calendar are of particular significance because of the fact that the percentage of claims reaching trial is now so small—2 or 3 per cent. If another 1 per cent of claims had to be tried the courts would be overwhelmed with the task. Although the factors discussed above probably would not have that much effect on the workload, the potential impact of such a small percentage of change in the settlement ratio makes prediction of the workload extremely hazardous.

It may be that the price tag for complete elimination of delay would be so much higher than that for reduction of delay to something like six months that the latter would prove to be the optimum choice. Of course this is not to say that nothing more should be done about the plight of the serious personal injury victim; that is a problem involving other issues as well as delay. Also, this is not to say that the present average delay of 30 months for personal injury cases in the New York Court is tolerable. The call to arms for the attack on delay, both in the New York Court and elsewhere, should be heeded even if the goal is somewhat more modest than elimination of all delay and the estimate of cost somewhat higher than the equivalent of 11.7 judge years in the New York Court and comparable cost elsewhere.

ROBERT E. KEETON


This volume, in the University Text Book Series, by Professor Lattin of Ohio State University attempts to summarize in one volume the great mass of law within the corporation field. The author states that his book was “written with the purpose of clarifying, where possible, the ‘law’ of corporations and to present in as simple language as accuracy would permit, the major principles which have been in the making since the early days of the American corporation. Where decision or statute law has seemed out of line with reason, it has been criticized, as justly it should be.” He also states that it is his purpose to present a text written in the light of modern thinking and modern cases.

The handling of a very large body of case and statute law within the confines of a single volume is an extremely difficult task; consequently Professor Lattin’s statement of purpose is necessarily somewhat grandiose. A one volume text may attempt either to be an intensive analysis of basic principles and problems within the field considered or else a comprehensive introductory presentation which, therefore, covers so much material that it must necessarily treat its subject in rather summary fashion. Professor Lattin’s book is in the nature of an introduction within the second category mentioned above, and designed for the use of the law student and not for the practicing lawyer. In accordance with his purpose of modernizing the presentation of the law of corporations, Professor Lattin’s footnotes cite recent cases in a large proportion of instances and contain extensive
references to the treatment of many important problems under the provisions of modern business corporation acts, notably the recently enacted North Carolina Business Corporation Act. In addition to gearing his case and statute references to modern instances, there is a noticeable difference between this book and a similar text of thirty or forty years ago, particularly in the reduced allocation of space and importance given to such matters as corporate powers, de jure and de facto corporations and ultra vires. On the other hand, such matters as directors' fiduciary obligations and the corporate opportunity doctrine, which are in flux and are expanding greatly in the modern practitioner's practice, merit even more extended consideration than they are given.

The organization of this text follows in general the organization of Ballantine, Lattin & Jennings, Cases and Materials on Corporations, with which the author is associated. The author is influenced in his basic approach and presentation by the earlier one volume work on corporations by Professor Ballantine. The author's general point of view with respect to the position of minority shareholders, fiduciary obligations and corporate democracy is primarily derived from Professor Berle, to whom, as to Professor Ballantine, the author frequently acknowledges his respectful indebtedness.

Over ten per cent of the text is devoted to an initial chapter entitled "The Role of the Lawyer in Determining what form of Business Association is Best Suited to his Client's Needs." This chapter considers the forms of business associations, other than corporations, such as partnerships, business trusts, etc., and sets forth their elements and basic problems. It is questionable whether so large a segment of so short a text should be diverted for such a discussion from the primary area of interest, namely, the law of corporations.

The next chapter considers, in brief compass, the concept of the separate personality of a corporation, the corporation with a single shareholder, corporate citizenship, the parent-subsidiary relationship, and the constellation of difficulties and problems often grouped under the phrase "piercing the corporate veil."

In chapter 3, called "Preincorporation Management: Promoters: Subscriptions," Professor Lattin devotes a great deal of attention to the problem of promoters' profits, to a detailed analysis of the Old Dominion Copper Company cases and particularly to the problem of who is the appropriate plaintiff, the purchaser of the stock or the corporation. In the situation where the promoters obtain shares which are then resold at an inflated price to the public, Professor Lattin urges strongly that the corporation has lost its opportunity to sell its shares to the best advantage, and that, therefore, a corporate cause of action is appropriate. In such a situation, it may well be that the corporation may not have been entitled to any greater payment for its stock than it received; the fact that the promoter may have overcharged the public does not necessarily mean that the corporation is similarly entitled to an overcharge. The promoters action may be unjust, but such a wrong is not righted by contending that the corpora-
tion is deprived of the benefit of performing a similar injustice. The corporate cause of action may well be the proper or practical solution, but it would seem to be so for a different rationale than that which Professor Lattin advances.

Although Professor Lattin refers to the effect of the Securities Act of 1933 upon the control of promoters’ profits, he does not indicate the full impact of these disclosure requirements upon the practical dimensions of this problem. So far as sizable public offerings of securities are concerned, the disclosure provisions of the federal and state securities laws have very materially altered the problems of the *Old Dominion Copper Company* cases by preventing the kind of concealment of cost and profits around which the earlier promoters’ cases revolved. Although such evils may still exist in connection with small corporations and small offerings, a large proportion of the problems growing out of concealment of profits would seem to have been obviated by disclosure requirements under securities laws; when such laws are violated, the remedies which they provide afford the simplest methods of obtaining recovery. Whether disclosure of promoters’ profits will actually stop unconscionable gains is far from certain. It may be that new fiduciary doctrines regulating such profits, even where disclosed, may have to be developed without regard to concealment or disclosure.

Throughout his text, Professor Lattin makes reference to the impact of federal securities laws, state blue sky laws and the Internal Revenue Code upon corporate practice; however, the extent of their impact is not sufficiently recognized by this book. Although the Securities Act of 1933 was designed primarily to require disclosure in the sale of securities, it has had widespread ramifications and has changed or, in effect, regulated, many matters traditionally considered part of corporation law. As a matter of fact, there are some commentators who advocate controlling a much larger portion of traditional corporate activity by resorting to securities laws and the actions of administrative commissions which operate under them. Whether such an oblique type of regulation should be substituted for direct legislation by business corporation acts (even for admittedly beneficial ends) merits much serious consideration and questioning.

The federal income tax laws, as well as federal and state securities laws, also tend to exert substantial effect upon corporate law and practice, far beyond the avowed intent of the laws themselves. There are many widely recognized instances of the limitations imposed upon corporate action by tax considerations. As one very minor example of the wide reach of such laws into areas not so generally recognized, it has often been suggested that in a closely held corporation, where a partnership arrangement is sought to be approximated, the customary perpetual corporate duration should be shortened to a term of perhaps two to five years to allow for periodic reconsideration of relationships and for ease of dissolution. Many corporate practitioners are deterred from the use of such a device because of the uncertainty of its tax consequences upon expiration.

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of the stipulated period and the amendment of the charter to extend the duration of the corporation. The extensive impact of such laws upon corporate activity would justify fuller recognition in even a single volume text.

The chapter on "Preincorporation Management" is followed by a chapter which deals with defectively formed corporations and then by a chapter dealing with the purpose clause and ultra vires. The next two chapters are entitled "Postincorporation Management: Directors, Officers and Agents," and "Postincorporation Management: Shareholders’ Ambit of Action." The first of these two chapters on "Postincorporation Management" contains a general consideration of the position of officers, directors and agents; the second chapter, despite its broad title, deals primarily with procedural matters and stockholders’ agreements and voting controls. It does not consider the problems of stockholders’ suits which are separately dealt with in a chapter entitled "Shareholders’ Protection Against Acts of Management"; it also does not deal with the large areas of power which are still reserved to shareholders, such as approval of amendments, mergers and the like, which are considered instead in a subsequent chapter entitled "Fundamental Corporate Changes."

Toward the end of the volume, there is a chapter called "The Use of Shares to Acquire Corporate Assets," which discusses, among other things, the problems of watered stock. It would seem that the question of promoters’ profits, which is treated at length earlier in the book, could probably have better been considered here in conjunction with stock watering. In the same chapter the author chooses to set out the types of preferred securities and the nature of their terms. This very broad subject of the different types of securities and their provisions is treated rather summarily. The book concludes with chapters on "Dividends" and "Dissolution." The book deals very lightly with problems of transfers of shares, does not discuss at all the matter of foreign corporations or the problems of interstate corporate activity, does not attempt to deal with the problems of succession, merger and consolidation and does not discuss the field of corporate reorganization.

Throughout his book, Professor Lattin advocates stringent rules to protect the position of minority stockholders in connection with stockholders’ suits, corporate democracy and fiduciary problems. Although this reviewer concurs with the general approach of Professors Berle and Lattin in such matters and agrees with most of the broad fiduciary propositions that Professor Lattin asserts, it would seem wiser to set forth some of the practical considerations and arguments which are advanced in opposition to inflexible rules in such respects. For example, in discussing whether a purchaser of a control block of shares must make a simultaneous similar offer to other shareholders, little consideration is given to countervailing arguments, such as the social desirability of freedom from restraints on alienation and the possibility that the purchaser may be unable to finance a greater purchase than he is offering to make. In such an area Professor Lattin is generally impatient with so-called "practical arguments"; in
his chapter on "Fundamental Corporate Changes," he is not similarly disturbed by the adverse consequences which can be forced upon minority stockholders through charter amendment or merger.

Professor Lattin's book is very comprehensive for a one volume text; it has the advantage of speaking in terms of modern cases and citations and contains extensive references to modern business corporation acts. It indicates some aspects of the impact of the Internal Revenue Code and state and federal securities laws upon corporate law and practice. The presentation is, by virtue of the size of the book, necessarily somewhat elementary and discursive; the treatment of the subject matter is not sufficiently intensive or documented to be valuable as a reference work to the practicing lawyer. Professor Lattin's book cannot be said to have achieved the high purposes set out in his statement of purpose quoted at the beginning of this review. However, it is a competent introductory textbook, which covers a large mass of material in simple and understandable fashion.

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Those who follow the recurring law review discussions of the problem of pleading and proving foreign law will remember Messrs. Sommerich and Busch as the authors of one of the more helpful contributions to that discussion.1 The theory that foreign law is fact, to be pleaded and proved as such, had long imposed unnecessary burdens on the administration of justice. In revolt against those burdens, modern scholars, lawyers, and legislative draftsmen had turned to the concept of judicial notice as a solution to the problem of ascertaining foreign law. Without denying that substantial progress had resulted from the employment of judicial notice, Sommerich and Busch counselled moderation and common sense. Judicial notice, after all, could not accomplish miracles. The problem of ascertaining foreign law, and of establishing it to the satisfaction of a court, remained a formidable one. Knowledge of foreign law cannot be bestowed on courts by legislative fiat; and considerations of fairness still dictate that foreign law, like other matters that may have a decisive effect on the outcome of litigation, be determined in accordance with the traditions of the adversary process. Notice is still required, and the foreign law must still be ascertained in the fairest and most reliable way. Notice is best given in the pleadings, and the fairest and most reliable way of ascertaining foreign law is by the examination of experts in open court. Hence Sommerich and Busch maintained that, while judicial notice could be relied on to obviate some of the harshness