

## **Curso de Derecho Mercantil**

Professors Boris Kozolchyk and Octavio Torrealba; Cooperativa Universitaria de Libros, Universidad de Costa Rica (San Pedro de Montes de Oca), \$10.00.

Reviewed by VICTOR C. FOLSOM

For those students and practitioners of international private law interested in the Latin American system of Civil Law and who read Spanish, a most valuable learning tool is now available. It was largely compiled while Professor Kozolchyk was teaching at the Faculty of Law of the University of Costa Rica under a contract with AID. Substantial contributions to the work were made by a number of lawyers and students from both Costa Rica and the United States, and this collaboration is one of the reasons the book gives one such a clear insight into the differences in approach of the Common Lawyer and the Civilian. While the book deals basically with Costa Rican law, its scope is much broader, and writings of Spanish, Italian, French, and Latin American authorities are referred to and discussed. Your reviewer would probably be enthusiastic about the book if it were pure Costa Rican, for he has on many occasions expressed his admiration for the legal and judicial system of this small democracy.

The initial purpose of the work was to study the effect of law on economic development. Sometime during the progress of the study it assumed a much larger role, and we are the beneficiaries of that expansion. To show that law should facilitate and foster social, economic, and human progress and that Latin American Civil Law has generally failed in these objectives is important but apparent to most lawyers and economists. To go forward from this point to a discussion of law on a comparative basis and make recommendations for changes and improvements, both in the law and the teaching of it, is a noteworthy and impressive undertaking.

The history and development of mercantile law and the Civil Law distinctions between what is "mercantile" and what is "civil" are reviewed in conjunction with the methods by which the courts have historically determined what constitutes a commercial act. The discussion of our law of equity and its multiple view of "property" is carried on without reference to some of our more complicated theories, fortunately for the Civilians who try to understand our theory of property. One country, Italy, has unified its commercial and civil

codes, but we find that Italian courts and lawyers continue to struggle with the distinction between commercial and civil acts. This points up the difficulty of trying to change centuries of Roman law and the Romanists who cherish it.

The discussion of specific laws of Costa Rica and how its courts determine whether an act is commercial, unilaterally so, or mixed is most useful. The laws governing merchants are examined. Contrary to some writings, there is little in the Civil Law to substantiate the idea that under the Civil Law the merchant is held to a high degree of good faith in dealing with the public and that this anticipated our development of "consumer law." The merchant's obligations are different but not necessarily of a higher order. Unlike most Civil Law books dealing with commercial law, many important decisions are included in the book to illustrate how it works in practice. Costa Rica seems to be moving toward the development of substantial "case" law but is still a long way from adopting our theory of *stare decisis*.

The section of the book covering the Civil Law concept of the company or corporation is important reading for Common Lawyers. Although all this law has a common source, present day differences are many, though subtle. They should not be overlooked.

A subchapter entitled "The Sources of Mercantile Law" contains an interesting history of the 1560 Ordinances of Bilbao which governed commercial transactions well into the 1800s. It is emphasized that at the time of the colonization of Latin America, commercial law was fairly uniform and that this continues today. This is both good and bad. It makes for a degree of predictability but also makes for inflexibility which inhibits the development of needed modifications to meet changing conditions. This is a common problem in Civil Law.

The book may be primarily a teaching tool, but I find it absorbing reading and the type of book I would recommend to a young lawyer who is going to represent clients who invest in Latin America. Without some additional background, parts of it may be difficult reading, but the frequent citations to, and quotations from, authorities on various subjects should lead the avid seeker of knowledge into some other important and interesting paths. It is also good Spanish.

The Costa Rican decisions involving industrial property and unfair competition are as interesting as any I have read recently, because they indicate a trend toward the adoption of some of the principles of the Common Law and the abandonment of some of the strict "formalism" of the Civil Law, a needed development. The sections on commercial agency are important because of the substantial differences between the two systems in this area. The commission merchant is not at all what we expect him to be. An independent contractor who is entitled to severance pay would be an anomaly in our law, but he exists in some countries.

This volume is the first of two, and your reviewer looks forward to the publication of the second in the near future. Both should be translated into English.

