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BOOK REVIEW

FORENSIC MEDICINE. By Douglas J. A. Kerr. New York: MacMillan Co., 1957. Pp. v, 363. \$6.50.

PRACTICAL FORENSIC MEDICINE. By Francis E. Camps & W. B. Purchase. New York: MacMillan Co., Pp. vii, 541. \$13.50.

To lawyers, the medico-legal field connotes mainly the medical issues of fact in personal injury litigation. In medicine, the term Legal Medicine or Forensic Medicine identifies a medical field of specialization for pathologists and toxicologists, i.e., the investigation and report to legal authorities of the cause of death in individual cases of violent or unexplained death. These two books deal mainly with the latter subject in the United Kingdom.

Forensic Medicine by Dr. Douglas J. A. Kerr is the sixth edition of his well-known and respected text first published in 1935. Dr. Kerr is Regius Professor of Forensic Medicine at the Medical School at the University of Edinburgh, whose department in this field is the oldest and most revered in the English-speaking world. There is no doubt but that this book is among the classics in the field.

The sixth edition is by no means a radical revision. There are few changes from the earlier edition. The book is addressed to medical students training in the field. The approach is very practical, however, since Dr. Kerr writes from long experience in the courts. About three-fourths of the book is devoted to pathology in regard to different causes or mechanisms of death. There are also ten chapters on toxicology (poisons). All of this material is extremely well done. The chapter on suicide is excellent, including as it does a good deal of epidemiological material on the social and environmental factors in this area. Dr. Kerr has also added new materials in various parts of the book indicating improved methods for estimating the time of death.

Some limited and not very reliable materials are included in the book on forensic psychiatry. The author also devotes two pages to medical malpractice (spelled "malpraxis" in Britain) in a chapter called "Wounds and Wounding." Like many physicians—in Britain or America—he has rather delusional ideas about the subject. He asserts,

Anyone can bring an action against a doctor charging him with neglect or unskilled treatment, and however trivial the charge or however right the doctor may have been in his actions, he will have to defend the case for the sake of his reputation. Sometimes it may be that the doctor is to blame, but such actions are chiefly of a vexatious nature, and not infrequently the complainers are borderline mental cases.¹

1. KERR, FORENSIC MEDICINE (6th Ed., 1958), p. 81.

There is no doubt about the quality of the medical sections of the book, however. There are chapters on all of the significant areas in the field with objective tests and scales which can be used in court to support the conclusion of the clinical examinations. Many actual medico-legal cases with photographs are used as illustrations. The book can be recommended without qualification to medical specialists in the field. It is also an excellent reference source for attorneys involved in homicide litigation.

The second volume, *Practical Forensic Medicine*, is a new volume produced by faculty members at the University of London. Dr. Camps is a pathologist, a Reader in Forensic Medicine. Mr. Purchase is a barrister-at-law and a Lecturer in Forensic Medicine. Basically, the book is devoted to the same subject area as that of Dr. Kerr. It has three "Parts": *Part I—Forensic Medicine* devoted to forensic pathology and a few other subjects; *Part II—Toxicology* which concerns death due to poisons; and *Part III—Appendices* which contains medico-legal forms used by medical examiners and coroners in Great Britain and a few statutes. It also contains a Glossary which is much too abbreviated.

On the whole, one gets the feeling that the last-made comment is characteristic of the book in many of its chapters. It is not heavy with citations and references to objective standards wherever possible as is the Kerr volume. At the ends of chapters, we are referred, without page citations, to the standard texts in the field such as Kerr. The leading American text, Moritz,² is cited in its first edition, 1942. There has been a second edition since 1954.

There are some subjects covered in this book which are not dealt with in the Kerr volume. It has a fine chapter on deaths due to anesthesia and medical surgical procedures. Much of it may seem repetitious of materials in other parts of the book and in Kerr, but it is actually a new and enlightening treatment of the subject in the environment of surgical practice. This material is not found in Moritz, the American text, either.

Camps and Purchase also give attention to the automobile accidents as a cause of death and injury. Most of the material used deals with pedestrian deaths due to hit-and-run drivers. This is the most common type of case with which medical examiners and coroners are apt to deal. The problem is to connect the deceased with death by such a cause and with a particular vehicle. Anyone expecting a broader treatment of the medico-legal aspects of highway injuries will not find it in this volume—or any volume on so-called Forensic or Legal Medicine.

2. MORITZ, THE PATHOLOGY OF TRAUMA (1954).

There is a chapter on Trauma and Disease in the book. It deals in some four pages with trauma as a cause of infection, cardiovascular disease, and cancer. Though the authors may be commended for including the subject in their book, the treatment is obviously too brief to be of significance. The end-of-chapter references are to Stern's *Trauma and Internal Diseases* (1945), an American treatise rather out-dated, and to G. Payling Wright's *Introduction to Pathology* (1950). The latter, a British text with a new edition in 1958, is an excellent introductory volume in Pathology. Being designed for undergraduate medical students, it is not authoritative in the specialty areas of traumatic causes of various diseases. There are authoritative texts and many periodical articles in Britain and the United States which could have been listed here. Dr. Moritz has a more thorough treatment on the subject in chapter two of his book.

The book also has short chapters devoted to such diverse legal subjects as divorce, annulment, medical malpractice, industrial compensation laws, war pension laws, and testamentary capacity. The authors may be commended for their broad view of the subject area of Legal Medicine, but the treatments accorded the subjects are much too brief to be significant.

On the whole, one must say that both of these books are very scholarly and practical texts in Forensic Pathology and Toxicology. They are in basic agreement one with the other in the technical field, though Kerr is more detailed in most instances. Kerr is more to be recommended perhaps because it is a sixth edition—it has gone through the trial-runs and shakedown cruises that the newer volume has yet to experience. From the very fact of its broader approach to the subject, however, the Camps and Purchase book may well have more potential for growth than the venerable Kerr volume. Time will tell.

WILLIAM J. CURRAN*

CLOSE CORPORATIONS: LAW AND PRACTICE. By F. Hodge O'Neal.¹ Chicago: Callaghan & Co. 2v. Pp xx, 369; vii, 437. \$30.00.

There is some evidence to suggest that many businesses which are incorporated are of the closely-held or "family" type, and that incorporation occurs more frequently when the lawyer-adviser is from

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a large community than from a small one.² Even in larger communities unfamiliarity with corporate law, especially with that applicable to close corporations, may have made many lawyers reluctant to suggest to a client that he consider incorporating his business. A law student several years ago asked me why he was required to take a class in "Corporations." He planned to practice law with his father in a small rural Iowa community. The father, who apparently was an able, successful lawyer,³ had never in twenty-five years of practice participated in organizing a corporation. The father's experience is not surprising. Until recently most law school courses in corporate law have been oriented principally to the problems of the large, publicly held corporations,⁴ and there had been little written on close corporations in such a form as would assist the practitioners to evaluate the problems which incorporation might create and their possible solutions.

With O'Neal's book in hand, no attorney should be reluctant to suggest considering incorporation from fear of his own inadequacy to counsel. The lawyer so armed should be able to anticipate and provide for practically all matters necessary to prepare incorporation documents acceptable to the state officials who issue certificates of incorporation. In addition, he should be able not only to anticipate various problems that may arise between stockholders, between stockholders and widows or heirs of deceased stockholders, between stockholders and key employees, and between stockholders and tax gatherers, but also to discuss these problems with the incorporators and indicate possible solutions. And the last chapter of the book is an extensive section of forms and specimen provisions which should be a useful guide in any corporate drafting problem.

As the title indicates, the book deals with both law and practice.

2. Hayes, *Iowa Incorporation Practices—A Study: Introduction and Part I*, 39 IOWA L. REV. 409, 418, 440 (1954).

3. He has a "b,v" rating in *Martindale-Hubbell*, and a good reputation as a lawyer.

4. Some evidence of this is to be found in casebooks used for courses in Corporation Law. JAMES, *CASES ON BUSINESS ASSOCIATION* (1937), which I used as a student in 1946-47, practically ignores the close corporation. BERLE AND WARREN, *BUSINESS ASSOCIATIONS: CORPORATIONS* (1948), which I used as a student in 1948 and as a teacher in 1948-50, does have a section on stockholder participation in management, and some discussion of control, but nothing about restricting transfer of shares. DODD AND BAKER, *CASES ON CORPORATIONS* (2d ed. 1951) has one case and a note dealing with the problem of restricting transfer of shares. FREY, *CASES AND MATERIALS ON CORPORATIONS AND PARTNERSHIPS* (1951) has a section of several cases on transfer restrictions, as does STEVENS AND LARSON, *CASES ON CORPORATIONS* (2d ed. 1955). Only in BALLANTINE, LATTIN AND JENNINGS, *CASES AND MATERIALS ON CORPORATIONS* (2d ed. 1953) does one find a subject heading that speaks in terms of the close corporation—these editors have called one section: "Shareholders' Agreements: Some Problems of the Incorporated Partnership." Probably many teachers have used additional materials relating to close corporations to alert their students to relevant matters not brought out by the casebooks. Last year, O'Neal conducted a seminar in Close Corporation Law at New York University.

The first section of each chapter,⁵ and of some of the major subdivisions, states the scope of the chapter or division. The section or sections immediately following, in most chapters, describe particular problems that may be encountered, as for example: business need for (shareholder) veto powers (section 4.02); (shareholder or key employee) need for tenure and security of status (section 6.02); and why transfer restrictions may be needed (section 7.02). The material seems to be well organized and presented. Usually where material elsewhere in the book is relevant to a discussion, the author tends to make short comments and cross-reference rather than to repeat lengthy comments.

In the first of the nine substantive chapters, O'Neal attempts to define or describe the close corporation; he points out its distinctive needs and the general failure of legislatures and courts to appreciate them. The close corporation usually must operate under the same basic rules as the publicly-held corporation. But, as he indicates, certain common characteristics of the corporate form are disadvantageous to the closely-held corporation. This chapter also points out to what extent state and federal securities legislation may be applicable.

Chapter two discusses the steps preceding organization of the close corporation. The discussion pertains to choice of form of business organization; whether, when, where and how to incorporate and how to capitalize; and points out both tax and non-tax consequences involved. Among matters referred to are the advantages and disadvantages of low equity capitalization, the use of more than one class of stock, what par value to use if any, and whether or not the assets to be acquired by the newly incorporated business should be obtained in a tax-free transfer.

Modifying the corporate form by charter and by-law provision, the subject of chapter three, relates to the means by which the business structure of the enterprise may be shaped. Commonly the corporate charter must state the purpose of the corporation and usually the powers it is to have are stated. The author considers the use of all-inclusive clauses enumerating specific powers. Also commonly the charter must contain a stock clause, describing the corporate shares—their rights, powers, privileges and limitations. The author is concerned especially with provisions that can affect control or relate to minority representation on boards of directors. He suggests how the single stockholder may prevent a majority of the board of directors from seizing control of his corporation against his objections, and discusses such matters as non-voting stock, multiple classes and class voting for directors, preferred stock, dividend and liquidation

5. Each chapter consists of a number of sections, most of which are fairly short. The hornbook style of black letter statement at the beginning of each section is not used, however.

preferences, and preemptive rights. In some states there is considerable administrative control over charter clauses, specially over those optional clauses that do not have specific statutory foundation. This problem is discussed, as are the various types of such clauses, usually bearing on control. Some of these clauses are also discussed at greater length in subsequent chapters. The chapter then considers the status, function and possible content of by-laws, and the precautions which may be taken to increase the effectiveness of unusual charter and by-law provisions.

Chapter four, on charter and by-law provisions giving shareholders a veto power, is concerned with situations in which minority shareholders may feel the need of a veto right over fundamental changes proposed by the majority or acts and decisions of the majority, of directors or of officers. While this could be done by specific veto rights, by high quorum provisions, or by requiring approval of holders of a high percentage of shares, the author recognizes that some statutes and judicial decisions are unfavorable to some or all such provisions. But he points out the weaknesses of some policy arguments relied on in several of these decisions, suggests countervailing policy arguments, and discusses drafting of provisions which may meet with judicial acceptance.

Various control distribution devices outside the charter and by-laws are the subject of chapter five. These include shareholders' agreements, voting trusts, irrevocable proxies, and management contracts. These same devices, and others, are factors relevant to chapter six also. That chapter is devoted to methods of protecting the tenure and status of shareholder-employees and key personnel.

Chapter seven describes the use of the various types of stock transfer restrictions, including first options, buy-out arrangements, and provisions for redemption of common stock. The discussion also covers the use of business insurance to fund stock purchase agreements, and the tax consequences of the various types of agreements.

The attention of chapter eight is on problems arising during the operation of the business. Various topics are discussed, including the possibility of loss of limited liability because of undue disregard of corporate formalities and how to guard against such loss, compensation of executives, power of corporate officers, attempts to freeze-out minority stockholders, and fiduciary duties of directors and controlling stockholders to minority interests. The chapter concludes with a survey of the special tax problems arising where close corporations are used.

Chapter nine considers how to deal with problems of dissension,

deadlock and dissolution. One solution which the author discusses at length is arbitration.

Although the author points out early in chapter ten that no form is a substitute for careful, individualized drafting, the chapter contains thirty-seven forms, including a skeleton charter, many specific charter clauses, a specimen code of by-laws, special by-law provisions, shareholders' agreements of various types, a buy-and-sell agreement, stock retirement and first option agreements. Each form is cross-referenced to relevant comments in the first nine chapters. O'Neal makes no claim to have originated the forms; some are based on provisions approved in case decisions and several have been developed by insurance companies.

I find little to criticize about this book. It is on good paper, the two volumes seem sturdily bound, and the type is not difficult to read. I did note two minor typographical errors.⁶ References in both table of cases and index are to section rather than to page—however, as very few sections are more than one or two pages in length it should not be too difficult to use these two tables. Because of recent changes in tax law, several sections are already somewhat out-of-date. The author noted, and apparently questioned, the Tax Court *Casale*⁷ decision, bearing on whether corporate payments of premiums on stockholder life insurance was a dividend to the stockholder. Although the book was published after final resolution of this question in line with the author's thinking, he was unable to note that resolution.⁸ In section 7.29 his discussion of tax aspects of stock transfer restrictions is based in part on proposed estate tax regulations, which, subsequent to the publication date, were promulgated in final form with several changes. He had some doubt as to the foundation for parts of the proposed regulations. And the recent revision of tax law,⁹ including the provision for corporate election to be taxed as a partnership, a provision of great importance to a lawyer advising clients whether to incorporate their closely-owned business, came several months after the book was off the press. The publisher has provided pockets in which supplements can be inserted, so we can anticipate that the author's impressions of these tax changes will eventually be available.

Professor O'Neal has been working in the field of corporate law,

6. One appears in note 2, § 3.02, where two words of the title of a law review article have been omitted; this title is correctly cited in other footnotes.

7. *Oreste Casale*, 26 T. C. 1020 (1956).

8. *Casale v. Commissioner*, 247 F.2d 440 (2d Cir. 1957), 11 VAND. L. REV. 237 (1957).

9. Technical Amendments Act of 1958, 72 Stat. 1606.

especially in the area of close corporations, for a number of years.¹⁰ He is eminently qualified to write a definitive text on this subject. His book seems thorough, shows considerable insight, is well organized and clearly written, and should be of much use to lawyers dealing with problems of business organization. It should soon be recognized as a classic work in its area.

EDWARD R. HAYES*

10. He is co-author with Kurt Pantzer of *DRAFTING OF CORPORATE CHARTERS AND BY-LAWS* (1951); and has written a number of law review articles and a doctoral dissertation on close corporation matters.

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