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Restatement of the Law of Trusts

Alfred Evens

Indiana University School of Law

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BOOK REVIEWS

RESTATEMENT OF THE LAW OF TRUSTS, American Law Institute Publishers,
St. Paul.

The Restatement of the Law of Trusts is bound in two conveniently sized volumes. The same general plan adopted by the Institute for all the other restatements has been followed, namely, a brief statement of the general principles of law is printed in black type under a section number. This is followed by comments and illustrations amplifying the statement of the principle. The advantages and shortcomings of this type of treatment have been often discussed and are familiar to all. No citation of authorities is given. The omission of citations will no doubt prove a source of disappointment to the practicing lawyer, but such citations did not seem feasible to the Institute. Annotators are now at work in many states, annotating the restatement for their respective states. The better textbooks on trusts will supplement the work of these various state annotators.

The reporter and several of his advisers are outstanding writers and teachers in the trust field. Other advisers are distinguished practicing lawyers. The personnel of this group was a guarantee of the high order of scholarship which characterizes this restatement.

In form, this restatement is simple, clear, and easily understood. Unusual and coined words and phrases, not in general use by the profession, are avoided. Complicated and involved sentence structure is likewise avoided. In these features a happy contrast to some of the other restatements is exhibited.

Generally, Mr. Scott and his advisers have followed with fidelity their instructions to state the law as it is and not as they think it ought to be. Both in charm of composition and in soundness of legal content an excellent piece of work has been done. This restatement is a dependable source of information for judges, practicing lawyers and teachers and students of the law.

In one major omission the profession will, I think, be disappointed. The subject of constructive trusts is omitted and will be dealt with in the Restatement of Restitution and Unjust Enrichment. Any supposed scientific advantages of omitting the constructive trust from this restatement and including it with

quasi contract problems under a novel heading will, the writer thinks, be more than offset by the inconvenience which such treatment will cause the profession. Moreover, why the subject of resulting trusts should be included and that of constructive trusts excluded involves distinctions too unsubstantial to appeal to the practitioner.

This is one of the very few instances in which utility to the profession seems to have been lost sight of. On the whole, the work is sound and lawyer-like.

ALFRED EVENS.*

Bloomington, Indiana.

* Professor of Law, Indiana University School of Law.