

BOOK REVIEWS

FEDERAL INCOME TAXATION OF TRUSTS AND ESTATES. By Lloyd W. Kennedy. Little Brown and Company, Boston, 1948. Pp. xiv, 837, \$16.50.

When one accepts a book for review he can be sure of only one thing—he will get a book for nothing. If, however, the book should be one that is worth having and will, therefore, be a valuable acquisition to his library, he is practically being “paid” for his efforts. Such was the case in the instant matter, and the reviewer now finds that he is possessed of a book which he recommends to all who need it. The subject matter being trusts and estates, those who need this book might be described as a group whose numbers are legion.

Mr. Kennedy has not attempted to treat of a field of taxation, such as income, estate, gift, excise, etc. Nor has he concerned himself with a particular aspect of a field, such as corporate reorganizations, estate planning, etc. Instead he has devoted this entire volume to the tax problems of one type of taxable subject. A review of the field of tax literature indicates the need for a work of the character presented here, since there is nothing, in one volume, that covers the taxation of trusts and estates. And the book is a valuable contribution since it brings a much needed light to a complex, difficult and sometimes perplexing field.

The author's treatment is exhaustive and not merely superficial. This feature may not appeal to the general practitioner who is looking for a small volume that will do little more than point out the existence of a problem. However, if the reader is desirous of having a thorough treatment of the tax problems of trusts, this is his book. Mr. Kennedy has written this treatise for use not only by tax specialists or attorneys, but also by trust officers and accountants, and it is safe to say that anyone, no matter what his professional capacity, will find the volume helpful if he is at all concerned with the taxation of estates and trusts. It should be pointed out that only trusts of the traditional type are his subject, and “employees' trusts” and “common trust funds” are not discussed.

The scope of the book is large simply because the subject matter is vast. Yet it is to the author's credit that he did not become lost in subsidiary questions, though such issues may have been extremely interesting in themselves. For example, Chapter 3 is devoted to “Charitable Trusts and Charitable Contributions” and, naturally, mention is made of controlled charitable trusts or foundations. But wisely, there is no attempt to discuss the advantages, uses, etc. pertaining to these devices.

Because of the breadth of the book, mention of any specific portions would be inadequate to indicate content or treatment. Suffice it to say that the volume is comprehensive, and the reader will hardly find himself with a trust question that is not considered. It may be that the question is not answered, but that should not be blamed on Mr. Kennedy, since the field is one in which many open questions exist. Where there are answers, you will find them, and where the matter is still to be resolved, the author points the way for constructive thought and indicates the prevailing trend.

It is rather clear that the volume was intended as a reference book and as such it should rest on the same shelf as other treatises on income,

estate and gift taxation. Mr. Kennedy's book, however, does not require other studies or subsidiary references, since it is a self-contained volume. His appendices include all pertinent provisions of the Internal Revenue Code and of the Treasury Regulations. In addition, he has provided tables of citation of the Code, Regulations, Treasury Rulings, and cases. To complete the array of tools supplied with the book, mention must be made of the very detailed Table of Contents and of the carefully prepared Index.

It is a volume designed for use and intended to serve a long time. Since the law in this field changes but slowly, in an evolutionary rather than a dynamic fashion, the publishers have wisely provided for pocket supplements to keep the volume current. An entirely new treatment will not be necessary for some time to come, unless basic concepts are radically changed.

Barton E. Ferst †

FEDERAL PROSE—HOW TO WRITE IN AND/OR FOR WASHINGTON. By James R. Masterson and Wendell Brooks Phillips. University of North Carolina Press, Chapel Hill, 1948. Pp. 45, \$1.25.

James R. Masterson and Wendell Brooks Phillips were "trained in English at Harvard." They entered government service "only to discover that their training was incompetent, irrelevant and immaterial." Extirpating "the outmoded English language from their thought-patterns," they "mastered the intricacies of Federal Prose."

Federal Prose is a paper-bound book of forty-five pages with cartoons and much white space. Written with tongues-in-cheeks and addressed to "American citizens who aspire to serve their fellow men by writing the language that is written and sometimes spoken in the Nation's Capital," the book was undoubtedly aimed at those persons in and out of Government who make their living by writing in or about gobbledygook. Gobbledygook was defined in 1944 by its creator, stormy Maury Maverick, then Chairman of the Smaller War Plants Corporation, as "talk or writing which is long, pompous, vague, involved, usually with Latinized words. It is also talk or writing which is merely long, even though the words are fairly simple, with repetition over and over again, all of which could have been said in a few words."¹

"Federal prose" is just another name for gobbledygook, but not so accurate because it creates the impression that it is found only in the federal government. The casual reader might miss the statement on page twenty-seven that "federal prose" "occurs in various other products of semantic art:—in the writings and oral utterances of sociologists and educators, in the iridescent commentaries of theologians, in the texts of insurance policies, in reviews of plays and concerts, in advertisements of motor vehicles, novels, and tomato soup."²

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1. Maverick, *Case Against Gobbledygook; Vague, Pompous, Repetitious English*, N. Y. Times, May 21, 1944, Mag., p. 11.

2. England too has its gobbledygook. See GOWERS, *PLAIN WORDS: A GUIDE TO THE USE OF ENGLISH* (1948); Jones, *The King's Gobbledygook*, N. Y. Times, July 11, 1948, Mag., p. 14.

The book would have been timely in 1943 or 1944 before the evils of gobbledygook were so widely recognized. For many years before Maverick's outburst against written double-talk, lawyers, businessmen, bankers, and others had chafed at the complexity of financial and other reports, resolutions, regulations, headlines, etc. Little progress was made toward simplification until 1943 when a number of persons working independently showed that some complicated documents could be stated in simple language. In that year Dr. Rudolf Flesch, an Austrian lawyer who had left Austria in 1938 (the year of the *anschluss*), published his Ph. D. dissertation, *Marks of Readable Style*, in which he explained his formula for determining readability and for simplifying wordy documents. Working independently, Professor David Cavers prepared a memorandum containing specific suggestions for the simplification of OPA Price Regulations. In 1944, the Bureau of Internal Revenue began intensive work to simplify its forms.

A special committee of experts in the Bureau of Internal Revenue first prepared some simple forms. These forms were completely revised by "the brightest copy writers and public-relations experts" of "one of the best advertising concerns in New York." Next, the top officials of the Bureau made some final revisions to meet certain legal requirements overlooked by the copy writers and public-relations experts. A public-opinion-sampling organization then took them from door to door in New York. The twice-revised forms had to be further simplified because forty per cent of the people who tried them didn't understand some parts. Some of the causes of their troubles were incurable because some people do not know elementary business terms.³

Dr. Flesch found that his Ph. D. dissertation was not a readable book! In 1946, it was revised and published in readable style as the well-known book, *The Art of Plain Talk*. Dr. Flesch is now consultant to business firms, magazines, and a press service. He served as editor of OPA Trade Bulletins from 1944 to 1946. His method of simplification has been adopted by the United States Department of Agriculture Extension Service and other federal agencies.

Professor Cavers' revised memorandum has been published as an article entitled "Simplification of Government Regulations."⁴ The original memorandum was circulated to OPA attorneys and to attorneys in other governmental agencies.

Federal Trade Commissioner Lowell B. Mason condemned gobbledygook in a humorous statement entitled "For the Proportionalization of Prolivity; Gobbledygook," which was published in the New York Times of October 28, 1946. What Maverick wrote in 1944 was very funny and very timely. What Mason wrote in 1946 was funny and timely. What Masterson and Phillips wrote in 1948 is neither funny nor timely.

The authors sarcastically state that the single cardinal rule of "federal prose" as it is written is: "always write in a style that can be interpreted flexibly."

Every lawyer has learned from experience that certain documents should be flexible. One of the cardinal rules of legal drafting is to do everything possible to learn all the pertinent facts. Next, the draftsman must determine all the legal and non-legal problems which are involved or which may be involved if the facts are not as he believes them to be or if

3. Schoeneman, *We Try to Make it Easy for You*, Sat. Eve. Post, Feb. 21, 1948, p. 28.

4. 8 FED. BAR J. 339 (1947).

new and unexpected situations arise in the future. As a general rule, any document which will determine the rights and duties of the parties for a period of more than a year should be flexible. For example, a five-year lease frequently contains an escalation clause or a provision which gives one of the parties an option to do certain things upon the occurrence of a given event. But, I believe there are few, if any, draftsmen who would defend the use of ambiguous words to obtain desirable flexibility.

Some readers of the book *Federal Prose*—I presume it will be read by persons other than book reviewers—may receive the impression that federal regulations, etc., are first written in simple and clear language by bright persons trained in English at Harvard and then rewritten by dull persons (not trained in English at Harvard) in language so complicated that it means many things or nothing. Unfortunately, few things are simple and it is not easy to write in simple words even about simple things.

Some of the reasons why it is not easy to write in simple language are as follows: *First*, too many teachers of English in grade schools, high schools and colleges have not taught their students how to write. *Second*, many Americans have not been taught how to read. Professor W. Barton Leach of Harvard Law School has said that "students come to the law schools with habits of skim-reading; they understand, reason, and use language by approximation."⁵ *Third*, according to the experiences of law teachers from law schools in all parts of the United States, many beginning law students who are college graduates are not only unable to understand what they read and unable to express themselves in writing, but are also unable to analyze easy problems. *Fourth*, punctuation is not an exact science and the courts generally ignore the position of punctuation marks when construing a document. In some states, including Pennsylvania, bills may still be passed without any punctuation marks except periods. *Fifth*, the courts do not always construe the same word or phrase the same way. For example, "null and void" may mean void or voidable. *Sixth*, some subjects are too complicated to be stated in simple language—or at least within the time available for stating them. Professor Karl Llewellyn has said, "After a growing complexity of statement which is needed . . . to make sure of exactness, there can emerge . . . a way of getting at the same coverage, with equal precision (often, with greater precision) in direct, accessible language. This clearer and simpler way of putting a section or clause refuses to come by study. It comes suddenly, instance by instance, and without notice."⁶ *Seventh*, few documents are drafted by one person. It is frequently more important to complete a document which will satisfy a number of persons than to delay its completion until all can agree upon a simplified version. Where agreement by a number of persons is absolutely essential, the document must be satisfactory to all. *Eighth*, the person who prepares the first draft is frequently not aware of all the problems involved and his superior who is aware of problems not covered does not have time to revise the whole document. The insertion of additional words in a document of this type frequently results in long and complicated sentences. *Ninth*, certain documents when drafted in simple form may not be acceptable to persons accustomed to the more complicated phrasing. For example, it would be unwise for the grantor's attorney to use a

5. 1 J. LEGAL ED. 28, 41 (1948).

6. REVISED UNIFORM SALES ACT, SECOND DRAFT 6 (1941).

short-form deed if the grantee's attorney may persuade his client that the short-form deed is invalid because it does not contain the usual jargon. *Tenth*, Americans have too often been told that they will be successful if they increase their vocabulary by learning new words and using them. *Eleventh*, there are some people who like to correct whatever others write—particularly the writings of persons trained in English at Harvard.

The problem which Masterson and Phillips have treated lightly is given in a serious tone in an editorial of *The Saturday Review of Literature*. "In a time when every shade of thought may be of importance, it is a calamity to have a body of citizens growing up who are incapable properly of interpreting their opinions and reactions. Surely it is one of the prime responsibilities, as it is one of the first obligations, of our educational institutions today to equip the young people of the nation to take their part in the general give and take of ideas, to so train them that they are able to read beyond the mere surface import of words on a page, that they are able to use language with nicety and precision."⁷

Robert N. Cook †

FREE SPEECH AND ITS RELATION TO SELF-GOVERNMENT. By Alexander Meiklejohn. Harper & Brothers, New York, 1948. Pp. 107, \$2.00.

"Congress shall make no law . . . abridging the freedom of speech." Simple, isn't it? Not when dissected by the keen and analytical mind of Alexander Meiklejohn.

Certain exceptions are taken for granted, and were of course not unknown to those who framed the First Amendment. Libelous and slanderous assertions, words inciting to crime, sedition and treason are not protected by the First Amendment.

In 1919, Mr. Justice Holmes seemed to add another restriction to freedom of speech, holding that there might be a constitutional abridgment by legislative action in times of "clear and present danger." It is to be noted that in the famous *Milligan*¹ case, the Supreme Court had held that the Constitution was as inviolate in time of war as in time of peace. But Mr. Justice Holmes seemed to feel that no court could regard all speech as protected by any constitutional right in "fighting" times, on the ground that some "utterances will not be endured" by citizens. Professor Meiklejohn points out that the very purpose of the First Amendment was to compel men to "endure" in free society many things they don't like. Mr. Justice Holmes' clear and present danger doctrine was later clarified; the danger must be so imminent that an immediate check is required to save the country, or, as Meiklejohn puts it: "The danger must be clear and present, but also terrific." To this, Mr. Justice Brandeis, writing with the approval of Holmes, added that the incidence of evil apprehended must be so imminent that it may befall before there is full opportunity for discussion.

All of this leaves us somewhat confused. I often wonder whether there is anything new in the doctrine announced by Mr. Justice Holmes, even though Professor Meiklejohn refers to the rule as having "strik-

7. Sat. Rev. Lit., Dec. 21, 1946, p. 20.

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1. *Ex parte Milligan*, 4 Wall. 2 (U. S. 1866).

ing originality." Direct incitements to crime are criminal (page 18). All that Mr. Justice Holmes said was that there are words which in peace time might not be incitements where the words might have a different effect in time of war. In other words, conditions should determine whether or not the words are incitements to violation of law. The question is really not whether the utterances of certain words "will be endured" but whether or not they are incitements. Likewise, the determination of the fact of whether words are incitements would depend upon whether or not they are imminent or serious. Isn't this about what the clear and present danger doctrine really means?

Suppose I suggest that a fair definition of free speech would cover the right to express any *opinion* no matter how wild, dangerous, fanatical, radical or blasphemous it would seem to be. The protection is for the expression of an *opinion*. Incitement is not an opinion, although it may be expressed as such. For instance, if a gang or roughs had me tied up in the next room, and somebody declared, "In my opinion that man Hays ought to be killed!" this might well be regarded as an incitement. If I were then in California, it might be regarded as an opinion. The question would be one of fact. When Mr. Justice Holmes illustrates his point by suggesting that no protection of free speech would protect a man who falsely shouted "FIRE!" in a crowded theatre, he is referring to something which is not an opinion at all; as in many other instances, the words themselves are acts.

Professor Meiklejohn points out that the questions of freedom of speech do not depend wholly upon the Bill of Rights. Article I, Section 6, of the Constitution, referring to members of Congress, says that "for any speech or debate in either House they shall not be questioned in any other place." The same kind of immunity is guaranteed the judges of courts. Is this limited in time of "clear and present danger," and if not, why not?

The Fifth Amendment throws light upon the First. No person may be "deprived of life, liberty or property without due process of law," and the term "liberty" has been construed to include free speech. This would seem to indicate that free speech can be abridged under certain circumstances where there is due process of law. Professor Meiklejohn sets forth the relative effects of the First and the Fifth Amendments, as they deal with matters of speech. In trying to coordinate the two sections, he refers to the First Amendment as meaning merely that the "freedom of public discussion shall never be abridged" (page 69), and draws a distinction between what he calls private free speech and public free speech. He points out that as the makers of the law, citizens, directly or indirectly, have duties and responsibilities which require an absolute freedom, that as subjects of their own state, they have possessions and rights to which adhere what he calls a relative freedom. The First Amendment, says he, provides a guarantee against the abridgment not of free speech but of public discussion; "with that foundation beneath us we shall not flinch in the face of any clear and present or even terrific danger." The guarantees of the First Amendment have to do with speech which bears upon issues with which we, as voters, have to deal, matters of public interest; private speech, argument, inquiry, advocacy or incitement which are directed toward our private interests, privileges and possessions, are not so guaranteed; as to these we are entitled only to the protection of due process. In the first role, we are the Government; in the second, we are individuals.

The author draws a striking distinction between the abridging of speech and the abridging of freedom of speech. Thus, in a New England town meeting, there is no abridgment of freedom of speech, but of course all cannot speak at once, and there is thus a necessary abridging of speech. The First Amendment, says the author, is actually directed to any means for "mutilation of the thinking process. The First Amendment condemns with absolute disapproval any interference with the freedom of ideas."

The book is a valuable and provocative contribution to a never-ending subject of debate. The simple statement in the Constitution is colloquially expressed: "Let 'em talk. This is a free country, ain't it!" Yes, this is a free country, but the question of free speech is confusing. After all, the solution depends not wholly on what the Constitution says but upon the spirit of the people.

Arthur Garfield Hays †

LEGAL EFFECTS OF WAR. By Sir Arnold Duncan McNair.¹ University Press, Cambridge, Third Edition, 1948. Pp. xxiv, 458, \$6.00.

The title of the book and the reputation of the author might suggest that it is a treatise on public international law, and that it concerns the legal status of war. On the contrary, it is a thorough study of the effects of war in English municipal law, although aspects of international law are treated. The introductory chapters take up preliminary material on the definition of war, the status of British nationals and aliens, and the procedural status of alien enemies. Major emphasis is then devoted to the general principles governing the effect of war on contracts apart from frustration, and the principles governing frustration of contracts. Considerable discussion in a separate chapter is devoted to Trading with the Enemy principles. Succeeding chapters apply these principles to particular contracts, and to other legal relations. The concluding chapters are more closely related to public international law. Two chapters are devoted to the effects of belligerent occupation of territory, and a final chapter deals with the effects of peace treaties upon private rights.

The third edition does not differ substantially from the second, which was published in 1944.² Two valuable articles by the author have been added to the appendix, as well as the texts of the Law Reform (Frustrated Contracts) Act of 1943,³ and the Limitation (Enemies and War Prisoners) Act of 1945,⁴ which are not readily available to non-English readers. The articles, which are a significant feature of the new edition, concern the Frustrated Contracts Act and the requisitioning of merchant ships.⁵ Although the new edition takes account of developments in the

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1. Judge, International Court of Justice.

2. The first edition came out in 1920. Unfortunately, as the distinguished author points out himself in his Preface to this edition, p. ix, it appeared necessary to bring out this edition before sufficient time had elapsed to determine whether wartime legislation was to remain permanent. This premature publication deprived us also of the benefit of Judge McNair's observations on the post-war cases that inevitably arise out of war.

3. 6 & 7 GEO. VI, c. 40.

4. 8 & 9 GEO. VI, c. 16.

5. The articles are also to be found in 60 L. Q. REV. 160 (1944) and 27 J. COMP. LEG. & INT'L L. 68, parts III and IV (1945), respectively.

intervening period, no material revision has been attempted. Inasmuch as the second edition received numerous reviews in other legal periodicals⁶ this writer will attempt only to call attention to the general scope of the work and note certain aspects which should be of interest to readers of this Review.⁷

Although the author concentrates on English statutes and cases, he makes occasional reference to American materials, and in many situations, the paucity of authority makes the British experience of practical significance to an American lawyer dealing with these problems. Consequently, a brief summary of English developments may be of interest. In recent years, for example, American courts have increasingly tended to follow the executive policy on questions of foreign relations, with *United States v. Pink*⁸ as an outstanding recent example. The English courts have pursued quite rigidly such a practice in determining the existence of a state of war. The development of nationality legislation in the United States likewise parallels English development both in making it more difficult to acquire nationality and easier to lose that status by broadening the grounds for cancellation. This is apt to increase the number of persons who will be stateless, a status in international law for which nothing favorable can be said. It is to be hoped that the current efforts of the United Nations in the field of human rights will have some influence in mitigating this unfortunate situation.

The reader may be surprised to learn that the main test in determining whether a person is an alien enemy is a territorial one.⁹ This is true whether for procedural purposes or on the substantive questions of the invalidity of contracts. Thus, prisoners of war and "innocent" internees have access to English courts (save for habeas corpus) whereas an Englishman resident in enemy territory would not. A minor procedural question of interest is that of the running of statutes of limitation during war. English legislation in 1945 finally changed the English rule to bring it into accord with the American doctrine that permitted suspension of the statute.¹⁰ English practice with respect to procedural status denies to alien enemies access to the courts as plaintiffs but permits suit against them if appropriate conditions are met. In effect, the alien enemy cannot be an "actor" in the English courts.¹¹

The core of the book is the discussion of the principles governing illegality and frustration of contracts as a result of war.¹² In the first place it should be noted that all contracts are not automatically voided by war. The doctrine of supervening illegality, which the author distinguishes carefully from frustration, is grounded upon the mischief which might arise from continuing performance, rather than the impossibility

6. See 7 INDEX TO LEGAL PERIODICALS 769 (1943-1946).

7. The second edition is discussed by Professor Jessup in Book Review, 58 HARV. L. REV. 461 (1945).

8. 315 U. S. 203 (1942). Cf. *Vermilya-Brown Co. v. Connell*, 333 U. S. 859 (1948), involving the extension of the Wage-Hour Law to bases in Bermuda.

9. See *Soufracht v. Van Udens Scheepvaart en Agentuur Maatschappij* [1943] A. C. 203, one of the two recent cases which Judge McNair regards as outstanding contributions during recent years. The other is *Fibrosa Spolka Akcyjna v. Fairbairn Lawson Combe Barbour*, [1942] 1 K. B. 12, [1943] A. C. 32.

10. Limitation (Enemies and War Prisoners) Act of 1945, 8 & 9 GEO. VI, c. 16, reprinted in Appendix V, p. 448.

11. In Chapter 5, the author discusses the civil status of enemies other than procedural and contractual. Space limitations forbid comment on this material.

12. Chapters 4 and 6.

of performance. If applicable, the doctrine destroys all rights to further performance except that of receiving a sum of money. The test is one of possible benefit to the enemy. The doctrine applies although neither party is an enemy in the territorial sense. Thus mere suspension might make a postwar contract right of present value to the enemy. The contract is discharged and resort to foreign law as the governing law cannot save it. Rights of action that have already accrued prior to the outbreak of war are, however, suspended for the duration of war, as are debts even if they are not due when war occurs. Subsequent chapters detail certain exceptions to the doctrine, such as the extra-contractual rights of shareholders, which are treated in somewhat the same fashion as rights of property and status. The essence of the doctrine of illegality is that as to further performance, the contract is annulled.

Judge McNair opens his discussion of the doctrine of "frustration" by pointing out that the doctrine is itself an exception to the rule that war does not "frustrate" a contract. Although the distinction is not always truly drawn in the cases, the author emphasizes that, unlike supervening illegality, which discharges the contract as a matter of law, "frustration" operates to discharge a contract when the supervening circumstances, whether technically war or not, would in effect impose a new contract on the parties. The English courts have adopted various rationalizations of the doctrine, but the author submits that the basic theory is one of an "implied term" which comes into operation when the requisite facts exist. The doctrine apparently resulted from a coalescence of the common law notion of "impossibility" and the commercial law concept of the "frustration of the adventure." In order to prevent obvious self-help, the test of whether reliance on "frustration" is justified is an objective one. Interestingly enough, the doctrine can be invoked even though the contract itself contains a clause purportedly abrogating such a claim. Similarly, contract clauses providing for suspension during war cannot defeat the principle if the circumstances warrant its application. Once the facts call into play the principle of frustration, the contract is discharged, and the parties cannot elect to disregard it. Even contracts made after the outbreak of war may be "frustrated."

In his discussion of the companion concept of "trading with the enemy," the author is careful, as he is throughout the work, to distinguish between rules of international law and of municipal law. Thus, contrary to popular impression, such trading is probably not made illegal by any precept of international law, although municipal legislation or case law may forbid it. In the English common law, it is both illegal and criminal, and any contract which transgresses this prohibition is vitiated. As was the case with the doctrines previously discussed, "enemy" is used in the territorial sense. As is the case with us, most of this branch of the law is embodied in statutes. The Trading with the Enemy Act of 1939¹³ supplements and extends the common law.

In the following chapters,¹⁴ devoted to the application of these principles to particular types of contracts and relations, the discussion concerning companies is of particular interest to corporation lawyers.¹⁵ Whether the company itself should be classed as an "enemy" poses an interesting problem. The English courts and subsequent legislation have reached the position that if the company is enemy incorporated, or "con-

13. 2 & 3 GEO. VI, c. 89.

14. Chapters 8 to 16, inclusive.

15. Chapter 11.

trolled" by the enemy, or is operating in enemy territory, contractual relations are illegal both at common law and under the Trading with the Enemy Act. The shareholder's contract raises more complex questions. Here again the territorial test is basic. Even if the shareholder is a territorial enemy, there are property as well as contractual aspects to be considered. As a contract, it is suspended for the duration of the war, rather than dissolved. In this respect, it differs basically from partnership where the relation is dissolved. As a property interest, it presumably survives, although rights of action would be suspended, unless the Custodian of Enemy Property seized it under legal process. By way of contrast, the director's contract is abrogated, and thus is an application of principles applicable to agents generally.

The discussion of the effects of belligerent occupation of territory¹⁶ does not take into account recent post-war developments, such as the occupation of Germany. The author summarizes the present doctrine in public international law with its three stages of invasion, occupation, and transfer of sovereignty. He suggests that there may be an intermediate legal status lying between occupation and transfer of sovereignty, which could be called "de facto control." Basic to the subject is the rule that occupation per se does not displace sovereignty. Occupation by the enemy has the consequence, unless the Crown rules otherwise, of investing the territory with enemy character. Furthermore, under the Trading with the Enemy Act, unoccupied territory can likewise, by governmental declaration, be invested with enemy character. During the recent hostilities, such a declaration was made by Great Britain with respect to "unoccupied France" and other territories. Here, as elsewhere in this branch of the law, the test of enemy benefit is controlling. One of the noteworthy features of this anomalous situation is that treasonable acts can be committed in territory under belligerent occupation. This result has been reached by British courts, and a recent United States Navy court-martial held similarly with respect to acts occurring during the Japanese occupation of Guam.

A major aspect of this topic is the effect of the acts of an enemy occupant in an international war. The underlying principle is that acts within the narrow scope of the function of an occupying authority are recognized and given legal effect. When England is neutral, effect will be given during as well as after the war. In this connection, the author tactfully but vigorously criticizes the opinion of Clauson, J., in *Bank of Ethiopia v. National Bank of Egypt and Liguori*,¹⁷ where the Italians were given advantages far greater than was warranted by their status as an occupant under international law. Where the question involves the acts of an occupying revolutionary government during a civil war, the author largely relies on American cases arising out of our Civil War, wherein our courts gave effect to the normal acts of an occupier.

One of the most interesting features of this problem concerns the effect to be given to the acts of governments completely or partially dispossessed of their territory. The acts of the governments in exile during the recent hostilities raised complex questions which will be before the courts in this country as well as in England for many years, if the first World War experience is a safe precedent. This is an area in which principles of private international law are intermingled with public international law considerations. This discussion would be of special value to the practic-

16. Chapters 17 and 18. There is a brief note on the German question.

17. [1937] Ch. 513.

ing lawyer. The first important decision arising out of the last war was the *Anderson*¹⁸ case in the New York courts. Although the opinions were not wholly satisfactory, the decision influenced subsequent English cases. Where the constitutionality of the legislation of such a government is challenged, the English courts have taken the position that they are free to consider the question. The special position of ships has led to decisions both in this country and in England which recognize greater national control than ordinarily would be conceded on normal principles governing the extra-territorial effects of legislation. The author's fervent hope for the demise of the metaphor that a ship is a floating piece of territory should be heartily seconded in all quarters.

The final chapter concerns the effect of peace treaties on private rights.¹⁹ It is a brilliant illustration of the author's ability to summarize complex legal doctrines in a simple, understandable fashion. The export of such a gift would weigh heavily in redressing the present imbalance of payments, were it possible to bring it under the Marshall Plan. In conclusion, it should be said that this edition, although regrettably premature, is a valuable contribution to our understanding of the subject. It is to be hoped that the author's new judicial duties will permit him to favor us with additional products from his gifted pen.

Brunson MacChesney †

18. *Anderson v. N. V. Transandine Handelmaatschappij*, 289 N. Y. 9, 43 N. E. 502 (1942).

19. Chapter 19.

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