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## CASES ON PRIVATE CORPORATIONS. By I. Maurice Wormser and Judson A. Crane. Indianapolis: The Bobbs-Mlerrill Company, 1948.

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# BOOK REVIEWS

CASES ON PRIVATE CORPORATIONS. By I. Maurice Wormser and Judson A. Crane. Indianapolis: The Bobbs-Merrill Company, 1948. Pp. 1068. \$7.00.

THE publisher's announcement and the preface of this casebook state that the book is based on the third edition of Canfield and Wormser's *Cases on Private Corporations*, and that the general content and order of arrangement of that 1932 edition have been retained. Although a few more-recent cases have been inserted, a casual examination of the volume will confirm the above statement.

The prime merit of this book, as with the preceding editions, is its teachability. The development of the subject-matter evidences a very logical presentation of the basic common-law principles of the law of private corporations, in so far as there can be said to be a common-law coverage of this field of law. This writer used the first edition of Canfield and Wormser's *Cases* while a student in law school. He also has used the second and third editions in teaching the course. The four editions have closely followed the same pattern of presentation; the observable evolutionary change in the law, as these books depict it, has been very gradual and extremely meager. This writer could take his student classroom notes of a quarter-century ago and with a very slight revision teach the course from this 1948 edition without facing any seriously-perplexing changes. Nowhere throughout this entire quadruple series of logically platted editions are any convulsive changes in the law revealed. Thus, *if we can justly assume* that these editions have accurately recorded the evolutionary development of corporation law during the last third of a century, one can, by use of this book, without a fear of mental qualms, present the course with as great a degree of confidence as a William Blackstone teaching Coke on Littleton. In this sense, the volume has a high quality of teachability.

The respective editions bear the publication dates of 1913, 1925, 1932, and 1948. Considered in relation to the periods covered by these respective editions, of the principal cases in the present edition, 163 were decided prior to 1914, 17 from 1914 to 1925, inclusive, 35 from 1926 to 1932, inclusive, and 16 since 1932. The cases presented in the first edition were skillfully selected and were reasonably adequate in 1913. But the substituted and added materials in the later editions have, with a positive acceleration, failed in supplying case and non-case materials to keep the respective editions abreast with new developments in the law, not to mention the failure in making possible

substitutions of subsequent superior materials in replacing the outmoded portions.

Multiple-edition casebooks, like various types of diseases, generally "run their course" according to a fixed pattern. The instructor assembles his materials, mimeographs them, and tests the results out upon his own students. Then, after an adequate process of elimination, revision, and touching-up, they come out in a press-printed *first edition*. In many instances, the first step is eliminated so that the materials do not take on a polished nature until the second press-printed edition.

In preparing the usual second edition, the author substitutes a few later cases—entirely deleting the former decisions or pushing them into the footnotes—and adds a few more depicting new developments in the law in that field. This is repeated as to the third edition, and often, as in this casebook, as to the fourth, or even as to the fifth or any number of later editions.

It is possible that a branch of the law might be so static that such procedure would be unobjectionable. But in branches of the law—such as labor law, administrative law, corporation law, etc.—where dynamic evolutionary forces are rapidly squeezing the fluxional mass into more distinct molds, frequent overhauls of source materials are essential. Thus, the progressive teacher is emphatic in his demands for frequent drastic revisions in law casebooks. Of course such radical periodic revisionary changes entail (1) exhaustive labor on the part of the author, (2) greater expense (and less profit) for the publisher, and (3) necessity on the part of instructors using the new edition to acquaint themselves with these new materials. These factors are all too often the effective determinants prompting the many inexcusably-bland revisals.

This volume evidences three defects: one might be classed minor, while the other two are indeed major. As much as this writer feels constrained in criticising the handiwork of the two great legal scholars who have jointly prepared this volume, he feels that a review thereof requires mention of these defects.

First, from the psychological viewpoint, the law student should be apprised of the general internal set-up of the corporate unit relatively early in the course. In this collection of material there are only slight hints of the mode and manner of how the corporation functions as a business unit until Chapter 8 is reached. Until then, the subject-matter is confined largely to the corporation as an utter abstraction. The student's early familiarization with the interrelation among the shareholders, directors, officers, and agents within the corporate unit, would aid him in understanding how the corporation functions in its entrepreneurial capacity. Although sound educational psychology would seem to require this, the imperfection is not considered ma or,

owing to the fact that it may be overcome by supplementary classroom presentation.

It must be remembered that the law of strictly private corporations is primarily of American origin, and is predominantly statutory. Delaware has had liberal corporation laws for many years, and one-fourth of all of the states, including such great industrial states as California, Illinois, Missouri, Ohio, and Pennsylvania, have adopted modern business corporation acts revolutionizing the law of corporations. Moreover, many other states, such as Indiana, Kansas, Michigan, Nebraska, etc., also have made drastic revisions in their corporation statutes, modernizing them to a large degree. This sudden evolutionary development in the statutory law during the last two decades has caused a shifting of importance from early case law to judicial interpretation of modern business corporation acts. Before the present crop of law students are out practicing long, completely modern business corporation acts will doubtless be adopted in an overwhelming majority of the states.

This raises the problem as to how this new matter should be presented in a modern casebook on the subject. First, there are now to be found many excellent cases based upon these new codes (California reports contain a staggering array of decisions interpreting the California Act). Many of these cases should be included in any current casebook on Private Corporations. Second, excerpts from the various modern acts should be included, along with many more portions of the Delaware statutes than are contained in the book here being reviewed. The present volume contains several excerpts from the New York statutes, with a fewer number from Delaware and from the U.B.C.A. Moreover, it contains only one principal case (*Nolan v. J. & M. Doyle Co.*, p. 339) dealing with any of the modern acts. Third, during recent decades the legal periodicals have been rife with scholarly articles analyzing, interpreting, contrasting, and evaluating the content of the various modern business corporation acts. Any modern corporations casebook should contain a liberal sprinkling of reprints and excerpts from these valuable new case materials. One casebook, published in 1939 and now widely used in American law schools, is built primarily around these modern laws.

The authors have practically ignored all of this most practical and most-difficult-to-understand subject-matter. The footnote on page 303 fails to mention that the statutes of Kentucky, of Minnesota (to a less degree), follow the U.B.C.A. No modern book on Corporation Law can justify ignoring the content of the business corporation acts in California, Illinois, Minnesota, Ohio, and Oklahoma. The varied ramifications presented by these various new corporation codes present many of the most challenging problems in teaching the course in corporations today. Moreover, it would be futile to endeavor to present this matter from the classroom or from normal supplemental sources without some aid from the casebook. Certainly, the instructor could not justify

the omission of modern statutory provisions relating to: the use and reservation of the corporate name, supplying information to shareholders, fractional shares, conversion rights and options, consideration for shares, fixing the price and attributes of no-par shares, stock assessments, protection of stated capital and paid in surplus, issuance of shares in series, changes affecting shares adversely, dissenting shareholders, statutory mergers, consolidations, and re-organizations, registration of securities, functions and powers of the various commissions and bureaus over corporations, etc., etc.

This brings up the argument that casebooks are already too voluminous, and this new material, if added, would worsen matters. The answer to that contention is that this new matter has made much of the old materials obsolete. This reduces the problem to a question of substitution. Large portions of the content of this casebook could well be deleted. Matters concerning de facto corporations and ultra vires transactions have become more or less moot. The authors allot sixty pages (pp. 840-899) to "Transfer of Stock." Since all 48 states have adopted the U.S.T.A., this matter rests largely upon interpretation and application of the statute. It is admitted that many United States Supreme Court decisions are landmarks in the law of corporations. However, since *Eric R. R. Co. v. Tompkins*, the importance of federal decisions, in many instances, have lost their significance. Many of the 42 federal cases could well be omitted from this book. Moreover, there would not be much loss if all of the 19 English cases were dropped. Their value is largely historical and this matter could be handled adequately in textnotes and footnotes. In fact, it is the belief of this writer that every casebook on Private Corporations should contain a very complete historical introduction and all of the historical background should be covered therein.

The other major defect is in the poor distribution of cases. Forty-six cases are taken from New York decisions, while only two come from Delaware. The latter state, through its statutory laws and court decisions, has exerted a dominant impact on the shaping of the law of private corporations in this country. Nearly thirty per cent of all corporations listed on the New York Stock Exchange in 1946 were domiciled in Delaware. New York only had slightly over 61 per cent as many corporations thus listed as Delaware had. Twenty-one cases come from Massachusetts, while it ranked tenth among the states thus listed. Only two Ohio cases were selected, while Ohio ranked fifth, and was the first state to adopt a modern B.C.A. No cases were selected from any of the following 15 states: Arizona, Connecticut, Florida, Idaho, Louisiana, Montana, Nevada, New Mexico, North Dakota, Oklahoma, South Carolina, Vermont, Washington, West Virginia, and Wyoming. Ten more cases come from New York alone than from all the states south of the southern boundary of Pennsylvania and west of the Mississippi. Scattered through the reports of the various jurisdictions are many, many relatively-

recent cases which are distinctly preferable to a number of those carried over from the earlier editions.

In spite of its logical arrangement of content, this book is extremely deficient in presenting subject-matter most essential in practicing corporation law today and tomorrow.

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STATUTE MAKING. By Armand B. Coigne. Chicago: Commerce Clearing House, Inc., 1948. Pp. 293. \$4.00.

"THE primary object of this work is to explain the steps involved in the enactment of statute law in the United States. It is not intended to treat the subject exhaustively, but to cover the procedure sufficiently well to serve the needs of those who may be interested in legislation, either in school, business or professional life." The book is designed for "any intelligent reader, without any knowledge of the law." Also, "in the hands of the lawyer or other person familiar with the elementary matters, it will serve as a reference work on procedure."

Putting last things first, it seems clear that this compact little volume will not be of much value to lawyers "as a reference work on procedure." It is too comprehensive and yet too simple, and too summary a discussion of procedure to be of particular value in that respect. The whole subject matter in all its variations in forty-eight states and the Federal Government is hardly subject to "reference work" treatment in 282 pages, many of which deal with elementary matters of little interest to lawyers who may have problems concerning legislative procedure. For the most part the treatment of problems which may get into court is inadequate. Lawyers drafting bills, lobbying, acting as counsel in committee hearings, or as legislators will not find this volume of much help in solving particular problems of procedure.

But then, the average lawyer (and law professor or student as well) is not much concerned with cases involving legislative procedure, with problems of lobbying, etc. In fact, he may know very little about these subjects. Still, his neighbor tends to think of law in terms of statutes and occasionally asks some embarrassing questions about statute making, assuming that his attorney friend knows the answers. "Statute Making" will aid the attorney to get a good general background and many of the details to answer his neighbor.

As for other readers, they will find this book clear and understandable. It may be of particular interest to students taking courses in college government departments. In fact, the style and content are reminiscent of a textbook