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## Book Reviews

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## BOOK REVIEWS

THE LAW OF THE ORGANIZATION AND OPERATION  
OF COOPERATIVES

BY ISRAEL PACKEL

Matthew Bender &amp; Co., Inc., Albany, 1940. Pp. xvi, 307. Price \$5.00.

This is the first treatise on the law of cooperatives without qualification as to type of cooperative. We have Evans and Stokdyk,<sup>1</sup> Hanna,<sup>2</sup> and Nourse,<sup>3</sup> which confine themselves to a consideration of the legal aspects of marketing cooperatives. But there has been no attempt, prior to Mr. Packel's enterprise, to bring cooperative law within the confines of textbook covers. There is no doubt that the time is today ripe for such a text. Cooperatives of every type, from credit unions to rural electrification cooperatives, are increasing by leaps and bounds. Naturally attorneys are consulted more and more frequently with respect to legal problems that arise out of the formation and operation of cooperatives. This book will furnish the lawyer with the tool that he needs to find the answers to the questions presented to him. It deals with every phase of the cooperative enterprise.

After an introduction explaining the nature of the cooperative from the factual and legal viewpoints and types of cooperatives, the author discusses the problems involved in the formation of a cooperative. Any lawyer who has occasion to participate in the formation of a cooperative will find this material invaluable. What statute should be used as the incorporation statute? What jurisdiction should be selected as a state of incorporation? What name should be selected for the enterprise? What provisions should be contained in the articles of incorporation and bylaws? The attorney with a background of corporation law may feel that he is qualified to answer these questions. However, many may find to their amazement that corporation law is insufficient to answer the questions that arise in the field of cooperatives. For example, the name selected by the enterprise may satisfy the requirements of the general incorporation statute and the common law of corporations but yet violate some statutory or other rule relating to cooperatives. As noted by the author (P. 48 n. 6), certain types of cooperatives may not be permitted to use the word "Cooperative" as part of their names because another type of cooperative has secured a statutory preemption of the field. This is something the corporation lawyer might well overlook since it rarely, if ever, occurs in his field.

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<sup>1</sup>THE LAW OF AGRICULTURAL COOPERATIVE MARKETING (1937).

<sup>2</sup>THE LAW OF COOPERATIVE MARKETING ASSOCIATIONS (1931).

<sup>3</sup>THE LEGAL STATUS OF AGRICULTURAL COOPERATION (1928).

When we turn to the situations surrounding the question of membership, we find little doubt that the problems are *sui generis*. For example, we may be familiar with constitutional provisions prohibiting municipalities from subscribing to shares of stock in corporations. The first reaction of a lawyer is to feel that there is a possibility that courts will carry over this rule to prohibit municipalities from purchasing a membership in a cooperative. However, as the text demonstrates (P. 71) the courts have realized the difference between membership in a cooperative and a subscription to a share of stock and have held that the constitutional restrictions do not apply to the former.

The author not only treats the general legal problems that might arise in connection with the formation or operation of a cooperative, but includes a discussion, wherever necessary, of the day to day problems that face every cooperative enterprise. Under this heading might be cited the sections entitled, "Methods of Casting Votes," "Persons Eligible as Directors," "Use of Committees for Management," etc. Any lawyer that has, or will have occasion to advise cooperatives on their day to day activities will find a reference work that answers these questions indispensable.

Mr. Packel has included a chapter on the manner in which Government impinges upon cooperation. This is a most interesting and necessary discussion. In it we find consideration of the question of the taxation and regulation of cooperatives and paternalistic legislation such as grants, loans and statutory protection.

There is an appendix of working forms which may form the basis of the organization and operation of a cooperative. The forms set forth include articles, by-laws, minutes of meetings, applications for, and certificates of membership. An attorney will do well to consult these suggested forms prior to the preparation of any cooperative forms. Finally, there is a comprehensive bibliography of practically every text, law review articles and other legal discussion in this field. The bibliography, in its paucity of legal discussion, is a commentary on the way the cooperative has been a stepchild in the law for many years. It is to be hoped that the advent of this text in the field may bring a change in the attitude of the lawyer toward this no longer fledgling form of association.

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## CORPORATE TAXATION AND PROCEDURE IN PENNSYLVANIA

## VOLUME I

BY LEIGHTON P. STRADLEY AND I. H. KREKSTEIN

Commerce Clearing House, Inc., New York, 1940. Pp. vi, 412. Price \$10.00.

"Corporate Taxation and Procedure in Pennsylvania" is an authoritative and welcome addition to the comparatively small shelf of literature relating to corporate taxes imposed by this Commonwealth.

In 1935 the Pennsylvania Legislature effected a number of far-reaching changes in the body of corporate tax legislation. Among the most important of these changes were the elimination of the manufacturing exemption from the capital stock tax, the imposition of a franchise tax upon foreign corporations, and the levying of a corporate net income tax upon both domestic and foreign corporations. As a result of these revisions of the tax law, any person having charge of corporate tax matters is faced with a task of considerable and increased complexity. This book, which is the first comprehensive text on Pennsylvania corporate taxes to be published since these changes were made, will serve as a reliable and efficient reference and authority in this field, and should operate to clear up much of the confusion which has been so prevalent in connection with corporate taxation and procedure in recent years.

This book is the first of two volumes, the other of which is to be published in the near future. The present volume, accordingly, does not cover all Pennsylvania corporate taxes, but it does discuss the most important of the general corporate taxes (foreign bonus, domestic bonus, capital stock, foreign franchise, and corporate net income). This work is presented in such manner that it can be used effectively either as a source of information by attorneys and others actively engaged in corporate tax work, or as a text book by students desiring to acquire a general familiarity with the subject.

The book is well organized and the sequence of the various subdivisions of the authors' subject is admirably arranged to facilitate ready reference. The text is conveniently interspersed with headings and subheadings and also contains frequent summaries of preceding material. The legislative history of each of the tax statutes discussed is set forth in detail, and while this may have no considerable importance in many situations, in others it is absolutely necessary. It is frequently impossible to understand past taxing practices or to judge the treatment likely to be afforded to new situations without a careful study of the legislative background of the taxes involved.

In dealing with the subject of corporate taxes in Pennsylvania, it must always be kept in mind that the determination of tax liability is dependent more upon judicial and departmental rulings than it is upon the actual phraseology of the statute involved. It is often said that "taxation is a practical matter," and the authors of the present text appreciate this fully. In fact, it is this very situation which creates such a great need for a book of this type. It too frequently happens at present that attorneys, accountants or corporation executives spend considerable time in contesting a tax settlement only to find that the case is clearly ruled by some one of the many departmental rulings or practices. These rulings and practices are usually sound, and if their existence and effect were more generally known, much needless controversy and expense would be eliminated. The authors have been most thorough in collecting and referring to these rulings and practices which control corporate taxation and which are not accessible readily to the average practitioner, and in this respect they have conferred a real benefit upon both the Commonwealth and the taxpayers.

The necessity for filing correct corporate tax reports was considerably increased by the legislation adopted in 1937 which made most corporate taxes "self-assessing." Under this legislation, the taxes due must be computed by the taxpayer and must be paid on the date the report is filed. Interest begins to run from that date on any deficiencies or underpayment which may be discovered when the account is settled by the taxing officers of the Commonwealth. Since the date of settlement may be a year or more after the date of payment, it is obvious that, where any considerable amount of tax is involved, the correct computation of tax on the part of the person filing the report is a matter of considerable monetary importance.

There is probably no field of the law, with the possible exception of patent law, which requires so much of what might be called extra-legal knowledge as does corporate tax law. Corporate taxation is obviously almost as much a matter of accounting and economics as it is a matter of law. Accordingly, since most attorneys are not accountants, and vice versa, either an attorney or an accountant acting alone is at a considerable disadvantage in handling corporate tax matters. In this respect the present text should be most helpful for it is so organized and developed as to cover both the legal and the accounting phases of most of the subjects involved. Moreover, the two authors are particularly well equipped to write a book of this type. One of them, Mr. Krekstein, is a certified public accountant, who has had wide experience in the field of corporate finance and taxation, and who served for several years as Deputy Secretary of Revenue of the Commonwealth of Pennsylvania in direct charge of corporate taxes. The other, Mr. Stradley, is an attorney who has had many years' experience as a professor and lecturer on Federal and State taxation at the University of Pennsylvania. In addi-

tion, the authors had available the valuable collaboration of David H. Rosenbluth, formerly counsel for the Bureau of Corporation Taxes in the Pennsylvania Department of Revenue, and Leighton P. Stradley, Jr., instructor in Pennsylvania State Taxation at the University of Pennsylvania.

In our opinion the authors have performed a particularly valuable service for members of the legal profession, and for all others interested in corporate taxation, in their treatment of the problem of capital stock valuation. The value of a corporation's capital stock is the basic element used in computing both the capital stock tax on domestic corporations, and the franchise tax on foreign corporations. Notwithstanding the importance of this element, only the most general directions are set forth in the governing statute as to the proper method of ascertaining the value of the capital stock. Accordingly, there has been a widespread misconception on the part of corporate executives, attorneys and accountants as to the proper method of appraising and reporting the value of a corporation's capital stock. The authors have explained in great detail, and with numerous and apt practical illustrations, the method used and the elements to be considered in valuing capital stock. In this connection the text will do much to dispel the rather general impression that capital stock valuation is a secret art which is largely based on the caprice of the taxing officers.

The book is also very helpful in its discussion of the corporate net income and franchise taxes. These taxes are comparatively new in Pennsylvania, having first been imposed for the year 1935. Each of these taxes involves the use of three apportionment fractions based on tangible property, wages and salaries and gross receipts. The function of these fractions is to give the approximate amount of the capital stock or corporate net income representing business done in Pennsylvania. The respective statutes prescribe the make-up of these fractions in only the most general language and there are few Pennsylvania court decisions discussing them. Accordingly, the authors' complete and careful analysis of the proper way to set up these fractions in various circumstances, should prove of great assistance in the preparation of corporate net income and franchise tax reports.

There is also some very useful material in Title VI, the final portion of the book, which concerns administrative and procedural matters. The problems of procedure in the field of corporate taxation are not particularly involved or difficult, but they are unfamiliar to many attorneys. It is frequently just as important to know how to accomplish a desired result as it is to be able to determine which result is correct. The authors have explained clearly and in detail, in this title all the various procedural steps involved in the report, payment and collection of corporate taxes. Reference to this material will undoubtedly enable many attorneys to save or protect rights of their clients which would otherwise be lost.

In conclusion and by way of suggestion, it might be said that the authors should make some provision, when the second volume is published, for keeping the entire set up to date. There are still many questions of first impression to come before the courts involving the more recent legislation, and new departmental rulings are constantly being made. In our opinion it is highly important for the authors' material to be kept current through the use of some appropriate device, perhaps a pocket supplement.

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### LIFE AND LAW

By Samuel Williston. Little, Brown & Co., Boston, Mass., 1941.  
Pp. ix, 338. Price \$4.00.

Perhaps as often as not, autobiographies are primarily intended and received as non-fictional literary ventures. This account of Mr. Williston's life will be warmly received, by those even faintly familiar with the man, principally, as no doubt the author purposed, as a record and picture of his life. The story is told so simply and informally that one almost feels the author comfortably seated nearby, reminiscing in the course of easy, pleasant conversation. The style and language employed in narration are typical of the author in life. The book does not speak ostentatiously even when recounting the author's greatest achievements; neither is there diffidence. Throughout, there is the same ungilded matter-of-factness characterizing his story that has marked his life and personality. A number of readers of this autobiography who, though not unkindly, have expressed some little criticism of the book from a literary standpoint, seem to have missed the main objective of the author. Mr. Williston easily might have indulged in colorful phraseology and attempted a display of flashy rhetoric; but then he would not have succeeded in truly depicting himself. As it is, the book does more than recount the highlights of his life; it does for his mannerisms, character, and personality what his photograph, on the jacket of the book, does for his person.

The history of Mr. Williston's career, if not his turn of word, is fascinating and colorful. His life, traced from his childhood through his school and college days, his secretaryship in connection with the exploratory work in the Northwest of the Northern Transcontinental Survey, his law school student and teacher years, and his activities in legal practice and writing, has been replete with so many varied events and with such important and wide associations that the reader can

be assured an unusually lively continuity of action to hold his interest to the last sentence. By skillfully tracing his life upon a background of contemporaneous political and social life, he gives a picturesque and personal touch to the lives of numerous men, many of them famous, whose paths he crossed. Many a chuckle is provoked as Mr. Williston relates revealing anecdotes concerning some of these personages.

The story told in tracing the history of Harvard Law School from the days of President Elliot and Professors Langdell, Thayer, Gray, and Amos must have great appeal for Harvard alumni. Much of what is said had previously been collected in the *Centennial History of the Harvard Law School*, a book published in 1917. Again, however, Mr. Williston adds intimate personal touches which give new life to many classic tales and traditions about the school.

In the main, Mr. Williston has confined his book to narration and has eschewed eristic discussions. In chapter 13, however, he attempts a critical analysis of several new theories currently espoused in legal education, especially those based on the suggestions of Yale Law School's Professor Hohfeld and those advanced by the "realists" typified by Professor Llewellyn of Columbia. While Mr. Williston's views on these theories and his conclusions thereon will not be shared by all his readers (as they are not by the reviewer), his sincere effort to evaluate these new theories and to keep abreast of new thought in law is noteworthy and significant.

No review of this book would be complete without a reference to the touching tribute paid to the author by Judge Learned Hand in his wise and understanding foreword. Comparatively few men in law gain the admiration of their fellow men to a degree making each a "teacher's teacher" or a "lawyer's lawyer." As one of those few, Mr. Williston has provided, through his autobiography, incalculable inspiration for his students, his students' students, and for the profession at large.

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