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BOOK REVIEWS

International Business Planning: Law and Taxation (United States) (3 Vol.)

by William P. Streng, Jeswald W. Salacuse and Matthew Bender, 1982*

International Business Planning: Law and Taxation (United States) is a three-volume discussion of the fundamental planning rules of international trade. Each of the work's eighteen chapters began with a textual discussion of the subject matter and are followed by a supplement containing transactional documents, required governmental forms, and other background material, including a bibliography.

Volume 1, entitled "The Framework of International Business," provides an overview of the international monetary, international trade, and international financial frameworks as well as gives a perspective on the international business environment — all necessary for the attorney who plans an international business or trade transaction. Chapter 5 discusses fourteen federal agencies and the roles in international business. The appendix to this chapter contains a directory of some of the key agencies. Volume 1 is the weakest of the volumes because it tries to cover too vast of a field and does not contain a discussion of the workings of antidumping, countervailing duties, and other means for persons engaged in U.S. international trade to protect their market from unfair competition.

Volume 2 is entitled "The Export Transaction." This volume appears at this juncture to be the strongest of the volumes. Chapter 7 discusses international sales agreements. Its appendix gives four types of contracts, a packing list, and two international conventions on international sales agreements. Chapters 8 and 9 discuss the transportation of exports and commercial letters of credit respectively. Chapter 10 completes volume 2 with a discussion of export credit-financing export sales. Chapter 10 not only gives a useful insight into the structure and operation of the Eximbank (in which Mr. Streng worked as deputy general counsel), but also provides a comparison between export financing in the U.S. and other major industrialized

*Mr. Streng is the author of *International Business Transactions—Tax and Legal Handbook* (Prentice-Hall, 1978), and co-author with William F. Gifford of *International Tax Planning* (2d ed. BNA Tax Mgmt., 1979). The latter has been considered the leading textbook in teaching international tax planning in law school.

governments. The appendix to chapter 10 has twenty-seven different items, ranging from the organization and telephone numbers at the Eximbank to export financing techniques of other industrial countries, documents of the Foreign Credit Insurance Association (FCIA), and Private Export Funding Corporation (PEFCO) Offering Circular.

Volume 3 starts with a chapter discussing representation and distribution abroad, a chapter which mixes well a discussion of legal with business and marketing techniques. Both authors' experience in international trade makes these and other chapters a combination of a well-written overview to tips on practical problems. A chapter of technology exports discusses how to license patents, know-how, trademarks and the like. Four chapters in volume 3 discuss tax planning: for branch sales operations and distributorships; export tax incentives (e.g., DISC); export profit sourcing and export income allocation rules; and technology transfer tax planning. Since Mr. Streng has vast experience in both the practice and the teaching of this subject, these chapters are excellent. The final two chapters in volume 3 contain a discussion of U.S. export controls and foreign import controls.

Future volumes will contain material on foreign investment. At present the volumes would be more appropriately entitled "International Trade Planning" since they focus primarily on international trade. A prominent asset of the treatise is that it covers an enormous amount of subjects in an integrated fashion. Because the treatise is new, and is written by only two authors, and covers so many subjects, there are many lacunae in the individual subject matter areas. However, since the treatise will be updated, many of these gaps can be corrected. The treatise, in addition to the useful appendices, is footnoted throughout, so that the reader can use it as a reference tool. The treatise should be useful for practitioners, teachers, and corporate counsel. The wide range of the materials especially make the treatise an excellent resource for teaching an introductory course of private international trade. It does not discuss in detail the government regulation of trade (e.g., antidumping and countervailing duties) although such subjects would be a useful addition to the treatise in the future.

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Benedict on Admiralty

Volumes 6A & 6B, edited by Michael Marks Cohen: Matthew Bender, 1983

In 1850, Erastus Benedict published the first edition of *Benedict on Admiralty* which admiralty lawyers and courts today revere as a foundational text. Few texts survive a century, fewer still are universally studied by one segment of the bar unknown to the rest. Although Benedict's twenty-one volume set is undeniably aimed at the admiralty practitioner, volumes 6A and 6B offer lawyers a key resource when faced with disputes extending beyond the United States' borders. In these volumes organized in a topical format, editor Michael Cohen collects documents of general interest to the international lawyers' bar. For instance, chapter 8 indexes documents related to arbitration; chapter 9, those related to procedural questions; chapter 10, those affecting territorial waters and the high seas; chapter 13, documents related to the effect of war on international law; chapter 14, those affecting the regulation of maritime commerce; and chapter 15, documents involving miscellaneous international trade issues.

Unfortunately, the chapter titles noted may not attract the attention of the bar. A review of the documents catalogued within the chapters, however, suggests their value. For instance, the arbitration documents address subjects such as: How does one execute upon a foreign arbitration award? Does the United States have an arbitration act; if so, what are its provisions? Are there any arbitration rules specifically applicable to international commercial matters generally or to commodities in particular?

Similarly the Procedures chapter lists documents raising issues such as: "What is the enforceability of civil and commercial judgments in international law? How is evidence taken abroad? Chapter 15, containing documents relevant to miscellaneous international trade issues, contains quite helpful tables on existing treaties between the United States and other countries which could effect international trade disputes. Revisions to volumes 6A and 6B currently under way will expand this reference list. Specific conventions (treaties) of particular interest listed in chapter 15 are those on products liability, conflict of laws concerning commercial companies and on contractual obligations.

A word of caution is perhaps in order at this point to the reader of this review. Volumes 6, 6A and 6B of *Benedict* are appendices collecting treaties and documents relevant to admiralty and international law generally. The volumes do not provide a "plot and character" development of the law because they are not intended as expositions of the law. They provide one resource, a roadmap of applicable treaties and agreements relevant to the consideration of international disputes. They are but the starting point in

the lawyer's research. They are, nonetheless, a valuable reference work which may be consulted by a lawyer having a problem extending beyond the boundaries of the United States.

It is not, perhaps, unfair to wish for changes to volume 6, 6A and 6B which might increase their value to the average reader. For instance, although volume 2 of *Benedict*, chapter 12, discusses treaty jurisdiction, those of the bar having limited exposure to international law might wish some introductory comment and explanations as to the nature and effect of treaties, protocols and conventions. But, recognizing the Herculean task of cataloguing and selecting relevant treaties for a convenient reference source, members of the bar could profit from a familiarity with the *Benedict* text.

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German Antitrust Law

by Rudolf Mueller, Martin Heidenhain and Hannes Schneider (Frankfurt: Fritz Knapp Verlag, 2d ed. 1981) Pg. 291

This book presents a detailed introduction to the German antitrust law and, in its second part on facing pages, the English and German language text of the Act Against Restraints of Competition (the Act), the basic German antitrust statute.

The second edition of the book deals with important changes in the German antitrust law implemented by the 1980 Amendment to the Act, which substantially broadened the scope of its application. The 1980 Amendment increased governmental control over mergers, particularly conglomerate and vertical mergers, restricted the exemption for mergers of small enterprises and extended the scope of premerger notifications. The exemptions for banks, insurance companies and public utilities were narrowed and the prohibition of discriminatory practices were tightened. The comprehensive introduction to the German antitrust law has been considerably expanded in this edition, which provides an excellent account of the mechanics and complex provisions of the Act, its judicial interpretations and practical applications. The introduction elaborates extensively on horizontal and vertical restraints and is especially detailed in describing the procedural and substantive aspects of merger control, which were considerably changed by the 1980 Amendments.

In light of the sometimes difficult to read and confusingly arranged provisions of the fairly complex Act, the introduction is a valuable guide for any reader looking for a brief but comprehensive review of this important area of German law.

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U.N. Fund for Population Activities: Annual Review of Population Law 1981

Edited by Paul E. Mason, Winchester, Massachusetts: United Nations Fund for Population Activities, 1983, pp. 450

Does the ability of a family to obtain a tax deduction for having children really stop after three children have been born? Are paramedics authorized to perform sterilization as a family planning measure? Are there job priorities for families bearing only one child? Surprisingly, the answer to each of these questions is "yes," if one looks beyond the laws of the United States.

The *Annual Review of Population Law 1981* discusses all of these issues and provides a well organized outline of world legislation on current international developments in population planning and control. It also contains a bibliography of recently published material on the population issue, the text of the Beijing Declaration on Population and Development, and conclusions of the Parliamentary Conference on Population and Development held in Africa. Despite the date in the title, this is the latest edition of the *Annual Review*.

The legal community in the United States lacks an involvement and interest in this issue, as compared to that of the developing nations. This can perhaps be explained by the relative growth rate in America. Nevertheless, a matter with such potential effect on the world as a whole cannot be ignored. A mere glance at the *Annual Review of Population Law* will demonstrate the challenges that must be met. A more thorough reading, difficult to resist, will contrast various constitutional issues as well as policies of, for example, incentives and disincentives employed in an attempt to meet stated goals. With certain legislation in mind, the researcher may step further into ethics and human rights issues. Which of these disincentives actually have coercive effects and what are the limits of such approaches?

Additional material in the *Annual Review* is included on land tenure and improvement programs, education and health reforms, immigration legislation and personal status resolutions in regard to discrimination and equal

rights. Although there are numerous laws outlined and many countries under review, the text offers accessible indexing for specific research topics and also provides an index by country.

The 1981 edition of the *Annual Review* continues to provide a valuable research guide for those interested in population law and, moreover, offers further insight with a well-presented summary of current trends in policy and legislation throughout the world.

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Outer Space in International Law

by Andrzej Gorbiel, Lodz, Poland: University of Lodz, 1981, Pp. 175
(including a 33-page bibliography)

The author, a professor of the University of Lodz, is a member of the Board of Directors of the International Institute of Space Law of the International Astronautical Federation. He has served for many years as the representative of the Polish government at sessions of the Legal Subcommittee of the United Nations Committee on the Law of Outer Space (COPUOS). His book, *Outer Space in International Law*, is an analysis and guide to the work of COPUOS, and an overview of the law of outer space.

The book begins with a discussion of early concepts of the legal status of the space above the earth, including the views of Hugo Grotius (published in 1625) as to the freedom of the air. With the appearance of air navigation, freedom of the air was no longer academic, and various international agreements followed including the present governing International Convention on Civil Aviation (popularly referred to as the Chicago Convention of 1944) which recognizes the sovereignty of a state extending to the air space above it. However, the successful launch by the U.S.S.R. of a space object (Sputnik I) on October 4, 1957, introduced a new era requiring new legal norms. These, formulated for the area above airspace, are now known as Space Law, and are an integral component of international law. The international legal status of outer space is defined by two complementary legal principles — freedom of outer space and the non-appropriation of celestial bodies. The principle of freedom of outer space must be exercised subject to the constraint of respect for other states' lawful use of space and the maintenance of legal order in outer space.

The author relates United Nations' action on development of principles to govern outer space activities beginning with the formation in 1959 of an Ad Hoc Committee on the Peaceful Uses of Outer Space. Subsequent events described by the author are: the replacement in 1960 of the Ad Hoc Committee by a United Nations Permanent Committee on the Peaceful Uses of Outer Space composed of two subcommittees — the Scientific and Technical Subcommittee and the Legal Subcommittee; various resolutions of the United Nations General Assembly pertaining to outer space; five Space Law treaties drafted by COPUOS (four currently in effect and one not signed or ratified by the U.S. but needing only one more ratification to be effective among its adherents); and consideration accorded by COPUOS to other legal issues assigned by the United Nations General Assembly.

In addition to this work of the United Nations, the author discusses certain Space Law subjects. These include: registration and nationality of space objects, status of astronauts, remote sensing of the earth by satellites, direct television broadcasting from satellites, use of nuclear power sources in outer space, exploitation of natural resources of celestial bodies, delimitation of outer space, and the legal status of the geostationary orbit.

Professor Gorbiel relates the findings by the Scientific and Technical Subcommittee in analyzing the negotiation history of issues presented to the Legal Subcommittee. Footnotes further elucidate the background of positions and also provide references to published articles and other germane writings in many countries. An issue is resolved within COPUOS and its subcommittees by consensus; that is, when there is no further objection by a COPUOS member from the varied views held by the representatives of the many states within COPUOS, compromises are generally necessary to achieve this consensus. Insight is presented by Professor Gorbiel as to formation of group positions and compromises. The group composition may vary greatly as to particular issues. For example, with some exceptions, Eastern, Western and Third World states have generally opposed equatorial states' claims to sovereignty over the geostationary orbit above them. An excellent in-depth discussion and analysis is presented of this issue.

Where the U.S. and the U.S.S.R. differ on an issue, the author's view is generally more in accord with the position of the U.S.S.R. The author thus concurs with the U.S.S.R. view of requiring consent of a receiving state to direct broadcasting of another state's program from a satellite. The author does not, however, concur in the U.S. view that "non-aggressive" military use of space is considered "for peaceful purposes" as used in the 1967 outer space treaty. Nevertheless, whether or not a reader agrees with the author's view on an issue, one will find the supporting technical and legal reasoning advanced interesting.

The foreseeable intensification of exploration of celestial bodies is viewed by the author as demanding further legal norms to regulate the status of

persons in outer space, and to outlining mutual rights and obligations of states involved. The initial Space Law treaty of January 27, 1967, is recognized as the basic treaty of general principles upon which was premised the more detailed subsequent treaties covering specific subjects. However, more precise wording is still necessary to ascertain the intent of the 1967 treaty recital that exploration and use of outer space "shall be carried out for the benefit and in the interest of all countries . . . and shall be the province of all mankind." The "most essential implication" from this general principle, the author relates, should be that each member state of the international community consider it a duty to abstain from using outer space in a manner that would be incompatible with interests of other member states.

This book will provide the reader with insight as to the working of the United Nations COPUOS Legal Subcommittee in formulating and drafting legal principles relating to activities in outer space as well as its accomplishments to date.

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SYMPOSIUM

**THE PRACTICAL AND LEGAL ASPECTS OF
INTERNATIONAL ARBITRATION:
TWO CASE STUDIES**

