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Book Reviews

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BOOK REVIEWS

COMMENTS, CASES AND MATERIALS ON CORPORATE FINANCE. By Hugh L. Sowards. Buffalo: Dennis & Company, Inc., 1950. United States Case Book Series. Pp. 952. \$7.50.

More than a thought-provoking book on a legal topic of current interest, or even a treatise in a well-established field of law, a new case book presents a difficult job of review and appraisal. Assuming that the primary purpose of a case book is to teach, then considered judgment may only follow use and experience.

In this his first major work Mr. Sowards has sought to teach. But he has entered an area where the standards of legal instruction, as manifested in case books, is very high. Witness Berle & Warren, *Cases and Materials on Business Organizations (Corporations)* (1948); Berle & Magill, *Cases and Materials in the Law of Corporation Finance* (rev. ed. 1942); Prashker, *Cases and Materials on Corporations* (2d ed. 1949); and Stevens & Larson, *Cases and Materials on the Law of Corporations* (1947). His work must be judged accordingly. And where it is so difficult to criticize in the abstract, as with an untried case book, comparisons may be profitable. We necessarily grow curious as to what others have done with the same subject.

Certainly Mr. Sowards' extensive use of notes, comments and other materials is not novel in the corporate field. Professors Berle and Magill at Columbia, in their 1942 edition of Berle's 1930 case book in corporate finance, enlarged the already extensive use of notes and comments which Berle had made in his original edition. And Berle & Warren's recent case book on corporations is thoroughly and skillfully spiced with notes, commentary and statutory material. But what is refreshing, though not necessarily intellectually stimulating, is the simplicity and directness of the greater part of Mr. Sowards' notes. He leaves little to the law student's imagination. In Chapter I the author tells us that if Smith owns 100 of 1000 shares in corporation ABC he is one-tenth owner of ABC, "although he may live thousands of miles away and have no connection with the enterprise other than his financial interest."¹ This chapter sets the tone for the entire book.

A more fundamental novelty in Mr. Sowards' work is his obvious belief that corporate finance should not be combined in a single book or course with other aspects of corporate law. It is interesting to note that Professor Berle apparently operated under the same conviction when he compiled his case book on corporate finance in 1930, several years before the enactment of the first of the federal securities laws which Mr. Sowards² sees necessitating a separate book. Yet eighteen years later, in 1948, after the advent of all the various securities laws and the gigantic administrative machinery built up through those intervening years, Professor Berle, with Professor Warren, has authored *Cases and Materials on Business Organizations (Corporations)*, in which corporate finance and general corporate law are considered together. So in the last analysis Professor Berle has found that the entire body of corporate law is a unit to be taught and studied as one. It is a symphony all of whose movements must be heard at one sitting if the total impression is to be fully embraced. "A good course (like a good symphony) has both theme and counter-theme."³

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1. P. 1.
 2. Preface, p. vii.
 3. Berle & Warren, *Cases and Materials on the Law of Business Organizations (Corporations)* Foreword, p. vii (1948).

If Professor Berle's conclusion is based on his many years of teaching corporate law, and presumably it is, experience would seem to be on his side.⁴ But his new book embracing the entire field has not been long in the testing; and certainly Mr. Sowards' work should be given a fair trial, particularly as it differs substantially in organization from the Berle & Magill corporate finance case book, which Professor Berle himself has apparently found to be something less than ideal.

And indeed, there are many details of organization of the first two-thirds of Mr. Sowards' book which would seem likely to lead to a much clearer student conception of the subjects treated than could be gained from Berle & Magill's work. Mr. Sowards' scheme is mainly a chronological one. He begins with a first chapter on Definitions and Fundamentals. Chapter 2 is a general study on the Corporate Capital Structure; Chapter 3 deals with the Promotion process; Chapter 4 treats the different methods of Payment for Shares and Valuation of Property Exchanged; and Chapter 5 is an extensive consideration of the subject of Dividends. Berle & Magill's pattern of organization lacks chronology but, more significantly, it appears to lack any apparent logic. Whereas in Sowards early attention is given to the different legal consequences which courts attach to preferred and common stock, in Berle & Magill the subject finally crops up in Chapter 8, under the questionably helpful title of Limited Participations and Preferences. And the even more fundamental question of when a hybrid instrument is a stock and when it is a bond, importantly brought to the fore in Chapter 2 of Sowards, doesn't make its appearance until Chapter 10 of Berle & Magill. The student finds he has been begging the question for the entire first section of the book.

Though dependence in study on absolute categorization is always dangerous, the clear and intelligent subdivision of topics in Sowards, as well as their chronological development, leads to a less confused picture in the student's mind. Whereas Sowards places the topic of liability on Watered Stock neatly under Chapter 4 on Payment for Shares and Valuation of Property Exchanged, one wonders why in Berle & Magill it is placed under the chapter on the Rule of Equitable Contribution, rather than under the more logical choice of their chapter entitled Fair Valuation of Property Contributed in Payment for Stock. And also one may wonder why no par stock is treated as a separate chapter in Berle & Magill, rather than tied, as in Sowards, to the greater issues of which it is really an aspect—Payment for Shares and Valuation. In general, Sowards' organization gives a superior conception of how the various subjects interrelate, and a better grasp of the way in which the issues indicated in the subdivisions fit into the context of the larger problems.

Though Mr. Sowards' organization of his first five chapters is superior to the approach of Berle & Magill, his last four are inferior, both to Berle & Magill and to Berle & Warren. Chapter 6 of Sowards is a study of Blue Sky Legislation; Chapter 7 treats the Issuance of Securities: Federal Regulation (and thus, generally, the Securities Act of 1933); Chapter 8 deals with the Trading of Securities: Federal Regulation (and thus, generally, the Securities Exchange Act of 1934); and Chapter 9 concerns Civil Liability under the Acts. This is a logical chapter grouping, but in the subdivisions the general chronological pattern which Mr. Sowards uses throughout

4. There is indication, however, that Professor Berle's attitude from the beginning has been one of favoring the combined course. "Yet, from the beginning, it was clear that there was no real line between the principles of corporation law and the principles applicable to those financial situations which are conventionally a part of the life-experience of most corporations. In time the two courses could and should be integrated." *Ibid.*

his case book is, in several instances, abandoned. For example, in Chapter 7 he gives a detailed picture of the entire registration statement and prospectus process, in Sections (a) and (b) respectively. Then in Section (c) the word "security" is defined and in Section (d) the many exemptions are considered. In reading these sections even one with considerable experience in the field of securities issuance is impressed as he is reminded of how many possibilities there are of falling outside the definition of "security," or inside one of the exemptions. To have a clear conception of just what instruments of issue are subject to the Act before studying the registration statement and prospectus process will be an aid both to the memory and to the understanding of the total function of the Act. Berle & Magill did not make such mistakes in their treatment of the Securities Act of 1933, nor have Berle & Warren in their very similar and highly satisfactory treatment of the whole field of federal securities regulation.

Considered as a whole, the selection of cases in Mr. Sowards' work is thoughtful, judicious, and quite up-to-date. He has the advantage of authoring the most recent case book in the field and has made full use of it, particularly in the fast-moving field of SEC regulation. His inclusion of examples such as the Georgia Power and Light Trust Indenture⁵ and of the Southern States Iron Roofing Company Agreement Among Underwriters⁶, Underwriting Agreement⁷, and Selling Agreement⁸ are timely and very helpful in giving a practical vision of just what goes on in the field under consideration. Perhaps the most glaring of the very few omissions which this reviewer finds in the whole work is the failure to include cases and materials on the purchase (by the issuer) and/or retirement of stocks and bonds. This is an important and legitimate field of inquiry in any study of corporate finance, and Mr. Sowards' default in this regard is surprising.

The characteristic of Mr. Sowards' case book perhaps most worthy of mention is the clarity and directness of the notes which have been expressly written for this book. They occur throughout the work, and whenever they precede the beginning of a new topic they seem to be at their best and of the most value to the student receiving his introduction to the subject. This seems to be Mr. Sowards' area of special competence. Particularly outstanding are his notes on hybrids⁹; his simplified description of collateral trust bonds, equipment trust obligations, and guaranteed bonds¹⁰; and his note on investment banking¹¹. The introduction to the chapter on blue sky legislation¹² is very satisfactory, and the opening note of the chapter on the Securities Act of 1933¹³ is fairly adequate.

As one draws towards the end of the book, however, the notes become more and more quotation from other sources and less and less written expressly for the book. This tendency results in a diminishing of the virtue so prevalent in the earlier notes—clear exposition with the entire contents of the chapter at hand in mind. But certainly

5. Pp. 63-8.

6. Pp. 296-300.

7. Pp. 301-8.

8. Pp. 309-11.

9. Pp. 50-3.

10. P. 131.

11. Pp. 293-5.

12. Pp. 642-5.

13. Pp. 694-7.

a notable exception is the note on the Investment Advisers Act.¹⁴ And finally, a compliment which must be paid to the notes on Mr. Sowards' book is upon the choice of the large print in which they are set forth. Certainly the only justification for so much extra-case material in a case book is its importance and helpfulness relative to that of the cases. So why shouldn't they be given the same size print as the cases, thus recognizing their equal standing and preventing the less eager student from skimming over them as so much hard-on-the-eyes footnote material?

Of necessity this reviewer writes from the point of view of a practising lawyer. And in looking back over the years, the most valuable guides were the professors, the courses and the case books which compelled one to think through a problem, rather than those which "laid out" the law. Mr. Sowards' commentary throughout his case book is not as thought-demanding in a legal sense nor as thought-provoking in the larger social and economic sense as, for example, the all-embracing masterpiece of Berle & Warren, which probably marks the present high-water mark of enlightened case book presentation. But though the young author may not have the wealth of knowledge, depth of judgment, nor breadth of vision of two of his more venerable brethren, his work is definitely in the spirit of their best labors. And whatever be the ultimate merits or demerits of separating rather than combining a study of general corporate law and of corporate finance, certainly a highly creditable course in corporate finance is to be found within the confines of the Sowards case book.

JOSEPH F. MONAGHAN †

THE GROWTH OF AMERICAN LAW: THE LAW MAKERS. By James Willard Hurst, Boston: Little Brown & Company, 1950. Pp. XIII, 502. \$5.50.*

The author, a Professor of Law at the University of Wisconsin, has put together a series of essays which, as he states in his prefatory note, "outlines the growth of the principal agencies of law" during a period of one hundred and fifty years from 1790. After a short introduction he takes up successively "The Legislature," "The Courts," including their structure in both our State and Federal systems; "The Selection and Tenure of Judges and Their Social Functions," "The Constitution Makers," including the constitution-making processes; "The Bar," including its character and uses; and finally "The Executive and the Administrative Process." There is a closing chapter entitled "Prospectus for Legal History."

The author points out that "this is not a study made chiefly from original sources," although he adds that "primary sources have been tapped at various points." His purpose is "to interpret already available but generally scattered materials." The many statements of fact in his text, accordingly, are not documented, but at the end there are some twenty pages of references to decisions of the courts, books and articles that bear on the topics he discusses. His method of treatment in the main is to set forth the relevant facts so far as they are discoverable and to state frankly when they are not, with little or no attempt to philosophize about them.

Mr. Hurst is especially interested in developing the social and economic factors that underlie, or may be of significance in, his various topics. Thus he points out

14. P. 903.

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that in both State and Federal legislative bodies, lawyers and farmers together during the period under consideration constituted generally from forty to sixty per cent of the members; and that in Congress the percentage of lawyers was strikingly higher, running on occasion to seventy-five percent of the membership. He notes the preponderance of "white collar" men and the absence of any significant number of laboring men as legislators.

In discussing the uses of the bar, he goes into considerable economic detail bearing on the size of law firms, incomes of lawyers, alleged "overcrowding" at the bar and sources of legal business. This is perhaps not unnatural in one who served as a law secretary to Mr. Justice Brandeis of the United States Supreme Court. For, as the author states (p. 334), it was Brandeis who, when at the bar, first developed a new technique in brief-writing. In *Muller vs. Oregon* he submitted a brief containing two pages of conventional legal argument and over one hundred pages of social and economic facts and analysis.

Evidently the author leans to an economic interpretation of our history. Thus, in his introductory chapter, he begins with this paragraph: "There is a great deal in the early history of the United States which has made it natural for people to think about public questions as legal issues. Men wanted national independence for economic reasons, but they said they wanted it because their legal rights were invaded." It is almost needless to point out that there would be disagreement with this statement on the part of many competent to speak with authority.

On the whole, however, Professor Hurst has produced an interesting account of the factors that have contributed to the development of our law since we became an independent nation. While most of the book deals with matters broadly familiar to well-educated lawyers, it gathers the materials conveniently into one place. To those who are not lawyers the book should prove to be of interest and value in acquainting them with the development of our legal institutions.

IGNATIUS M. WILKINSON †

NEW YORK PRACTICE. (Third Edition). By Julian J. Appleton. Foreword by Harold R. Medina, United States District Judge. New York: Practising Law Institute, 1950. Pp. XV, 376. \$6.00.

Life is short. Law books are long. Hence, wise people do not read them. Once in a mighty rare while, there comes along an exception. Mr. Appleton's third edition of his excellent book on New York practice tells substantially the whole story in 326 pages of moderate size. Short but sweet. Judge Medina quite hits the nail on the head in his Foreword: "If only lawyers generally could get themselves away from ponderous tomes which do little more than digest heaps of what are in many respects irreconcilable opinions on minor points of practice, and be more alert to find and apply the few underlying principles, the courts would have more time to devote to the trial of cases on the merits."

The reviewer, who confesses his lack of familiarity with New York practice, and consequently has been almost always successful in matters of practice, used the new book recently in connection with the time limits of appeals and found it terse and accurate.¹

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1. P. 300.

Readers of the *FORDHAM LAW REVIEW* will be interested to learn that Mr. Appleton is a graduate of Fordham University School of Law, Class of 1935, and was an Editor of this Review. He evidently survived his arduous editorial duties, because he is now an active practitioner and the Chairman of the Bar Review Course given by the Practising Law Institute.

The value of the book is enhanced by a detailed Table of Statutes, which gives the section or sections in which the different statutes are referred to or discussed. The first Appendix² contains a number of useful forms which illustrate the progress of an action. The second Appendix³ briefly discusses the fundamental principles of jurisdiction of the United States District Courts. There is also a Table of Cases Cited, and a complete Index, which is practical as I used it in connection with looking up the time procedure on appeals.

No student preparing for the Bar Examinations should be without the book. Indeed, it is helpful also, to the practising lawyer like myself who knows little about New York practice.

I. MAURICE WORMSER †

2. Pp. 302-20.

3. Pp. 321-26.

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