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Merrill on Notice, by Maurice H. Merrill (1952)

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BOOK REVIEWS

MERRILL ON NOTICE, by Maurice H. Merrill, Vernon Law Book Company, 1952.
Three volumes, pp. 2285, \$45.00.

Notice is one of the strands in the seamless web of the law, if one may be permitted to borrow and adapt Pollock and Maitland's famous phrase. It defies conventional classification and runs hither and yon through fields of property, contract, tort, agency, and other enclosures, on and on toward the legal horizon. Perhaps because of its untrammelled and elusive nature it has not heretofore served as the subject matter of a systematic treatise. It is so much easier to reexplore fields which have already been clearly marked out by metes and bounds. Yet it is a topic which is of immense practical importance to lawyers in their everyday practice, and one which frequently presents difficulties because it is hard to find authority when one has to struggle through digests and indices under many titles. Professor Merrill has addressed himself to the tremendous task of compiling a comprehensive treatise on notice in all areas of the law where notice has legal significance. His book is the result of more than twenty years of research and work, and should be a valuable new tool for the practicing lawyer.

Merrill on Notice is more than a digest or encyclopedia; it is a treatise which presents a fresh analysis of the subject. It abandons the old dichotomy of "actual and constructive" notice and introduces a new one: "cognitive and absolute." A change in familiar terminology is justified only if it serves to clarify the subject and make for sharper analysis. Merrill has demonstrated, to this writer at least, that the change was justified, if for no other reason than that the old terms, as employed by legislatures, courts, and writers, were used in a great variety of situations to describe vastly different things. As used by Merrill cognitive notice refers to *knowledge*, actual or presumed, and absolute notice refers to *notification* which has legal effect whether or not the noticee actually has knowledge of the facts contained in the notice.

Approximately twenty per cent of the book is devoted to cognitive notice, or knowledge. Herein may be found an extensive treatment of the situations in which knowledge of facts (actual or presumed) will alter one's legal relations. The author explores and enumerates the many evidentiary factors by which actual knowledge is proved. He also devotes a great deal of attention to the types of facts and events which will serve to put one on inquiry as to the existence of other facts; and he concludes this portion of the book with a discussion of the extent to which one must go in order to discharge this duty of inquiry.

More than twelve hundred pages are utilized to discuss the ramifications of the law of absolute notice. The garden variety of absolute notice, and the type which naturally comes to mind when notice is mentioned, is formal notification—that time-honored legal device which serves to charge a noticee with knowledge of the facts contained in the notice whether or not they are understood, retained in memory, or even actually brought to his attention. In the short space allotted to this review it is impossible to indicate the thoroughness with which Merrill dissects the concept of formal notification, save to say that his treatment is subdivided into 446 separate sections. The discussion includes (a) formal requirements of the notice, (b) substantive contents of the notice—the nature of the operative facts and how to

state them, (c) methods of communication—personal and substituted service, mailing, publication, posting, and (d) time limitations.

The last five chapters on absolute notice may, for the purposes of this review, be lumped under the heading of "notification by operation of law," although one should hasten to add that this is not Professor Merrill's terminology. Such notification may be either of facts, or of law. In the former category are public records which, by virtue of recording acts or other legislation, give constructive notice to the world of the facts which they contain. Also in this classification are judicial and quasi judicial records, and *lis pendens*. In the latter category are statutes, ordinances, and administrative rules, regulations, and determinations, of which the public is presumed to take notice. Also in this category are the common law rules which members of the public are presumed to know. The above enumeration is, of course, not intended to be a comprehensive list of the matters covered; it is suggestive only of the broad bench marks which the treatise surveys in great detail.

Vicarious notice, both cognitive and absolute, is the subject matter of the concluding portion of the book. It contains a comprehensive treatment of those portions of the law of agency, corporations, and fiduciaries which charge one person or legal entity vicariously with knowledge acquired by, or presumed to be in possession of another.

The exhaustive nature of Merrill on Notice, and the thoroughness with which it has been prepared, may be illustrated by a few statistics. The index covers 112 pages and contains 559 principal headings. More than 29,000 judicial decisions are listed in the Table of Cases, with references to the section numbers of the book where they are discussed or serve to document the text. Moreover, each chapter is headed by an analytical table of contents. Here is a reference work on a subject which has heretofore received practically no systematic attention. It is designed primarily to aid the busy practicing lawyer, but should also be of great service to law students and law teachers.

MILTON D. GREEN*

THE TAXATION OF CORPORATE SURPLUS ACCUMULATIONS, by James K. Hall, prepared for the Joint Committee on the Economic Report, United States Government Printing Office, Washington, 1952, pp. 260, \$0.55.

If *A*, an individual in the present top surtax bracket, receives \$100,000 in dividends from a corporation in which he is a dominant stockholder, he will have only \$8,000 left for reinvestment after payment of personal tax. If, however, the corporation retains these earnings, *A* will have the entire \$100,000 available for investment through the corporation which he controls. By accumulation of earnings in the corporation and reinvestment through that agency, *A* can expect to reap far greater future returns on the initial \$100,000 of income than if the earnings are distributed to him as dividends. These earnings can either be distributed to *A* in a later year when tax rates may be lower or his surtax position more favorable, or they can be pyramided until *A* decides to liquidate the corporation or sell his stock, at which time he can take advantage of capital gains treatment for the accumulated earnings.

Because of the obvious invitation to tax avoidance implicit in this sort of situation, Congress has attempted since as early as 1913, to compel distribution and/or investment of corporate earnings through the imposition of an additional tax with respect to unreasonable accumulations of corporate income. After a good deal of legislative tinkering, this penalty tax has evolved into Section 102 of the Internal Revenue Code.

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