

## Who Is Adolf Berle, Jr. And Why Is Vice Chancellor Laster Quoting Him? re: Corporate Powers

Article By:

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Adolf A. Berle, Jr. wrote *Corporate Powers as Powers in Trust* more than four score years ago, but Vice Chancellor J. Travis Laster cited the article yesterday as if the Harvard Law Review had published it last week. *Quadrant Structured Products Co., Ltd. v. Vertin* (C.A. No. 6990-VCL) (Oct. 28, 2014). Here's the quotation from Berle:

in every case, corporate action must be twice tested: first, by the technical rules having to do with the existence and proper exercise of the power; second, by equitable rules somewhat analogous to those which apply in favor of a cestui que trust to the trustee's exercise of wide powers granted to him in the instrument making him a fiduciary.

44 Harv. L. Rev. 1049, 1049 (1931). Who was this Berle character and why is Laster quoting him?

Berle was an amazing person. He entered Harvard College in his nonage, being only fourteen years old. He graduated four years later, earned a masters degree and then entered Harvard Law School. He eventually teamed up with a relative late bloomer - Gardiner C. Means who matriculated at Harvard College at the ripe old age of eighteen. Together, the lawyer (Berle) and the economist (Means) wrote what is the most influential corporate law book ever - *The Modern Corporation and Private Property* (1932). This book popularized the "problem" of the separation of ownership from management. In the 1930's, Berle would become a member of President Franklin D. Roosevelt's "Brain Trust" and engage in a famous debate with Harvard Law School Professor Merrick Dodd over the nature of the corporation. Berle argued for shareholder primacy while Dodd argued that the public corporation had a social as well as profit purpose.

California courts haven't forgotten Berle. For example, the California Supreme Court cited Berle and Means in the seminal case of *Jones v. H.F. Ahmanson & Co.*:

Some have suggested that the price paid for control shares over their investment value be treated as an asset belonging to the corporation itself (Berle and Means, *The Modern Corporation and Private Property* (1932) p. 243) . . . .

1 Cal. 3d 93, 111 (Cal. 1969).

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