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Book Reviews

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BOOK REVIEWS

Admiralty Law of the Supreme Court. By Herbert R. Baer. Charlottesville: The Michie Company. 1963. Pp. xi, 361. $15.00 (pocket supplements included).

Uncertainty and confusion in admiralty law have resulted from recent decisions of the United States Supreme Court due largely to the Court's departures from recognized maritime concepts—departures accompanied by frequent and severe disagreement among the Justices. In *Admiralty Law of the Supreme Court* the author does not attempt to harmonize these decisions with a view toward bringing order out of chaos. The impossibility of such a task is recognized at once. Instead, the author reviews the more significant recent cases with a view toward presenting the confusing and sometimes conflicting decisions in an orderly manner in the hope that the practitioner, after due deliberation, will be cognizant of the confusion and will chart his course accordingly.

The book is divided into two parts. Part one, discussing personal injury and death claims, is a current revision of the author's article, *At Sea With The United States Supreme Court,* which appeared in this *Review* in 1960. Similarly, part two, discussing the Court's decisions in such areas of admiralty as maritime insurance, limitation of liability, cargo claims, etc., is a current revision of *Down To The Seas Again,* which appeared in the *Review* last year.

Mr. Baer has done well by his subject. Each case is discussed only after it has been framed properly against the historical development of the law pertaining to the issue or issues decided therein. This able review of the development of the law and the delineation of the present areas of confusion with respect to the subjects considered, renders the book of consequent interest and substantial value to the admiralty bar.

The book has a table of contents, a table of cases, an index, and provision for periodic supplements, all of which should make the book more usable. It also contains five appendices, covering seventy-two pages, of doubtful value. Appendices A and B are copies of the petitions for exoneration and limitation of liability filed in the *Andrea Doria-Stockholm* litigation. Either of these

petitions would have sufficed in itself to demonstrate the proper content and form of such a pleading. Appendices C and D respectively contain the Brussels Collision Convention of 1910 and the Brussels Limitation Convention of 1957, and are included in view of the fact that the Maritime Law Association of the United States is currently sponsoring legislation in Congress which would adopt the principles of these conventions. The Supreme Court Admiralty Rules are set out in Appendix E. The inclusion of this latter material would seem superfluous since it is neither germane to the author's text, nor a source of information likely to be used by the practitioner.

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Doing Business Abroad. Edited by Henry Landau. New York: Practicing Law Institute, 1962. 2 vols. Pp. 732. $25.00

Would you like to know whether: (1) corporate profits made in Taiwan from an approved investment may be sent to the United States without limitation; (2) a Canadian may own a controlling interest in a Brazilian corporation formed to mine silver in Brazil; (3) foreign capital is guaranteed equal treatment with domestic capital in Argentina; (4) Bolivia offers income tax relief incentive to reinvest corporate profits in Bolivia; (5) in Chile tax liability may be frozen for ten years at the rate and to the taxes in effect when a foreign investment is made; (6) a license is necessary to import machinery into Colombia to implement a foreign investment; (7) Under English law Americans can be prevented from acquiring shares in British companies; (8) An Australian corporation may carry on a public utility enterprise in West Germany; (9) investment incentives exist in Naples, Italy, which do not prevail in Turino; (10) Belgium will exempt real estate taxes in certain investment situations; (11) expropriation is permitted by the law of Switzerland; (12) A treaty of commerce, friendship and navigation is in effect between Sweden and the United States; (13) import quotas are imposed by Japan?

People who want to know things like this are: (1) wealthy clients with money to invest and with which to pay adequate consul fees; (2) attorneys with clients of that character; (3) attorneys

aspiring to obtain clients of that character (4) law students taking courses or seminars in "International Business Transactions"; and (5) cosmopolites with international interests and a zest for living. If you qualify on any count, congratulations, and hasten to read both volumes of *Doing Business Abroad,* published by the Practicing Law Institute.

This entry in the ever-swelling current of materials in the emergent and blue-chip stream of international business transactions, accurately proclaims itself to be "by 23 legal and tax experts." This massive composite expertise prohibits individual accolades, though merited, to individual contributing authors. This reviewer recently had occasion to try to do justice to a similar work in which fourteen experts had collaborated.[1] On that occasion something, factual and nice was said about each contributor. Somewhere between fourteen and twenty-three co-authors the personal approach snaps and the aggregate assessment takes over.

Consequently, the "would you like to know" approach appears to be a permissible way to treat this gold mine of international legal-business information. In the area of labor law, bearing on the advisability of investment, would you like to know whether: (1) complete labor mobility has already been achieved within the E.E.C.; (2) investors abroad must anticipate higher labor costs there as a result of expanding concepts of the welfare state, (3) currently unemployment is higher in the United States than it is in E.E.C.; (4) profits must be shared with workers in Mexico; (5) United States or E.E.C. industrial hourly earnings have increased in percentage more in recent years; (6) labor union membership is growing in Africa; (7) local unions are active and effective in Germany; (8) the major labor organization in Italy is Communist dominated; (9) unions in other countries pay strike benefits; (10) employers in Latin America are organized into strong associations; (11) the primary purpose of labor arbitration in New Zealand is to arrive at a collective bargaining agreement; (12) Canadian law protects the individual worker's right to strike; (13) local trade unions are powerful in Mexico.

The preceding phantasmagoria is a result of random selection from approximately the first ten per cent of the pages of this encyclopedic work. Obviously, to keep the present review within con-

[1] Wurfel, Book Review, 41 N.C.L. REV. 165 (1962).

ventional limits, sampling of the remaining ninety per cent must be drastically streamlined.

The work contains a lucid exposition of the different available types of business organization, world-wide, their advantages and disadvantages, with individual treatment of the pertinent laws of several of the Latin American countries, Germany, France, Italy, Sweden, Switzerland and Belgium, the United Kingdom, Australia, Canada and India, Japan, and the Netherlands.

Still within the confines of volume one, the basic facts of, and agencies for, financing foreign operations are set forth. Also covered are the international aspects of the anti-trust laws of the United States, Great Britain and the European Common Market, individual countries of western Europe, Canada and Japan. Volume one ends with a helpful statement of "Some Civil Law Concepts."

Volume two commences with discussions of the American trader in foreign litigation, state trading and the doctrine of sovereign immunity.

Attention is then given to the all-important subject of the impact of foreign taxes on all kinds upon business enterprises. This is followed by a detailed consideration of the tax laws of Brazil, France, Germany, Italy, Sweden, and Japan. Next comes a highly practical discussion of United States tax laws applying to foreign income and their influence in determining the forms of organization to be adopted in the conduct of foreign operations. Tax problems are rounded out by specific treatments of taxation of international sales transactions, the use of foreign base corporations, particularly in Panama, Puerto Rico, and Switzerland, proposed United States legislation on tax havens, tax aspects of foreign licensing, and finally the assistance available from the International Tax Relations Division of the United States Treasury Department. All this is indispensable to "tax planning."

The textual treatment concludes with material pertaining to the important area of foreign licensing agreements.

The second volume contains two valuable appendices. The first is a detailed check list prepared by Henry Landau, the general editor. In this highly complex area of the law-wise counsel will make full use of every means to insure that no vital consideration has been overlooked in arriving at the advice rendered to the client. While no list is completely fool-proof, nor self-executing, this one

will be of value to even the most experienced international practitioner.

The second appendix collects an excellent "Doing Business Abroad" bibliography, primarily of periodic literature but also including recent timely books. It is well organized both by subject matter and by country. Finally an excellent index makes it easy to pinpoint the treatment given to a specific item by this most remarkable compendium.

This work is a good example of the law in action. It realistically blends law and economics. It is a most valuable reference for lawyers, business executives, law teachers and law students with international interests.

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Green Belts and Urban Growth. By Daniel R. Mandelker. Madison, Wis.: The University of Wisconsin Press, 1962. Pp. xv, 176. $5.00.

In an era of galloping suburbs as well as suburbia, many Americans besides the "New Frontiersmen" have become concerned over the disappearance of wide open spaces—especially in and around our great metropolitan regions. Holley Whyte's magazine articles and speeches of the late 1950s, proposing public acquisition of "development rights" so as to maintain the rural and "open" character of selected areas in the path of development, struck an unexpectedly responsive chord. The ensuing search for new and imaginative techniques to preserve "open space" has resulted in a spate of literature,[1] action by several state legislatures,[2] and even a whole new federal program of assistance to localities in such efforts.[3]

Any such search must perforce take into consideration the experience of the English with their so-called "green belts"—rings of

[1] *E.g.*, WHYTE, JR., SECURING OPEN SPACE FOR URBAN AMERICA: CONSERVATION EASEMENTS (Urban Land Institute Technical Bulletin No. 36) (1959); SIEGEL, THE LAW OF OPEN SPACE (1960); REGIONAL PLAN ASSOCIATION, THE RACE FOR OPEN SPACE (1960); Krasnowiecki & Paul, *The Preservation of Open Space in Metropolitan Areas,* 110 U. PA. L. REV. 179 (1961).

[2] CAL. GOV'T CODE §§ 6950-4; MD. ANN. CODE art. 66(c), § 357(A) (Supp. 1960); N.Y. MUNIC. LAW § 247; N.J. Sess. Laws, 1961, ch. 45.

[3] See 75 Stat. 183-5, 42 U.S.C. §§ 1500-1500(e).

land several miles wide which have been designated around various large cities. Within these belts an attempt is made to limit severely the new development which takes place, whether for the purpose of preserving "amenity," of protecting prime agricultural land, of checking further growth of large built-up areas and forcing decentralization into new towns, of preventing neighboring towns from merging into one another, of preserving the special character of towns such as Oxford, or of preventing new scattered development before existing communities have been completely filled in (as Dr. Mandelker indicates, the philosophical basis of these controls has never been absolutely resolved). Under the various English Town and Country Planning Acts, individual "planning permission" is required for almost any type of "development," no matter where it may take place. It is expected that within the green belts such permission will customarily be refused, although a certain amount of "infilling" and "rounding off" of existing villages and towns is contemplated.

Since experience with the green belts in some measure dates back to 1938, it might be expected that Americans could learn valuable lessons from examining the actual workings of this technique. Unfortunately, both the title of this book and the publisher's "blurb" on the dust jacket raise false hopes in the reader seeking such lessons. The author does not really set out to analyze the varying situations in which this technique has been used, where it has succeeded and where it has failed, or why. He does not seek to compare the use of this technique with others which might have been used in similar situations, or to measure its advantages and disadvantages. In short, he is not particularly concerned with the questions which might be considered of most importance by planners or policy-making officials.

This is not to say that the book is without value. It is actually, in the words of its subtitle, a very fine analysis of "English Town and Country Planning in Action," as measured in a year's close study by a highly competent lawyer and legal researcher. In many respects it is the finest short description readily available to the American reader of the workings of English planning and land-use regulation procedures. But it treats green-belt regulations only as a particularly illustrative set of regulations around which to center this description.

The author begins with the processes involved in adoption and

approval of local plans. Then he traces through the processes by which individual applications for planning permissions are received and decided at the local level and at each successive step in the appeal procedure. Illustrating his presentation both with statistics and with descriptions of particular cases, he puts his finger on a number of points which will raise the eyebrows of many American lawyers.

The English planners have made a conscious effort, it seems, to treat each case on an *ad hoc* basis, arguing that circumstances differ so widely that an undesirable element of rigidity would be introduced by establishing a system of precedents. Imagine this from the homeland of our common law system, where even the Chancellor's equity proceedings came rather quickly to be framed by a series of case-derived rules! The obvious danger of such an approach is that individual applicants will be treated in an arbitrary and discriminatory manner. Without saying so directly, Dr. Mandelker highlights a number of factors which indicate that this is a very real danger indeed.

There are several possible safeguards which could be used to head off such danger. First, as in the field of American administrative law, some reliance might be placed upon the expertise of the adjudicators, relying upon their professional standards to serve as a brake upon excessive arbitrariness. This undoubtedly is a protection in the English system, but as Dr. Mandelker indicates, the initial decisions are made by a committee of laymen similar to an American planning board or county governing board. And the final decision on an appeal is apt to be made by members of the administrative decisions branch of the Ministry of Housing and Local Government, who are trained neither in the law nor in planning nor even in the other design professions such as architecture or engineering.

Next, in the absence of a constitution, the restraints which might be imposed by the judiciary in the interest of "reasonableness" or "fairness" are largely non-existent. Only a minimal number of appeals reach the courts, and the scope of their review is extremely limited.

Next we might look to the Ministry of Housing and Local Government, which has general supervisory authority over the lower level agencies in the process. Here we find an apparently deliberate refusal to give detailed instructions to those making decisions. The Ministry's circulars (perhaps reflecting the statutes on which they

are based) appear to be written in broad and loosely defined terms. The Ministry seems to have discouraged the publication of case reports or their use as precedents. In general, it seems to have set its face against treatment of individual applications as judicial-type cases, in hopes that they can be treated routinely as mere administrative matters.

In America land-use regulations are normally detailed in the zoning ordinance or local subdivision regulations, available to all who can read. In the absence of equivalent written regulations in England, the formally adopted plans of local governments might have the same effect, serving as a framework for decisions on individual applications. But Dr. Mandelker reports that in many instances there is no plan, or the plan is mapped at such a small scale (one inch to the mile) that it is of little help in concrete instances, or its text statements are deliberately succinct or vague, or the plan has not yet (through administrative delay) been approved, or the plan was so far out of date when it was finally approved that its basic assumptions are no longer valid. So criteria for judging each individual application must in many cases be developed on the spot.

In America a common safeguard against arbitrary action in favor of an applicant is the probable reaction of neighboring property owners. Under the English system, the interests of the neighbors are largely ignored. In the ordinary case they receive no notice of a pending application. And in the event that a planning permission is granted, no provision is made for an appeal by aggrieved neighbors.

Finally, the appeal process throughout is characterized by inadequate records of evidence, findings of fact, and statements of the reasons for decisions. Indeed, as the case moves up towards the top, records seem to become even more inadequate. The result appears to be that issues are never really sharpened, and a great deal of confusion and irrelevant arguing results.

Oddly enough, the chief victim of all of this does not appear to be the property owner seeking a planning permission. Instead, the raw statistics would indicate that the public interest suffers. In 1958, permission was initially granted in roughly ninety per cent of the 400,000-odd cases. Of those denied permission, approximately one out of five chose to appeal, and relief was granted to over thirty per cent of the appellants. This percentage held true even in the green belt areas where development was to be discouraged. "Although

population growth in the green belts has been retarded," reports the author, "between 1951 and 1958 they increased at a rate which was from four to six times the national average."

Summing up, Dr. Mandelker paints a more gloomy picture than has been customary in descriptions of English planning:

> As American planning and zoning move toward the English model, an evaluation of the English experience has a priority of the first order. None would deny the boldness of postwar English planning legislation. In practice, however, the product has not lived up to its promise. Part of the problem lies in the planning process. Policy remains fuzzy and unclarified. Planning administrators, both national and local, muddle through. Public disenchantment is all too obvious, even to the casual observer. The health of the planning mechanism would benefit greatly from a public stocktaking, increasing policy clarification, and a tightening and improvement in the administrative machinery.

American planners and lawyers will find much of interest in Dr. Mandelker's study. It is suspected, however, that its chief beneficiaries are likely to be the British planning administrators.

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