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Frey: Cases and Statutes on Business Associations

Marquette University

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assure the injured person's getting something in the way of effective relief. The imposition of responsibility in many cases ought to depend on the realities to be faced in the process of fixing compensation. Who can say that the process of assessing damages can be separated from the process of fixing the limits of responsibility in actions for defamation where the plaintiffs claim compensation for special "damages," and in actions for damages based upon some claimed injuries to relationships between the plaintiffs and members of their families? (The word "injury" used in these sentences is obviously not meant to suggest physical injuries to the person.) Perhaps it is because the two processes cannot be separated that the literal bases upon which the computations rest in these actions, or in any actions for damages because of permanent injuries to human beings, seem so artificial. Perhaps, too, that is why the cases about conversion and fluctuating value have seemed so arbitrary to this reviewer. The evaluations in those cases depend rather upon the relationships between the parties, as bailors and bailees, for terms or at will, upon the conduct of the several defendants that can be described as tortious as well as "contract-breaking," rather than upon the characteristic of fluctuating changes in "market value" which is typical of staple consumable commodities and speculative securities. In any event the chapters on "Avoidable Consequences," "Certainty," and "Foreseeable Losses" in contract actions, contain enough cases to permit any instructor to illustrate the realities about the two intertwining (to use a compromise term) processes.

A glance at the table of contents should stimulate an immediate interest in the book. It is so well edited and the subjects covered seem so important to this reviewer at least that he is looking forward hopefully to the opportunity to use this casebook in his classes—and to use it in a course on damages.

VERNON X. MILLER.

BOOK NOTE

Cases and Statutes on Business Associations, by Alexander Hamilton Frey. Callaghan and Company, Chicago, 1935. 1331 pages.

This casebook is one of the newer books purporting to include within one scheme of classification the materials covered in several of the usual law school courses. It is a bulky volume with more than enough material for a course of six credit hours. Whether six hours can be spent more effectively in the study of the separate groups of problems associated traditionally with "corporations" and "partnership" or whether the work can be done better in a more comprehensive all-inclusive course described as "business associations" is a matter of opinion. It depends on the personal preferences of the instructor and the convenience with which such a course can be fitted into the law school curriculum. This particular field of commercial law is deserving of a large place in the law school. Six hours is not too much time to spend on it. As it is, today, law students are required to "take" corporations and they are permitted to study partnership by choice. There is much to be said for the one course.

Professor Frey is much more concerned with accounting problems than the editors of the traditional casebooks on corporations have been so concerned. The chapter on "Computation and Distribution of 'Profits'" is quite substantial with some excellent explanatory material included as introductory to the cases. There are a number of cases in the book on the subject of conflicting claims between

preferred and common shareholders to distributions out of surplus, including the opinion in the "standard" New Jersey case,¹ and the opinion of both the Circuit Court of Appeals² and the United States Supreme Court³ in the Wabash Railway case. "Redemption of Shares" is treated at length.

The traditional topics, "legal entity," "de facto and de jure corporations," and "ultra vires," are missing from the chapter headings. Emphasis is placed on the formalities to be observed in attaining the corporate status, and there is an excellent criticism of the classic "de facto" presentation in the chapter on "Creation of Business Associations." Some of the problems included in the traditional classification, "ultra vires," are covered in the chapters on disposition of corporate assets and credit transactions.

When a separate course in partnership is given in any law school a considerable portion of the course is devoted to the study of dissolution and the winding up of insolvent firm estates. There is no material for any such study to be found in this casebook. Cases on problems incidental to insolvent dissolution, as pertaining to corporate estates, or the estates of unincorporated firms, are consciously omitted from the editor's selection. He suggests that these problems be left for treatment in the courses on creditors' rights.

Everything of importance can not be presented in the three-year law course. There is a limit to the credit hours which a student can or should carry. After all the content of the curriculum or of any course therein is a matter of opinion. Professor Frey has presented plenty of material for a stimulating course. His notes are comprehensive and there is a generous sprinkling of good text comment throughout the volume. He does not pretend to cover the field of agency except incidentally. He has placed emphasis on certain aspects of business law which are too often treated, if at all, only superficially in the usual law school course on corporations. The editor has emphasized "facts and figures" and has in effect disregarded traditional concepts except for criticism. He has devoted a comparatively small portion of the book to partnership, as such.

¹ *Day v. U. S. Cast Iron Pipe & Foundry Co.*, 96 N. J. Eq. 736, 126 Atl. 302 (1924), casebook, p. 847.

² *Barclay v. Wabash Ry. Co.*, 30 F. (2d) 260 (C.C.A. 2nd, 1929), casebook, p. 853.

³ *Wabash Ry. Co. v. Barclay*, 280 U.S. 197, 50 Sup. Ct. 106, 74 L. ed. 368 (1930), casebook, p. 860.