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Corporation Law

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narrow situations where the court's own judgment is itself the vehicle by which the unlawful conduct is carried out. Thus the distinction between collateral and inherent illegality, formerly the traditional principle, has been rejected.

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CORPORATION LAW

SETTING THE PRICE IN A CLOSE CORPORATION BUY-SELL AGREEMENT by David Keith Page, 57 Mich. L. Rev. 655 (March 1959)

A synthesis of law review articles dealing with agreements restrictive of the sale of stock of close corporations, insofar as they purport to fix the value of the stock, reveals the merits and weaknesses of the most commonly used price-fixing methods, and emphasizes the desirability, in most cases, of arriving as closely as possible at the true fair value of the stock.

Thought-provoking problems face the draftsman of a buy-sell agreement in his selection of a method for the fixing of the price. The book value method of valuation is not as flexible as a formula or fixed price method, and its simplicity and apparent accuracy are likely to be illusory. Accuracy in producing a truly fair price will vary with the nature of the business and the corporate accounting practices. Extreme care must be used in setting out the method and the terms must be meticulously defined or litigation may be provoked.

The capitalization of earnings and other formula methods are needlessly cumbersome in most cases, and generally not advisable for small unestablished corporations. However, a formula may be the best device to determine value for a large corporation. Appraisal and arbitration methods have drawbacks in that appraisal is expensive and arbitration agreements not enforceable in many jurisdictions.

All in all the most satisfactory method for arriving simply and inexpensively at a fair price is by the use of a fixed price method whereby a fixed value is set on the shares with closely spaced periods of revaluation, a provision being made for a responsible third party's adjustment of the last price in case extraordinary events affect the value of the shares after the last valuation. The agreement using this method should further specify, as should every buy-sell agreement, all the factors, including good will, which are to be taken into consideration in arriving at the price, in order to facilitate acceptance of the valuation by the Commissioner of Internal Revenue for estate tax purposes.

A discussion is had of tax considerations bearing on the choice of the price fixing mechanism, the most important of which is the estate tax valuation. The problem is to devise a plan that will provide a valuation figure that will be conclusive for estate tax purposes. The two methods under

which value reached is subject to doubt as to its binding effect on the Commissioner of Internal Revenue are appraisal and arbitration. Proper planning can achieve a figure conclusive for federal estate tax purposes. The more accurate the method used, that is, the closer it comes to reaching the true fair value, the more likely will be its acceptability to the Commissioner.

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INTERNATIONAL TRADE

A UNIFORM LAW FOR INTERNATIONAL SALES by John Honnold, 107 U. of Pa. L.R. 299 (January 1959)

During the last quarter century, a commission of European lawyers has been drafting a yet uncompleted uniform law to cover international sales. Despite the extent of the foreign trade of the United States and its importance in the maintenance of favorable international relations, this country has not participated in the work. Both the treaty-making powers and the power to regulate foreign commerce furnish the constitutional bases for the adoption of the proposed law, either as a treaty or legislation.

The draftsmen have sought to eliminate the peculiar technicalities engrafted in the sales law codifications of both common and civil law countries, one noteworthy instance being in the area of warranties. Risk of loss has been approached neither from the viewpoint of the property concept of the Uniform Sales Act, nor of the allocation of risk theory of the Uniform Commercial Code, but through a concept new to Anglo-American law embraced in the French term délivrance which deals with the handing over of goods conforming to the contract. The result of the use of this concept is a formulation more consistent with mercantile understanding in overseas trade than those found in our domestic sales laws. Salvage is treated so as to provide an even more efficient disposition of goods that have been rightly rejected, than under the Uniform Commercial Code.

The work of the draftsmen was progressed to the point where United Nations sponsorship appears desirable for completion and formulation. Professor Honnold concludes with an expression of hope for a greater national participation in cooperative endeavors to meet day-to-day needs of trade as a step in the development of an international legal order.

ROBERT DOIA

LABOR

REFLECTIONS UPON LABOR ARBITRATION by Archibald Cox, 72 Harv. L. Rev. 1482 (June 1959)

In this article Professor Cox concerns himself with the conflict between arbitral awards and judicial decisions, and seeks to find