

# HARVARD LAW REVIEW

FEBRUARY, 1939

---



---

## LEADING ARTICLES

TRANSFER AGENT'S DILEMMA: CONFLICTING CLAIMS TO SHARES OF STOCK . . . . .	<i>Frank L. Dewey</i> . . . . .	553
JUSTICES AS JUDGES OF CRIMINAL LAW . . . . .	<i>Mark DeWolfe Howe</i> . . . . .	582
SALES TAX IN INTERSTATE COMMERCE . . . . .	<i>William B. Lockhart</i> . . . . .	617
<hr/>		
FEDERAL WAGES AND HOURS ACT . . . . .		646

COMPLETE TABLE OF CONTENTS OF THIS ISSUE  
ON PAGES V AND VI

---



---

Published Monthly November to June Inclusive. Entered at Norwood Post Office as second-class matter  
 PER ANNUM IN ADVANCE . . . . . 75 CENTS PER NUMBER  
 FOREIGN SUBSCRIPTIONS, \$5.00, 85 CENTS PER NUMBER

Copyright, 1939, by THE HARVARD LAW REVIEW ASSOCIATION

Printed at . . . . . 161 Lenox Street, Norwood, Mass., U.S.A.  
 Editorial and Executive Office . . . . . Gannett House, Cambridge, Mass., U.S.A.

# HARVARD LAW REVIEW

VOLUME LII

FEBRUARY, 1939

NUMBER 4

## CONTENTS

LEADING ARTICLES	PAGE
The Transfer Agent's Dilemma: Conflicting Claims to Shares of Stock . . . <i>Frank L. Dewey</i> . . .	553
Juries as Judges of Criminal Law . . . <i>Mark DeWolfe Howe</i>	582
The Sales Tax in Interstate Commerce . . . <i>William B. Lockhart</i>	617
NOTES AND LEGISLATION	
The Federal Wages and Hours Act . . . . .	646
RECENT CASES	
Administrative Law — Procedure — NLRB Order Remanded to Correct Procedural Irregularity ( <i>Ford Motor Co. v. NLRB</i> , U. S. Sup. Ct. 1939) . . . .	680
Bankruptcy — Duties of Trustee — Personal Liability for Failure to Pay Known Tax Claims ( <i>Lyman County v. Scott</i> , N. D. 1938) . . . . .	681
Bankruptcy — Railroad Reorganization — Measure of Damages under Section 77 for Rejection of Lease ( <i>Connecticut Ry. &amp; Lighting Co. v. Palmer</i> , U. S. Sup. Ct. 1939) . . . . .	682
Conflict of Laws — Jurisdiction of Courts: Divorce — Application of <i>Res Judicata</i> to Prevent Collateral Attack on Jurisdiction of Subject Matter ( <i>Davis v. Davis</i> , U. S. Sup. Ct. 1938) . . . . .	683
Constitutional Law — Municipal Corporations — Statute Giving City Lien for Improvements to Tenements Prior to Existing Mortgages Held Unconstitutional ( <i>Central Savings Bank et al. v. City of New York</i> , N. Y. 1938) . . . . .	684
Constitutional Law — Operation and Enforcement of Constitutions — Standing to Protest against Federal Competition ( <i>Tennessee Electric Power Co. v. TVA</i> , U. S. Sup. Ct. 1939) . . . . .	686
Contracts — Consideration: Validity — Extension of Maker's Notes as Consideration for His Assumption of Note of Another ( <i>Schaefer v. First Nat. Bank of Findlay</i> , Ohio 1938) . . . . .	687
Copyrights — Infringement — Owners of Copyright Play Awarded Entire Profits of Infringing Motion Picture ( <i>Sheldon v. Metro-Goldwyn Pictures Corp.</i> , S. D. N. Y. 1938) . . . . .	688
Corporations — Contracts — Corporation Held Entitled to Ignore Terms for Repayment and Recover Money Lent to Officer in Violation of Statute ( <i>Cold Metal Process Co. v. Steckel</i> , Ohio App. 1938) . . . . .	689
Damages — Exemplary Damages — Allowance of Punitive Damages to Conditional Vendee for Trespass Committed in Repossession ( <i>Commercial Credit Co. v. Spence</i> , Miss. 1938) . . . . .	690
Income Taxes — Collection and Enforcement — Suspension of the Period of Limitations on Assessment of the Liability of Transferees ( <i>United States v. Continental Nat. Bank &amp; Trust Co.</i> , U. S. Sup. Ct. 1939) . . . . .	691

Income Taxes — Constitutional Law — Retroactive State Income Tax Held Valid under Federal Constitution ( <i>Welch v. Henry</i> , U. S. Sup. Ct. 1938) . . .	693
Interstate Commerce — Carriers: Regulation of Rates — Discrimination between Shippers by Providing Nontransportation Services at Less than Cost ( <i>Baltimore &amp; O. R. R. v. United States</i> , U. S. Sup. Ct. 1939) . . . . .	693
Interstate Commerce Commission — Authority of Commission to Condition Approval of Proposed Railroad Lease upon Acceptance of Provisions to Protect Adversely Affected Employees ( <i>Chicago, R. I. &amp; Gulf Ry. Trustees Lease</i> , ICC, Division 4, 1938) . . . . .	694
Labor Law — National Labor Relations Act — Abrogation of Contracts Signed during Pendency of NLRB Proceedings ( <i>Consolidated Edison Co. of N. Y. v. NLRB</i> , U. S. Sup. Ct. 1938) . . . . .	695
Taxation — Contracts — Recovery of Sum Paid under Mistake of Law in Compromise Settlement Allowed ( <i>Cloister Printing Corp. v. United States</i> , C. C. A. 2d, 1938) . . . . .	696
Trade-marks and Trade Names — Descriptive Words Held Registerable under the 1920 Trade-mark Act — Federal Jurisdiction over Unfair Competition Obtained through Question as to Validity of Trade-mark ( <i>Armstrong Paint &amp; Varnish Works v. Nu-Inamel Corp.</i> , U. S. Sup. Ct. 1938) . . . . .	697
Trial — Evidence — Federal Judge's Expression of Opinion on Merits Held to Abridge Right to Jury Trial ( <i>United States v. Meltzer</i> , C. C. A. 7th, 1938) . .	698

## BOOK REVIEWS

Prusnitz: The Standardization of Commercial Contracts in English and Continental Law . . .	<i>K. N. Llewellyn</i> . . . . .	700
Nékám: The Personality Conception of the Legal Entity . . . . .	<i>Max Radin</i> . . . . .	706
Moore and Friedman: Moore's Federal Practice . . . . .	<i>E. M. Morgan</i> . . . . .	708
Obering: The Philosophy of Law of James Wilson } Burns: James Madison: Philosopher of the Con-stitution . . . . . }	<i>Benjamin F. Wright, Jr.</i> . . . . .	709
Powell: Registration of the Title to Land in the State of New York . . . . .	<i>Percy Bordwell</i> . . . . .	711
Dix: The Law Relating to Competitive Trading . . . . .	<i>Nathan Isaacs</i> . . . . .	712
Thornley: Year Books of Richard II: 1387-1388 . . . . .	<i>William Huse Dunham, Jr.</i> . . . . .	714
Abbott: The Child and the State . . . . .	<i>Geoffrey May</i> . . . . .	715
Griffith: History of American City Government: The Colonial Period . . . . .	<i>Harold J. Laski</i> . . . . .	716
Seidman: Legislative History of Federal Income Tax Laws: 1938-1861 . . . . .	<i>Erwin N. Griswold</i> . . . . .	718
Montgomery: Federal Taxes on Estates, Trusts, and Gifts. 1938-1939 . . . . .	<i>Erwin N. Griswold</i> . . . . .	719
Fowler: Revenue Bonds . . . . .	<i>Oscar W. Haussermann</i> . . . . .	719
Lockmiller: Sir William Blackstone } Warden: The Life of Blackstone . . . . . }	<i>Theodore F. T. Plucknett</i> . . . . .	721

BOOK NOTES . . . . .	722
----------------------	-----

BOOKS RECEIVED . . . . .	724
--------------------------	-----