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BOOK REVIEWS

International Business Transactions: A Guide to Research Sources

I. I. Kavass, Nashville, Tennessee, Vanderbilt University 1983, p. 88, \$18.00

Professor Kavass of Vanderbilt University has compiled this bibliography as a companion to his article, "The Problems of Legal Research in International Business Transactions" (10 INT'L J. LEGAL INFORMATION 344-358 (1982)). This reviewer suggests that the researcher read that article to get some idea about the difficulty of doing research in the area of international business transactions. Only with an awareness of the enormity of the task, and a sense of humility, can a researcher hope to achieve small successes in this field.

In the *Guide* reviewed here, Prof. Kavass warns us that the law of international business transactions "is an area of law where the public may be better served by bibliographic information based on judiciously selective expertise rather than an indiscriminate urge for quantitative comprehensiveness." (page 2.)

The *Guide* consists of 18 chapters or "briefs:" General Information Sources for International Business Transactions; Doing Business in a Foreign Country; International Contracts of Sale; Carriage of Goods; Insurance of Goods in Transport; Letters of Credit; Import Laws; Export Laws; Export Financing; Government Insurance against Financial Loss from Exporting; The International Monetary System and Exchange Controls; International Commercial Arbitration; International Antitrust Law; Foreign Bankruptcy Laws As They Affect American Creditors; International Taxation; Economic Aid Grants and Economic Aid to Developing Countries; International Transactions in Mining and Petroleum; and Transfer of Technology.

Introductory comments begin each "brief" and are followed by annotated bibliographic references. Professor Kavass has the expertise (and courage) to evaluate many of the titles cited, as well as to point out *lacunae*. He follows his own advice by eschewing comprehensiveness for judicious selection. Thus each "brief" has a highly selective list of basic works along with helpful annotations. The section on "Carriage of Goods" is illustrative. It begins with five "Introductory Works," followed by seven "Comprehensive Guides" (grouped by mode of transportation) and four titles listed under the heading of "Foreign Law," which in turn is followed by two titles under the

heading "Texts of Law," one title under the heading, "Forms" and three titles under the heading "Statistics." These lists are followed by a comment on the "Lacunae," and ended by nine suggestions for "Further Reading."

Professor Kavass, with his vast knowledge of and experience in legal literature and law, is a wise and caring shepherd for the rest of us. His *Guide* and article are essential to all law libraries concerned with international business transactions, and all law libraries desirous of an introduction to this illusive mistress. Lawyers, of course, could greatly benefit from these works, but they are more likely to use one "brief" at a time, a use encouraged by the arrangement of Professor Kavass' *Guide*.

Earl Weisbaum
Los Angeles, California

International Trade: Law and Practice

Edited by Julian D. M. Lew and Clive Stanbrook, London: Euromoney Publications Limited, 1983, xxiii, p. 212. Softcover, \$87.00.

This work is described by the editors as providing a "general over-view of the form and structure of the multi-facets of international commercial transactions and the various extraneous influences affecting international trade . . ." This it does admirably. Addressed to business persons and professional advisors who have had little experience in international trade, the book is designed to be an introduction to the various forms of international trade transactions, as well as giving an insight into the difficulties, pitfalls and advantages that may be encountered through such transactions.

The work is a development of the "chapter by expert" approach, insofar as some seventeen writers have authored the twenty chapters of the book. The subject matter of the book benefits by this approach as it gives an informed review of the general legal and commercial principles applicable to a wide range of forms of international trade. While recognizing that only a comprehensive work could definitively address all major issues of international commercial transactions, the editors have nonetheless managed to avoid the result of a work too generalized for specific benefit. This result is achieved, not only by the descriptive treatment of the general legal and commercial principles applicable, but also by examining in detail some of the more "standard" international forms of doing business, e.g., extensive reviews are given of international licensing and distribution contracts, among others.

The book is made up of four parts. Part One examines the principle types

of international trade contracts. This is done in a two-tiered approach, with a summary of the general principles of international sales agreements and international carriage of goods, followed by a detailed review of specific international contract types. The specific forms of international contract reviewed are: joint venture agreements, international mineral development arrangements, oil and gas exploration licensing agreements, international construction contracts, international licensing contracts, and international distribution contracts.

In Part One, the authors of the chapters on, respectively, International Sales Agreements, and International Carriage of Goods, summarize the subjects in a concise yet descriptive manner. The chapter on International Sales Agreements is particularly good, and benefits by a review both of the relevant international uniform codes, and by reference to United States, European Economic Community, United Kingdom and Soviet Union domestic laws. There is also a valuable treatment of the private international legal issues in this chapter.

As to the more detailed review of specific international contracts in this part, while one might question the inclusion of such specialized subjects as oil and gas exploration licensing and international mineral and development arrangements in a general work, the review of international distribution, licensing, construction and joint venture contracts are worthy of inclusion, and are very well treated. In addition to a general description of such contracts, individual provisions are considered clause by clause.

Part Two of the book addresses international trade financing and includes an examination of the appropriate forms of payment, sources of international finance, and the form and characteristics of financing. This part is covered in four chapters. The first chapter on International Payment Mechanisms deals succinctly with the standard forms of documentation, with a number of good forms attached as exhibits. The following chapter on Public and Private Funding in International Trade is an excellent comparative review of many State export credit agencies, and includes a descriptive review of selected international lending agencies, including a review of their respective rules on criteria and limitations, eligible borrowers, interest rates and fees, and repayment terms. There is also a good treatment of private financing arrangements in this chapter.

The chapter addressing Sources of International Finance, while being somewhat limited to mostly a review of the Euro-currency market, also covers syndicated loans and gives a good summary of certain standard clauses to be found in syndicated loan transactions. A more detailed form of financing is considered in the final chapter dealing exclusively with leveraged leases.

Obviously no treatment of the book's subject matter would be complete without a treatment of enforcement of contracts and dispute settlement.

This is done in Part Three. In addition to the standard sovereign immunity and act of state coverage, there is also a good individual treatment of the varied international arbitration institutions, and coverage of the associated issues of the recognition and enforcement of foreign arbitral awards. This part is benefited by a comprehensive chapter on remedies for breach of contract. This chapter deals with a number of international uniform codes, as well as reference to the U.C.C. and the United Kingdom Sale of Goods Act.

The final, and fourth, part of the book deals with the regulation of international trade. In addition to a general summary of GATT, individual chapters deal with the specific codes thereof, including review of the customs valuations code, the anti-dumping code, the anti-subsidy code, and the government procurement code. A short review of miscellaneous Tokyo Round agreements is also provided. A criticism of this part of the work is perhaps that very little reference is made to specific United States laws and procedures, most necessary to understanding the application and enforcement of the GATT in the United States.

While most counsel working in specialized areas covered by the book might not find it a valuable resource tool for those purposes, all those who work in the area generally, or who wish to be introduced to it, will benefit by the valuable overall treatment of the subject matter.

Peter S. Watson
Los Angeles, California

**Dutch Business Law—Legal,
Accounting and Tax Aspects of
Doing Business in the Netherlands,
2d edition (1983)**

Steven R. Schuit (editor) and others. Kluwer Law and Taxation Publishers,
p. 600, \$72.00

Writing a book on one's own legal system for the benefit of a foreign audience is an exercise in comparative law even in the absence of any references to any legal system other than the one which is the subject of the book. One cannot fruitfully describe one's own legal system to an audience familiar with another legal system unless one has a fair familiarity with the language of the law as utilized in that other system and unless such familiarity extends to the concepts which, in the minds of the members of that audience, are associated with that language.

The need for thorough familiarity with the audience's legal language and concepts is compounded where the gap to be bridged concerns such thoroughly divergent legal traditions as the Anglo-American common law and the codification-oriented common law. Traditionally, the Napoleonic codification movement which prevailed in most continental European countries was based on the one hand on a great distrust of judges and a desire to give them as little leeway as possible in creating new law, and on the other hand on a possibly overly optimistic view of the ability of the legislative and executive powers to fashion statutory rules on any issue which may be readily and literally applied to any combination of facts which might arise. When soon after these codifications it turned out that ambiguities and unanticipated fact situations often precluded a literal and blind-folded application of statutory provisions, the courts were not alone in fashioning appropriate solutions.

Instead, in keeping with traditions pre-dating the codification itself, many fundamental issues were hammered out in dialogues (or disputes) between learned authors, in which the courts subsequently chose sides. Thus, even where open issues had ultimately to be decided by the courts, the latter would mostly content themselves with following the guideposts set by the learned authors, rather than permitting new law to emerge inductively through the accumulation of their own decisions. In this manner, the civil law's concept of the courts as the finders or pronouncers, rather than the creators of emerging legal rules, remained viable.

Civil law legal doctrine thus developed out of a discourse between legal scholars concerning general concepts, rather than on a case-by-case basis, and its reasoning processes tend to be deductive rather than inductive. At least insofar as concerns traditionally codified subject matters, such as contract, torts, and property law, the importance of general legal doctrine is of such importance that Dutch law often cannot be adequately understood without reference thereto.

The last point brings us back to our present concern: how to describe one legal system in terms understandable to outsiders. It is tempting to make a distinction between two elements here; on one side, a description of how that legal system would resolve a particular concrete legal issue; on the other side, a description of the line of reasoning through which that resolution is obtained. However, in practice these two aspects may not be that easy to separate. Because of Dutch law's emphasis on a deductive approach, many important aspects of it cannot be adequately described without some exposition of legal doctrine. For instance, Dutch law makes an all-important distinction between property rights on the one hand and mere contractual rights on the other, the effect of the distinction being that whenever a right can be characterized as a property right, its holder will generally be able to fully exercise it against a debtor irrespective of bankruptcy or insolvency,

whereas if the holder had a mere contractual right, he would (absent an enforceable lien) be reduced to his pro rata share of any bankruptcy distribution. In addition, Dutch doctrine holds that transfer of title must necessarily be based on an existing, enforceable contract, and that if a contract is for any reason whatsoever dissolved or void, an automatic reversal of title to any property transferred on basis of that agreement occurs. Breach of contract is a ground for dissolution of any contract, and a successful suit for such dissolution will consequently trigger reversal of title even though bankruptcy of the defaulting party has intervened. Thus, the issue of creditors' priorities in bankruptcy is to a very significant degree affected by the interaction between two legal principles (the distinction between property rights and mere contractual rights; and the dependence of the efficacy of transfers of title on the continued viability of the underlying agreement) which, on their face, have nothing to do with bankruptcy law.

However, in works that seek to convey practical information on the Dutch legal system rather than make a scholarly contribution, an extensive treatment of the doctrinal underpinnings of Dutch law would seem out of place. The newly published second edition of *Dutch Business Law*, accordingly in its Preface, sets itself the task of placing "warning signals near some notorious pitfalls caused by differences between systems." This work constitutes the most extensive up-to-date description of the Dutch legal system for the English language reader, and results from the collective efforts of members of a major Dutch domestic and international law firm, Loeff & van der Ploeg, in cooperation with outside accountants and tax consultants. As such, it invites comparison with two English language sources on Dutch law which are similarly the result of the collective efforts of members of major Dutch law firms. These are the *Netherlands Law Digest* in the 1984 edition of Martindale-Hubbell, prepared by members of De Brauw & Helbach, and the "Doing Business—Netherlands" section in the Commerce Clearing House *Doing Business In Europe* looseleaf service, prepared by members of Dutilh, van der Hoeven & Slager. Because the De Brauw and the Dutilh publications are each part of larger U.S.-based projects providing information on a number of foreign legal systems, they both have had the advantage, from the American reader's point of view, of having been filtered through a rigorous United States editing process. Consequently, they more consistently reflect American language usage and may be more easily accessible to the American reader than many chapters in *Dutch Business Law*.

Dutch Business Law is to a large extent a series of separate chapters written by different authors, apparently with considerable variations in each author's familiarity with American law and with American legal language usage. Some of the chapters (e.g., Chapter II on Moratorium and Bankruptcy, and Chapter VII on Real Property Transactions) have obviously been written with a great deal of understanding for the needs of an Amer-

ican reader, while other chapters sometimes lapse into barebone descriptions of statutory provisions or literal translations of key phrases from court opinions which, absent concrete examples, convey little information.

Notwithstanding its shortcomings (which also have been the subject of marked improvement from the 1978 edition), the information provided in *Dutch Business Law* on major key subjects such as property and contract law is far more extensive, and often far more incisive, than the other sources. In particular, *Dutch Business Law* seeks with greater frequency than the other sources to dip under the surface of a mere description of legal outcomes, and to provide some inkling of the reasoning process underlying those outcomes. As such, it constitutes a necessary supplement to them.

Pierre Vogelenzang
Los Angeles, California

Soviet Law in Theory and Practice

By Olympiad S. Ioffe and Peter B. Maggs. Dobbs Ferry, New York: Oceanic Publications, p. 360, \$31.00

It is the rare American practitioner who in the course of his practice ever has the occasion to refer seriously to detailed provisions of Soviet Law. Indeed, in the over two decades that our firm has served as a major source of legal advice and counsel to the leaders of American business in connection with their commercial relations with Soviet organizations, we have usually found Soviet Law to be at best merely relevant, rather than determinative, in the rendering of competent professional advice to a client.

Nevertheless, both the serious international practitioner as well as the well-educated casual observer need at least an overview of the legal system that governs one of the world's "superpowers," encompassing its second largest economy and largest geopolitical land mass. As Professors Ioffe and Maggs correctly note, Socialist Law has now joined the Common Law and Civil Law as one of the three main families of legal systems. Soviet foreign policy, which so greatly influences international affairs, is an outgrowth of the USSR's internal economic and political structure, which is reflected in Soviet Law. Soviet Law is an integral element of the arena in which the competition and struggle between the Socialist and Capitalist systems occurs. Finally, in appropriate circumstances, Soviet Law is used and must be referred to in the sphere of economic and cultural collaboration between East and West.

In this respect, Professors Ioffe and Maggs have done an admirable job; and their work is recommended as required reading both for one involved in

the international practice of law, as well as for one who merely endeavors to become more familiar with the Soviet system.

As they point out in their introduction, this book is intended to present a general overview of Soviet Law, rather than to analyze this vast subject in a degree of detail sufficient to permit its use as a treatise by the active practitioner involved with the intricacies of the Soviet legal system. They note that this work "is intended as an outline of Soviet Law as a whole, on the one hand, and Soviet Law as an acting force in the most important social realms, on the other hand." (page 5.) In addition, as is suggested by the title, the authors bravely undertake the formidable task of contrasting the specific provisions of Soviet Law in theory with the practical realities of its discretionary application, a contrast that some legal scholars—particularly those of Soviet extraction—might formally take issue with.

The authors bring distinguished credentials to their work. Professor Ioffe is currently teaching law at the University of Connecticut after immigrating from the Soviet Union in 1981. Prior to coming to the United States, Professor Ioffe served on the law faculty of Leningrad State University from 1947 to 1980, and he holds a doctorate in law from the same University. Professor Maggs teaches law at the University of Illinois. He spent a year studying law at Leningrad State University (where, incidentally, Professor Ioffe was his faculty advisor), and also spent a term in 1977 as a Fulbright Lecturer in law at Moscow State University. Professor Maggs is a graduate of Harvard College and Harvard Law School. Both Professor Ioffe and Professor Maggs have previously published numerous books and articles on Soviet Law.

In chapter 1, the authors describe the structure of the Soviet State, its agencies and functions. Then, "bearing in mind the subordination of Law to the State in the USSR," (page 5), they move on to describe the Soviet legal system and the functions of its various branches. Subsequent chapters describe the relationship between law and politics in the USSR, the legal structure and regulation of the Soviet economy, and various legal rights and responsibilities of Soviet citizens. Finally, the authors grapple with the complex subject of legal responsibility: protection of the State against its citizens, protection of citizens against one another, and protection of citizens against State agencies and officials. It is hardly surprising that they observe that the Soviet system of legal responsibilities is at its strongest in protecting the State against its citizens, and at its weakest in protecting the citizens against State agencies and officials.

Perhaps the most significant feature distinguishing this work from other general works of this nature is the in-depth knowledge that Professor Ioffe brings to bear in weaving throughout the text a well-documented description of how the Soviet legal system operates in practice, as opposed to the specific provisions of the Soviet codes of law that, on the surface, often resemble

various code provisions of Western civil-law countries. Only one who has spent a lifetime immersed in the Soviet legal system can adequately and credibly describe this dramatic contrast.

In summary, then, the practitioner looking for a precise answer to a specific legal problem will probably not find this work to be as useful as the many other detailed works that have been published on various specific fields of Soviet Law. On the other hand, this book is a must for those with a desire to better understand the legal and political systems of one of the two most powerful and influential forces shaping the history, and future, of our time.

John I. Huhs
New York City and
Chairman, Committee on
Soviet and Eastern
European Law

