

***An Introduction to Business Associations in Canada, Cases, Notes and Materials*, R.L. Simmonds & Peter B. Mercer, Toronto: Carswell, 1984. Pp. xxviii, 778. \$40.00 (softcover).**

The teaching of agency, partnership and company law has often been fraught with ideological differences. Some approach the latter as having sufficiently developed to warrant independent treatment and study. In their view, the subject is *sui generis*. Most textbook writers have taken this view since at least the turn of the century.¹ All, however, readily admit of the historical foundations of company law in agency, partnership, and even trust law. It is not uncommon to find discussion of matters of common interest in these areas in casebooks, judicial decisions and treatises.

Partly because of the common approaches, and partly because students often do not elect to study agency and partnership as a separate body of law, it has been common to include introductory materials on at least the rudimentary features of partnership law in basic company law courses. In two other published casebooks on corporation law in Canada, Beck, Iacobucci, Johnston & Ziegel, *Cases and Materials on Partnerships and Canadian Business Corporations*² and Buckley & Connelly, *Corporations, Cases, Texts and Materials*,³ the first chapters contain an overview of partnership law. But even though such courses, and sometimes the casebook,⁴ are often entitled "Business Associations", in reality they are company law courses and company law casebooks.

Professors Simmonds and Mercer in *An Introduction to Business Associations in Canada* have tried to integrate agency, partnership and company law into one body of law entitled "Business Associations". They present several reasons for doing so. In their opinion, the noncorporate forms of business organizations are probably more common than the corporate form and thus, for this practical reason, the book is not predominantly about corporations.⁵ Many would likely dispute the relevance of this fact. They would point to the fact that the vast majority of business transactions are conducted through the corporate form and that most of the major business organizations are corporations. Professors Simmonds and Mercer, on the other hand, are of the opinion that the sole proprietorship remains today the favoured form for the smallest business⁶ and that sole proprietorships and partnerships are par-

¹Consider, for example, F.W. Wegenast, *The Law of Canadian Companies* (Toronto: Burroughs, 1931). Editors of most casebooks have been similarly inclined, e.g., E.E. Palmer, D.D. Prentice, B. Welling, *Canadian Company Law*, 2nd ed. (Toronto: Butterworths, 1978).

²Toronto: Carswell, 1983.

³Toronto: Emond Montgomery, 1984.

⁴The previous publication of Beck et al. was entitled *Business Associations Casebook* (Toronto: DeBoo, 1979).

⁵R.L. Simmonds & P.P. Mercer, *An Introduction to Business Associations in Canada* (Toronto: Carswell, 1984) v.

⁶*Supra*, note 5, at 2.

ticularly well suited to small businesses.⁷ Thus Professors Simmonds and Mercer place the emphasis on the small business organizations, while most others concentrate on the largest organizations, i.e., corporations.

The importance of this preference usually dictates the type of materials presented. Professors Simmonds and Mercer, in the first six chapters, only present a handful of corporation cases including, of course, *Salomon v. Salomon Co. Ltd.*⁸ The same weighting in favour of agency and partnership cases is found in chapters 7, 8, 9 and 10. By length and number, agency and partnership law are the clear winners.

The result, of necessity, is a limitation of space available for purely corporate materials. Insider Trading receives only passing mention under "Financing the Business"⁹ and "Fiduciary Duties"¹⁰, compared to a full chapter in both Beck, et al and Buckley & Connelly.

Palmer, Prentice & Welling, *Canadian Company Law*, 2nd ed.,¹¹ a fourth Canadian casebook, takes the traditional Canadian approach of first putting corporation law in its Canadian constitutional setting.¹² In Simmonds & Mercer, the issues are relegated to a short note.¹³ Also excluded by Simmonds & Mercer are Corporate Distributions and Fundamental Changes. More surprising is the limited material on the small or closely held company, given the author's emphasis on small business organizations. Beck et al, for example, have a chapter entitled "Special Aspects of the Closely Held or Private Corporation",¹⁴ as do Buckley & Connelly.¹⁵

Thus, the major advantage of Simmonds & Mercer is its agency and partnership comparatives. Its major weakness is its lack of comprehensiveness of corporate law. If you think *Perlman v. Feldmann*,¹⁶ *Teck Corp. v. Millar*,¹⁷ *Northwest Transportation v. Beatty*,¹⁸ *Automatic Selfcleansing Filter Syndicate Co. Ltd. v. Cuninghame*,¹⁹ *Jones v. H.F. Ahmanson & Co.*,²⁰ *Green v.*

⁷*Ibid.*, at 43.

⁸[1897] A.C. 22 (H.L.).

⁹*Supra*, note 5, at 162.

¹⁰*Ibid.*, at 625.

¹¹2nd ed. (Toronto: Butterworths, 1978).

¹²*Ibid.*, ch. 1.

¹³*Supra*, note 5, at 103.

¹⁴*Supra*, note 2, ch. 10.

¹⁵*Supra*, note 3, ch. 9.

¹⁶(1955), 219 F. 2d 173 (2nd Cir. Ct. App.).

¹⁷[1973] 2 W.W.R. 385 (B.C.S.C.); (1973), 33 D.L.R. (3d) 288.

¹⁸(1887), 12 App. Cas. 589 (P.C.)

¹⁹[1906] 2 Ch. 34 (C.A.); 75 L.J. Ch. 437.

²⁰(1969), 460 P. 2d 464 (S.C. Cal.).

Charterhouse Group,²¹ *Edmonton Country Club v. Case*²² and *Ringuet v. Bergeron*²³ are required reading in corporate law, then Simmonds & Mercer is not for you. Any one of the other three casebooks mentioned will provide you with more coverage of most of these leading cases. On the other hand, Simmonds & Mercer will cause you to think a little more and a little longer of the place of corporation law in the field of business organizations. In this aspect, it provides an alternative that is not served by the other current casebooks. It is not surprising then, that Carswell has seen fit to publish Simmonds & Mercer along with Beck et al.

When the final page is reached, I still remain of the opinion that corporate law is *sui generis* and best taught that way. To present successive chapters on agency law, then partnership law and then corporation law, fragments the issues too much to obtain the potential comparative analysis that one might want from the student. Thus, although I appreciate what Professors Simmonds and Mercer are attempting to accomplish, I think I will stay with the more traditional approach for teaching corporation law.

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²¹(1976), 12 O.R. (2d) 280; 68 D.L.R. (3d) 592 (C.A.).

²²[1975] 1 S.C.R. 534; (1974), 44 D.L.R. (3d) 554.

²³[1960] S.C.R. 672; (1960), 24 D.L.R. (2d) 449.

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