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ACCOUNTING FOR LAWYERS, by A. L. Shugerman. The Bobbs-Merrill Company, Indianapolis, 1952. Pp. 592. \$15.00.; LEGAL ACCOUNTING, by William H. Shannon. West Publishing Company, St. Paul, 1951. Pp. xi, 366. \$5.00.

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Book Reviews

ACCOUNTING FOR LAWYERS, by A. L. Shugerman. The Bobbs-Merrill Company, Indianapolis, 1952. Pp. 592. \$15.00.

LEGAL ACCOUNTING, by William H. Shannon. West Publishing Company, St. Paul, 1951. Pp. xi, 366. \$5.00.

Most of what will be found in these volumes could as readily be found in any of the many standard works on accounting: those by Mason, Paton, Finney, and many others could be cited. In both, however, there has been an attempt to supplement the standard discussions of accounting structure and function with additional materials and with differences in treatment so as to make them more useful to the practitioner and to the law student. The preface to *Legal Accounting* suggests that it will be useful also to the accountant and to the prelaw student; *Accounting for Lawyers* does not go so far.

Accounting for Lawyers, by Professor Shugerman, is perhaps the more informative about its objectives, thus: "It is editorial in that the various fields of accounting have been combed for accounting concepts that are germane to the practice of law. It is explanatory in that every effort has been made to explain these concepts in a simple, easily-understood manner." After a useful summary of the major fields of specialization in accounting, there is set forth a conception of "legal accounting" as that "cluster of accounting situations which experience has shown are apt to arise in the practice of law."

Here the author has reference, of course, to the greatly expanded practice of using accounting as a control device in corporate regulation, of using accounting terminology as the language of the income tax statutes, and of using or implying accounting principles and practices in the drafting of commercial contracts and in the determination of damages questions thereunder. In order to understand "legal accounting" thus defined by the author, it becomes necessary to understand the accounting functions of recordation, analysis and summarization and the accounting principles and terminology which have been evolved for the purpose of accomplishing this task. Having thus set the stage for what he proposes to accomplish, Shugerman adds, in

his opening chapter, some thoughtful observations on what he terms the "philosophical touchstones of accounting." Here he treats briefly of the importance of accounting as the language of finance, of the question whether accounting creates or merely records facts, of its interrelation with tax law, of the role of precedence and conservatism in accounting, of the difficulties with inconsistencies, and of the continuing quarrel in accounting, as in the law, as to where procedure leaves off and substance begins.

The balance of this part of Shugerman's book is devoted to a relatively conventional treatment of the recordation process. The second part is devoted to a presentation of the structure and function of financial statements, including an excellent treatment of working papers and their utilities. In the third part are collected rather comprehensive presentations of specialized problems related to partnerships and corporations cast metaphorically into a biological "birth," "life," and "death" rhythm. Additional chapters are devoted to such specialties as consignment accounting, home-office and branch-office accounting, and installment accounting. The last chapter is devoted to a conventional treatment of accounting for estates and trusts.

Since the designation "legal accounting" has been used to describe "the cluster of accounting situations which experience has shown are apt to arise in the practice of law," the designation assigned to accounting for estates and trusts is that of "an aspect of court accounting." However, if the adjective "legal" had to be used to modify accounting (a need which one could wish had not arisen) it seems to me that it might least harmlessly and most accurately have been used to designate just such specialties, together with other types of fiduciary accounting such as those required of receivers and of trustees in bankruptcy.

While the material included by Shugerman is excellently presented, its coverage falls short of achieving the objective implicit in the title *Accounting for Lawyers* and in the meaning assigned to "legal accounting." Probably Graham and Katz most nearly embraced the lawyer's "cluster of accounting situations" in their 1938 edition of *Accounting in Law Practice*. In that edition the authors observed that "the principal value of an understanding by the lawyer of accounting principles does not consist in an ability to keep books . . . but rather in the added facility which it gives him in the handling of his own peculiar

tasks. . . . The lawyer whose practice includes any substantial amount of advisory work for business enterprises, whether corporations or partnerships, has frequent need for an ability to understand and analyze financial statements. In legal specialties such as income tax practice, utility rate regulation, and corporate mergers and consolidations, a mastery of accounting principles is almost indispensable. . . . But even apart from such specialized branches of the practice where the need for accounting is obvious, lawyers very generally recognize the value of an understanding of accounting in dealing with such questions as corporate dividends, income bonds, blue sky laws, corporate franchise taxes, qualification of foreign corporations, and partnership liquidations. Not least among the benefits resulting from such an understanding is the habit of visualizing business operations and financial conditions in the form of the financial statements in common use. This habit very definitely facilitates the understanding of the legal rules involved in some of the rather complicated aspects of these problems." Developments in the state and federal areas of business control since 1938 have served to underscore the sageness of this observation. I think there would be, as a consequence, a disposition on the part of many prospective users to part with the treatment of such relative exotics as consignment accounting and home-branch accounting, in favor of treatment of such topics as accounting for receivers and trustees in bankruptcy, the accounting problems incident to public utility regulation, and some concrete help in the matter of income tax accounting by way of working paper techniques in getting from book income to taxable income.

I find Professor Shannon's book, cryptically entitled *Legal Accounting*, a little puzzling. It is said by the author to represent "the first presentation of an analytical and legally annotated approach to a study of accounting." But twenty years ago Graham and Katz pioneered this field with a text which was replete with annotations to legal materials and left little to be desired in the way of analysis of the structure and function of accounting, at least as it had developed up to that date.

Insofar as there is novelty in the analysis such as to warrant the prefatory statement, it may lie in the emphasis placed on the "business transaction" and accounting therefor. Certainly it does not lie in any concerted effort to demonstrate the extent to which the rules governing such transactions have been translated

into law. For example, the author is content with the role assigned to accounting determinations in the abortive *Dobson* decision of 1943, in which, as he phrases its learning, "questions pertaining to the nature, scope, and effects of business transactions are considered by the courts to be questions of fact and not questions of law." The rule of the *Dobson* decision seems hardly a reliable criterion of the way in which courts use business standards in determining controversies about business transactions. The obvious preoccupation of the court in that decision was with the specific job of stopping the flood of tax appeals: classification of a determination by the tax court of an accounting controversy as a fact determination was a way of limiting the flood since appeals would lie only to the extent that they presented unmixed questions of law. Parenthetically, it is ironical that, while Congress overturned the procedural rule embodied in the *Dobson* decision in 1948, it did not (or perhaps could not) rectify the damage done by the decision to the orderly incorporation of accounting standards into the law.

Nor does there seem to be any more than a casual concern for integration of accounting principles into the law elsewhere in the work: in the section devoted to "law and accounting" the author's observations are directed wholly to the interrelationship of the practice of the accountant and the lawyer. To this end, the section contains several cases determining questions of unauthorized practice of law in the tax field and a reproduction of the recent joint statement by the National Conference of Lawyers and Certified Public Accountants on tax practice. Shannon comments thusly at the end of the section: "an accountant and an attorney are frequently concerned with the same basic facts, namely, business transactions: even though there may be a common source of facts, the professions have individual or/and interrelated roles to play. Accounting is confined to the sphere of activities involving the ascertainment, analysis and presentation of business transactions, but the accountant must take cognizance of certain principles of law in providing the desired business enterprise-transaction information. Many fields of law, particularly in the case of regulatory and tax legislation, are couched in terms of and are based upon financial concepts drawn from accepted commercial and accounting practices. The attorney must be versed in and mindful of accounting principles and procedures in the practice of law. The distinct, but comple-

mentary, roles of the accountant and the attorney must be recognized and are vital to our commercial life."

Twelve chapters devoted to accounting structure and function are elaborately analytical of relatively simple concepts; so much so that it is difficult to conceive of escorting a second-year or even a first-year law school class through the analysis at anything like the measured pace necessary in handling difficult conceptual and factual legal materials. For example, some forty-six pages are devoted to analyzing the "merchandise cost of sales element" as compared with some six pages which Graham and Katz devoted to the topic in their 1938 work and some three pages which Katz devotes to it in his 1950 *Introduction to Accounting*. Professor Wade devotes two or three pages to the topic in his *Fundamentals of Accounting*, a text designed primarily as a survey of accounting for non-commerce students and an excellent brief treatment of general accounting structure and function. The space comparison is perhaps not quite accurate since Shannon's analysis includes such elements as bad debts expense and some others not usually included in a discussion of merchandise cost of sales. However, the treatment is elaborate not primarily because of space devoted to analyzing and integrating accounting theory with the development of commercial law theory: on the contrary the space is devoted to etching out exhaustively the logical and economic implications of merchandise accounting. For example, a description of the interrelation of gross merchandise sales and merchandise sales returns, discounts, allowances, and bad debts indicates the depth of analysis carried out in this area: "The pure merchandise sales element is a measurement of the ultimate assets received, in exchange for the assets furnished, in the sales of merchandise; it describes the final bargain price assigned to the assets to be furnished by the vendor. [Footnote:] It is customary practice to ignore the interperiodic refinement of the contingent concessions extended to the vendee; regularity and uniformity of periodic overlapping of comparable business transactions are offered in justification of the practice." The analytical nicety employed is further illustrated in tracing the sale of merchandise through accounts receivable into cash thus: "In order to ascertain the value of the ultimate assets received in the periodic sales of merchandise, it is necessary to consider the current recognition of the credit sale transactions in relation to the collectibility of the subject accounts receivable. The periodic

overlapping of the sale agreements and the collection of the accounts receivable has contributed to the indicated methods of recognizing the bad debts factor. The subject concession extended to, and accepted by, the vendees is unique in many respects. [Footnote:] Unique aspects of the bad debts factor are presented in *S. Rossin & Sons v. Com'r of Int. Rev.*)”

The value of analysis carried out in this amount of detail and abstraction, as it is throughout the book, seems to me to lie primarily with the economists and theoretical accountants and not, except in rare instances, with lawyers and law-students. Illustratively again, is the term “intangible assets” rendered most meaningful by a description such as Wade’s: “Fixed assets affected by passage of time only [are] intangible fixed assets such as patent rights, copyrights, and franchises. [They] are subject to expiration at some definite future date and hence suffer periodical reductions in value through the passage of time [amortization]” or by such a description as Shannon’s: “Individual types of assets listed under the classification of ‘intangible assets’ possess varying traits of which the following are representative: (a) Acquirement is essential to the establishment and operations of the business enterprise; (b) Appear in physical form or comprise a special grant; (c) Existence is coextensive with that of the business enterprise. Intangible assets represent a unique group of individual types of assets around which many practices, contrary to accepted accounting principles and procedures, have arisen and prevail. [Footnote:] To illustrate, it is customary to assign a nominal value of \$1.00 to the subject assets; adjustment to the proprietary equity is made accordingly.” Mark Twain said, probably after an explanation such as the latter, “The more you explain it to me, the more I don’t understand it.”

Perhaps it is mere captiousness, but the choice of the title *Legal Accounting* seems regrettable for a book described in the preface as a “concise presentation of the accounting cycle from an analytical viewpoint . . . [affording] a comprehensive understanding of the basic work of an accountant and legal annotations from which research may be pursued.” The use of some such title as “The Accounting Cycle and the Law” would have had the advantage of saving the title *Legal Accounting* for the accounting specialties which are more accurately so described, such as trust and estate accounting and accounting for receivers and trustees in

bankruptcy. Such a title would have in no way impaired the utility of the work, since it seems clear that it is not designed to serve as the primary teaching material in a law-school course; as a supplement to materials such as those of Schapiro and Wienshienk's *Cases and Materials on Law and Accounting* or Amory's *Materials on Accounting*, it would play a useful role. It is to be noted, however, that in materials such as these latter the tendency is to recommend general texts on accounting such as Paton, Mason, Finney, and others.

At the University of Chicago, where a combined course in corporations and corporate accounting is offered, a short introductory course is available to law students as a foundation for the work in corporate accounting as well as for work in the areas of income taxation, bankruptcy, and financial reorganization. For this purpose, Professor Katz has compressed into the compass of little more than a hundred pages an introduction to basic concepts and procedures of accounting. The work, modestly entitled an *Introduction to Accounting*, does not purport to be arranged analytically; collateral readings in the standard texts are relied upon for elementary background. Thus *Legal Accounting* would be collaterally useful for basic insights into the accounting cycle in structure and function. Shugerman's work, *Accounting for Lawyers*, on the other hand, would play much the same collateral role to such a course as Graham and Katz' *Accounting in Law Practice*, since Shugerman's work is basically a general text on accounting with some but not all of the special interest areas treated in the latter work.

Assignment of a collateral role in law school classwork to such books as those under review and to their precursor, *Accounting in Law Practice*, by Graham and Katz, usually follows recognition that law students will most effectively capture the structure, function, and terminology of accounting by encountering it in specific areas of law where it has become part of the apparatus of control, as in the case of corporation law and utility regulation law, or has become part of the apparatus of measurement of various kinds of commercial liability, as in tax law and commercial contract law. Thus the organization of materials which Schapiro and Wienshienk have assembled for use at Yale "proceeds by legal rather than accounting-concept subdivisions, following initial instruction in the rudiments of elementary bookkeeping. Representative legal areas are utilized which give ample oppor-

tunity to increase the student's familiarity with accounting concepts but evaluation of specific accounting principles is thereby possible in the focus of concrete and dissimilar legal issues. Thus, 'cost or value in the balance sheet,' 'depreciation,' 'treatment of treasury stock,' 'good-will,' 'inventory valuation,' and other accounting concepts are viewed first through the writing of leading accountants and then emphasis is shifted to the direct effect which alternative interpretations and applications of these concepts may and should have upon specific legal problems: e.g., measurement of damages in patent and ordinary breach of contract litigation, the legal requirements of financial reporting designed to protect investors, the positions and interests of creditors and varying classes of shareholders within the corporate family, the fairness and feasibility of corporate recapitalization or reorganization plans, controls over charges to consumers in the area of public utility regulation, and the competing equities of income beneficiaries and remaindermen of trust estates."

And even if one were not convinced that this latter approach was the most fruitful one for law school teachers, who would brave (at least in any tax-supported school) the horrid cry of "duplication" which would be raised against the teaching, however shrewdly disguised, of what a school of commerce would call a "survey or service course in accounting"?

ADDENDUM

Another book, entitled *Lawyers Accounting Handbook*, has just been published in this field which I believe presents a solid contribution in an area of lawyer interest which has become a sort of "no-man's land." The work has just come from the presses of Matthew Bender & Company and was prepared by Professor Christian Oehler of Fordham University under the legal editorship of Arthur I. Winard, formerly managing editor for the Practising Law Institute of New York. The area of lawyer interest I refer to is the preparation of income tax returns; the contribution consists of a carefully illustrated series of working papers showing the manner in which client data in the form of a trial balance and supplementary information can be analyzed and synthesized into tax return requirements. Some two hundred pages of a total of nine hundred and three pages are devoted to illustrative working papers, tax returns, and explanatory text. The only carping note I would inject would be the heretical one that working papers do not need to be reproduced in someone's hand-

writing, however legible, to be convincing as working papers; explaining their role, to the extent it is not already done, would be a small price to pay for complete legibility.

Oehler's book is satisfying on another and minor score; the term "equity of creditors" is used only as a section heading, and debts and proprietary items on the balance sheet are generally referred to by Oehler as interests of creditors and interests of owners. It has seemed regrettable to me that as the use of the term "liabilities" is generally being contracted and rendered more meaningful in balance sheet terminology by excluding from it proprietary items, another corruption is developing in its place, namely the use of the term "equities" to cover both creditor and owner interests. Such use of the latter term is particularly confusing in reorganization law and accounting where the respective interests of creditors and stockholders have come to be referred to as debt claims and equity claims. I suppose if the use of it in this fashion has historical justification it lies in the analogy to the "equity of redemption" notion developed in connection with mortgage foreclosures in courts of equity. In the light of this history, it seems somehow anomalous to refer to the claim of a first mortgage bondholder as an "equity," yet this seems to be the effect of a classification of balance sheet items into "proprietary and non-proprietary equities."

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JURISPRUDENCE—ITS AMERICAN PROPHETS, by Harold Gill Reuschlein. The Bobbs-Merrill Company, Indianapolis, 1951. Pp. xvii, 527.

This work presents the views of some seventy different American writers in a loosely-constructed, badly proof-read, but on the whole remarkably faithful paraphrase. The task the author took on himself was truly a formidable one. Long articles had to be summarized in a few sentences, whole books in a couple of paragraphs. To accomplish this condensation without committing egregious blunders is itself an achievement of some importance.

But the book displays more important qualities than mere industry and breadth of coverage. The author has a remarkable

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