

tendencies become more pronounced, those for whom the book is written may do well to include on their antitrust shelf additional materials which treat the same facts from viewpoints less favorable to the association and which use the same terms in a different sense. The Twentieth Century Fund's three volume study, with its more detailed treatment of cases, is an example in point.⁴

Despite the implication that unwarranted inferences of illegality have led to antitrust actions against trade associations, the lessons of the cases have been studied and advice offered which, if followed, should minimize the antitrust risks. "For the members and officers," the authors wisely point out, "the fundamental rule to be followed in keeping an association's operations within the antitrust laws is that there be no agreements, express or implied, which restrict the individual's freedom to make independent business decisions" (P. 30).

NORMAN BURLER*

⁴ Stocking and Watkins, *Cartels in Action* (1946); *Cartels or Competition* (1948); *Monopoly and Free Enterprise* (1951).

* Law Librarian, University of Chicago Law School.

Partners and Partnerships: Law and Taxation. By J. M. Barrett and Erwin Seago. Charlottesville: Michie Co., 1956. 2 Vols. Pp. xviii, 765; xiv, 915.

When two or more persons join to accomplish a business objective an attorney is faced with choosing the legal form which will most effectively accomplish the objective and best satisfy the individual client's requirements. Several types of interests may be involved in a given project, including stock ownership in a corporation, an interest in a general or limited partnership, interest in an association taxed as a corporation, or interest in a partnership engaged in investment or the development of minerals, electing to be taxed as a corporation.

Although many lawyers reach for the incorporation forms when confronted with a proposal for a joint venture, there are still more partnerships than corporations in the United States. The greater feasibility and efficiency, and the resulting more frequent use of the partnership form, raise many problems of substantive and of tax law. The problems in the tax area have recently been given careful attention in Chapter K of the Internal Revenue Code of 1954, which seeks to give many needed answers.

In *Partners and Partnerships*, the authors have logically treated the substantive law of partnerships and have performed the additional service of giving, at the end of each section, a separate discussion of the applicable provisions of the Internal Revenue Code of 1954, and the applicable tax decisions under the 1939 and earlier revenue acts. Some day, perhaps, we will consider tax law the same as any other law, but for the present at least this method of

treatment serves to point up the variations between the results reached in local courts on matters of substantive law and the results reached when tax rears its menacing head. In addition, this work collects for convenient reference in two volumes the Uniform Partnership Act, the Limited Partnership Act, the partnership provisions of the 1954 Code with regulations and congressional reports, the 1939 Code provisions, regulations and Tax Service rulings, forms of partnership agreements, buy-and-sell agreements and forms for specific clauses relating to insurance and other matters.

The opening chapter relates the history of the law of partnerships and encourages a philosophical approach to current efforts to solve existing problems by codification. As set out there, our modern partnership law stems from the English case of *Fox v. Hanbury*.¹ The debate between the proponents of the entity theory and those of the aggregate theory dates back even farther, with the entity coming from the law merchant as administered in the admiralty courts and the aggregate theory coming from the common law. The fact that these two theories have flourished side by side for so long would indicate that the 1954 Code has historical justification for allowing an election in this respect. Through the years, solution of problems to effectuate the intent of the parties has been simplified through the application of one or the other of these inconsistent theories.

Of more immediate significance to the practitioner will be the 164 pages devoted to business and tax planning (Chapters 10 and 11). Herein are treated the relative advantages of partnerships as compared with corporations. As in all such discussions, a listing of the relative advantages points inevitably to the partnership arrangement in many cases, but this has been demonstrated previously by other writers, and lawyers will doubtless continue to reach for incorporation papers without undertaking the laborious task of comparing advantages to see which form best fits the requirements of the particular case.

In comparing incorporation with partnerships lawyers frequently overlook the disadvantages of the corporate form in the event of certain contingencies. For example, the advantage of a continuing entity uninterrupted by death is fine for those who survive, but many a widow with a minority interest in a small corporation would be better off if her share of the assets of the enterprise were available, as it would be if she held a partnership rather than a stock interest. In such a case the benefits of a continuing entity uninterrupted by death are based largely on the assumption that the client's wife will not become a widow who needs the protection of joint ownership of certain assets, rather than a minority interest in a small closely held corporation. The freedom to terminate may be disadvantageous to those who wish the business to continue, but it is surely of value to one who wants to get out. At the time of starting the

¹ 2 Cowp. 445, 98 Eng.Rep. 1179 (1776).

business it is difficult to forecast who will benefit from the form chosen, but the alternatives should certainly be examined in the light of all possible contingencies.

The section on business and tax planning also discusses buy-and-sell agreements, survivorship agreements, valuation of partnership interests, and various methods of purchasing insurance; and presents forms of the various documents discussed. In this area a lawyer usually insists on reaching his own conclusions, but the discussion is valuable as a check-list of the questions which should be raised and considered.

Some thirty-five pages are devoted to the problems incident to incorporating a business which has been carried on by a partnership (Vol. II, pp. 417-42). This common situation, which would seem to present no tax complications, contains a wealth of potential booby traps which the authors cover in detailed fashion. A source of many of the incorporation complications is the fact that in many instances the aggregate total of the basis of assets to the partnership will differ from the aggregate total of the bases of the partnership interests to the partners. The resulting problems concerning the corporation's basis for the transferred assets, and the former partners' bases for the acquired stock are fully considered by the authors. The pages devoted to this discussion sensitize the reader to the pitfalls arising from incorporation of a partnership where this basic disparity exists, and make useful suggestions for avoiding these pitfalls.

The foregoing example is only illustrative of a multitude of areas in which these volumes are useful in gathering the tax law applicable to a given partnership transaction. The principal advantage of a text such as this is that it deals with problems as they would come up in practice, interrelating the many applicable sections of the Code and discussing problems which a mere exposition of the Code might miss.

Inasmuch as partnerships are entered into for all types of undertakings, a complete treatment of the problems involves the substantive law on many other subjects, and the authors have not hesitated to enter into an analysis of this related substantive law which ranges from the problems incident to purchase of insurance to the right to a depletion allowance. Of course discussion of these matters is available in many other works. The chief value of these volumes lies in their assembling in one convenient place all the tax and substantive law relating to partnerships, together with necessary forms and check lists, so that an analysis of a problem may be pursued with the least possible interruption to hunt for relevant source material.

MERLE H. MILLER*

* Member of the Indiana Bar.