

Cases and Materials in the Law of Corporation Finance. By Adolf A. Berle, Jr.
St. Paul: West Publishing Company, 1930, pp. rv, 911.

Many law schools in the last five years have been engaged in a re-examination of the traditional course in corporation with the view towards revitalizing it either by changing its organization or its content, or both. This book is one of the first products of such stirrings.

It is divided into two parts – “The Corporate Organism” and “The Processes of Financing.” The first sketches the corporate concept, the management, corporate stocks and bonds, and their participation in the enterprise. The second is concerned with some of the aspects of the acquisition of property, the promotion of enterprises and the marketing of securities.

The first part while interesting is for the most part more familiar to corporation courses than the second part. Its novelty is largely in the way it is organized. The exception is the treatment of bonds and debentures. It is gratifying to see material dealing with the content of corporate trust indentures coming into teaching materials. The second part is more unique and interesting because of its treatment of the investment banking operation and the public issue of securities. Those fields are practically new in academic circles. In its treatment of them the book constitutes a pioneer and unique contribution to legal literature. It is only to be regretted that the author did not carry the results of his explorations farther.

One unique feature of the work is the inclusion of headnotes to topics in which the author sketches the business problem or lays out the divergent legal views that bear upon the problem. These give spice and flavor to the legal material, as do the various forms and statutes which are interspersed throughout.

Parenthetically, it is difficult to see how the book will tie – in with the normal course on corporations. It embraces a large part of it and leaves other parts untouched. It barely touches upon the control over the management with respect to their removal or the dissolution of the enterprise or the sale of the assets. It leaves undeveloped the liability of a transferee for the debts of the transferor. It leaves virtually undeveloped subscription contracts and does not include stockholders' derivative actions, inspection of books, transfer of stock, authority and power of officers and many phases of stockholders' liability to creditors. Some of these obviously relate to the position of the management and the stockholders' control over it. Others relate to the acquisition of property and the marketing of securities. Such problems would seem to come within the author's definition of Finance. Certainly the residuum left in the course on corporations would not be a self-contained unit nor very attractive by itself. If the student takes corporations first he will be retraversing here much of the material he would normally have had. If it takes the place of corporations, there has been much omitted that would be desired. So much for what are probably only administrative details.

As the author indicates, there are many ways of organization of material, the important thing being "that there shall be some sort of a core to serve as a starting point." This is quite true. And the author goes on to point out that the materials "do not purport to give a complete picture of the of the law of corporation finance, nor even a complete kit for a satisfactory course of study." This no doubt explains the manner in which many of the topics have been skeletonized or presented only generally, e.g. subsidiary corporations, syndicate agreements, conversion of bonds and debentures (treated only in a footnote), after acquired property, release and substitution of property under the trust indenture, negotiability (treated only in an essay), merger and consolidation, and reorganization.

However, it would not seem to justify the exclusion of option agreements (with all of their major legal problems, not the least of which are the problems of taxation), transfer agreements, appraisal statutes (a most significant device, both from the viewpoint of the minority and the corporation), blue sky laws, taxation problems arising on the marketing of securities, transfer of shares, contingent voting stock, and cumulative voting. These would seem to fall within even a narrower definition of finance than the author has given it. The utility of including under Reorganization only three pages of exposition, citations of nine articles and texts and three forms (which take up fifty-seven pages) may also be doubted. No teaching material is present. The instructor would be under the necessity of compiling dozens of cases to cover the subject.

For all that has been said, the book has all the worth of a pioneer book. It is the opening wedge to that vast source of legal data too infrequently explored and for the most part ignored by law schools. It treats with many problems which are familiar to business schools but to date have been foreign to most law schools. It is only to be regretted that it has been drawn in charcoal when there are so few as qualified as the author to etch it in detail.

William O. Douglas

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