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R. E. Robertson

Wadieh S. Shibley

Jay E. Grenig

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Book Reviews

A GUIDE TO RULE 144, Second Edition, by Dan L. Goldwasser.
Practising Law Institute, 810 Seventh Ave., New York, N.Y.,
10019. 1978. Pp. 575. \$40.00

The Securities Act of 1933, as amended¹ (the "Act") requires the registration with the Securities and Exchange Commission (the "Commission") of the sale of all securities, unless the sale falls within one of the exemptions set forth in the Act. One of the most significant exemptions, the one upon which thousands of shareholders rely everyday in selling their securities through brokers, is known as the "resale" exemption.²

A serious problem, however, is presented with respect to the availability of this exemption if the shares which a shareholder wishes to sell have not been previously sold in a registered offering, namely securities purchased directly or through a series of transactions from an issuer in essentially private transactions. Such restricted securities are commonly referred to as "letter stock." Following years of study and debate, the Commission in January, 1972 promulgated a comprehensive rule, officially designated Rule 144,³ which governs the sale of "letter stock" and also "control stock," that is, securities held by controlling shareholders of an issuer corporation.

The traditional focus prior to the adoption of Rule 144 had been on the subjective concept of whether a shareholder had initially purchased his "letter stock" with a view to distribution. If he was found to have purchased with such an original intent he was deemed to be an "underwriter" as defined under section 2 (II) of the Act, and the resale exemption was not available. The principle criteria utilized to negate the inference that the holder of unregistered securities acquired such securities as an underwriter was the period of time that he had held the securities.

Rule 144 shifts the focus from a subjective inquiry into the in-

1. 15 U.S.C. §§ 77a-aa.

2. This exemption (section 4 (1) of the Act) exempts sales by persons other than an issuer, underwriter or dealer.

3. 17 C.F.R. 230, 144.

tent of the stockholder at the time he acquired the securities to an emphasis on the following criteria: a) the availability of current public information, b) the volume of securities to be sold in relationship to the trading volume or the total number of shares outstanding, and c) the traditional inquiry into the length of the holding period.

In 1975 Dan L. Goldwasser, a member of the New York bar, authored an in-depth study of Rule 144 entitled *The Practitioner's Comprehensive Guide to Rule 144* in which he explored the historical background of the rule as well as providing an extensive analysis of its provisions. Since this publication was intended as a current working tool for use by both securities lawyers and brokers involved in matters pertaining to the sale of restricted securities, it dealt in admirable detail with the position which the staff of the Commission had taken with respect to its interpretation of the Rule. However, over the next several years new policies were adopted by the Commission which necessitated an updating of the original work and thus, in late 1977, Mr. Goldwasser completed the second edition of this work, retitled *A Guide to Rule 144*. This edition not only incorporates the latest policy changes adopted by the staff but also charts anticipated changes in the staff's philosophy regarding the Rule. For example, he notes that there is a growing tendency on the part of the staff to interpret the rule in a more reasonable fashion. He attributes this at least in part to the fact that many of the potential problems which were envisioned at the time the Rule was initially adopted did not materialize.

While this work is primarily designed as a research tool for practicing lawyers and securities dealers who need quick answers not only with respect to the Rule but also with regard to the Commission's pronouncements and the interpretive positions taken by the Commission's staff, it also provides a comprehensive overview and valuable background information relating to this important area of securities law. Further, Mr. Goldwasser presents his material in such a way that even those who do not have an in-depth understanding of the securities laws can derive a general understanding of the subject.

Mr. Goldwasser's analysis of the interpretations placed on the Rule by the staff is quite even handed, but he does not hesitate to take issue with the staff's position in those areas in which he disagrees with their position. Also, where no interpretations have been forthcoming he has suggested sound and practical approaches.

In this reviewer's judgment, this book is of particular value be-

cause of its practical orientation as illustrated by the step by step selling procedure set forth in the chapter on the "Mechanics of Sales Under the Rule" and the clear and extensive analysis of the definition set forth in the Rule. Mr. Goldwasser has provided not only the practitioners in this area but also interested students with a useful and scholarly guide to a most important area of the securities law, the resale of unregistered securities.

*R.E. ROBERTSON

* R.E. Robertson is an Associate Professor of Law at Pepperdine University School of Law.

PROBLEMS AND MATERIALS ON FUTURE INTERESTS. By Edward C. Halbach, Jr. and Eugene F. Scoles. Little, Brown and Company Law Division, 34 Beacon St., Boston, Mass., 02106. 1977. Pp. xviii, 349. \$7.95.

In law teaching it has been said that adoption is the sincerest form of flattery. I do not teach a course in future interests; but were I to do so, I would not hesitate to use this book. A careful inspection reveals that this book compares very favorably with other available casebooks and texts in the subject matter covered therein. Additionally, this book is a compendious work on a complex subject that traditionally has been covered in casebooks twice its size.

In the preface, the authors tell us what their goals are: "These materials are designed for use either in a separate course on Future Interests, even a mini-course, or as part of an integrated course on Wealth Transmissions or Estates and Trusts, including Future Interests."

Having taught a course on Trusts, this reviewer heartily agrees with the intended goals of the authors.

The outstanding feature of the book is the problem approach used therein, which, in the eyes of this reviewer, is a definite advantage over the traditional case method. To be sure, this is also a casebook, and, though concise, it has not neglected to include an abundance of cases to adequately present the case law covering the entire gamut of the subject as it is traditionally presented, plus a modern treatment of the field of Future Interests. In this regard, the book compares very favorably with other casebooks dealing with the subject.

The problem method, as used here, is definitely superior to the usually presented case method. With the inclusion of representative cases covering the subject, the student (or lawyer), gains a double advantage in the ability to solve problems: first, from a reading of the cases, (it being assumed that the ability to solve problems will flow automatically once the students master the cases); second, the grappling of the student with specific problems certainly provides an effective basis for problem solving.

This practice oriented technique should stand the student in good stead when he encounters actual problems on an exam or in the role of a lawyer who is given a fact situation to unravel, analyze and solve. The problem approach is not new to this field. It

will be found, for example, in Simes' *Cases on Future Interests* (3d Ed. 1971) containing a chapter entitled: "Recurring Problems with the Five Future Interests." There the authors present the problem and, while they do not give the answer, they clue one in to a solution by citing, for example, either actual cases adjudicated, or some treatise dealing therewith, such as the Restatement. This is very helpful to both student and teacher. It is wondered why the authors of this book have not done likewise, except in a more oblique way. We know they are experts in their field; so why have they not shared some of their expertise with those who use their book? They have seldom done this, except in Chapter 8, dealing with the Rules Against Perpetuities. There the authors pose a number of questions and are not hesitant in giving their version of the "correct" answers. Why haven't they followed the same format with respect to the problems presented in other areas of the book?

One aspect that was particularly appealing to this reviewer is the concern of the authors for an understanding of the common law system of estates in land and the historical background of the present-day law of future interests. They admonish the student that an understanding of the foregoing "is essential to you in this course." They then proceed, in the very first chapter, to indicate that it is intended to acquaint the student with the various future interests and their legal characteristics, pointing out: "It will review certain subject matter which you may have studied in a first year property course." If the student did not learn well the fundamentals of future interests in his first year property course, he is given a second chance to do so by the excellent treatment thereon provided by this book: the textual material, cases and problems made available to him are outstanding. Additionally, the authors make clear that the materials are not designed for a study of conveyancing or of feudal law, but are concerned essentially with problems of future interests in current estates practice such as planning, litigation and fiduciary administration, and dealing with, primarily, the provisions of principal on the termination of a trust.

Looked at from the point of view of a student taking the advanced course in future interests, a student who usually will have been one or two years away from his first year property course, this book provides an excellent tool for refreshing his recollection of matters he may or should have learned concerning future interests. This is even more true in the case of a lawyer many years removed from law school who now finds it necessary to master an area of the law which previously he may have considered obnoxious, unimportant or unintelligible. This book, by way of a prelude to every chapter, gives a concise and authoritative review of

the basic principles leading to a consideration of the more complex problems that follow. So it is fair to say the authors have virtually led the student by the hand in an easy transitional approach to the subjects primarily considered in the book.

The scope of this book's coverage and its excellent arrangement is best revealed by noticing the authors' own labelling of the contents of each of the eight chapters:

- Chapter 1. Historical Background and Characteristics of Future Interests.
- Chapter 2. An Introduction to Some Rules Restricting the Creation of Future Interests
- Chapter 3. Introduction to Construction and Drafting
- Chapter 4. Requirement of Survival Preview: Some Recurring Constructional Situations
- Chapter 5. Construction of Class Gifts.
- Chapter 6. Miscellaneous Problems of Construction.
- Chapter 7. Powers of Appointment.
- Chapter 8. Rule Against Perpetuities.

The format used in the presentation of the materials in each of the chapters is interesting, uniform and effective in imparting to the reader what is to follow, thereby permitting him more readily to focus his attention on the primary and vital matters to be considered.

An example of the foregoing is found in the following caveat of the authors in Chapter 3:

This chapter and the three that follow it are concerned with construction of dispositive provisions involving future interests and, conversely, with their drafting. Your attention is initially directed through cases and problems to the handling of constructional problems in litigation. In this context, you should consider the functions of construction and of rules of construction; whether particular rules and the judicial treatment of these rules are satisfactory, including as a basis for counseling the various persons concerned with a particular constructional issue.

Throughout these chapters, attention should also be directed to the question of how the draftsman could better have handled the provision in question, for the recurring constructional problems you will study are the product of inadequate drafting. . . It is risky business for the draftsman not to have some familiarity with the types of problems you are about to study.

The authors have included throughout the book a fairly extensive and wise selection of pertinent statutes and excerpts from authoritative legal writings, thus facilitating its use.

In sum, this is a very good book and successfully carries out the goals announced by the authors. I would like it in my own library

as a helpful companion in a very difficult area of the law. It is a good learning tool as well as an effective tool.

WADIEH S. SHIBLEY*

* Wadieh S. Shibley is a Professor of Law at Pepperdine University School of Law.

LEGAL SERVICES PLANS: APPROACHES TO REGULATION. Edited by Werner Pfennigstorf and Spencer Kimball. American Bar Foundation, 1151 E. Sixtieth St., Chicago, Ill., 60637. 1977. Pp. xxiv, 662. \$16.00

Legal service plans are designed to facilitate delivery of legal services to the large proportion of the population said to have difficulty obtaining such services. Because legal service plans in their present form are a relatively new phenomenon, existing regulatory regimes have not had sufficient time to adjust. In *Legal Services Plans: Approaches to Regulation*, the editors and contributors suggest regulatory approaches geared to the specific nature and risk involved in various types of plans.

The editors first analyze the organization, objectives, and operating practices of existing legal service plans. This analysis provides the basis for a discussion of the various objectives and methods of regulations and their relevance to the different types of plans. The editors recommend amendments to state insurance laws, laws governing automobile clubs, and amendments to the ABA Code of Professional Responsibility.

Seven of the book's chapters are from background papers examining various aspects of legal service plans. The first two deal with special regulatory regimes—the federal control of employee legal service plans and the treatment of legal service plans under federal antitrust laws. Two are concerned with the unique problems of special types of plans—legal assistance programs for students and legal benefits provided by automobile clubs. Three of the chapters provide an historical and comparative perspective of legal service plans—legal defense programs for the medical profession, regulation of health service plans, and the European experience in legal expense insurance.

The appendices contain a proposed model act to regulate legal expense insurance, German standard contract terms for legal expense insurance, an extensive bibliography, a list of plans and carriers, and a list of state laws relating to legal services plans.

The chapter describing the function and operation of various types of legal service plans will undoubtedly be of interest to attorneys and consumers of legal services. However, the chapters discussing the regulatory aspects of legal service plans are rather technical and will probably be of interest only to those directly involved in such activities. In light of the increase in the number of

attorneys and the likelihood that a substantial portion of legal services in the future will be provided through one form or another of legal services plans, all members of the legal profession should be vitally concerned with this book and its recommendations for regulating legal service plans.

***JAY E. GRENIG**

* Jay E. Grenig is an Associate Professor of Law and Director of Continuing Education at Pepperdine University School of Law.