



January 1969

Book Review: Crane and Bromberg on Partnership

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Recommended Citation

William H. Painter, *Book Review: Crane and Bromberg on Partnership*, 23 Sw L.J. 415 (1969)
<https://scholar.smu.edu/smulr/vol23/iss2/12>

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BOOK REVIEW

CRANE AND BROMBERG ON PARTNERSHIP. BY ALAN R. BROMBERG. St. Paul, Minnesota: West Publishing Co. 1968, Pp. xviii, 695. \$12.00.

Anyone who undertakes the job of updating a treatise on the law of partnership must be motivated by a large measure of altruism, particularly if he is to do a good job. Credit for originality is likely to be given to the author who first sponsored the work, while the best that is said of the person who modernizes it is that he has done a competent job, consistent with the quality of the original. And the law of partnership, being what it is (rightly or wrongly), a stepchild in the curriculum of the modern law school, sandwiched in as part of a course on "business associations" or dubiously coupled with agency law, in itself an ugly duckling, is not a particularly glamorous area in which to work.

In reading over Professor Bromberg's admirable renovation of *Crane on Partnership*, one is left with a distinct impression that this is not merely an updating and modernization of a hornbook; it is a significant contribution to the law of partnership. This is not to underestimate the value of the original work. In the writer's opinion *Crane on Partnership* was perhaps the clearest and most helpful book for students working in the area. However, it was published thirty years ago and badly needed a face-lifting. An example or two may suffice to illustrate this: Section 31(4) of the Uniform Partnership Act provides that a partnership is "dissolved" by the death of any partner. Yet many businesses continue despite the death of a partner and many, if not most, partnership agreements expressly provide for continuation. In dealing with this problem Professor Crane took the view that "it is better to consider that there is a dissolution without winding up, and a continuance of the business by a new partnership or person."¹ Professor Bromberg considers that the "debate whether dissolution occurs on certain events [like the death of a partner] is somewhat artificial."² He observes that "no dissolution occurs in a large partnership whose articles specify that there is no dissolution on death, retirement, incapacity, etc.," and "[t]here is no reason why legal theory should not accept this practical result And there is no reason to limit it to larger firms."³ His approach shifts the student's attention away from academic theory and possibly outdated concepts of partnership law to a much more modern and realistic perspective. And consistent with his emphasis, Professor Bromberg has added as a new appendix a very satisfactory form of general partnership agreement. This not only further illustrates the way in which modern partnership affairs are handled but also may be useful in classroom discussion. How often do lawyers complain that the law schools teach partnership and corporations and yet the students seem unable to draft a partnership agreement or articles

¹ CRANE ON PARTNERSHIP 392 (2d ed. 1952).

² A. BROMBERG, CRANE & BROMBERG ON PARTNERSHIP 419 (1968).

³ *Id.* at 418.

of incorporation? Although instruction in draftsmanship is time-consuming and often not feasible in large classes, much can be done with the distribution and discussion of forms; students can be asked why this particular clause is in the agreement and why it was drafted in a particular fashion. Is it a tax reason? Is it to meet some business need or to deal with an unexpected difficulty which has cropped up in litigation?

The emphasis in many courses today is away from the classical theoretical approach towards a more functional perspective, emphasizing business planning and often working interchangeably with several interrelated disciplines, such as federal income, estate, and gift taxation as they relate to the requirements of partnership or corporate law. Professor Bromberg's revision of *Crane* appears well suited to this business planning approach, applied to the law of partnerships. Thus, in dealing with the highly important problem of "choice of forms of organization" (e.g., whether or not to incorporate or form a partnership), Bromberg has replaced the very rudimentary discussion in the original edition with an extensive survey of the various factors which should go into making an intelligent decision on the form of a particular business. Needless to say, the tax aspects are not overlooked; there is a very good summary of some of the complexities of partnership taxation as well as the advantages of subchapter S of the Internal Revenue Code,⁴ which might be considered as having created an alternative form of business organization which is *sui generis* with its own set of advantages and disadvantages. Tax aspects are dealt with even more extensively in connection with a discussion of the highly important problem of preparing for the death, retirement, or incapacity of a partner. A whole new section has been added which sets forth in considerable detail the various alternative ways in which this problem may be handled, together with the tax, business and other considerations which normally accompany each alternative and influence the choice as well as the particular method of drafting clauses in the partnership agreement.

In summary, Professor Bromberg has taken a very competent but outdated hornbook on the law of partnership and not only has done a thorough house-cleaning and renovation but also has changed the whole emphasis of the book away from the classical and theoretical (if not conceptual) approach of an earlier era to a much more meaningful perspective better oriented to the job of preparing the student for practicing in the area of partnership. Since partnership continues as a significant feature of the modern business world despite the lack of emphasis which it may receive in many law school curricula, this book will inevitably occupy an even more useful niche in any well-equipped library, whether it be that of a law school or one of a practitioner.

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⁴ INT. REV. CODE OF 1954, §§ 1371-78.

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