

Interview with Charles E. Rounds, Jr., author of *Loring: A Trustee's Handbook, 2003 edition*. Aspen Publishers. ISBN: 0-7355-3823-9 Price: \$175

Interview by Michael L. Rustad, Thomas F. Lambert Jr. Professor of Law, Co-Editor, Bimonthly Review of Law Books

MR: Charles, this is an entirely new edition of *Loring A Trustee's Handbook*. It replaces all prior editions including the 7th edition. What is new about this edition?

Charles Rounds: Fourteen sections are new to the Edition 2003. There is even more cross-referencing in *Loring 2003* than there was in *Loring 2002*. With the introduction of 14 new sections, we continue the process of filling in gaps in our presentation of the substantive material. And we continue to comb the text and footnotes for errors. Finally, the *Handbook's* index continues to be refined and expanded.

There are approximately 71 pages of additional text in the main body of *Loring 2003*. There are 771 additional lines of footnoting text. There are 533 new footnotes, 84 new case references, 53 new article and law review references, and 15 new treatise references. Hundreds of pre-existing footnotes have been corrected, updated, and/or revised.

The reader should understand, however, that in spite of all this new material, *Loring* continues to be lean and mean. There is no frivolous footnoting or mindless stringing of citations. Each footnote is either itself a wealth of useful information or the gateway to it. In keeping with this philosophy, we again provide the appendices on an accompanying CD-ROM in an effort to keep down the *Handbook's* physical bulk. Much of the tax material can now be easily obtained from the web. For the convenience of our readers, however, the appendices contain an expanded selection of relevant income, gift, estate, and generation-skipping Internal Revenue Code Sections. These are the new sections:

- §6.2.8: Duty to Administer Promptly and Efficiently
- §6.2.9: Duty to Keep Precise, Complete, and Accurate Records
- §7.1.1: Defenses to Allegations that the Trustee Breached the Duty of Loyalty
- §8.15.33: The Anti-Netting Rule for Multiple Breaches
- §8.15.34: Virtual Representation Doctrine
- §8.15.35: The Hershey Trust
- §8.36: May the Trustee Represent the Trust in the Federal Courts Without Counsel?
- §8.37: The Origin of the English Trust
- §9.8.6: The Probate Estate
- §9.9.5: Honorary Trusts (including trusts for pets)
- §9.9.6: Secret and Semi-Secret Trusts
- §9.24: The Incentive Trust (and the public policy considerations)
- §9.25: The Joint Trust (including the tax basis revocable trust (TBRT)).
- §10.7: Income Taxation of Business Trusts
- §7.2.3.2: (Damages) has been substantially refined and expanded.

MR: How many prior editions of *Loring* have there been?

CR: Seventeen in all:

- 1898: *Trustee's Handbook*, 1st ed., Augustus P. Loring
- 1900: *A Trustee's Handbook*, 1st ed., Augustus P. Loring
- 1907: *A Trustee's Handbook*, 2nd ed., Augustus P. Loring
- 1925: *A Trustee's Handbook*, 3rd ed., Augustus P. Loring
- 1928: *A Trustee's Handbook*, 4th ed., Augustus P. Loring
- 1935: *A Trustee's Handbook*, 4th ed., Augustus P. Loring
- 1940: *Loring A Trustee's Handbook*, 5th ed., Mayo Adams Shattuck
- 1962: *Loring A Trustee's Handbook*, 6th ed., James F. Farr
- 1994: *Loring A Trustee's Handbook*, 7th ed., Charles E. Rounds, Jr., et al.
- 1996: *Loring A Trustee's Handbook*, 1996 ed., Charles E. Rounds, Jr., et al.
- 1997: *Loring A Trustee's Handbook*, 1997 ed., Charles E. Rounds, Jr., et al.
- 1998: *Loring A Trustee's Handbook*, 1998 ed., Charles E. Rounds, Jr.

1999: Loring A Trustee's Handbook, 1999 ed., Charles E. Rounds, Jr.
2000: Loring A Trustee's Handbook, 2000 ed., Charles E. Rounds, Jr.
2001: Loring A Trustee's Handbook, 2001 ed., Charles E. Rounds, Jr.
2002: Loring A Trustee's Handbook, 2002 ed., Charles E. Rounds, Jr.
2003: Loring A Trustee's Handbook, 2003 ed., Charles E. Rounds, Jr.

MR: Your 2003 Edition has a long and distinguished lineage. Our readers would be interested to hear a little about the path of trust administration law. Who was Mr. Loring? Is it true that Professor Scott (Scott on Trusts) thought highly of Loring's handbook?

CR: The first edition of *A Trustee's Handbook*, by Augustus Peabody Loring, appeared in 1898. Mr. Loring, who saw his brainchild through its fourth edition, was a practicing lawyer and a Boston trustee. In the 40 years that passed before his death, his small, compact handbook played an important role in the dramatic growth of trust administration in this country. From coast to coast, it quickly became the trustee's text of first resort. In 1940 Professor Scott wrote that for more than three decades the Handbook had been on his desk or near at hand. Mayo Adams Shattuck, Esq. and James F. Farr, Esq. prepared the Handbook's fifth (1940) and sixth (1962) revisions respectively.

In 1994 the Handbook was given a new lease on life with the publication of the Seventh Edition in hardcover. That was followed by the 1996 Edition in soft cover, and then the 1997 Edition also in soft cover. The 1998 Edition in hardcover marks the passing of the publishing baton from Little, Brown & Company to Aspen Law & Business. The year 1998 marked the 100th anniversary of the Handbook's existence.

MR: I understand that you were tapped to be the author of the Seventh Edition and have been involved with this handbook since 1994. Tell our readers a little about how the major developments in trust administration since you first became involved in the project. Describe the process by which you gave this classic work a new lease on life?

CR: It was 1990 when I was tapped by Little, Brown to prepare a Seventh Edition. Loring had not been updated since 1962. Times had changed since 1962. The state was now dispensing many more entitlements and regulating commercial activity far more intensely than had been the case 30 years earlier. In the late 1960s—perhaps in response to these developments—law schools had set about the process of downgrading courses in the law of trusts from required to elective status, so that by the early 1990s, while almost all law schools had made courses on state regulation mandatory, only a few (most notably Suffolk University Law School in Boston) were continuing to afford the law of trusts the status it had enjoyed in Mr. Loring's time. In most law schools, the law of trusts had become an afterthought, buried somewhere in an elective course on estate planning. I therefore, could not assume—as Mr. Loring could and surely did—that the young lawyers who would read the Seventh Edition had had any formal instruction in the law of trusts.

Moreover, much had happened in the field of trusts since 1962. The years since then had seen major developments in the area of creditors' rights, spousal rights, and Medicaid eligibility and recoupment. ERISA would not arrive on the scene until 1974. There was no such thing as an IRA or Keogh plan. RICO, CERCLA, and the consumer protection statutes had yet to be enacted. It would be many years before the social investment movement would come into its own. These are just some of the developments that had to be worked into the Seventh Edition.

Since I have been involved with the Loring project, the Prudent Investor Rule was adopted by the American Law Institute and the Uniform Trust Code was finalized. Both have been woven into the fabric of the Loring text.

MR: The nineteenth and early decades of the twentieth century featured many grand theoretical treatises on substantive law. What accounts for the continued appeal of this single-volume handbook? Who is the intended audience for your book? What are the uses of the latest edition of the Handbook?

CR: The Seventh Edition was not designed to be a treatise. I wanted it to be a handy, ready reference: a gateway, as it were, to the treatises, restatements, law review articles, uniform statutes, and seminal cases. In 1898, Mr. Loring had succeeded in producing just such a book. Through the Seventh Edition we were endeavoring to revive and carry on the

Loring tradition. In my opinion, we accomplished what we had set out to do. As we enter the 21st century, Loring's audience has expanded to include trust lawyers, SEC lawyers, estate planners, trust beneficiaries, trust officers, accountants, financial planners, insurance agents, stockbrokers, law students, mutual fund administrators, regulators of public charities, fiduciary litigators, and pension fiduciaries.

MR: This past year we seem to have an epidemic of high profile cases involving the breach of fiduciary duty. What reforms (if any) are required to punish those who would abuse the trustee's office?

CR: None. All plaintiffs' lawyers and regulators of charitable and pension trusts need do is familiarize themselves with the common law duties of a trustee which are the subject of Chapter 6 of Loring and the trustee's liabilities which are the subject of Chapter 7. Equity arms the bench with all the authority it needs to severely punish those who would breach their fiduciary duties.

MR: How has the increased regulatory state of the 1970s impacted the law of trust administration?

CR: The greatest impact is in the pension area. ERISA has codified a number of the common law principles which are the subject of Loring, for example ERISA's catalog of "prohibited transactions."

MR: How would you characterize the pace of change in the field of trust administration?

CR: Rapid. With most of the states having now enacted prudent investor legislation and with the National Conference of Commissioners on Uniform State Laws now lobbying state legislatures to adopt the Uniform Trust Code, trust law has become as volatile as tax law.

MR: What role has your scholarship had in the field of trust administration?

CR: I like to think that I am the keeper of the fiduciary light. With most law schools no longer requiring instruction in the law of trusts, Loring is now virtually the only game in town when it comes to trusts, particularly for those who cannot afford to purchase the Scott or Bogert treatises. And in any case Loring has much practical information which is contained in neither treatise. I am also the Reporter for the 4th Edition of the ACTEC (American College of Trust and Estate Counsel) Commentaries on the ABA's Model Rules of Professional Conduct. Trustees are fiduciaries. Lawyers are fiduciaries. There is a synergy in the Loring and ACTEC projects.

MR: You teach courses in fiduciary relations and the law of trusts at Suffolk University Law School. Is Loring an appropriate text for law school classes? How have students reacted to *Loring's Handbook* and how do you use it in a law school classroom?

CR: Loring is an ideal text for a course on trust law. True, it has no cases, but that hole can easily be filled with a case supplement. The advantage of using Loring as the basic classroom text is that a student can use it to prep for the bar, and then as a desk reference once he or she has embarked upon the practice of law. Students cherish their Loring. Law firm librarians I know have a difficult time keeping track of their Loring.