

BOOK REVIEWS

Subsidiaries and Affiliated Corporations. By Elvin R. Latty. Chicago: The Foundation Press, 1936. Pp. xxvii, 220.

With the rapidly rising tide of problems confronting business men and lawyers under the provisions of various recently enacted statutes, federal and state, dealing with corporate parents, subsidiaries, affiliates and the all important matter of "control," such a title as "Subsidiaries and Affiliated Corporations," given to a work just published, is an immediately arresting one. The Federal Securities Act, the Public Utility Holding Company Act, certain sections of the federal revenue laws, the so-called affiliated interest provisions now being commonly added to the public utility acts of the states, and much other comparatively new legislation have served to make us conscious as never before of the subject of intercorporate relations and their legal consequences.

Professor Latty has not, however, primarily set out to supply specific answers to specific problems, modern or old, but rather has written, with the object of establishing if possible a basis of logical reasoning, a painstaking and intelligently critical analysis of a department of the law which in its haphazard development quite defies rationalization, at least at the hands of the ordinary thinker. The early chapters of the book have an almost philosophical tinge in their somewhat discursive consideration of corporate personality and the entity concept and one can readily agree with the author that "Much of the controversial literature on corporate personality is of such quasi-theological flavor that it is of very little use to the lawyer who is faced with a practical problem."

But soon enough, perhaps, we encounter the realities in the timely discussion of such matters as the extension of the receivership or bankruptcy of a parent corporation to the administration of the business and property of a subsidiary; the possibility of obtaining jurisdiction over a foreign parent through a domestic subsidiary; the extent to which a subsidiary may be used for the purpose of enabling the parent to avoid contractual obligations or statutory mandates; and other questions arising under particular statutes of limited application. Of practical value also is the chapter, "The Owner as His Own Creditor," in which is considered the problem of intercorporate claims, particularly the question as to the extent to which and under what circumstances claims of the parent against its subsidiary should be subordinated to the claims of outside creditors.

The central and dominant theme of the book, consistently adhered to, is the subject of liability, both contract and tort, and the effectiveness of incorporation as a means of limiting liability under varying circumstances. In fact, the special matters above referred to as being of particular interest to the practicing lawyer are treated not as of independent importance but merely as authoritative or unauthoritative "liability-precedents," as the case may be. In the parent-subsidiary or sub-subsidiary relationship the author characterizes the liability problem by the rather expressive

phrase, "intercorporate vicarious liability." With considerable skill Professor Latty weaves his way through the maze of decisions where under certain facts the courts scrupulously respect the corporate "entity" and refuse to "pierce the corporate veil" and where, sometimes under different facts but often under like facts, they elect disdainfully to "disregard the corporate fiction" and to see the corporation as a sheer "device," "agency" or "instrumentality" created for the futile purpose of escaping personal liability.

It seems true, as said at the opening of the concluding chapter, that "nearly all of the discussion heretofore could just as well have been directed to individual stockholders as to parent corporations." This last chapter, however, entitled "Limitations upon Limited Liability," goes directly to the vital question whether in certain situations there may not be a point beyond which an individual, once having limited his liability through incorporation, may not go in further limiting his liability by causing the corporation to form subsidiaries for the conduct of separate departments of the business enterprise. It is suggested that the cases allowing the creditor of the subsidiary recovery against the parent or intermediate subsidiaries are simply giving legal recognition to what may be an economic fact, namely, that the whole corporate family constitutes a single economic unit and that there is no justification for "denying to an injured claimant of an insolvent subsidiary recovery against a parent corporation which is itself, *inter alia*, an instrument for limiting the liability of its own stockholders." Assuming that the single enterprise theory is a tenable one for legal purposes, the difficulty of its application, it is pointed out, lies in the inability of the economists themselves to give us a formula for determining what does and does not constitute a single business unit. This concluding chapter is especially well and interestingly written. It is unreservedly commended to those who may not be disposed to read the book in its entirety.

Professor Latty writes easily and at times with a real literary flourish. The book is readable and in no sense is it a bare reference text. There is an excellent collection of cases. Professor A. A. Berle, Jr. has written a foreword in his usual brilliant style.

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Capital Surplus and Corporate Net Worth. By Raymond P. Marple. New York: The Ronald Press Company, 1936. Pp. viii, 201, \$3.00.

This little book should be read throughout by every corporation lawyer. It is an exceptionally clear discussion of the group of legal-accounting problems with which the lawyer is today most frequently concerned. The chapter headings include Legal Capital, Capital Stock Premiums, No-par Value Stock, Treasury Stock, Reduction of Legal Capital, Revaluation Surplus, Charges against Capital Surplus, Losses and Asset Write-downs, and Capital Surplus and a Declining Price Level.

The author is a certified public accountant and is head of the research and service department of the National Association of Cost Accountants. His work has almost none of the qualities which have made many accounting books of limited usefulness to lawyers. Too frequently accountants deal cavalierly with troublesome statutes and