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Book Review: Israels & Guttman: Modern Securities Transfers

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BOOK REVIEW

MODERN SECURITIES TRANSFERS. BY CARLOS L. ISRAELS AND EGON GUTTMAN. Boston: Warren, Gorham & Lamont, Inc. 1967. Variouslly paged, approx. 530 total.* \$27.50.

I. THE AUTHORS

By any standard, Carlos Israels is a giant in modern corporate and financial law. While maintaining an active practice in New York (and teaching a course or two at Columbia each year), he has been a frequent and popular lecturer to legal groups, a prolific contributor to law reviews,¹ and the author or editor of at least three major books before this one.² The earlier work set a pattern of practical wisdom, careful analysis, diverse approach, and clear statement. The new volume, done jointly with Professor Egon Guttman of Howard University, a wide-ranging scholar, fully lives up to expectations.

II. THE SUBJECT

The transfer of securities has always been a rather inconspicuous part of corporate law, characterized by little litigation and much paper work. Until the 1950's, few lawyers dealt with it, since it was handled largely by banks and other professional transfer agents, mostly in New York. There was relatively little written on the subject in the journals; the literature consisted mainly of the looseleaf services³ and the venerable Christy.⁴ Beyond these were the practices and requirements of the major transfer agents and of the stock exchanges and National Association of Securities Dealers.⁵ Finally, there was the Uniform Stock Transfer Act, promulgated in 1910 and adopted in all states in the ensuing decades. It provided, among other things, a kind of negotiability for stock certificates. This period was marked by a preoccupation with techniques for avoiding liability of the transfer agent for wrongful transfer or wrongful failure to transfer.

The situation has changed in many ways during the last ten years or so. Debt securities have been increasingly issued, more and more commonly in registered (rather than coupon or bearer) form. A staggering number of corporations have gone public, multiplying the number of security issues

* xix, approx. 260 text, 181 appendices, 71 tables and index.

¹ A quick survey of the Index to Legal Periodicals shows him listed (usually several times) as an author in 10 of the 12 triennial volumes from 1931 through 1967.

² C. ISRAELS, CORPORATE PRACTICE (1963), preceded by a number of editions with the same title and R. Gorman as co-author; WHEN CORPORATIONS GO PUBLIC (C. Israels & G. Duff eds. 1962); S.E.C. PROBLEMS OF CONTROLLING STOCKHOLDERS AND IN UNDERWRITINGS (C. Israels ed. 1962).

³ E.g., CCH STOCK TRANSFER GUIDE.

⁴ F. CHRISTY, THE TRANSFER OF STOCK (1st ed. 1929, 2d ed. 1940, 3d ed. 1958, 4th ed. 1967).

⁵ For current versions of some of these, official and unofficial, see N. Y. Stock Exchange Rules 175-225, CCH N.Y.S.E. GUIDE §§ 2175-2225; American Stock Exchange Rules 748-96, CCH A.S.E. GUIDE §§ 9578-9615; NASD Uniform Practice Code, NASD MANUAL § 3501; J. MORLEY & J. LYNCH, HANDBOOK ON STOCK TRANSFERS (Assoc. of Stock Exchange Firms 1962); M. TOROSIAN, SECURITIES TRANSFER, PRINCIPLES & PROCEDURES (1967).

actively traded, the number of transfer agents, and the places where they operate. The huge rise in the stockholder population and a higher turnover rate have further contributed to massive growth in trading volume.⁶ Clearing house arrangements, automation and computers have struggled to bring the situation under control. But markets have closed each Wednesday for much of 1968 because of inability to keep up with transfers and paper work in the securities industry. Business concern has understandably shifted to speed-up and simplification of the transfer process.

While these business changes were occurring, others were taking place in the legal area. The Uniform Commercial Code, based on years of work by experts, was promulgated in 1951, and revised in the 1950's and 1960's. Enacted throughout the country in the 1960's, the Code has revamped the whole field of commercial law. Its article 8 (Investment Securities) supplants the Stock Transfer Act, broadens the coverage to include debt securities, reinforces negotiability, reassigns duties and responsibilities, and introduces a number of new features. (Mr. Israel was one of the draftsmen of this article, and Mr. Guttman an analyst of it, at least in its later phases.) And the shadowy areas of "restricted stock," "investment stock," "control stock," and other matters related to the federal securities laws, have become more important and, at the same time, more widely applicable for the reasons indicated in the preceding paragraph. This is the context of modern securities transfers, which are the subject of the book and provide its title.

III. THE TREATMENT

The Israel-Guttman book covers the law of securities transfer under the UCC and largely ignores prior material, on the theory that the latter has been either codified or rejected by the Code.⁷ The volume contains a careful explication of article 8 and other relevant parts of the Code, as well as their full text, official comments and authors' notes in the Appendix.

But the authors have produced much more than an annotated article 8. They have skillfully interwoven the customs of the securities markets,⁸ the methods of handling restricted stock,⁹ and other applicable transfer legislation, like the fiduciary simplification act.¹⁰

After introductory discussion of the nature of a security and of the transfer office, the chapters are organized around the basic concepts or steps in the transfer of securities: indorsement, delivery, registration of transfer (presentation, assurances, signature guarantees), and adverse

⁶ For example, New York Stock Exchange 1967 trading volume was about five times 1957. The number of shares listed more than doubled. The turnover rate rose from 12% to 22%. DOW JONES INVESTOR'S HANDBOOK 69 (1968). All figures apparently rose at a proportionally greater rate on the smaller exchanges and over-the-counter markets.

⁷ Ch. 2, at 207. Nonetheless there are several hundred citations to cases, predominantly pre-UCC. These seem to be either historical background, points of consistency with the Code, or points not covered by it.

⁸ E.g., ch. 6, at 1006.

⁹ E.g., ch. 4, at 405-06, ch. 6, at 610-12, ch. 12, at 1217; App. pp. 111-12, 130-31.

¹⁰ Ch. 10, at 1013, 1015.

claims.¹¹ Elsewhere are careful treatments of the relative rôles of issuer, transfer agent and registrar,¹² the problems of original issuance of securities,¹³ and the optimum methods of registering securities in the names of fiduciaries, co-owners, partnerships, corporations, etc.,¹⁴ to avoid difficulties when presented for later transfer. Then come chapters on replacement of "lost" securities¹⁵ and on the diverse and intricate requirements the several states impose to prevent transfer of a decedent's securities before payment of any inheritance tax he may owe.¹⁶ The text closes with an assessment of the risks involved in security transfers, and the dozen or so types of insurance covering one or more of the risks.¹⁷

The discussion is always clear and usually well-rounded, taking the viewpoint of each party participating in a stage of the transfer transaction.¹⁸ The tone is confident and declaratory, without glossing over unsettled issues.¹⁹ The sections are short, well-captioned, and well-related; the style is easy to follow. The legal analysis is always coupled with an awareness of the operational setting and an appraisal of the related business risks.²⁰

Throughout there is a wealth of practical advice on specific questions which may arise in transfers. Of course, the authors have not thought of every contingency, but I doubt there will be many on which they fail to shed some light. The book abounds in forms (72 of them), checklists and examples. Alternative courses of action, when available, are explained and evaluated, with unhesitating wisdom on which to follow.²¹

The volume is directed primarily to the persons who run the transfer office, whether within the issuing corporation or at a professional transfer agency. But it offers valuable insights to the issuer, buyers and sellers of securities, brokers on both sides of the transaction, guarantors, other persons, and lawyers for all of these parties. While transfer problems arise most commonly in publicly held corporations, some of them—like the names in which securities should be issued, and perhaps the assurances which should be required before transferring from holders not well-known to the issuer—may appear in closely held companies too.

In jurisdictions which—like Texas—have only recently enacted the UCC, the most valuable portions of the book will probably be those deal-

¹¹ Chs. 4-6, 9-12.

¹² Ch. 7.

¹³ Ch. 8.

¹⁴ Ch. 3.

¹⁵ Ch. 13.

¹⁶ Ch. 14, considering also state transfer taxes. Of the four extant when the book was written, one (Texas) has since been repealed.

¹⁷ Ch. 15.

¹⁸ *E.g.*, ch. 11, at 1108-28 (what a bank or broker should require before guaranteeing a signature).

¹⁹ *E.g.*, ch. 10, at 1014-16 (whether requiring supplementary assurances vitiates reliance on primary assurance, the signature guarantee; whether failure to require them is negligence).

²⁰ The authors' knowledge of transfer operations seems to be so intimate that it is hard to believe they did not spend a couple of years each in a transfer office. In any event, they acquired a thorough familiarity, through their own efforts and by consultation with a number of persons in the business. See pp. v-vii.

²¹ *E.g.*, ch. 10, at 1019-24 (whether to require supplementary and additional assurances of the propriety of an indorsement); ch. 12, at 1211-15 (how to deal with adverse claims).

ing with registration of transfers.²² Of these, the chapter on "assurances" has the greatest day-to-day importance, since it tells the issuer or transfer agent what it can and should ask for in the way of guarantees of signatures, and the traps set by the UCC if it asks for much more.²³

IV. CONCLUSION

If there are major faults in the book, I could not find them. A few minor ones struck me. There is no consideration of the problems of merger or purchase of corporate assets for securities. Both these transactions are essentially combinations of new issues and transfers, but in a different legal and business setting. Nor is there any provision for upkeep of the book. However, the same publisher issues a monthly Securities Regulation and Transfer Report (although it is not tied to the book) and other services report stock transfer and UCC decisions.

On the mechanical side, both tables of contents²⁴ for the forms have garbled page numbers. The book would have been more usable with running heads dividing the long Appendix into its components (UCC, forms, etc.). Similarly, cross-references from the UCC discussions in the Appendix to those of the same sections in the text would have been convenient, although the equivalent is available by detour through the table of Statutes Cited. The paging is a bit confusing, since the Appendix begins again with arabic numerals undifferentiated from those of the text.

Apart from these flaws, this is a comprehensive, well-written and highly useful book—altogether excellent, and essential for those who handle securities transfers.

Stock certificates may soon disappear in favor of computer credits as the markets bog down further in paper work. Until they do, this book will give valuable insights and workable solutions to the handling of certificates. Even if certificates pass from the scene, the legal requirements for transfer of ownership credits will probably have been largely anticipated by Israels and Guttman.

*Alan R. Bromberg**

²² Chs. 9-12. On the Texas transition, see Morris & Slover, *Problems of Texas Issuers Under Article 8—Investment Securities—of the Uniform Commercial Code*, 20 Sw. L.J. 602 (1966); Wozencraft, *Investment Securities Under the Uniform Commercial Code—Guidelines for Business Lawyers*, 44 TEXAS L. REV. 669 (1966).

²³ Ch. 10.

²⁴ Pp. xvii-xix, App. pp. 101-03. The USC citation at 811 n.11 is garbled, too. On page 1210 in par. (d) "or" should be "of."

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