

# HARVARD LAW REVIEW

---

JUNE, 1948

**SAY IT WITH MUSIC . . . . .** *Jerome Frank*

**RECENT DEVELOPMENTS IN NONTAXABLE  
REORGANIZATIONS AND STOCK DIVIDENDS . . . . .** *Norris Darrell*

**THE LAW MERCHANT AND THE LETTER OF  
CREDIT . . . . .** *Rufus James Trimble*

COMPLETE TABLE OF CONTENTS, PAGES IV AND V

# HARVARD LAW REVIEW

VOLUME LXI

JUNE, 1948

NUMBER 6

## CONTENTS

### LEADING ARTICLES

- Say It with Music . . . . . *Jerome Frank* . . . . . 921
- Recent Developments in Nontaxable  
Reorganizations and Stock Divi-  
dends . . . . . *Norris Darrell* . . . . . 958
- The Law Merchant and the Letter of  
Credit . . . . . *Rufus James Trimble* . . . . . 981

### NOTES

- Accounting Principle v. Tax Practice: Treatment of Deferred Credits  
and Reserves . . . . . 1010
- Predictability of Result in Commercial Arbitration . . . . . 1022
- The Commissioner Unbound: Waning of State Property Decrees and  
Emergence of a Control Criterion in Federal Taxation . . . . . 1033
- Here Endeth Chapter X — A Lesson in Finality for Investors . . . . . 1042

### RECENT CASES

- Air Law** — Civil Aeronautics Act — Order of CAB Approved by the President Not  
Subject to Judicial Review (*Chicago & So. Air Lines, Inc. v. Waterman S. S. Corp.*,  
U. S. 1948) . . . . . 1053
- Brokers** — Commissions — Broker May Recover from Prospective Purchaser Who  
Defaults on Contract with Vendor (*Chiple v. Morrell*, N. C. 1947) . . . . . 1054
- Conflict of Laws** — Jurisdiction: in General — English Court Determines Title  
to Spanish Land (*Re Duke of Wellington*, C. A. 1947) . . . . . 1055
- Corporations** — Duties of Directors — Personal Liability of Shareholder-Directors  
for Accumulating Earnings Which Led to Subjection of the Corporation to § 102  
Taxes (*Mahler v. Oishei*, N. Y. Sup. Ct. 1947) . . . . . 1058
- Corporations** — Rights of Minority Stockholders — Merger with Wholly-Owned  
Subsidiary May Destroy Right to Accrued Preferred Dividends despite Charter  
Provision to Contrary (*Langfelder v. Universal Laboratories, Inc.*, C. C. A. 3d  
1947) . . . . . 1060
- Corporations** — Rights of Stockholders — Upon Transfer of His Stock, President  
of Corporation Permitted to Retain Voting Rights to Conduce Continuation of  
His Services (*Ecclestone v. Indialantic, Inc.*, Mich. 1947) . . . . . 1062
- Inheritance Taxes** — Property Subject to Tax — Appointment to Residue Made  
Property Subject to Pre-1942 Power Taxable although Residuary Legatees Turned  
out to Be Takers in Default (*Guaranty Trust Co. v. Johnson*, C. C. A. 2d 1948) . . . . . 1063

<b>Inheritance Taxes</b> —Reserved Power to Accumulate Income during Life of Settlor-Trustee Held to Force Inclusion of Trusts in Settlor's Gross Estate ( <i>Industrial Trust Co. v. Commissioner</i> , C. C. A. 1st 1947) . . . . .	1065
<b>Labor Law</b> —Constitutional Law—Freedom of Speech—Constitutionality of Taft-Hartley Prohibition of Secondary Picketing Upheld in District Courts ( <i>Le Baron v. Printing Specialties &amp; Paper Converters Union</i> , S. D. Cal. 1948) . . . . .	1067
<b>Labor Law</b> —Labor Management Relations Act, 1947—District Courts Held Injunctive Relief Available to Private Litigants under Taft-Hartley Act ( <i>Textile Workers v. Amazon Cotton Mills</i> , M. D. N. C. 1947; <i>Dixie Motor Coach Corp. v. Amalgamated Ass'n of Street, Elec. Ry. &amp; Motor Coach Employees</i> , W. D. Ark. 1947) . . . . .	1068
<b>Labor Law</b> —Statutes and Interpretation—Union Entitled to Review of Order Determining Bargaining Unit on Appeal from Dismissal of Its Subsequent Unfair-Labor-Practice Charge ( <i>Newspaper &amp; Mail Deliverers' Union v. Kelley</i> , N. Y. Sup. Ct. 1947) . . . . .	1070
<b>Process</b> —Securities Act of 1933—Extrastate Service upon Third-Party Defendants Permitted whether Liability Was Asserted under Statute or under Contract of Indemnity ( <i>Müller v. Hano</i> , E. D. Pa. 1947) . . . . .	1072
<b>Securities Acts</b> —Holding Company Act—SEC Held Authorized to Issue § 11(b) Order before Full Consideration of Pending § 11(e) Plan ( <i>Northern States Power Co. v. SEC</i> , C. C. A. 3d 1947) . . . . .	1074
<b>Torts</b> —Federal Tort Claims Act—Waiver of Governmental Immunity Held Not to Include Suit by Insurer-Subrogee ( <i>Bewick v. United States</i> , N. D. Tex. 1947) . . . . .	1076
<b>Venue</b> —FELA Venue Provision Does Not Relieve Nonresident Plaintiff from Posting Security for Costs in Accordance with the Court's Procedural Rules ( <i>Grant v. Pennsylvania R. R.</i> , S. D. N. Y. 1948) . . . . .	1077

## BOOK REVIEWS

Lake: Discrimination by Railroads and Other Public Utilities . . . . .	<i>Talcott M. Banks, Jr.</i>	1079
Evatt: The United Nations . . . . .	<i>Louis B. Sohn</i>	1082
Hays: Cases and Materials On Civil Procedure . . . . .	<i>Mason Ladd</i>	1084
Rostow: A National Policy for the Oil Industry . . . . .	<i>Sidney S. Alexander</i>	1088

## BOOK NOTES

Koo: Voting Procedures in International Political Organizations . . . . .	1093
New York University Institute on the Federal Administrative Procedure Act and the Administrative Agencies . . . . .	1093
Hinc: Confessions of an Un-Common Attorney . . . . .	1094
Carrow: The Background of Administrative Law . . . . .	1095
Americano: The New Foundation of International Law . . . . .	1095

## BOOKS RECEIVED . . . . . 1096

The HARVARD LAW REVIEW is published eight times a year (November, January, February, April, May, June, July, September) at Gannett House, Cambridge, Mass. (Application for transfer of second-class entry from Norwood, Mass., to Boston, Mass., is pending.)

Subscriptions: \$5.50 per annum payable in advance, \$1.00 a number; foreign: \$6.00 per annum payable in advance, \$1.10 a number.