

Organizing Corporate and Other Business Enterprises (Book Review)

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dreamed of by its drafters and proponents. Its history reveals how a document of feudal "liberties" was moulded by a variety of circumstances and interests into a great charter of "liberty of the subject." The history of this heritage should be a matter of common knowledge quite as much as the cherished heritage itself. The Great Charter, as the forerunner of bills of rights, stands as the classical monument of freedom. Magna Carta gave us the talismanic phrase *per legem terrae*. From this vague fiction sprang the concepts that school boys have come to know as the inalienable rights of man, to due process of law—trial by jury, freedom from unreasonable searches and seizures, protection against ex post facto laws and bills of attainder, habeas corpus—in short, our Bill of Rights.

It is in this light that the Charter deserves to be known. To so understand it is not a distortion of historical fact, for the Charter even in 1215 was a document that stood for limitations upon governmental power. Regardless of its historical vicissitudes, it quite properly came to be regarded as the keystone of constitutional government. It represents the uncompromising principle of the supremacy of the law and equality before the law. *Magna Carta* should serve to stimulate public interest in another charter, the Charter of the United Nations, presently enduring the formidable and challenging test of the processes of history. Yet, upon this new charter lies the hope of the world for the achievement of an international community, based on law, cooperation and understanding. If this new charter, like the charter of King John, becomes a myth, may it ultimately prove as happy and fruitful a myth as its monumental predecessor.

EDWARD D. RE.**

ORGANIZING CORPORATE AND OTHER BUSINESS ENTERPRISES. By Chester Rohrlach. New York: Matthew Bender & Company, Incorporated, 1949. Pp. xv, 500, index. \$12.00.

In his preface, the author states that the book's primary purpose "is to make available to the general practitioner, in one volume with a unified approach, guidance in dealing with the many legal problems involved in the organization of a new business, from the conception of the idea on through the death of the owners. This necessitates a broad coverage of an extremely large segment of commercial law, but it does seem important that the various legal aspects of the subject matter be treated in one volume, not only as a

written by Professor Albert Beebe White, who first awakened the author's interest in the famous Charter. Miss Thompson's first book on the Magna Carta, *The First Century of Magna Carta: Why It Persisted as a Document*, was a doctoral dissertation prepared under the direction of Professor White.

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matter of convenience, but also, and especially, because such treatment results in a correlation of the legal considerations in a manner which is virtually impossible under the traditional segregated treatment by subject rather than by project."¹

Utilizing citations to statutes and leading and illustrative cases from the forty-eight states, Mr. Rohrlach has accomplished his stated purpose of providing a guide for the formation of new business enterprises. He points out that the lawyer must be familiar with the advantages and disadvantages of the several forms of business organization² to such an extent that he may assist his clients in (a) selecting the most favorable form and (b) putting it into proper operation.

Commencing with the preliminary survey,³ there is a splendid step-by-step outline of general procedure to be followed, with suggestions as to how to avoid pitfalls in unique situations. A careful reading of the book results in the conclusion that the lawyer must pay close attention to the statutory provisions of the state in which the business is to be operated and that no general forms may safely be used in any and every state.

Your reviewer realizes that his comments must be brief, but desires to mention the following matters which are covered in more or less detail in the book and which impressed him as being of particular interest to young lawyers and others whose corporate practice is limited:

Promoters:

There is a very clear explanation of the liabilities of those who promote corporations, and attention is called to legislation in some states which serves as a protection to promoters.⁴

Pre-incorporation agreements should be expertly drawn so as to avoid ambiguities with respect to the personal liability of the promoters.⁵

There are several methods by which promoters may obtain compensation for their services and reimbursement of their expenses.⁶

Liability of corporate stockholders:

The author discusses important exceptions to the general rule that a stockholder's liability is limited to the amount of his investment in the corporation.⁷

Selection of corporate "domicile":

"We should ordinarily approach the question [of domicile] with a strong predisposition to incorporate in the state wherein the principal business activity of the corporation will take place."⁸

¹ P. v.

² Sec. 1.01.

³ C. I.

⁴ P. 42.

⁵ Pp. 42-43.

⁶ Pp. 204-206.

⁷ Sec. 4.07.

⁸ P. 156. Also read entire Sec. 6.01.

Stock:

Methods have been developed in various jurisdictions which eliminate, or at least minimize, the risk of revocation by corporate subscribers of their stock subscriptions.⁹

There has been a lessening use of no par stock.¹⁰

While preferred stock is viewed with disfavor in some situations, there are important reasons for its use under other circumstances.¹¹ Several devices for the protection of preferred stockholders have been developed.¹²

If preferred stock is to be issued, many questions arise and must be answered.¹³

Trust Indentures:

The method of preparing a "trust indenture" and the purpose it plays in connection with corporate obligations are discussed. The author outlines, section by section, the preparation of the usual indenture.¹⁴

Methods of financing:

The author explains several fundamental considerations relative to financing and cites the dangers that might confront a corporation commencing business with a small capital and a large debt.¹⁵

Also of interest are the comments and suggestions concerning the acquisition of a going business—especially those having to do with the tax consequences.¹⁶

Included in the Appendix are two specimen partnership agreements¹⁷ which were prepared for use in a symposium held under the auspices of the Practising Law Institute in New York in April, 1948; also, Comparison Tables¹⁸ analyzing federal income taxes for corporations as compared with sole proprietorships and partnerships.

The author is to be commended for the splendid content of the volume and the clear and concise way in which he presents the subject. It is lamentable, however, that the printing is not on a par with the book's contents. The startling contrasts between heavy and light face type in alternate lines—with no apparent reason for the difference—are distracting, as are crooked lines, bad spacing between words, and omissions of parts of words.

On the credit side, it must be observed that Mr. Rohrlich has been very generous with footnotes referring to source materials, which tends to confer upon the book the stamp of authenticity. It is obvious that the author is well

⁹ Sec. 8.01.

¹⁰ Sec. 10.05.

¹¹ Sec. 10.06.

¹² P. 254.

¹³ Pp. 255-270.

¹⁴ Sec. 10.07.

¹⁵ Sec. 10.03.

¹⁶ C. IX.

¹⁷ Pp. 375 and 387, respectively.

¹⁸ Commencing at p. 405.

acquainted with his subject and qualified to assist others through his work here reviewed.

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DAVID DUDLEY FIELD CENTENARY ESSAYS. Edited by Alison Reppy. New York: New York University School of Law, 1949. Pp. xxiii, 400. \$6.00.**

The commemoration by the New York University Law School, under the direction of Professor Alison Reppy, of the hundredth anniversary of the adoption of the Field Code of Procedure, is fully justified. As William D. Mitchell says in one of the essays which have been collected in book form, "It is not easy to arouse a crusading spirit about procedural reforms."¹ Procedure is not exciting,² but is essential to the proper administration of justice. Its unemotional character is a challenge to the toughness of the minds of the men who have fought for procedural reform. Of these fighters David Dudley Field was one of the first and probably the foremost. In the field of modern civil procedure in England and in America his name, in Judge Clark's phrase, "towers in lonely eminence."³

Field's ultimate objective of simplifying the administration of justice was based upon three great reforms; the fusion of law and equity, the abolition of the forms of action, and the evaluation of pleadings on the basis of factual rather than formal presentation. These innovations comprised, in the words of Professor Sunderland, one of the contributors to the series of essays, "the most drastic reform ever undertaken in the history of English and American jurisprudence."⁴

The first of these reforms, the fusion of law and equity, was to be accomplished by the elimination of distinctions in pleading resulting solely from the way in which equity jurisprudence had developed. Only deeply entrenched prejudices could oppose such a reform. Such prejudices have been found, however, not only at the Bar, but also at the Bench, and the New York courts have been notoriously adept in finding ways of utilizing their ancient learning at the cost of thwarting legislative efforts at procedural simplification in this direction.

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** Professor Newman has reviewed this book for the New York Law Journal. Vol. 122, 66 N. Y. L. J. 700, October 4, 1949.

¹ P. 73.

² Note Lord Chorley's statement that procedure tends to be regarded as an inferior subject by professors in England, and even to be treated with contempt (p. 101).

³ *The Influence of Federal Procedural Reform*, 13 LAW & CONTEMP. PROB. 144 (1947).

⁴ P. 84.