



# THE VALUATION OF PROPERTY

*A Treatise on the Appraisal of Property  
for Different Legal Purposes*

VOLUME I

BY

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**THE VALUATION OF PROPERTY**  
**VOLUME I**

Another Book on Valuation  
published under the auspices of the  
Columbia University Council  
for Research in the Social Sciences

VALUATION  
UNDER THE LAW OF EMINENT DOMAIN

A Complete Coverage of the Law of Valuation under Eminent  
Domain Based on an Analysis of the Reported Court  
Decisions and Commission Cases and on a General  
Study of All Types of Valuation of Property by  
the Courts.

Two Volumes — Second Edition

By LEWIS ORGEL  
*Registrar of the City of New York*

PUBLISHED BY  
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*To*

IRVING W. BONBRIGHT

*with Appreciation and Affection*

## PREFACE

This treatise presents the results of a research in legal and economic theories of property valuation, prepared under the direction of the author and under the auspices of the Columbia University Council for Research in the Social Sciences. As with all other studies supported by the Council, the analysis and conclusions are those of the author and his associates, who alone assume responsibility therefor.

Although the present work covers almost the entire study, it omits a detailed treatment of several of the topics to which we have devoted separate monographs or articles. A list of these publications is given below. To the titles of three of the articles are attached asterisks in order to indicate that they are so largely reprinted in this work as hardly to repay the attention of the present reader. Acknowledgments are due to the Columbia Law Review for kind permission to reprint.

### MONOGRAPHS

*Public Utility Valuation.* By John Bauer and Nathaniel Gold. New York, The Macmillan Company, 1934.

*Stock Watering: The Judicial Valuation of Property for Stock-Issue Purposes.* By David L. Dodd. New York, Columbia University Press, 1930.

*Valuation under the Law of Eminent Domain.* By Lewis Orgel. Charlottesville, Va., The Michie Co., 1936.

### ARTICLES

"The Amount Available for Dividends Where No-par Shares Have Been Issued," by Joseph L. Weiner, 29 *Columbia Law Review* 906-919 (1929).

"Balance-sheet Valuations in German Law," by Joseph L. Weiner, 48 *Journal of Accountancy* 195-206 (1929).

"The Breakdown of 'Present Value' as a Basis of Rate Control," by James C. Bonbright, 15th *Proceedings, Academy of Political Science* 75-80 (1930).

"The Concept of Depreciation as an Accounting Category," by James C. Bonbright, 5 *The Accounting Review* 117-124 (1930).

"Conflicting Functions of the Upset Price in a Corporate Reorganization," by Joseph L. Weiner, 27 *Columbia Law Review* 132-156 (1927).

"Depreciation and Valuation for Rate Control," by James C. Bonbright, published simultaneously in 41 *Quarterly Journal of Economics* 185-211 (1927) and 27 *Columbia Law Review* 113-131 (1927).

"Money as a Device for Measuring Value," by Simon H. Rifkind, 26 *Columbia Law Review* 559-587 (1926).

"Payment of Dissenting Stockholders," by Joseph L. Weiner, 27 *Columbia Law Review* 547-565 (1927).

"The Problem of Judicial Valuation," by James C. Bonbright, 27 *Columbia Law Review* 493-522 (1927).

"Progress and Poverty in Current Literature on Valuation," by James C. Bonbright, 40 *Quarterly Journal of Economics* 295-328 (1926). (Confined to valuation for rate-making purposes.)

"Railroad Valuation with Special Reference to the O'Fallon Decision," 28 *American Economic Review Supplement* 181-216 (1928). Simultaneously published in somewhat revised form under the title "The Economic Merits of Original Cost and Reproduction Cost," 41 *Harvard Law Review* 593-622 (1928).

"A Survey of the Problem of Valuation," by James C. Bonbright, 20th *Proceedings, National Tax Association* 15-25 (1927).

"Theory of Anglo-American Dividend Law," by Joseph L. Weiner, 28 *Columbia Law Review* 1046-1060 (1928), 29 *ibid.* 461-483 (1929), 30 *ibid.* 330-358 (1930).

"Two Rival Theories of the Priority Rights of Security Holders in a Corporate Reorganization," by James C. Bonbright and Milton M. Bergerman, 28 *Columbia Law Review* 127-165 (1928).

"Valuation of Property to Measure Fire-insurance Losses," by James C. Bonbright and David Katz, 29 *Columbia Law Review* 857-900 (1929).

"The Valuation of Real Estate for Tax Purposes," by James C. Bonbright, 34 *Columbia Law Review* 1397-1438 (1934).

"Valuation to Determine Solvency under the Bankruptcy Act," by James C. Bonbright and Charles Pickett, 29 *Columbia Law Review* 582-622 (1929), reprinted in 34 *Commercial Law League Journal* 684, 751 (1929).

"Value and Vested Rights," by Robert L. Hale, 27 *Columbia Law Review* 523-529 (1927).

"Value to the Taker in Condemnation Cases," by Robert L. Hale, 31 *Columbia Law Review* 1-31 (1931).

"What Is Fair Value in Taxation?" by Simon H. Rifkind, 19th *Proceedings, National Tax Association* 305-313 (1926).

Other publications by members of our staff, while not formal contributions to this research, may be noted for their discussions of value theory: Professor Robert L. Hale's book on *Valuation and Rate Making* (New York, 1918); his portion of Smith, Dowling and Hale's *Cases on the Law of Public Utilities* (rev. ed., St. Paul, 1936); the author's article on "Valuation" in the *Encyclopedia of the Social Sciences*; his monograph on *Railroad Capitalization* (New York, 1920); and his portion of the Minority Report of the New York State Commission on the Revision of the Public Service Commissions Law (Albany, 1930). Professor David L. Dodd is co-author with Mr. Benjamin Graham of a book on *Security Analysis* (New York, 1934), which discusses the valuation of corporate securities. The official



Report on Law and Procedure in Condemnation Applicable to Proceedings Brought by the City of New York (New York, 1932), by Hon. Leonard M. Wallstein, reflects many of the views of Mr. Lewis Orgel, whose studies and services were loaned by the research to Mr. Wallstein for this investigation.

It may be in point to mention the relationship between this study and other studies published under the auspices of the Columbia University Council. That by Professor Adolf A. Berle, Jr., and Dr. Gardiner C. Means, on *The Modern Corporation and Private Property* (New York and Chicago, 1932), raises issues as to asset valuation and security valuation, some of which are discussed here. Jointly with Miss Victoria J. Pederson, Professor Berle also published a book on *Liquid Claims and National Wealth* (New York, 1934), which goes further than we have gone in raising certain implications as to the significance of market values. Professors Robert M. Haig and Roswell Magill are directing a research on the concepts of taxable income, one portion of which has already been published: Magill, *Taxable Income* (New York, 1936). The close connection between the theory of income and the theory of value is well recognized by economists, and the newer study will doubtless clarify many issues inadequately treated in the present work.

So many of the author's colleagues and former students have participated in this study that it is impossible to assign proper credit to each individual.

Without the constant cooperation of Mr. Joseph L. Weiner of the New York Bar, this book could not have been written in its present form. The chapters on the law of damages, on the law of dividends, on suits by dissenting stockholders, on the law of reorganization, and on the valuation of corporate stock under the Federal income tax, are largely based on his studies; and many portions of them have been written by him. His criticisms and suggestions have influenced the entire treatise. At present he is Counsel to the Board of Transportation of the City of New York.

The separate treatise on *Valuation under the Law of Eminent Domain*, by Mr. Lewis Orgel of the New York Bar, forms the basis of the summary of this subject presented in Chap. XVI of the present work. Mr. Orgel is now Assistant Corporation Counsel of the City of New York, in charge of important condemnation cases.

The untimely death of Mr. Charles S. S. Epstein of the New York Bar was a serious loss to the research staff and to the legal profession. A large part of the chapters on tax valuations was prepared by him, as was a portion of our study in the law of damages.

Mr. David Katz of the New York Bar is co-author of the article on "Valuation of Property to Measure Fire Insurance Losses," which is almost completely reprinted as Chap. XV. He also contributed much to the damage study.

Mr. Simon H. Rifkind of the New York Bar, in addition to writing the articles noted above, was a major contributor to the chapters on tax valuations.

Mr. Charles J. Pickett of the New York Bar prepared the material for the article on valuation as a test of solvency, which is now substantially reprinted as Chap. XXII.

The separate volume on *Stock Watering*, by Professor David L. Dodd of the Columbia University School of Business, is the only comprehensive study that has yet been made of valuation for stock-issue purposes. His conclusions are summarized in Chap. XXIII.

Mr. Milton M. Bergerman of the New York Bar is co-author of the separate article on corporate reorganization, which discusses a controversial legal theory mentioned in Chap. XXV. He also contributed to the study of the damage cases.

Mrs. Dorothy Maggs prepared much of the material for the study of public-utility condemnations and for the references to the British condemnation law.

Mr. Warren H. Lowenhaupt of the New York Bar initiated the study of eminent domain, which he was prevented from concluding because of his appointment as secretary to the late Judge Bijur of the New York Supreme Court.

The separate article on "Value to the Taker," by Professor Robert L. Hale of Columbia University, furnishes our analysis of this aspect of the law of condemnation, discussed in Chap. XVI and in Mr. Orgel's book on eminent domain.

Mr. Carlos L. Israels of the New York Bar contributed reports used in the chapters on the law of damages.

Dr. Gardiner C. Means' call to Washington terminated his brief membership on the research staff. But his critical analysis of the chapters on value concepts have led to material revisions in this part of the treatise.

Dr. John Bauer and Mr. Nathaniel Gold prepared the monograph on valuation for purposes of rate control. While the chapters on the same subject in the present treatise (Chaps. XXX and XXXI) present the independent views of the author, they reveal few conflicts on major issues.

Mr. Morton Liftin of the New York Bar participated in the revision of the chapters on property taxation.

Miss Elizabeth Sanford initiated the study of tax assessments under the unit rule.

Mr. Benjamin Goldring of the New York Bar collaborated with the author in completing Chaps. XVII, XVIII, and XIX, on tax valuations.

Messrs. Myron N. Krotinger and Milton Sandberg prepared the material for the sections of Chap. XXV dealing with corporate reorganizations under Secs. 77 and 77B of the Bankruptcy Act. They also made valued contributions to Chaps. XIII and XIV, on the law of damages.

The brief acknowledgments that follow by no means adequately express the author's indebtedness to colleagues and other specialists for important advice and criticisms: In accountancy, to Mr. Howell A. Inghram and Professor Roy B. Kester of Columbia University, and to Mr. George O. May of Messrs. Price, Waterhouse & Co.; in appraisal, to Messrs. J. W. Cunningham and L. H. Olson of the American Appraisal Company; in bibliography, to Mr. Walter Hausdorfer and his staff in the library of the Columbia University School of Business; in fire-insurance appraisals, to Mr. H. R. Bassford of the Metropolitan Life Insurance Company, to Professor Ralph H. Blanchard of Columbia University, and to Mr. Prentiss B. Reed of the firm of Wagner & Glidden; in the law of damages, to Professor Charles T. McCormick of the Northwestern University School of Law; in the law of evidence, to Professor Jerome Michael of Columbia University; in the law of real property, to Professor Richard R. B. Powell of Columbia University; in the mathematics of finance, to Professors Harold Hotelling and John A. Northcott of Columbia University; in taxation, to Professors Robert M. Haig, Roswell Magill, and Carl S. Shoup of Columbia University, to Hon. Barnet Hodes, Corporation Counsel of the City of Chicago and former member of the Illinois State Tax Commission, to Dr. Arthur H. Kent and associates in the Federal Department of Internal Revenue, and to Mr. David C. Krakauer and Commissioner Jacob Manicoff of the New York State Department of Taxation and Finance; and in many legal problems, to Professor Hastings Lyon of Columbia University. At the inception of the study, Professor Karl Llewellyn of Columbia University took part in the staff conferences and presented points of view that have been fundamental to the preparation of the entire treatise. To Miss Anna D. Hynd of Columbia University the author is indebted for her able superintendence of the secretarial work.

NEW YORK, N. Y.,  
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JAMES C. BONBRIGHT.

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