THE MODERN LAW OF TRUSTS,
By David R. Parker and Anthony R. Mellows;
(Sweet & Maxwell: London), 1966; pp. xxv, 358 and 10 (index).

This new students' textbook on the law of trusts was published in 1966, and your reviewer has therefore had the opportunity to use the book for two and a half years. As the title indicates, the emphasis is on the *modern* aspects of the law of trusts, and considerable attention is given to the purposes for which trusts are now used. Especially welcome is the prominence given to the impact of taxation, now a most relevant consideration in framing a trust; though Canadian readers must, of course, take great care not to be misled by peculiarly English tax provisions in working through the financial examples usefully provided in this book.

The book is written in an attractive, readable style, and there can be no doubt that it is in general competently done. But in the end your reviewer has mixed feelings about it. In view of its 358 pages (though the pages are small) it is in many places irritatingly superficial and sometimes inaccurate. Perhaps the following examples will suffice to justify the complaint.

Superficiality. At page 7 the very difficult and not entirely academic problem of the nature of the beneficiary's interest is treated in nine lines; at page 15 there is no mention of the two possible tests for certainty in a power which can be extracted from *Re Gestetner*[1] and which have now been canvassed in *Re Gulbenkian's Settlement*[2]; at page 22, on the distinction between personal representatives and trustees, *Commissioner of Stamp Duties for Queensland v. Livingston*[3] is of central importance; at page 34 the discussion of the important and difficult case of *Oughtred v. I.R.C.*[4] is poor, and the statement that the majority held s. 53(1)(c), Law of Property Act 1925 (equivalent to s. 9, Statute of Frauds) is wrong—moreover, it is pitifully inadequate to relegate *Vandervell v. I.R.C.*[5] to a footnote with a "see also"; at pages 55-56, on covenants in favour of volunteers, the discussion of *Re Kay's Settlement*[6] is poor, and it is not true that in that case the assistance of a court of equity was invoked—and at page 58, on the same subject, if the trust explanation of *Fletcher v. Fletcher*[7] is correct, it is not anomalous, but merely unpredictable when a trust will be implied; at page 72 et seq., (i) the exposition of the common law rule against

1. [1953] Ch. 672.
2. [1968] Ch. 126, C.A.; [1968] 3 W.L.R. 1127, H.L.
3. [1965] A.C. 694.
4. [1960] A.C. 206.
5. [1965] 2 W.L.R. 1085.
6. [1939] Ch. 329.
7. (1844) 4 Hare 67.

perpetuities in the introduction is confusing, because there is at that stage no adequate explanation of the requirement of certainty of vesting; (ii) in the discussion of the Perpetuities and Accumulations Act 1964 it is misleading to state the age-reducing provision before the wait and see provision; at page 130 et seq., on non-charitable purpose trusts, (i) *Re Dean*[8] is probably wrongly decided; (ii) there is no reference to *Leahy v. A.G. for New South Wales*[9]; (iii) the Perpetuities and Accumulations Act 1964 does not make *Re Chardon*[10] academic, because the Act is not retrospective; at page 136 et seq., on charities, (i) there is no discussion of the difficulties caused by *Oppenheim v. Tobacco Securities Trust*[11]; (ii) it is clear from *Re Scarisbrick*[12] that even the poverty exception requires an element of public benefit to distinguish a purely private trust; (iii) there is no proper discussion of the leading cases of *I.R.C. v. Baddeley*[13] and *Williams' Trustees v. I.R.C.*[14]; (iv) there is no mention of hospitals under head (4) of Lord Macnaghten's classification. And so on.

Inaccuracy. At pages 4-5, example 9 is wrong, because estate duty would be payable on the whole capital on the death of the life tenant; at page 9, can it ever be fraud to fail to exercise a power?; at pages 23-24, *Harvell v. Foster*[15] is perfectly consistent with *Re Ponder*[16] etc.; at pages 46-47, the rule in *Shelley's case*[17] is not a rule of construction; at page 239, the statement that a beneficiary is personally liable to indemnify "where the trustee is a bare trustee" is either wrong or dangerously misleading—the statement should be "where the trustee is trustee for a sole beneficiary who is sui juris," citing *Hardoon v. Belilios.*[18] And so on.

For a monograph of this length, intended for use in universities, the faults are serious.

Only eighteen misprints were noticed, better than average for a first edition.

All in all, the book deserves a qualified welcome. Its chief virtues are readability and modernity; its chief defects are superficiality and inaccuracy, and it is hoped that attention will be paid to these matters in future editions.

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8. (1899) 41 Ch. D. 552.
9. [1959] A.C. 457.
10. [1928] Ch. 464.
11. [1951] A.C. 297.
12. [1951] Ch. 622.
13. [1955] A.C. 572.
14. [1947] A.C. 447.
15. [1954] 2 Q.B. 367.
16. [1921] 2 Ch. 59.
17. (1581) 1 Co. Rep. 88b.
18. [1901] A.C. 118.

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