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Organizing Corporate and Other Business Enterprises, by Chester Rohrlich

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ORGANIZING CORPORATE AND OTHER BUSINESS ENTERPRISES (3rd ed.). By Chester Rohrllich. New York: Matthew Bender & Company. 1959. Pp. xii, 534. \$15.00.

Considering its excellence and its potential usefulness to a sizable portion of the general practitioners of law, *Organizing Corporate and Other Business Enterprises* has received surprisingly little attention from the reviewers in legal periodicals. There were five reviews¹ of the first edition which was published in 1948, no reviews of the revised or second edition published in 1953 and so far there has been only a "booknote"² on the third edition. Unlike quite a few other recent books designed primarily for the general practicing lawyer, I think this book is well worth the money at least for lawyers who expect to be called upon from time to time to assist in the organization of a new business enterprise or for advice in making any fundamental change in the character, form or ownership of an existing business. To such a lawyer the book should prove invaluable in bringing him abreast of current developments in the fields of federal taxation and close corporations, *i.e.*, achieving partnership advantages for corporations. For a bound book the author and publisher do a remarkable job of including current material. There is a discussion of or reference to the so-called "tax option corporation," (enabling legislation became effective on September 2, 1958) at all relevant points. Although the preface is dated October 1958, cases and law

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1. Field, 63 HARV. L. REV. 727 (1950); Sandgren, 24 ST. JOHN'S L. REV. 187 (1949); Wilkinson, 18 FORDHAM L. REV. 323 (1949); Wright, 4 MIAMI L. Q. 266 (1950); Zacharias, 27 CHI.-KENT L. REV. 261 (1949).

2. 33 CONN. B. J. 91 (1959).

review articles first appearing in the fall of 1958 are cited in the text or footnotes.

The organization of the book is unusual. Instead of presenting the subject matter along traditional conceptualistic lines, it is arranged around the lawyer's projected role in various phases of the life history of an ordinary business enterprise. After a brief introduction, the book starts in Chapter II with the protection of non-patentable business ideas and progresses onto Chapter XIV, a brief but very valuable text on estate planning called "Anticipating the Death of the Owner." The heart of the book is the long (136 page) Chapter IV on the "Advantages and Disadvantages of the Various Forms of Business Organization" and Chapter V on "Choosing the Best Form." In these chapters, Rohrlich gives valuable and practical advice to the lawyer faced with the constantly recurring dilemma of Corporation v. Partnership. His analysis might be summed up by three, multi-party suits, *i.e.* (1) Sole Proprietorship v. Family Partnership v. One-Man Corporation; (2) Joint Venture v. Partnership v. Limited Partnership v. Close Corporation; and (3) Private Stock Corporation v. Joint Stock Co. v. Business Trust. His answer of course is that the "best" form varies depending on the special circumstances involved. He, however, leaves the impression that frequently the use of several forms instead of one would be the wise and practical thing to do. On the whole, Rohrlich does an excellent job in these two chapters. A law student might cover the same ground equally well in half the space by reading the first chapter—The Role of the Lawyer in Determining What Form of Business Association is Best Suited to His Client's Needs—in Lattin's new textbook on Corporations³ and an Indiana lawyer might find the Indiana Bar Association symposium on Corporation v. Partnership⁴ more suited to his needs. Rohrlich, a practicing lawyer in New York City and part-time teacher of law at New York University School of Law, manages to integrate tax considerations into the general text with skill and practical judgment. He soundly accords the tax factor important but not primary influence.

In addition to the chapters already mentioned it seems to me that four chapters are exceptionally well done. They are Chapter VIII on "Preincorporation Agreements," Chapter IX on "Acquisition of a Going Business," Chapter X on "Capitalization and Financing" and Chapter XII on "Subsidiaries or Divisions." On the other hand, Chapter III on "Promoters" is disappointing and Chapter XI on "Marketing Se-

3. LATTIN, *THE LAW OF CORPORATIONS* (1959).

4. INDIANA STATE BAR ASSOCIATION, *CORPORATION VS. PARTNERSHIP* (1951).

curities" detracts from the generally high standards of other parts of the book.

In order to produce a completely successful book in this area of Business Associations, the author and publisher must overcome three well-nigh insuperable obstacles. First, the desirability of collecting in a single work treatment of all the most frequently reoccurring legal problems involved in the organization of a new business, necessitates coverage of a very large portion of the entire body of the law, and results in an incomplete exposition of most individual topics. Rohrllich tries to surmount this obstacle by being suggestive rather than exhaustive. Also his painstaking and excellent citation of cases and especially law review articles and notes goes a long way towards overcoming this obstacle. His treatment of federal regulation of securities expanded from eight pages in the first edition to twenty-six pages in this edition is one of the most noticeable shortcomings in this respect. Secondly, the book is designed for general practitioners in all fifty-one jurisdictions in this country. This is an area where the precise provision of the relevant state corporation and security codes, and the attitude of local judicial and administrative agencies is of paramount importance. For example, the aid which an Indiana lawyer, when faced with a problem involving the Indiana Securities Act, would get from the books two and a half page treatment of Blue Sky laws is minuscule. Thirdly, in a field where federal tax provisions are of great importance, the constant stream of new decisions, regulations and legislation threatens to make many sections of the book obsolete within a very short time. The first edition contained an appendix with over eighty pages of comparative tax tables. A year after publication these had to be drastically changed in the 1949 pocket supplement, the extensive amendments made in the Internal Revenue Code in 1950 in turn rendered portions of the 1949 supplement inaccurate, resulting in their abandonment in the 1953 revised edition. The text of the 1953 edition, in turn, became unsatisfactory at several points, because of the revision of tax laws undertaken in the Internal Revenue Code of 1954. Although the current edition, as noted above, contains reference to 1958 tax decisions and discussions of the Technical Amendments Act of 1958, it, nevertheless, illustrates the difficulty of relying on our unstable federal tax law. A year's experience with subchapter S indicates a more cautious approach than that adopted by the author when he quotes (apparently with approval) the following statement:⁵

5. At 214.

The 1958 Tax Law is a bonanza for businessmen. It has added new Code provisions which will prove far more valuable than any straight tax cut possibly could.—The 1958 Tax Law (Tax Research Inst. Sept. 1958) 5.

Possibly, books such as the one being reviewed should only be published in loose leaf form with a commitment from the publisher to keep them up-to-date.

I have put the book to a use probably not envisaged by the author. During this semester I have been conducting a seminar in Corporate Problems. The seminar has been built around the lawyer's role in organizing and financing small business enterprises in Indiana. I have used the book as a guidebook for the work of the seminar and have required all students in the seminar to read most of the chapters as background for the individual reports delivered by participants in the seminar. I have found the book to be a valuable teaching aid and many of the students have used it as a starting point for the preparation of their reports.

In summation, my opinion is that the general practitioner who invests in the purchase price of this book will receive a generous return on his investment and that Law School Libraries will find it a valuable acquisition.

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MAN, THE STATE, AND WAR. By Kenneth N. Waltz. New York: Columbia University Press. 1959. Pp. vii, 213. \$5.50.

The present volume seeks to delineate the contributions made to our knowledge of war and peace by certain representative thinkers in the field of classical political theory. The thought systems of Spinoza, Kant, and Rousseau are described in alternate chapters. Each formulation of the war-peace problem is followed by an analytical statement concerning the difference it makes in our thinking about war and peace and in the implementation of public policy. The final chapter attempts to relate the views of Spinoza and Kant to the one developed by Rousseau. The question which Professor Waltz attempts to answer directly is whether the writings of the classical political theorists provide any clues to the founding of methods whereby the frequency of military hostilities may be reduced and periods of peace prolonged. The theme of a lasting or eternal peace is not explored.

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