 *A.L.J.* 58-59.

²⁹ Section 131. Property Law Act, 1958 (Vic.).

³⁰ Section 37D. Conveyancing Act 1919-54 (N.S.W.). It should be noted that similar legislation is also in force in N.Z. (S.2, Trustee Amendment Act 1935 (N.Z.)).

³¹ (1958) 32 *A.L.J.R.* 44. For a case note on this decision see B. A. Beaumont, *supra* 340.

³² (1959) 2 *W.L.R.* 722.

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