

2-1-1948

Book Reviews

North Carolina Law Review

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Recommended Citation

North Carolina Law Review, *Book Reviews*, 26 N.C. L. REV. 237 (1948).

Available at: <http://scholarship.law.unc.edu/nclr/vol26/iss2/4>

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BOOK REVIEWS

Investment Company Shares. By Alec Brock Stevenson. New York: Fiduciary Publishers, Inc. 1947. Pp. 52. \$1.00.

The investment of money has always been a difficult task. This fact has given rise to voluminous advice to investors through the ages, illustrated by the ancient Hebrew formula that every man should divide his money into three parts, and invest a third in land, a third in business, and a third to be kept by him in reserve. A more humorous comment is that in investing money the amount of interest desired will depend on whether the investor wants to eat well or sleep well.

As men learned to produce more than they consumed, the need for investment management grew apace. The instability and uncertainty in the investment field in recent years are common knowledge. The growth of government controls, the increase of taxation, the unrest of labor, together with the far-reaching effects that atomic energy is bound to have upon our economy, have greatly complicated the problems of investment management, particularly from the standpoint of the fiduciary. Under these conditions, the wise investment of trust funds calls for expert knowledge.

For these reasons, the compact volume on "Investment Company Shares" by Alec Brock Stevenson, a Trust Officer and investment expert, is especially welcome. Mr. Stevenson has written a concise and thorough analysis of investment company shares as permanent investments for fiduciary investors. This book should be helpful to all persons handling the investment of trust funds, particularly those belonging to small estates. As he points out, the basic problem of investment management in its simplest terms, is what to buy, when to buy, and how long to keep it. The solution of this problem demands careful initial research, plus continuous full-time supervision. He demonstrates that these are supplied in large measure through the practice of pooled investments found in investment company shares.

An investment company is defined as "a financial institution designed to assemble a large aggregate investment fund from a multitude of individuals, and to provide for the fund a caliber of management and a degree of diversification ordinarily beyond the reach of any of its individual shareholders." It resembles the common trust fund but offers additional advantages, arising mainly from the fact that Federal regulations prohibit institutions administering common trust funds from using the investment performance of their funds as a basis for soliciting

trust accounts. The common trust fund is established as a medium for the investment of the funds of regularly established trusts which have been created for other reasons than to secure the investment management afforded by the common trust fund.

The book contains a clear description of the different types of investment companies, which are divided mainly into "closed-end" and "open-end" companies; a comparison of the assets held by the two types; and a detailed discussion of their organization, operation and objectives. Regardless of type, the author observes that the companies are unanimous in holding two convictions—"that continuous research is essential and that selective diversification is of the highest importance."

As would be expected of a carefully prepared treatise, such as the one now under review, dealing with a relatively new type of investment for trust funds, the legal questions are given a frank and full analysis. The author is careful to point out that after diligent research it must be admitted that the propriety of investing trust funds in investment company shares has never been adequately determined as a matter of law. The charge has been made that the fiduciary who makes such investments is violating the principle prohibiting the delegation of his power. Only one case squarely in point has been discovered, that being *Marshall v. Frazier*,¹ in which the court surcharged the trustee. However, on the basis of two favorable decisions² in states following the Massachusetts rule of the prudent man in making trust investments, which dealt with analogous investments, the author concludes that a trustee who prepares to meet the prudent-man test in respect of the purchase of investment company shares need not assume that the issue of delegation will be raised in his case. There is sound reason for this opinion because the trustee purchasing an investment company share is in a far better position to know what he is buying than when he buys a share of a commercial or industrial corporation.

After all is said, the rule of the prudent man, as laid down long ago in *Harvard College v. Amory*,³ gives a safe test for trust investments, and, as the author suggests, in those states following the prudent-man rule, trustees may hope with good reason that the courts will not rule out investments of fiduciary funds in investment company shares.

This opinion should apply with considerable force in North Carolina because our state, since the decision in *Sheets v. Tobacco Co.*,⁴ has clearly followed the prudent-man rule. In that case, in which the investment by a guardian of his ward's funds in the preferred stock of a

¹ 159 Ore. 491, 80 P. 2d 42, 81 P. 2d 132 (1938).

² *Kimball v. Whitney*, 233 Mass. 321, 123 N. E. 665 (1919); *Rhode Island Hospital Trust Co. v. Copeland*, 39 R. I. 193, 98 Atl. 273 (1916).

³ 9 Pick. 446 (Mass. 1830).

⁴ 195 N. C. 149, 141 S. E. 355 (1927).

manufacturing corporation was challenged, it was held that good faith and due diligence on the part of the guardian would protect him and his sureties from liability for losses.

Other grounds for legal challenge to the investment of trust funds in investment company shares are mentioned. Among these is the charge that they constitute an unwarranted comingling with the assets of other trusts; also that they are an indirect breach of trust because, perchance, the portfolio of a given investment company may contain securities improper for trust investment; and also, the illegal imposition of the trustee's costs of management on top of those of the investment company.

From time to time, the question of validating investments by fiduciaries of trust funds in investment company shares, will arise in the courts, and in legislative halls. Whenever that takes place, this little volume will prove of invaluable help to the lawyer and the draftsman handling the matter, and it should be regarded as a necessary part of the working library of every trust officer and investment counsellor.

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Federal Taxation for the Lawyer. Second Edition. By Houston Shockey. New York: Prentice-Hall, Inc. 1947. Pp. xiv, 396. \$5.00.

In this day and age when practically every business transaction involves a tax aspect, it behooves every attorney to be familiar with the workings of the Internal Revenue Code in order that he may properly serve his clients. The drawing of a will, the preparation of a lease, the trading in of an automobile, the exchange of securities, the purchase of stock, and innumerable other every-day business dealings all present problems relating not only to the subject matter of the transaction, but more than likely they hold hidden tax aspects also. It has been said that almost every section of the tax law is an elective section in the sense that the taxpayer can so adjust his affairs as to fall within or outside of the section. In order to make such an election intelligently most taxpayers require the advice of counsel; and the taxpayer's attorney must be ready to give such advice. It is not sufficient, however, for the lawyer to stand ready to answer the questions as they are put to him by a client. His responsibility is far greater. He must be able to recognize the existence of a tax question and to point it out to his client so that the client may avail himself of the election provided him by law.

Mr. Shockey's book, which is a revision of an earlier edition, ably

further the meaning of the above remarks inasmuch as it carries attorney and client through a vast series of legal transactions, pointing out in each the various tax questions which are involved and playing up for the reader the necessity of an understanding of these various questions. As the preface points out, ". . . the Federal taxes represent an important part of the net financial effect for the parties involved. Therefore, it is obvious that a lawyer's work on any particular legal matter is incomplete if the tax features have not been taken into account."

The book, which is designed to serve the lawyer and not the layman, is interestingly written, comprehensive in scope, and accurate in portrayal. This is not to say that it is in the nature of a treatise, or a law digest, or a compilation of cases. It does not serve the purpose of a research work or a tax service. On the other hand, it fills the need which exists for a work that gives the unfamiliar an understandable, yet meaty introduction to the fundamentals of the laws of Federal taxation.

The book consists of examples of legal transactions that might come into any law office, with an analysis in each case of the tax consequence to the client. The general introduction provides a background of the whole field of Federal taxation, integrating the remarks in this respect with an explanation of the Federal taxing machinery.

The book then proceeds by chapters to probe the effect of the tax laws upon the fields of Wills and Probate, Gifts, Trusts, Insurance, Sales and Transfers, Stocks and Securities, Real Estate, Mortgages, Leases, Business Practice and Accounting, Partnerships, Corporations, Shareholders, Corporate Reorganizations, and Corporate Liquidations. Each chapter is broken down into subheadings which effectively classify the different types of transactions falling within the treated field. As an additional aid to the reader, each of such subheadings is concluded with a brief summary of the legal principles considered therein. In a number of instances the author makes the answers appear easier than they actually are in real life. This, however, should not be considered detrimental to the quality of the writing because, as expressed above, the purpose of the book is to explain fundamentals and not to argue over technicalities. It may be said that if the answers as presented by our author tend toward over-simplification, the answers that are given are conservative in nature and are designed to avoid pitfalls and to protect taxpayers from adverse claims that might be made by the taxing authorities.

The mechanical features of the book are excellent. The printing is clear, and no errors of proof reading were discovered. The text material is frequently supported by footnote references. The notes, however, lose some of their practical value inasmuch as they are all compiled at

the end of the book. In addition to the table of notes there appears at the end of the book a table of cases and a rather exhaustive index.

One question which must certainly come to the reader's mind when perusing a book of this nature is as to whether or not the text is of a perishable nature. The first edition, which was published in 1941, no doubt suffered a serious blow by the vast changes effected by the Revenue Act of 1942. If the intimated tax changes are put into effect some time in the near future, Mr. Shockey's revision will have been somewhat in vain.

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United Nations or World Government. Compiled by Julia E. Johnsen. New York: H. W. Wilson Company. 1947. Pp. 285. \$1.25.

Miss Johnsen's compilation sets out to "present some of the recent outstanding discussions on the United Nations Organization, without bias, and alternative world government." As an introduction to the subject of whether or not the United Nations is working, and if it isn't what can be done to make it work, this volume deserves a qualified recommendation.

Unfortunately a good deal of the text is already dated. Nearly all of it first appeared in 1945 and 1946 and, therefore, contains a disproportionate amount of eulogy of the United Nations Organization which it was thought bad taste to criticize too bluntly in its infancy. The events of 1947, which are not reflected in this volume, not only produced additional experiences which demonstrated weaknesses in the U. N. as it is now constituted and prompted Secretary Marshall and the American delegation to join, in a very limited way, the chorus of smaller powers in sponsoring consideration of changes in the charter, but the year also saw the consolidation of a number of organizations engaged in spreading the fundamental concepts of world government¹ and the publication of a number of analyses better reasoned than many in this volume.² There are, however, a few good articles on world

¹ The first national convention of world government advocates was held at Asheville, N. C., February 22, 1947, and resulted in the merger of five organizations into United World Federalists, a nationwide membership organization wholly supported by dues and contributions. The first international convention of world government advocates was held at Montreux, Switzerland in August 1947 under the auspices of World Movement for World Federal Government, an international coordinating association with member organizations or representatives in the following countries: Australia, Austria, Belgium, Canada, Czechoslovakia, Denmark, France, Germany, Great Britain, Hungary, India, Italy, Lithuania, Luxembourg, Netherlands, New Zealand, Norway, Palestine, Poland, San Salvador, South Africa, Sweden, Switzerland, Turkey, United States and Yugoslavia.

² *E.g., Peace or Anarchy* by Cord Meyer, Jr.. Boston: Little, Brown and

government such as "Timetable for World Government" by Thomas K. Finletter, which originally appeared in the March 1946 *Atlantic Monthly* and "Myths of World Government" by Edward McN. Burns, and a fairly valuable collection of short quotations, but here again the latter were sent to press too soon to include, for example, the recent statement in support of world government by Former Secretary of State and war-time Secretary of War Henry L. Stimson.

One lesson of history which should be clear by now is that human beings can't live together in close physical contact without fighting, unless they live under the authority of one common government. This is so obvious people everywhere take it for granted in the narrow bounds of city, state and nation; but since about 1900 the people of the world have been living in close physical contact, trying desperately to get along not merely without one common government but with 63 or 54 or some other such number of separate sovereign governments, each demanding the supreme allegiance of its particular subjects and asserting its own right to use whatever force it can muster when and wherever it might well please. This is anarchy.

Can the United Nations, as it is now constituted, establish the rule of law for this world community? Is it a government, or is Miss Johnsen right in referring to it as an "alternative" to a world government? It would seem axiomatic that any government must have a monopoly of physical power far superior to what could be accumulated by any one or groups of its subjects, and that that power must be exercisable directly upon each of its individual subjects. The present United Nations has in itself no physical power and the decisions which its organs are expected to make do not apply to individuals, but consist instead of mere recommendations to the several separate sovereign states which constitute the membership to take separate action against another sovereign state. In the last analysis each sovereign state is free to accumulate as much physical power as it can and if there is a conflict between a U. N. recommendation and its own idea of its best interest, there is no compulsion on it to follow the recommendation, except the vague possibility some other sovereign states might risk opposing it if it didn't. This is still anarchy, whatever you choose to call it.

Inasmuch as the official intercollegiate debate topic of the year is "Resolved That a Federal World Government be Established," and the 1948 high school world peace study and speaking program is on the topic "How can the U. N. Be Strengthened?" this book is likely to see much service in the hands of students and it is also the type of anthology

Company. 1947. Pp. 233. \$2.50. "Our Final Choice" by W. T. Holliday, *Reader's Digest*, January 1948. P. 1. Also the collection of essays entitled "How Can the United Nations Be Strengthened?" U. N. C. Extension Bulletin, Vol. XXVII, No. 3. October 1947.

which will suggest itself for study by Wednesday Afternoon Book Clubs and other adult forums, but unfortunately the collection does not contain sufficient material for a proper grounding in the fundamental arguments in behalf of world government. The bibliography is long but spotty, and for this reason may confuse more than help unless it is looked upon as merely an additional check list. Anyone who prefers not to go off half-cocked on this issue ought to get hold of Emery Reves' "The Anatomy of Peace"³ or Meyer's book.⁴

When all the articles in this collection devoted mainly to support of the U. N. are taken together the significant impression is that even its chief supporters are not satisfied that the U. N. as it is now constituted can do the job and say it is but a start in the right direction of world government and that gradually it may grow into one. But the truth is that the U. N. cannot strengthen itself; that takes political action.

Every lawyer's job should be to grasp this vision of the world community attempting to exist without a government, and therefore without law.⁵ Having grasped it, each lawyer is the best, perhaps the only man in his community who can alert his fellow citizens to the urgent necessity of establishing a government for that world community, and those fellow citizens will, according to recent public opinion polls,⁶ respond surprisingly well.

When that response is seen by our political leaders, they can no longer use as an excuse for the failure of our own foreign policy to have as its first objective the establishment of a genuine world government

³ New York. Harper & Brothers. 1946. Pp. 299. \$2.00. Also in king-sized edition, complete and unabridged, by Pocket Books, Inc. New York. 1946. Pp. 90. \$1.00. The compiler's failure to include any selections from Reves' brilliant and thorough analysis is a glaring omission.

⁴ Note 2 *supra*.

⁵ The members of the 1941 General Assembly of North Carolina may have seen it. On March 13, 1941 they adopted a resolution prepared by Robert Lee Humber of Greenville and endorsed by Governor Broughton by which they registered their "profound belief and irrevocable conviction: That governments are essential to the existence of communities and that the absence of government is anarchy. That there exists an international community, encompassing the entire world, which has no government. . . . Communities without government perish. Either this community must succumb to anarchy or submit to the restraints of law and order." Similar or stronger world government resolutions have now been adopted in 16 states, the latest being Missouri in May 1947. The Massachusetts resolution is more explicit and was passed by an overwhelming vote by the 1947 legislature after the voters of the state registered their conviction that the U. N. should be drastically changed so as to create a world government by a 9 to 1 margin in an official state referendum on that issue at the General Election in November 1946. These developments are not reflected in this compilation.

⁶ *E.g.*, polls by Dr. George Gallup, Elmo Roper, and the Denver Institute of Public Opinion. This book ought to have included one or more analyses of these polls, since so much of the argument against the feasibility of world government is made on the assumption that the people would be unwilling to try or accept it.

the unsupported assertion that the people are not ready for it. This is the greatest challenge in the history of the Bar. Whatever else we are doing, whether it makes us money or not, is just so much playing with our toes.

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