

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

decisions as merely illustrating indefensible accounting notions. With Mr. Marple, however, the first duty of the accountant is to master the applicable rules of law and present the financial data in such a form that their legal significance may be understood. Only then may he insist that the statements should also present additional information in order that creditors and investors may not be misled. Like most accountants, the author decries statutes which do not require the maintenance of "invested capital,"—which permit directors to fix an arbitrary, if not nominal, "legal capital"—but this has not kept him from presenting a more accurate and readable discussion of the effect of typical modern statutes than may be found in the strictly legal literature.

Particularly able is the discussion of treasury stock and the effect of the purchase of such stock upon surplus in jurisdictions where, by statute or application of the "trust fund" theory, such purchases may be made only "out of" surplus.¹ Only recently has it been recognized by either accountants or lawyers that in many, at least, of these jurisdictions the purchase of treasury shares has the effect of freezing, or rendering unavailable for dividends or further share purchases, a portion of the surplus equal to the cost of the treasury shares. In most states, when the treasury shares are formally cancelled, the frozen surplus is freed to the extent of the reduction of legal capital effected by the cancellation and, if the shares are resold, surplus is freed to the extent of the proceeds. In California earned surplus is permanently reduced by the purchase of treasury shares and is not replaced upon cancellation or resale.² Referring to the California act, the author says, "It is difficult to see how the purchase and resale of treasury shares can convert earned surplus into capital surplus. But accountants do not make laws."³ The provisions that thus puzzle Mr. Marple represent an original effort upon the part of the draftsmen of the California act to put a real check upon share purchases—to make it impossible by successive transactions to use earned surplus as a "revolving fund" with which to support the market in the corporation's shares.⁴

The practice of charging losses against capital or paid-in surplus while the corporation has an earned surplus is justly and effectively condemned,⁵ although in this connection reference might well have been made to the opinion of the Illinois Attorney General that this practice is authorized by § 60a of the Illinois Business Corporation Act.⁶ The soundness of this opinion is open to serious question.⁷

Exception might be taken to the sketchy treatment of the rights of shareholders of different classes,⁸ as well as to the unqualified statement that the donation to the cor-

¹ C. 5.

² Cal. Civ. Code §§ 342, 342b (supp. 1933).

³ P. 76.

⁴ See Ballantine, *California Corporation Laws* § 180 (supp. 1933); Ballantine, *A Critical Survey of the Illinois Business Corporation Act*, 1 *Univ. Chi. L. Rev.* 357, 368 (1934).

⁵ C. 10.

⁶ *Op. Att'y Gen'l Ill. No. 672*, August 9, 1934, reprinted in *Illinois Business Corporation Act Annotated* 65-67 (supp. 1936).

⁷ *Illinois Business Corporation Act Annotated* 9 (supp. 1936).

⁸ Pp. 109, 157-58.

poration of par value shares issued for overvalued property permits their resale for any price without violation of the rule against original issues at less than par.⁹ Such criticisms, however, would be of little importance; the book is a real contribution, making available to the lawyer a lucid explanation of accounting principles and to the accountant a sound discussion of statutory rules. To teachers and students of both law and accounting it will prove invaluable.

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⁹ P. 33.