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## Book Reviews

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## Book Reviews

**BUSINESS LAW**, by THOMAS S. KERR, *John Wiley & Sons, Inc.* 776 pages, 1934.

*Business Law* is offered as a text for an undergraduate college course. Its purpose is particularly the development of those principles of law that are of special interest to college students preparing for a business career. It seems well adapted for that purpose and because of the limited field which its author seeks, the book should not be subjected to the acid, if not acrid, tests which reviewers usually apply to books intended for use in professional schools and by practitioners. It is primarily a case book, 562 pages being devoted to reprints from court decisions and 133 pages to short summarizations of the principles of law in those subjects or divisions usually considered as constituting the field of business law. Fifty pages are used in reprints of the uniform sales act, the negotiable instruments law, and the uniform partnership act. A 13-page introduction briefly outlines the history and purpose of law, the organization of our judicial system and the principal steps in the conduct of litigation. The index is good and there are the usual table of contents and table of cases.

In his preface the author states that the case method of study in law is universally endorsed and that experience has demonstrated its superiority over any other method. That statement seems too broad even for professional schools of law, now that we are passing into an era of law-making by legislatures and regulatory bodies in the executive branch of our government. Certainly experience has shown that the efficacy of the case system depends very largely on the skill of the teacher who is conducting the class. The selections of cases made by the author might well be modernized, too many of them being cases found in standard case books of forty years ago. But some of the old key cases such as *Lawrence v. Fox* and *Hoare v. Rennie* are omitted. So far as the summaries go, the principles of law seem to be fairly stated but the selected cases are not always appropriate. For example, on page 85 the author writes that courts in general find some way to enforce subscriptions for public, charitable and religious purposes, but his only case is an old one in New York wherein the court did not enforce the subscription. This case does not indicate at all the modern New York theory on this troublesome question of consideration.

HAROLD DUDLEY GREELEY

**BUDGETING**, by PRIOR SINCLAIR, *The Ronald Press Company*, New York. Cloth, 438 pages. 1934.

A somewhat discouraged manufacturer, approached on the subject of having a budget prepared for 1934, replied "Ye-ah! Well, I made up a budget for 1930, a very nice budget." (Pause) "I haven't made one since!"

Nevertheless the author of *Budgeting* assures us that "undoubtedly those businesses which today are operating in harmony with methods of budgetary control are best prepared to meet the trials brought by the changes in the velocity of business" (p. iii). Skeptical competitors might attribute such happy preparedness more to past prudent conservatism and lucky guessing, but it can not be denied that budgeting as a means of control is growing in favor

by leaps and bounds to judge by the recent output of articles and books on the subject. Of the latter, it is safe to say that Mr. Sinclair's *Budgeting* is the best that has appeared to date.

The first question of any business man, especially of the old-fashioned school, is apt to be: "What will a budget system do for me?" The question is best answered in chapter 19, pp. 361-369, wherein is given an elaborate analysis of adverse conditions that might exist in any business through lack of intelligent control—a sort of horrible example, as it were. Any man of common-sense would readily admit that a system which would help him detect and remedy such conditions would be worth trying. Then if he turns back to chapter 18 on the budget manual, he will get a comprehensive view of how a budget is planned and installed and what are the duties and responsibilities of executive and accounting officers and departments in carrying out its aims. At first glance the details may seem voluminous, but a little study will prove that they are quite adaptable to the requirements of any business, large or small.

That, in setting up a budget, the coöperation of the accounting department of any business is indispensable goes without saying. Whether it is a field into which the public accountant should enter may be debatable. His prime function is that of verifying past transactions and certifying to their results, and he stands on firm ground when required to prove the accuracy of his work. But if he undertakes to set up the actual figures of a budget, who but he will be blamed if they fail of realization even through no fault of his?

However, I do not understand that Mr. Sinclair would advise the public accountant to do more than lay out the skeleton plan of a budget for his client, leaving the actual work of organizing and operating to the managers of the business. For that purpose the author's association with a well-known firm of public accountants is a sufficient guarantee to the profession that his book is a safe and practical guide in planning a budget system for clients.

W. H. LAWTON

FEDERAL SECURITIES ACT PROCEDURE, by J. K. LASSER and J. A. GERARDI. *McGraw-Hill Book Company, Inc.*, New York. 388 pages. 1934.

The promise of authoritative treatment which collaboration of a practicing accountant and a practicing lawyer might give is scarcely realized in *Federal Securities Act Procedure*. The authors say that accountants are under obligation to do many things that hitherto have been considered as out of their province. In the act itself there seems to be no extension of the ground that accountants are expected to cover as experts; but the authors of this book, in interpreting the law, import into it the most surprising things. They say an accountant in preparing registration statements must determine that titles are legally clear on public records (page 145), that provision has been made for all publicly recorded liens and mortgages, that all deeds and other instruments of title are in the possession of the issuer, that assets are actually in possession of the issuer (requiring actual physical inspection and listing), that unless an appraisal is made the accountant must survey the assets to ascertain that the balance-sheet sets forth a fair statement of going value, and (page 147) determine by "active inspection" that franchises, patents, etc. have been legally assigned to the issuer, and investigate the status of actions which have been or

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will be—yes, will be—started for infringement, etc. These are merely specimens of the way in which the authors would thrust upon accountants responsibility for matters clearly beyond their sphere or competence and call upon them to assume the rôles of engineers, lawyers or, in the last case, fortune tellers.

Those who have been called on to testify as expert accountants know that they are permitted to testify as experts only on matters contained in books or other written records and that their testimony as to other matters, such as condition and value of physical assets, if allowed at all, is rated as testimony of non-experts, equal in value to the testimony of any other persons without special qualification. Yet it is as experts that they are, in this book, required to take responsibility for actual value of assets, legal title to property, absence of legally registered liens, physical possession and actual ownership of assets, possession of legally sufficient title deeds, etc. What value title deeds have when the title to property has been searched and found in order is not stated. Reliance upon such deeds is vain; old title deeds can be obtained in any quantity; they have no value.

It is not improbable that if accountants did some of these things for pay they might incur penalties under the laws reserving for lawyers certain kinds of activities. Protests of lawyers against similar work by trust companies and others are by no means unknown in New York and elsewhere.

When we remember that for many years public accountants were almost alone in striving for more enlightening accounts, the sudden fervor of newly made converts to thrust upon us responsibilities for which our training was not designed to fit us is not easy to justify or understand. Perhaps it is an effort to shift to us some unwelcome duties of others. It would, indeed, be a convenience to all other parties to an issue if accountants could be made to take responsibility for everything, and some of us might be so ingenuous as to be proud that we were considered to be like Teufelsdröckh, Professors of Things in General; still it is regrettable that a certified public accountant should join in attributing to us wholesale responsibilities with possible penalties if we fail to measure up as experts in valuations of physical assets, in searching titles and as soothsayers in the matter of possible future lawsuits.

The distinguishing characteristic of this book is perhaps that it is calculated to reawaken the worst of the apprehensions of those who are liable to be called upon to assume responsibility under the securities acts. If the views which it sets forth were generally accepted, few accountants would be willing to undertake any such responsibilities. Fortunately the S. E. C. seems disposed to take a far more practical and realistic view of the requirements under the acts and it is to be hoped that its pronouncements will dispel any extravagant fear which the work, if widely read, might inspire.

F. W. THORNTON

FEDERAL TAX HANDBOOK, 1934-1935, by ROBERT H. MONTGOMERY.  
*The Ronald Press Company, New York. 1,158 pages. 1934.*

The *1934-1935 Federal Tax Handbook* by Robert H. Montgomery is the fifteenth of his series of tax books. In the author's usual lucid style, he critically reviews the revenue act of 1934 and published rulings of the treasury department, of the board of tax appeals and court decisions, which taxpayers

will have to keep in mind in filing their returns for 1934 and subsequent years, unless the law is changed.

In the preface to his *Handbook* Mr. Montgomery points out some of the unjustifiable and indefensible imposts placed upon taxpayers due to the disregard of sound economic principles in the law and a lack of understanding of business practices displayed by the framers of our revenue laws. As he well states, "It is not necessary for me to prove my point that taking our laws as a whole from 1913 to 1934 they constitute a mess." When new laws come to be drafted, it might have some salutary effect if the prefaces to several of Mr. Montgomery's *Handbooks* were fully digested by our lawmakers, so that some of the inequities and injustices under which innocent taxpayers suffer could be corrected. The task of administering the revenue laws would be made much easier and tax avoidance minimized if the determination of taxable income were made to conform closely, as it ought to, with the determination of income under ordinary business practices.

Due to the nature of the subject and the fact that the author is dealing with a law containing many new principles and requirements which have not yet been clarified by regulation or actually applied in practice, so that on abstruse points no standard of practice is available to go by, the *Handbook* will be of more aid to tax practitioners well versed in the niceties of interpretation of tax law than it will be to laymen. It is, perhaps, unavoidable that, when dealing with matters not made entirely clear in the law itself, the *Handbook* does not completely clarify the situation but leaves something to the understanding of the reader in the practical application of the more difficult problems. The work could be improved to some extent if the writer more consistently kept in mind that the *Handbook* is used and read by hundreds of business men who are not skilled in reading between the lines and distinguishing between conflicting court decisions applying to their own particular problems.

On page 303 where the author comments on a stock dividend in preferred stock the reader will not understand the statements made in the first paragraph. The paragraph in question will appear to conflict with contiguous paragraphs unless he reads between the lines and understands that the author is referring to a dividend in preferred stock issued to common stockholders at a time when there is no preferred stock outstanding. In that case a dividend in preferred stock will not be taxable in the hands of the recipient.

Again on page 304, when dealing with the proper entries on the books of a corporation relative to a dividend declared payable in additional no-par-value stock, the *Handbook* merely points out that there is a difference of opinion among accounting authorities regarding the proper entry and refers the reader to another publication by the same author in which the matter is discussed at length. As the question of the proper accounting entries is an integral corollary to the non-taxability of no-par-value stock dividends, it would be most helpful to have a statement from the author as to what, in his opinion, should be the proper entries, and merely to refer the reader to his other work for further information as to different views and methods of making the necessary record on the books of the corporation.

A similar lack of completeness appears in the author's comments on page 586 relative to the retirement of preferred stock. The reader is left with the impression that a corporation can get rid of an undistributed surplus by using it to

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retire preferred stock. At the same time, however, it would appear to be necessary to advise the reader at this point that, in certain circumstances, such retirement of preferred stock might well be held to be a taxable dividend, and refer him to page 284 where this subject is explained. Even with the aid of the index, the unprofessional reader might fail to tie up these two subjects.

On page 595 it is stated "section 351 (c) expressly excepts the credit for taxes paid a foreign country allowable in reduction of income tax by section 131 of the law, so that no foreign tax credit is allowable against surtax. The foreign tax is, however, deductible in determining net income subject to the surtax, if not claimed as a credit." The words "if not claimed as a credit" leave the reader somewhat in doubt as to what is meant, since the law provides for no credit of such taxes for purposes of the surtax under section 351. T. D. 4503, dealing with the surtax on personal holding companies (section 351), clearly states that the deduction of foreign taxes under section 23 (c) is permitted for the purposes of the surtax even if, for the purposes of the normal tax imposed by title (1), a credit for such taxes is taken. Thus, the credit for foreign taxes can be either claimed as a credit against normal tax or taken as a deduction from gross income used in determining normal tax by personal holding corporations and is also deductible in determining the net income subject to surtax even though claimed as a credit against normal tax.

However, there are few tax practitioners who, when they have a difficult problem with which to deal, would not be interested first in seeing what Mr. Montgomery has to say on the subject. His trenchant criticisms often point the way to the solution of a difficult problem.

NORMAN G. CHAMBERS