

BOOK REVIEWS

Cases and Materials on the Law of Corporations. By Henry W. Ballantine and Norman D. Lattin. Chicago: Callaghan & Co., 1939. Pp. xxxi, 917. \$6.00.

Like most reviews of case books, this one comes in advance of an attempt to use these materials for teaching purposes. By turning the pages, one's familiarity with the cases selected and his study of the editors' contributions in the form of notes enables him to understand the scope of the work, the thread of their analysis, the theory of their progression and the proportions of their treatment of different topics. But only the use of the materials as a medium for instruction supplies a solid foundation for a final appraisal of a case book.

In the present instance, the long teaching experience and the recognized ability and scholarship of both editors commits one to an advance judgment that this case book must be of a high order of excellence. Contributing further toward this assurance is the knowledge that this book is the product of the collaboration of two men prominent in the field of corporation law and that their product has been subjected by them to classroom test before publication.

Though this is a case book dealing with the law of corporations only, and not with the law of business associations generally, it does include a preliminary chapter essential for laying a foundational understanding of some of the practical differences between the corporation and the various types of unincorporated associations.

The preparation of a case book requires the exercise of judgment in determining what aspects of the entire subject may be excluded. In eliminating treatment of the reorganization of insolvent corporations, the editors have adopted the recently accepted practice of leaving this topic to a course on creditors' rights or to an advanced course on corporations. The subject of foreign corporations is omitted. There are two cases and a text note of a page and a half relating to state and federal security legislation. Apparently, the editors themselves regard this as substantially equivalent to a complete omission, for, in the preface, they mention governmental regulation of security issues as one of the subjects left to other courses.

Teaching law by the "course method" certainly raises problems as to the most appropriate allocation of topics to the several courses. A student can not take all the courses offered and his choice among them may be insufficient to acquaint him with the distributed phases of a single problem. For example, courses on trusts and future interests would seem to be incomplete unless the pertinent provisions of gift and estate tax laws, which so essentially condition the employment of trusts and the creation of future interests, were not only referred to but thoroughly discussed. Similarly, modern securities legislation has important bearing upon the solicitation of subscriptions and the allotment of shares; the pre-incorporation activities of promoters; the purchase and sale of shares by directors, and the solicitation and use of proxies. The editors have dealt with the first of these problems in the material already referred to.¹ They have made only casual allusions to the other three and have appended brief footnote references to pertinent periodical literature.²

¹ Pp. 361-73.

² Pp. 196, 252 and 655.

One may question whether sufficient material has been included to explain and emphasize that tax laws may frequently have a decisive bearing upon the form or method of corporate action. This important point has not been entirely ignored. In the opening chapter, there is allusion to differences in tax laws applicable to incorporated and unincorporated associations. In a short note,³ attention is drawn to the non-taxability of stock dividends under *Eisner v. Macomber* and to the fact that, by its decision in *Koshland v. Helvering*, the Supreme Court opened the door to the taxation of some stock dividends. In the same chapter, it is pointed out also that for income tax purposes there is a difference between income resulting from "capital gains" and income received as interest or dividends.⁴ There is an admirable chapter on fundamental changes in the corporate constitution. This presents the most recent significant decisions and statutes relating to such changes and directs a study of the limitations upon the state's powers to amend its contract with the corporation and upon the power of the majority to amend their contract with the minority. The sale of corporate assets, merger and consolidation are here developed with emphasis upon the protection of creditors and shareholders. But as to the tax angle, which may be controlling in shaping this type of "reorganization," the student receives only the footnote warning that "the job of the lawyers is to conduct the transaction so it will be a tax-free 'reorganization' under Section 112 (g) of the Fed. Rev. Act."⁵

In framing the outline and in filling in the details of this case book the editors have given proper recognition to the relative importance which various problems have in current practice. Their selection of cases includes a preponderance of decisions since 1930. Recent statutory provisions are set forth in abundance. The footnotes are unusually comprehensive—helpful to the instructor and to the student who has occasion for exhaustive study. Notes and problems have been generously interspersed throughout the text. By this means the editors have laid introductory foundations and suggested variations in facts and local differences, and thus have broadened the field to which the student's attention is invited while at the same time frequently avoiding the need for illustrative cases to be studied. Typical examples of the employment of this method are found in the chapter on ultra vires where eleven of the fifty-three pages are devoted to text notes and problems, and in the chapter on capital and dividends where fifteen of the sixty-five pages are so devoted. The book is replete with evidence of thoroughness of scholarly labor directed by a practical viewpoint.

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Illinois Motion and Petition Practice. By Harry George Fins. Chicago: Callaghan & Co., 1939. Pp. 1322. \$15.00.

It is now six years since the passage of the Civil Practice Act. The doubtfulness and uncertainty engendered by a different type of procedure has now blown away. A few statutory amendments, a few clarifications by the Supreme Court, and the Civil Practice Act is now an integral part of our legal system. Out of the dust and confusion of change have emerged two important concepts: first, that the change is procedural only, and does not affect any substantial rights or rules of law; and second, that in place of all pleas and demurrers, in their stead stands just the motion, or its twin-brother, the petition.

³ P. 442.

⁴ P. 453.

⁵ P. 772.

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