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CLOSE CORPORATIONS: LAW AND PRACTICE, by F. Hodge O'Neal, Callaghan & Company, Chicago, Illinois, 1958. Pp. Vol. 1, XX, 369, Vol. 2, VII, 437.

Alvin B. Rubin

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## Book Reviews

CLOSE CORPORATIONS: LAW AND PRACTICE, by F. Hodge O'Neal, Callaghan & Company, Chicago, Illinois, 1958. Pp. Vol. 1, XX, 369, Vol. 2, VII, 437.

Legend has it that the Duke of Gloucester, upon being presented with a copy of a volume of *The Decline and Fall of the Roman Empire*, muttered, "What! Another of those damned, fat, square, thick books! Always scribble, scribble, scribble, eh, Mr. Gibbon?"

Beset by booksellers with inexhaustible devices for new books and new editions, by libraries with something less than infinite space, and by landlords who have developed a penchant for charging by the square foot, the contemporary lawyer can share the Duke's sentiments.

But once in a while a book comes along for which space must be found even if it should be fat, square, and thick. And if it be lean and legible, so much the better. *Close Corporations* is such a book. Together its two volumes may be plump, but separately each is handy in size and easy to read. It meets a need in the law library not served by any other work.

If a "Local-Lad-Sheds-Legal-Light" note is not out of order, F. Hodge O'Neal graduated from the L.S.U. Law School in 1940. He has received graduate degrees from both Yale and Harvard, and was employed for a year as an associate of Sullivan and Cromwell. He has taught at a number of law schools and is presently Professor of Law at Vanderbilt University and Visiting Professor of Law at N.Y.U. He has spent a number of years in study and research on the problems of close corporations.

What is a "close" corporation? There have been many attempts at definition. The author uses the term to refer to a corporation whose shares are not generally traded in the securities markets. This is the kind of corporation with which the average lawyer must deal in his daily practice. Few of us will serve as corporate counsel for the firms listed on the exchanges. The corporations whose articles we draft, whose officers we advise, against whom or for whom we sue are in the main owned or con-

trolled by relatively few individuals. Their shares are seldom traded. They are close corporations in every sense.

These volumes deal with the unique problems of the close corporation. They begin with a chapter on "Distinctive Needs of Close Corporations and the General Failure of Legislatures and Courts to Appreciate Them." The appositeness of this introduction will appeal to all of us who have searched in vain for the answer to the problem of a used car dealer's small corporation among statutes and decisions which appear to deal with corporations only as if they were all of like size with General Motors.

However many times the reader may have advised the incorporators of a new venture, he will profit by reading the author's comments on "Steps Preceding Organization." The discussion commences with the business and tax factors involved in deciding whether or not to incorporate; and, once incorporation is determined, in deciding whether there should be a single corporation or multiple corporation; how the corporate name should be chosen and reserved; how the corporation should be capitalized; and the multitude of other problems which the lawyer should be prepared to discuss with his clients when they walk in his office and announce that they've come to talk about a corporation.

There follow chapters on drafting the corporate charter and by-laws, veto provisions, and control devices. In addition, consideration is given to employment agreements, stock transfer restrictions (including buy and sell arrangements), and, in two particularly valuable chapters, to "Problems of Operation" and "Problems of Dissension."

Notwithstanding the limitations of standardized forms, formularies serve an invaluable function when coupled with a comprehensive text. The author has provided a full set of specimen provisions, reasonably free of surplusage and gobbledygook, and annotated to the text and to relevant decisions.

Whether they damn or praise an author, most reviewers cannot resist offering a few suggestions. This reviewer will not disturb the precedent.

For instance, there is an observation in the text<sup>1</sup> that thin incorporation (forming a corporation with a portion of the stockholder contribution represented by debt) "may sometimes be

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1. At page 56.

advantageous taxwise because the shareholder-creditors will have a bad debt deduction and not just a capital loss if the corporation fails." This appears doubtful in the light of the decision in the *Putnam* case.<sup>2</sup> Incidentally, while the author cites several excellent articles on thin incorporation, he does not refer to one of the oldest and best, Schlesinger, "*Thin*" Corporations: *Income Tax Advantages and Pitfalls*.<sup>3</sup>

It would be well, too, for the Louisiana reader who uses the buy and sell agreements discussed in the book to consider the desirability of having the spouses of the parties sign the agreement, as a safeguard against claims that the nonsigning spouse cannot be bound by a contract looking to a time when the community of acquets and gains would be dissolved.

Unfortunately, there is no discussion of the manner in which a corporation may act by unanimous stockholder consent. Can a corporation, with unanimous consent of the stockholders, perform an act which would normally be beyond the power of its board; for example, can it borrow money for a stockholder's benefit? There are other questions which I have sometimes pondered and for which I had hoped to find answers in the text. For example, where restrictions are imposed on the transferability of stock, in how much detail must the restrictions be set forth on the face of the stock certificate in order to protect against violation of Section 15 of the Uniform Stock Transfer Act? Will a reference suffice or must the full text of the restriction be set forth?

Of course, no book can cover the whole of the questions in any field. And no book can think for the lawyer. After he has read, the job of analysis and application is his alone. This book carries the lawyer as far along in his thinking as any book can. With these volumes, I would add to my library the excellent book by Arthur B. Willis, *Handbook of Partnership Taxation*, published in 1957. These two works together provide a set of tools for use in solving problems relating to the form of business organization almost indispensable to any law office, large or small.

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2. Of course, the question may now be of less importance in view of the provisions of the Section 202, Technical Amendments Act of 1958, amending Section 165 of the Internal Revenue Code of 1954, and adding Section 1244 to the Code.

3. 61 HARV. L. REV. 50 (1947).

*Close Corporations* is the first book in its field. It will pay for itself many times over in any law office. In addition, it is a work of scholarship, demonstrating real insight into the needs and problems of small business, and hacking a path through the underbrush which no legal writer has yet travelled.

*Alvin B. Rubin\**

THE JOINT VENTURE AND TAX CLASSIFICATION, by Joseph Taubman. Federal Legal Publications, Inc., 1957. Pp. 493. \$15.00.

Judge Learned Hand once said of the business organization about which this book is written that it is "one of the most obscure and unsatisfactory of legal concepts." As Taubman states, "the joint venture does not enjoy ease of identification. . . . Laymen scarcely know the term. The bar is aware of it mainly as a device to impose legal liability as an additional cause of action in a complaint. The bench has used this relationship to impose certain of its legal consequences as a measure of justice. . . . Paradoxically, the term is easier to define than to identify. Joint venture is an association of two or more natural or juridical persons to carry on as co-owners an enterprise, venture, or operation for the duration of that particular transaction or series of transactions or for a limited time." Since 1932, it has for tax purposes been included in the concept of partnership. But in 1954 Congress added two extraordinary provisions to the Internal Revenue Code: "[T]he Secretary . . . may, at the election of all the members of an unincorporated organization, exclude such organization from the application of all or part of [the provisions on partnership]." (§ 761(a), Internal Revenue Code of 1954): "[A]n election may be made, in accordance with regulations prescribed by the Secretary . . ., by the proprietor or all the partners, owning an interest in [an unincorporated business] enterprise . . . to be subject to . . . taxes . . . as a domestic corporation. . . ." (§ 1361(a), Internal Revenue Code of 1954)

To the author of this treatise, these somewhat obscure provisions presented a challenge; the result has been a rare and refreshing phenomenon in tax law—a genuinely philosophical

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