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Materials on Reorganization, Recapitalization and Insolvency. by Walter J. Blum and Stanley A. Kaplan.

Lawrence P. King
New York University

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MATERIALS ON REORGANIZATION, RECAPITALIZATION AND INSOLVENCY. By Walter J. Blum and Stanley A. Kaplan. Boston: Little, Brown and Company. 1969. xxi + 868 pages. \$13.50.

LAWRENCE P. KING*

This classroom tool is the latest revision of earlier materials dated 1948, 1956 and 1960.¹ In essence, it wends its way through the restructuring of corporate entities within and without a proceeding under the Bankruptcy Act, due to or disconnected from the ill of insolvency. Depending on the structure of a particular course on Corporate Reorganization, a value judgment will have to be made as to the point of commencement into this area, and which omissions are most appropriate. While the materials contained in the book are excellent, the instructor will find a need to supplement them in some cases, and omit parts in other instances, depending upon his particular course.

To give just a brief description of the coverage of the book, in addition to the materials pertaining to reorganization under the Bankruptcy Act there are included sections dealing with mergers, acquisitions, rights of dissenting stockholders, reorganization under the Public Utility Holding Company Act, railroad reorganizations and mergers, regulation of public utility rates, and even wage earner proceedings under chapter XIII of the Bankruptcy Act. Although some of the others are rather broadly interrelated, it is unclear why the last mentioned subject was included at all. And how an instructor is to broach the subject of wage earner proceedings in the midst of rather heady discussions of complex corporate problems is perhaps inexplicable. It may be that the general idea was to give a bird's-eye view of the Bankruptcy Act in its entirety, but because so many other areas are included having nothing to do with a bankruptcy proceeding in any of its aspects, it certainly seems to have been an unnecessary inclusion. Of course, the easy answer is that if it does not fit, anyone using the book may omit any reference to it. But where one has to say at the beginning of class, "the following parts of the book will be omitted" either he looks foolish in the way he has structured the course, or he looks foolish in settling upon the particular book for use in that course.

One general statement by way of providing some description of the book may well be made. The approach taken by the editors is distinctly weighted toward the economic and financial aspects of corporate reorganizations, rather than what could be labeled purely procedural problems. The materials, of which there is a generous amount, perhaps even more than cases, and which include excerpts from articles, speeches, reports of the Securities and Exchange Commission, and the like, focus on this approach in all parts of the book. This is

* Professor of Law, New York University.

1. As mentioned on p. vii: "A not insubstantial part of these materials previously appeared in Blum, *Materials on Insolvency and Reorganization*, 1960. This collection was a revision of the 1956 edition of these materials and of Blum and Katz, *Materials on Reorganization*, 1948."

pointed out not by way of criticism, but rather to indicate the essence of the book. Thus, if one wanted to consider a rather important current problem involving the consolidation of proceedings under the Bankruptcy Act involving subsidiary or affiliated companies, one would find the materials sparse indeed to give it any consideration. On the other hand, there is some consideration of the appropriate relief problem, whether a corporation should be put through a chapter XI arrangement or a chapter X reorganization by the inclusion of the *United States Realty and Improvement Co.*,² *Shlensky*,³ and *American Trailer Rentals*⁴ cases, all decisions of the United States Supreme Court. But there is no follow-through of the procedural, even economic problems raised by these decisions. One might well be left with the impression, from a mere recital of these decisions, that stockholders' rights are adequately, perhaps fully, preserved if the corporation is forced into a chapter X reorganization instead of being permitted an arrangement under chapter XI as desired by the debtor and its creditors.⁵ Investigation of lower court cases, however, proves the fallacy of so broad an assumption.⁶ It would have been worthwhile to devote some pages to a discussion of the availability of new money when a proceeding is switched from chapter XI to chapter X, in the attitude of creditors toward one or the other, and to the fact that stockholders' rights can, in actuality, be completely wiped out through such a change, either because creditors or new investors will acquire the stock, or the company will be adjudicated bankrupt and liquidation will ensue. Without even some note following these cases to raise such questions, the instructor is left completely to his own imagination and devices. In addition, this location in the book would have been an excellent place for the inclusion of a brief excursion into the basic differences between chapter X and chapter XI proceedings, although some indication of them may be gleaned from the cases mentioned.

Reviewing a casebook or a "materials" book is, for the most part, an impossible task. The essential question the reviewer must respond to is whether or not the book is a good or useful tool for an instructor to assign to his class as the daily source material around which the classroom discussion centers. This reviewer is really not capable of answering that basic question or offering advice as to the general utility of the book in the classroom. There are several reasons. First, I am not sufficiently knowledgeable to make a value judgment on all the materials covering what in some schools would be within the ambit of courses

2. *SEC v. United States Realty and Improvement Co.*, 310 U.S. 434 (1940), p. 221.

3. *General Stores Corp. v. Shlensky*, 350 U.S. 462 (1956), p. 321.

4. *SEC v. American Trailer Rentals Co.*, 379 U.S. 594 (1965), p. 236.

5. A chapter XI arrangement proceeding may affect only the rights of unsecured creditors. A chapter X reorganization may affect the capital structure and the secured indebtedness as well as the unsecured debt of the debtor corporation. In chapter X, the court generally must appoint a disinterested trustee to administer the debtor and the SEC is usually a party or has the option of becoming one while neither would occur in a chapter XI proceeding.

6. See, e.g., *In re Herold Radio & Electronics Corp.*, 191 F. Supp. 780 (S.D.N.Y. 1961); Weintraub & Levin, *From United States Realty to American Trailer Rentals: The Availability of Debtor Relief for the Middle-Sized Corporations*, 34 *FORDHAM L. REV.* 419, 429 (1966).

and seminars devoted to corporate law in all its aspects, as distinguished from general insolvency law. Second, individualistic teaching styles must be considered and personal prejudices taken into account. For example, I would rather approach the general subject matter covered by this book from a purer problem method technique. All areas of general commercial practice today are peculiarly susceptible to a problem method approach, and my personal bias is much more favorable toward teaching tools which make this attempt rather than toward those which are more traditional. There are, accordingly, an insufficient number of problems in this book for my taste, but that is a purely personal matter. Third, it is too early for me, as a reviewer, to state baldly that the book contains too much and too little. In teaching a course in this area I personally would not be able to assign this book because there would be too much to be omitted from it and too much that would have to be added to it. Thus, how can a reviewer suggest to other instructors that they should or should not adopt the particular book? All that can be said, but which adds little, is that the book exists and it contains thus and so.

One caveat of a peculiar nature should be expressed. The statutory appendix contains, among other things, excerpts from the Bankruptcy Act. It should be noted, however, that some of the sections of the Act are set forth inaccurately in that they do not reflect 1966 and 1967 amendments made to these particular sections. For example, section 2 does not contain added paragraph (2A); section 64a(4) does not contain the 1966 amendment while, inexplicably, section 64a(5) does; the inclusion of section 67 is very poorly drafted in that section 67b does not reflect the change made in 1966 and immediately following it is part of section 67d without any indication that it comes from paragraph *d* instead of paragraph *b*; section 70c does not reflect the 1966 change; and, sections 334 and 337 do not indicate the 1967 amendments made thereto. I have been informed that an errata sheet has been mailed out, which I have not seen, to correct various errors in the book itself but apparently none of the statutory inaccuracies have been noticed.

