

INTERNATIONAL BUSINESS TRANSACTIONS AND ECONOMIC RELATIONS. Cases, Notes and Materials on the Law as it Applies to Canada by J.-G. Castel, A.L.C. deMestral & W.C. Graham. Emond Montgomery Publications Limited, Toronto (1986) 925 pages.

The subject of International law as it relates to business transactions and economic relations between states has until recently been very much the poor relation of public international law. Now, as the importance of the international economy and exports for Canada's well-being is being increasingly recognized, international commercial and economic law (ICEL) — which the writer would suggest as the best designation of this field — is gaining new ground. For the growing band of instructors in the field there is a definite need for a comprehensive book of notes and materials. In some ways this book answers the need, but it also has serious limitations that undermine its usefulness.

The book's weaknesses stem from the peculiarly legalistic approach of the authors to a field that is not pure law but a mixture of business, economics, finance *and* law. This approach is most obvious in the division of the field into private and public law, a division dear to the hearts of legal academics but one that is not only meaningless but misleading in the context of ICEL. It is *meaningless* as it purports to divide up a field that is permeated by public law aspects, from the law of international trade and finance to the activities of multinational corporations to the issues of anti-trust and intellectual property law and international dispute settlement that arise in the context of international commercial law. The division is *misleading* where, as in this book, it leads to the omission of a whole area, namely that of the law relating to international finance. Such an omission would have been impossible if the authors had approached the field from the perspective of the international business person and economist and had looked at the substantive areas making up the field instead of concentrating on their theoretical categorization into public or private law.

What are the areas making up ICEL? It is suggested that they are three. Firstly, there is *international trade law*, comprising the laws — both national and international — that regulate the trading relationships between nations, foremost among which are the GATT, national trade laws, commodity agreements and arrangements for regional economic integration. Secondly, there is *international finance law*, which is a wide area taking in not only the regulation of international investment, services and money flows but also the promotion and financing of international trade, including the activities of the multilateral lending agencies and the private law issue of exchange risk management. Here also is where one would place the principles of international business conduct — including the extraterritoriality of anti-trust legislation, which is given such prominent place in this book — for this is an important aspect of foreign direct investment. Finally there is *international commercial law*, which comprises *all* contracts relating to market entry — sales, distribution, agency, licensing, joint venture, contract manufacturing agreements etc. — as well as payment mechanisms, insurance, the international carriage of goods and dispute settlement procedures. These, it is suggested, are the categories into which any book in this area should be divided.

Using these divisions as a yardstick, let us turn to the book. With respect to *international trade law* the book is relatively good on the GATT and matters coming within its orbit, except that the authors seem to forget that the subject matter at issue is *international* business transactions and that some idea of the tariff regimes of Canada's other major trading partners would be useful. In particular some salient excerpts from the copious U.S. import relief legislation would be in order. In fact the only foreign trade laws that warrant any attention are U.S. export restrictions and their extra-territorial effect, although even here the authors declare a discussion of the international propriety of such laws to be beyond the scope of the book — a rather odd pronouncement considering the inordinate length at which the substance and propriety of U.S. anti-trust laws and their extra-territorial effects are discussed. It would also have been useful to have the book present some of the problems associated with national standards and government procurement, especially with regard to Canada's major trading partner, the United States.

A positive aspect of the book's treatment of international trade law is its inclusion of the issue of the New International Economic Order, including the integrated commodity scheme put forward by UNCTAD. But even here there are serious gaps. There is but the briefest mention of the *Generalized System of Preferences* — arguably the most successful aspect of the North-South dialogue — and no reproduction of the 1962 *U.N. Declaration on Permanent Sovereignty Over Natural Resources* as a counter-balance to the 1974 *U.N. Charter of Economic Rights and Duties of States*. This is a disadvantage for any instructor wishing to discuss the contrasting attitudes of the industrialized and less developed countries towards North-South issues, for just as the latter states with great eloquence the views of the Third World, so the 1962 *Declaration* sets out the bottom line for most industrialized countries, particularly with respect to foreign investment and the treatment of multinationals. Mention must also be made of the doubtless unintentional but nonetheless misleading impression given on page 387 of the text that the 1974 *Charter* incorporates a principle of international law; as is well-known, resolutions of the U.N. General Assembly are not binding, particularly where, as in the case of the *Charter*, three of the leading industrialized nations — Germany, Britain and the United States — opposed it and the other four — Japan, France, Canada and Italy — abstained.

It is good to see some discussion of the Multi-Fibre Agreement and commodity agreements, but yet again the book belies its initial promise. The crucial parts of the Multi-Fibre Agreement are quite short and could easily have been accommodated, and it would have helped many instructors for the book to sketch out the basic ways in which commodity agreements work — quotas, buying-in procedures, shifting minimum and maximum prices etc.; instead all we have is a rather anodyne and uninformative discussion of the Wheat and Coffee Agreements. Regional Economic Integration — arguably one of the most important trade issues of the recent past and one which directly affects Canada — is given even shorter shrift. There is no discussion of what a common market or a free trade area is, no attempt to analyze the effect of such arrangements on Canada's external trade and commercial policies and no excerpts from the

most influential integration treaties — such as the Treaty of Rome, which has, albeit perhaps in a negative fashion, helped to shape the modern trade realities facing any Canadian government. Instead we have a chapter on bilateral trade agreements involving Canada, including the Canada-U.S. Autopact, which is interesting but loses much in appearing in isolation without any attempt to relate the issues to the greater phenomenon of worldwide regional integration. Nor is there any meaningful discussion of North American free trade.

As far as *international commercial law* is concerned, the book offers some good points. There is a good analysis of letters of credit and collection procedures and a creditable attempt to discuss the various problems, including anti-trust and intellectual property legislation, surrounding some market entry modes, particularly licensing. As far as the international carriage of goods is concerned, sea travel receives quite exhaustive treatment. Both the ICC Incoterms and the *Uniform Customs and Practice for Documentary Credits* are reproduced, although the former is limited to FOB and CIF terms. There is even something on countertrade and a long chapter devoted to international dispute settlement, which nevertheless manages to eschew any mention of the recently established British Columbia International Arbitration Tribunal.

But, despite these good points, even here there is much room for criticism. If one were to address this area of International Commercial and Economic Law from the perspective of the international business person, which, it is submitted, one should, the starting point must be the various market entry modes. These are: *direct export*, which involves not only sales but also distribution and agency agreements; *contract entry*, which involves licensing and contract manufacturing; and *direct investment*, which includes branches, subsidiaries and joint ventures. The only modes that the book addresses are sales agreements and licensing. With respect to sales agreements, the book has some useful points to make and gives some commonly-used precedents, but it does not even analyze the Vienna Convention on the Sale of Goods in any meaningful way, let alone give some excerpts from the Convention's more important articles. Its treatment of licensing agreements is highly unbalanced. It treats the whole subject from the perspective of the transfer of technology, as if this were the *raison d'être* of licensing agreements, whereas in reality licensing is merely another form of market entry and *one* of the issues for Canadian business is the *protection* of technology within the context of foreign intellectual property and anti-trust laws. Another criticism is that the book attempts no comprehensive survey of international carriage, preferring to stick to a rather out-dated concentration on sea carriage. One has only to compare its treatment of this area with that afforded by Lew and Stanbrook in their book *International Trade: Law and Practice* to see how inadequate it is.

All these shortcomings are insignificant, however, compared to the book's omission of any material on the law relating to international finance. It is quite simply unacceptable for a book purporting to deal with international business — let alone economic relations between states — to ignore this crucial area. It is beyond the comprehension of this reviewer how the authors can justify omitting any reference to the IMF articles or

the various OECD codes to which Canada has subscribed and describe foreign investment law as a matter for specialists while at the same time devoting their third largest chapter to the esoteric issue of the extra-territoriality of anti-trust legislation (and using, one may add, a repealed Canadian statute into the bargain). The answer, one suspects, is that this latter subject is within their area of competence whereas international finance is a complex area requiring too much extra-legal knowledge. But it is nonetheless an essential part of International Commercial and Economic Law and if the authors are not prepared to deal with it, one must wonder whether they are qualified to deal with the field at all. In fact, so complete are their omissions that even when they discuss the Export Development Corporation they do not even pause to discuss the OECD Arrangement on Officially-Supported Export Credits.

Any worthwhile book on the materials relating to this field must as a minimum include some of the more important articles of the International Monetary Fund, — as well as some notes on exchange practices and what exactly SDRs are — the salient articles of the OECD Codes on Invisible Transactions and Capital Movements, the OECD Declaration on Foreign Investment, materials on the multilateral lending agencies and official export credit agencies, some basic materials on international banking, including instruments used in the offshore markets, and some attempt to enlighten lawyers as to the reasons for and ways of dealing with foreign exchange risk management. It is useful to give, as the book does, some of the assistance programmes available in Canada for exporters, but it is hardly sufficient to do only this. Taxation is also not covered, although it would not have taken inordinate space to outline the main problems — double taxation, right to tax and basis for taxation — and give some examples from the various standardized tax treaties.

The reviewer would normally deal with the principles governing international businesses in the context of international finance. The book, which eschews the whole area of international finance, deals separately with the conduct of international businesses and does so in great detail. There is also another long chapter on restrictive business practices, which relates to this area. Given the omissions of the book, one might wish that these issues has been dealt with more briefly.

In conclusion, one must say that the book is a disappointment. Despite the great need it seeks to fill and its good points, the book has serious shortcomings both in what it covers and how it deals with the field that vitiate its usefulness. These shortcomings highlight one crucial point about the study of International Commercial and Economic Law, namely that it is a field of study that comprises law only as *one* ingredient. This book is very much a lawyer's approach and it suffers from this. Whether one wishes to write about this area or teach in it, one has to approach it from the perspective of the international business person and economist. Their perspectives set the parameters of the legal issues. To proceed otherwise is to consign oneself and one's readers or students to a legal world detached from reality.

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