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## Oleck: Modern Corporation Law.

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is essentially statutory law, and statutory law, soundly or unsoundly, often stands in the way.

One reviewer has said that these volumes use a "how to do it approach."<sup>3</sup> This is not literally true. The teaching of these volumes can be said to be "how to do it" only if it can lawfully be done in the state whose law is controlling. The value of the volumes is not in teaching "how to do it" but in pointing out avenues of approach; in indicating what the possible solutions may be. And, in this respect, the work affords a most valuable contribution by providing in effect a comprehensive check list. Whether particular techniques suggested for consideration are usable, the reader must determine for himself.

Your reviewer would have preferred a shorter or a longer study than that reflected in the present work.

The present work is too long for what it achieves. It is too repetitive even for use by a non-specialist. The Note "Statutory Assistance for Closely Held Corporations" published in the June, 1958 issue of the Harvard Law Review seems to this reviewer to give a clearer statement with respect to a large part of the problems elaborated upon in Professor O'Neal's work than does his work itself. Moreover, the latter work is marred by such statements as "Apart from limitations imposed by statute or public policy, parties may adopt whatever provisions they desire," which, although true, make no contribution to the subject.

On the other hand, a longer work could have been justified. But such a work should not only stress that the problem is basically statutory; it should relate its analysis more closely to the relevant statutes of particular states and the decisions interpreting them.

Be this as it may, admittedly no work is perfect, and certainly Professor O'Neal's work should be far from condemned. Whether or not we would like a fuller contribution to the subject, Professor O'Neal has made the most valuable contribution yet made to the subject "Close Corporations."

One word in conclusion. Volume 2 ends with a collection of forms suggested for consideration. The forms constitute, as the author has stated, "invaluable assistance to draftsmen if used cautiously and only as idea guides." They are worthy of careful attention.

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**Modern Corporation Law.** By Howard L. Oleck. Indianapolis: The Bobbs-Merrill Company, Inc. 1958, Vol. 1, Pp. vii, 968, \$20.00; 1959, Vol. 2, Pp. iv, 913, \$20.00; 1959, Vol. 3, Pp. iv, 846, \$20.00.

The post-war period has been one of unprecedented growth and development in the area of corporation law. Many states have thoroughly revised their corporation statutes and others are in the process of doing so; the close

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<sup>3</sup> *Israels, Book Review, 72 Harv. L. Rev. 1187 (1959).*

## BOOK REVIEWS

or small corporation with its peculiar problems has engaged the attention of legislatures, courts, and Congress; the elastic concept of the fiduciary duties of management has contracted and expanded in the matrix of multitudinous fact situations; and nineteenth century doctrines have been re-examined in the light of the needs of twentieth century business enterprise. In this period the corporation as the predominant type of business organization has reflected in size and in numbers the accelerated pace of the post-war economy. In the year 1959, for example, over 190,000 new corporations came into existence in the United States.

Yet, until the last year, this increased activity had resulted in few general treatises and texts dealing with current problems of corporate practice. Apart from Fletcher's massive *Cyclopedia of Corporation Law*, the well-known single volume texts of Ballantine and Stevens pre-empted the field.<sup>1</sup> Recently, however, four new works have made their appearance and the practitioner now has available a richer variety of materials.<sup>2</sup>

Professor Oleck's treatise when completed will consist of four volumes of text and a fifth volume of forms, all to be kept current by annual supplements. Three volumes have already been published. The plan of the work, the author informs us in the preface, "is to combine statutory delineation and analysis with detailed discussion of those aspects of corporation law that are not blueprinted by the statutes."<sup>3</sup> And his objective is stated, with some redundancy, as follows: "Practical modern realism has been sought, above all—plus, the paramount goal of utility; usefulness to the average practicing lawyer and the corporation specialist alike."<sup>4</sup>

Professor Oleck's work is unusual in two respects. First, the statutory material is far more extensive than is commonly found in books on corporation law. Instead of giving the reader the statutes of a few selected states the pertinent sections of the statutes of all American jurisdictions are digested and presented on a state by state basis. Thus, the work is truly national in scope. Secondly, the non-statutory material consists principally of authorized reprints of law review articles and comments in addition to contributed materials by specialists in particular areas. This collection of law review articles is the most valuable feature of the work. The best writing on many difficult problems in corporation law has appeared in the law reviews and Professor Oleck has rendered a valuable service to the practicing lawyer in bringing these together in one set of books. The articles are well selected and appropriately placed. One could wish, however, that as editor Professor Oleck had updated the articles where necessary in the

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<sup>1</sup> Ballantine, *Corporations* (Rev. ed. 1946); Stevens, *Corporations* (2d ed. 1949).

<sup>2</sup> In addition to the Oleck work herein reviewed, the recent publications are: Hornstein, *Corporate Law and Practice* (2 vol. 1959); O'Neal, *Close Corporations: Law and Practice* (2 vol. 1958); Lattin, *Corporations* (1 vol. 1959).

<sup>3</sup> Vol. 1, p. iii.

<sup>4</sup> *Ibid.* On p. iv he expresses the hope "that the practitioner will find this work to be, above all, useful in daily practice." And he concludes the preface with the wish that "this work . . . will serve as a practical working tool at all levels of corporation law and practice, kept current every year."

light of more recent developments and had excised portions to prevent duplication.<sup>5</sup>

Volume 1 (Organizing the Corporation) has for its subject matter the topics of pre-incorporation agreements, promoters, tax considerations, organization fees and taxes, one man corporations, close corporations, incorporation procedure, organization meetings, by-laws, and purpose and power clauses. Since most of the material consists of substantial portions of articles by recognized authorities the treatment of the subject matter is, on the whole, excellent. This is especially true of the chapters on close corporations and defective incorporation.

Volume 2 (Management of the Corporation) treats of capitalization, methods of financing, and issuance of shares as well as the powers and duties of directors and officers. The materials on various methods of financing a corporation should be of interest to the practitioner. In this volume, as elsewhere, Professor Oleck shows an awareness of the "brooding omnipresence" of the tax collector and two chapters are devoted to tax considerations. But, as frequently happens, emphasis on tax factors results in inadequate treatment of substantive law aspects of corporation problems. In discussing executive compensation, for instance, there is a failure to treat of the legal requirements for a valid stock option plan. The fate of the stock option plans of some Delaware corporations is a reminder that state law as well as the Internal Revenue Code must be kept in mind by counsel when drafting a plan for this type of incentive compensation.<sup>6</sup>

Volume 3 (Shareholders and Third Parties) deals with various aspects of stock and stockholders, including restriction on transfers of shares, preemptive and appraisal rights, voting rights and proxies, in addition to the topics of dividend law and stockholder actions. The treatment of dividends is disappointingly inadequate. The statutory provisions in all of the states

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<sup>5</sup> The topic of thin incorporation, for example, is treated in Vol. 1, §§ 49 and 196, and in Vol. 2, §§ 655, 656 and §§ 658-662. The excerpt in § 656, taken from the article by Lutz, "Capital Formation of Speculative Enterprises," 34 Taxes 420 (1956), contains the bald statement: "A technique which should wholly eliminate the problem of thin incorporation is available . . . . This method consists of having a bank, credit agency or other third party lend the major share of the capital funds required to the new corporation, with the stockholders in turn guarantying such debt to the primary creditor." The decision by the Court of Appeals for the Eighth Circuit in *Putnam v. Commissioner* is cited (224 F.2d 947) but not the decision of the United States Supreme Court, 352 U.S. 82 (1956). As to the merits of the statement, compare Bittker, *Federal Income Taxation of Corporations and Shareholders*, § 4.07 (1959).

In the chapter on "One-Man Corporations" (Vol. 1, c. 12) there is reprinted Dean Latty's excellent and extensive commentary on the remarkable decision of the North Carolina Supreme Court that a corporation with a sole stockholder becomes dormant and inactive. *Park Terrace v. Phoenix Indemnity*, 243 N.C. 595, 91 S.E.2d 584 (1956). But nowhere are we told that the *Park Terrace* decision was abrogated by the legislature, at least prospectively, in 1957. See N.C. Gen. Stat. (Supp. 1959) § 55-3.1. In *Lester Brothers, Inc. v. Pope Realty and Insurance Co.*, 250 N.C. 565, 109 S.E.2d 263 (1959) the Court refused to give the statute retroactive effect and held the two shareholders individually liable for the debts of the corporation.

<sup>6</sup> See *Kebs v. California Eastern Airways*, 33 Del.Ch. 69, 90 A.2d 652 (1952); *Gottlieb v. Heyden Chemical Corp.*, 33 Del.Ch. 82, 90 A.2d 660 (1952).

### BOOK REVIEWS

relating to dividends are digested but there is little or no analysis and exposition of these statutes. The permissible sources of dividends is dealt with only obliquely. The arrangement of other materials in this volume could also have been improved. One would expect to find a treatment of security-for-expenses statutes in the chapter on Stockholders' Actions but in fact the topic is included in an earlier volume under the heading of Litigation-Expense Indemnity. And civil remedies for fraud in securities transactions under Section 10(b) of the Securities Exchange Act of 1934 is distributed between a chapter labeled "Torts and Crimes" in Volume 3 and a chapter on securities problems in Volume 2.

The work as a whole, despite some editorial deficiencies, may be said to have successfully accomplished its main objective of supplying the practicing lawyer with highly useful materials in a field of the law that is increasing in importance and in complexity.

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