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BOOK REVIEW

LAW AND PRACTICE OF INTERNATIONAL FINANCE. By Philip Wood. New York: Clark Boardman Co., Ltd., 1982. Pp. xlv, 18-27. Index.

The past forty years have been a time of fundamental change in the international economic system. Before World War II, the world economy was made up of largely self-sufficient areas. Today, the world economy is an integrated global system, in which no nation is independent of foreign raw materials, produced goods, and technologies. As previously uncommon international financial transactions became standard practice, problems in international financial law became apparent. The decentralized and uncoordinated response to these problems has failed to reconcile divergent legal and commercial concepts and practices into a comprehensive law of international finance.

Philip Wood's *Law and Practice of International Finance*¹ covers the wide variety of concepts and practices encountered in international financial transactions. Wood's stated purpose is to be as comprehensive as possible in touching on those topics which are most likely to come up in practice, with prime emphasis on commercial bank lending and international bond issues.² Rather than striving for rigorous completeness, Wood's goal is to provide "orientation and some ideas which hopefully . . . will be helpful to anybody involved in international finance."³ Although Wood is an English barrister, he covers the law of other major jurisdictions as well as relevant international law. Thus, *International Finance* is intended to function primarily as a general introduction to the law, and secondarily as a source of practical ideas and drafting models.

The major strengths of *International Finance* are the clear identification of the important legal issues in international transactions, and the practical tips, especially the sample contract clauses. Unfortunately, *International Finance* achieves its comprehensiveness at the cost of detail. Wood raises important legal questions, but his answers often lack thorough analysis. *International Finance* is therefore a good introductory work, but should serve only as a secondary reference tool.

Wood's best chapters are those which treat specific problem areas

¹ P. WOOD, *LAW AND PRACTICE OF INTERNATIONAL FINANCE* (1981).

² *Id.* at vii.

³ *Id.* at viii.

likely to arise in practice rather than those which contain general expositions of an area of the law. For example, a very well written chapter analyzes contract clauses which give a creditor some control over his debtor's actions.⁴ The chapter discusses various alternative clauses from the viewpoint of both creditor and debtor, emphasizing clauses often acceptable to both. Priority of debts, mergers, and negative clauses are covered in depth, and a section on remedies and defaults deals with the problems of noncompliance. A wide variety of remedies are compared, and the effect of statutory bankruptcy upon them is summarized. The chapter is written in easily understood language and should be useful to any lawyer.

The chapter on ship and aircraft finance is probably the best in the book.⁵ Wood sets out the major problems encountered in using a ship as security when borrowing, and provides alternative solutions to each problem. The ship mortgage law of several representative jurisdictions is summarized and principles of maritime insurance are set forth. Aircraft finance is compared and contrasted with ship finance. Although the coverage is comprehensive, the chapter is clear and easy to understand.

The lack of detail in *International Finance* is demonstrated by Wood's chapter on transactions with governments. The act of state doctrine mandates that U.S. courts not pass on the validity of acts of a foreign government committed in a foreign state.⁶ The U.S. Supreme Court's strict interpretation of this doctrine is a major obstacle to enforcing contracts with foreign governments in U.S. courts. Wood presents a general statement of the doctrine,⁷ and cites the "Hickenlooper amendment,"⁸ a 1964 attempt by Congress to limit the doctrine's application.⁹ He does not, however, mention the restrictive court interpretations of the amendment, which have made it inapplicable to most cases.¹⁰ Further, Wood's treatment of the three exceptions to the doctrine is very confusing. Two exceptions are discussed several pages after the act of state doctrine is set forth, without a reference to or from the basic statement.¹¹ The third

⁴ *Id.* at 6-2 to 6-35.

⁵ *Id.* at 16-3 to 16-90.

⁶ *See, e.g.*, *Banco Nacional de Cuba v. Sabbatino*, 364 U.S. 398 (1964); *Underhill v. Hernandez*, 168 U.S. 250 (1897).

⁷ WOOD, *supra* note 1, at 4-60 to 4-61.

⁸ Foreign Assistance Act of 1964, Pub. L. No. 88-633, § 301(d)(4), 78 Stat. 1009, 1013 (codified as amended at 22 U.S.C. § 2370(e)(2) (1982)).

⁹ WOOD, *supra* note 1, at 4-65.

¹⁰ *See, e.g.*, *Emprese Cubana Exportadora, Inc. v. Lamborn & Co.*, 652 F.2d 231 (1981), ruling that the amendment applies only when previously exported property is brought into the United States. The amendment thus does not prevent the act of state doctrine from applying when intangible rights are at issue, or when the specific property expropriated remains abroad.

¹¹ The first exception states that the act of state doctrine will not be applied when the State Department sends the court a letter confirming that deciding the case will not affect U.S. foreign policy. Wood discusses the exception but omits its probable overruling by the Supreme Court in *First National City Bank v. Banco Nacional de Cuba*, 406 U.S. 759 (1972). Although a plurality opinion in that case supported the exception, two concurring and four dissenting jus-

exception is not mentioned.¹²

For the practitioner who deals with international financial transactions infrequently, *International Finance* is a good introductory work which is most valuable as a practical checklist of issues. Unfortunately, Wood's suggested solutions often omit secondary considerations and his statements of relevant law are frequently oversimplified. Consequently, the book should be used in conjunction with other treatises which provide more detailed discussions of substantive law.

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tices rejected the exception totally. *Id.* at 772-73 (Douglas, J., concurring); *id.* at 773 (Powell, J., concurring); *id.* at 776-77 (Brennan, J., dissenting).

The second exception is that the act of state doctrine does not apply to counterclaims against foreign government plaintiffs. Wood only hints at this second exception in a serious misstatement of the holding in *First National City Bank*, which established it.

¹² The third exception is that the act of state doctrine does not apply when the foreign government act is commercial in nature. It was first stated in the plurality opinion in *Alfred Dunhill of London, Inc. v. Republic of Cuba*, 425 U.S. 682 (1976). Since the concurring and dissenting justices did not reject the exception, most courts have assumed the exception is established. *See, e.g.*, *Nat'l Am. Corp. v. Fed'l Rep. of Nigeria*, 448 F. Supp. 622 (S.D.N.Y. 1978).

