

PROCEEDINGS OF THE SEMINAR ON CURRENT PROBLEMS OF CORPORATE LAW,
MANAGEMENT AND PRACTICE. Edited by the Indian Law Institute.
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This volume contains the proceedings of a seminar on 'Current Problems of Corporate Law, Management and Practice' held, under the joint auspices of the University of Delhi and the Indian Law Institute, in Delhi in November 1962. The list of participants was a distinguished one. Professors Loss and v. Mehren from the University of Harvard, Professor Tunc from the University of Paris and Professor Yazawa from the University of Tokyo were the four guests. From India the parti-

participants included the Minister of Industries in the Indian Government; four judges, two from the Supreme Court and one each from the High Courts of Calcutta and Gujerat; the Vice-Chancellor of the University of Delhi; four representatives from the Company Law Administration of the Government of India, including the Secretary, Deputy-Secretary and the Director of Research; the Registrar of Companies of New Delhi and Calcutta and many advocates and law teachers making up a total of over forty participants in all.

Apart from the formal speeches opening the seminar, which were delivered by the Chief Justice of India, the Vice-President of India and the Union Minister of Commerce and Industry, the volume contains what are described as 'extracts' from the eighteen papers which were presented to the seminar, and an edited version of the discussions which took place during the nine sessions of the seminar.

Unfortunately the text of the discussions is separated from that of the papers, so that it is difficult to know which papers were supposed to be discussed during which sessions. Indeed it would seem to be true to say that the sessions of the seminar rarely got down to a detailed discussion of any of the papers. They seem to have preferred to discuss, in very general terms, the general topic which was down for discussion.

The major weakness of these discussions seems to have been the level of generality and even of superficiality at which they were conducted. Professor Loss, who was one of the most active participants in the discussions seems to have been particularly prone to wide generalizations. Thus on page 56 he is reported as having said that:

A company, in my philosophy, is conceptually nothing but a huge partnership centrally managed.

Now the corporate form of organisation is used for many purposes and if there is one thing that is certain, it is that a company is not (conceptually or otherwise) 'nothing but . . .' something else. It seems a pity to find the seminar continuing to discuss the notion of corporate personality without any reference to the more recent work in this field. There can be little justification for continuing to discuss this subject as though Nekam and Hart, to name but two, had not written on the subject.

Professor Loss' view, it may be added, is derived from his further proposition that one cannot say that the management of a company 'hires' capital in the same way as it 'hires' labour. He says (p. 55):

Some people, I know, have suggested that that is the more realistic outlook. But I find the implications dangerous and I might even say distasteful.

Apart from the fact that Professor Loss does not indicate precisely why it is dangerous and distasteful to speak in this way, the question of either danger or distaste is hardly one that is relevant. What is more to the point is whether it is a useful significant or illuminating way of looking at the problem. One can hardly discuss the problems of corporation law on the basis of what is tasteful and what is not.

In discussing the problem of the control of companies Professor Loss considers the question whether 'judicial administration' or 'administrative administration' of company law is preferable. He seems to prefer the latter at least in certain areas, on the ground that the problems involved are too complex for the courts to handle. He thus says of the judge (p. 117):

How can you expect him intelligently to decide whether the merger of two steel companies really will be a material restraint of trade? The questions are beyond the traditional justiciable controversy

Now this may or may not be so, and it is clearly a most important point, but stated in this form it raises more problems than it solves. What problems are within the realms of 'justiciable controversy'? Company problems are far from being the only

complex problems that are handled by the courts — modern sociologists are insistent that sentencing is far too complex for a mere judge — and it seems reasonable to suggest that before, at the behest of every expert who happens to come along, the courts are shorn of their powers we should have a clear idea of just what does lie within the area of 'justiciable controversy' and what does not. Merely to assert that certain questions are not justiciable does not establish that that is so.

Again, discussing the question of the justification for the use of criminal sanctions Professor Loss stated (p. 118):

Whatever might be said about the lack of correlation between severity of punishment and deterrence in fact in criminal law generally — and my criminological friends tell me that capital punishment and other severe punishments do not necessarily deter — I think it is quite clear that a criminal conviction of an otherwise reputable business man, even with a small fine, does deter.

Again this may or may not be so, but it can hardly be said to be 'quite clear'. This is a matter which can only be determined by empirical studies, and without any factual background it is not really possible to assert dogmatically one way or the other. What Professor Loss is asserting here is that although there is no evidence of a correlation between punishment and deterrence in criminal law in general, there is such a correlation in 'white-collar crime'. This would be a most significant conclusion, if it could be sustained, but so far as your reviewer is aware, there is no evidence to support it: arguments such as this cannot be rested upon mere assertion and belief.

It would be possible to continue in this vein for a long time, for the few examples quoted above illustrate the general level of both the discussions and the papers contained in this book. The book contains then a very general discussion of some very large problems of corporation law. The discussion is far too general and too superficial for anything of real significance to emerge therefrom. This is not to say that the volume is without interest. Its interest lies in the fact that it presents a discussion of some of the well known problems of company law, and any discussion of such problems is almost necessarily of some interest. The areas covered by the seminar are 'Concept of Corporate Personality in Municipal and International Law'; 'Nominee Holdings and Take-Over Bids'; 'Corporate Management and its Nature and Obligations'; 'Investors' Protection and Adjustment of Majority and Minority Rights'; 'Investment Companies and Investment Trusts'; 'Supervision and Control of Corporate Administration'; 'Company Law and Accounts'; 'Company Law and Foreign Corporations' and 'Law and Economics of Foreign Investments'. This is clearly an enormous field to attempt to cover in nine meetings spread over four-and-a-half days. It is to be hoped that the Indian Law Institute and the University of Delhi will hold more seminars in future with more restricted scope so that the discussion can get down to specifics and something rather more constructive emerge.