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Principles of Business Law (Book Review)

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PRINCIPLES OF BUSINESS LAW. By Essel R. Dillavou and Charles G. Howard. Revised edition. New York: Prentice-Hall, Inc., 1933, pp. xxxix, 966.

Every teacher and writer in the field of law knows only too well that it is infinitely more difficult to set forth a popular presentation of his subject, than to expound it in the familiar terms of his technical environment.

Something of this truth makes itself evident in every attempt to serve up in the semi-popular form of a business law text a sufficiently adequate treatment of our substantive law, catalogued and chaptered for non-professional consumption. Legal niceties must necessarily yield to the enforced brevity and clarity of popular treatment. Orthodox refusal to yield to the demands of a non-professional audience or body of readers, and to ride rough-shod over it with a straightforward and purely professional assault, are only too frequently defeated by the cold force of indifference, fatal alike to teacher and author.

Certainly the student of business law whose chosen field is business, not law, and whose object is to acquire a working acquaintance with the practical aspects of law as applied to business, rather than the professional intricacies of the subject itself, is entitled to a treatment which, though simple and understandable, shall nevertheless be sufficiently comprehensive and accurate to serve his purpose.

To overcome these difficulties, writers on business law have usually selected one of two paths. Either the painful and laborious task of thorough and comprehensive treatment coupled with editorial analysis of illustrative cases has been assumed and discharged; or else the somewhat more easier path has been adopted of presenting a thin dilution of rules and principles classified under familiar subject headings, supplemented by a collection of cases themselves presented largely in their original form, in the hope that students of business law, notwithstanding their limitations of time, will be persuaded religiously to study the opinions of courts, with the possible aid and guidance of their instructors—a hope that is not too well justified by the experience of those who have spent years in the training of students of business law.

It is feared that the work of Professors Dillavou and Howard, while excellent in many respects, suffers somewhat from their having elected the somewhat easier road to business law instruction. While an attempt has been made to furnish a classified treatment of legal principles in convenient chapter form, and to make up for the dilution of text treatment by a generous supplement of cases, the fundamental difficulty which has been pointed out has not been thereby eliminated.

We find, for example, that so important a subject as Personal Property is disposed of in four brief pages. The subject of Sales, so vital to students of business law, and bristling, as it does, with numerous practical problems grappled with in large part by the Uniform Sales Act, is encompassed in fourteen pages. The all important subject of Bankruptcy, unfortunately of growing importance, is given no separate treatment at all, but is tucked away into the tail end of the discussion on Contracts. The subject of the discharge of contracts, in connection with which one would expect to find a discussion of breach and damages, is given a bare two pages, while the questions of breach and damages, for some reason or other, find their way into the chapter on

Performance of Contracts; so that to the uninitiated, looking through the index and finding no reference to the subject of breach, the subject would be lost entirely.

Similar evidences of this reliance upon case treatment instead of thorough analysis and presentation in text form are apparent throughout the work. Arbitrary distinctions are sometimes made which a thorough treatment of the subject would scarcely seem to justify; for example, the distinction between void contracts and unenforceable contracts implied in the separate treatment under separate headings of Void and Voidable Contracts and Unenforceable Contracts.

Similarly in the treatment of Agency, we find the important subject of Termination of Agency, including the principles involved in connection with agencies coupled with an interest, summarily dismissed in barely over two pages. Bailments are given the briefest mention, and the subject of Carriers is likewise hurried over with scarcely more than bare mention (although later adverted to under a major classification entitled "Security Relations"). The subject of Trusts, so vital to any adequate presentation of a text on business law, is omitted entirely.

These deficiencies are the natural concomitants of too great a reliance upon cases and reported decisions in the place of thorough text treatment. They emphasize the relatively exacting requirements of semi-popular treatment. A recognition of the needs of the students in this field must compel the severe task of thorough analysis and special effort rather than the easier path of reliance upon the student himself in the face of the limitations in time and object. Only too frequently, also, the danger of relying upon reported decisions is that they fail to bear out the general principles briefly set forth. For example, we have a generalization made on page 316 in reference to corporations, which is scarcely borne out by the annotated cross reference to the particular case cited in support of the proposition. The proposition, as stated, is: "If stock is issued in excess of the actual assets in money value of the corporation it is said to be watered stock, and original holders of such stock are liable to creditors for its par value." The citation given in support, and the cross reference, is the case of *Upton v. Tribilock* on page 803, which deals, not with the question of liability of a stockholder in reference to watered stock, but rather his liability in connection with the unpaid amount of his subscription.

Aside from the deficiencies pointed out which are necessarily inherent in the method of presentation, it should be said that in many other respects the work bears evidence of careful editing. The text itself is lucidly presented and, on the whole, excellently arranged. The supplementary cases, in many instances, are prefaced by introductory explanations of the points involved, which are greatly helpful to an understanding of the opinions cited.

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