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## Book Review (reviewing Lawrence F. Ebb, Regulation and Protection of International Business: Cases, Comments and Materials (1964))

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## BOOK REVIEWS

REGULATION AND PROTECTION OF INTERNATIONAL BUSINESS; Cases, comments and materials. By Lawrence F. Ebb. St. Paul: West Publishing Company, 1964. Pp. xxv, 885. \$12.00.

About ten years ago a number of law schools, troubled by the supposed sterility and intellectual rarefication of the conventional course offerings in international and comparative law, began to introduce a new kind of course. The convergence of a number of powerful forces—the accelerated pace of United States private foreign investment, the establishment of new transnational economic organizations, a growing restlessness among faculty members and students with the parochialism of much of the traditional law school curriculum, and in some cases a liberal infusion of foundation funds—made the “international transactions” course, as it came to be known in many quarters, an instant success in most law schools. Though still deemed esoteric by some faculty members, the transactions course has come to be thought of, at least by students headed for large law firms, as a bread-and-butter course. Still it has remained to this day a course without agreed content.

The subject matter of most law school courses is fairly fungible from school to school, but the transactions course seems never to have jelled around some common core of problems or materials. So long as there was no casebook in the field, most established teachers continued to teach that which they knew best. Teachers of international law and organization taught much the same thing that they had been teaching in the past, with perhaps a bit less “law” and a bit more “organization.” Comparative lawyers moved from classical contract and tort problems under the French and German codes to an examination of commercial law, including business organizations. Recognizing with incisive, unromantic pragmatism that, hour-for-hour, the bulk of the so-called international practice of law consists of the application of the United States tax laws to foreign transactions, tax lawyers emphasized tax problems. And some teachers with no particular training or experience in international transactions emphasized what they deemed to be the practical problems of doing business abroad, an emphasis which in their own domestic specialties they would have derided as a how-to-do-it approach.

In time most transactions courses included a hodgepodge of all these topics. In the process international transactions began to resemble more a grab-bag than a “field” of law. What came to be taught in a great many schools was primarily an eclectic collection of domestic law materials for which there never seemed to be time

in jam-packed domestic law courses, to wit, the additional layer of complications produced whenever activities transcending national boundaries were subjected to domestic legislation.

In time casebooks began to appear. From the congealing process to be observed in other once-novel course offerings, one might have predicted that the "field" would come to have some agreed content. Four casebooks later we find that, quite to the contrary, some other process, perhaps best characterized as the division of labor, has been at work.

Katz and Brewster were first with their book<sup>1</sup> which emphasized international and domestic public law within a rather abstract framework. Offering navigational assistance to a multitude of teachers floating about upon a sea of mimeographed materials, this path-breaking volume won a deserved clutch of "adoptions."

Shortly thereafter appeared Bittker and Ebb's highly creditable achievement.<sup>2</sup> The virtues of their book seemed to flow precisely from the choice of a restricted and homogenous set of problems in the single field of United States tax law with only an occasional glance at comparative materials.

A first-rate contribution cast in a specialized format was Stein and Hay's *Law and Institutions of the Atlantic Area*. It was precisely its emphasis on Atlantic institutions which gave the book its strength; a vast body of seemingly unrelated material ordered itself surprisingly well around this focal point and, as the authors explained, "the impact of international institutions on the life of the individual and of the enterprise, and on national law, has been deeper in Europe than in any other part of the world and has reached a level which allows for serious study."<sup>3</sup>

The latest offering is Professor Ebb's *Regulation and Protection of International Business*.<sup>4</sup> Despite its promise of a treatment of "international business," the qualifying words "regulation and protection" suggest the actual scope of the volume. This new effort, like its predecessors, is not a general book on the international economic process or even on the problems of doing business abroad. The decision to deal with a more restricted field is made quite explicitly:

The international ramifications of contract, corporate, and tort law (traditional private law) represent one area of interest. This book,

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<sup>1</sup> KATZ & BREWSTER, *INTERNATIONAL TRANSACTIONS AND RELATIONS* (1960).

<sup>2</sup> BITTKER & EBB, *TAXATION OF FOREIGN INCOME* (1960).

<sup>3</sup> STEIN & HAY, *LAW AND INSTITUTIONS OF THE ATLANTIC AREA* iii (1963).

<sup>4</sup> EBB, *REGULATION AND PROTECTION OF INTERNATIONAL BUSINESS* (1964).

however, concerns the legal aspects of another area, that of public regulatory and protective measures, and considers those problems in depth—rather than attempting to canvass a broader area with less thoroughness. Both approaches are legitimate, and accomplish different objectives.<sup>5</sup>

While one might hope that someone will someday organize a book of cases and materials around the international economic process as a whole, it would not be fair to quarrel with Ebb's decision to attack only a part of the field. Ebb does what he does quite well indeed. His suggestion that his book occupies at least half of the field, leaving out only some private comparative law materials, however, is misleading. What we have here is a very intensive probing of a series of discrete problems falling within what might be termed international trade regulation, coupled with a superficial treatment or total disregard of other equally important problems within the same general area.

The first quarter of this massive book is devoted to an intensive examination of essentially one topic: The application of domestic legislation to transactions with foreign elements. The materials, drawn almost exclusively from United States law, involve primarily antitrust, tax and labor legislation. The difficulty of organizing this flood of disparate material into a single doctrinal framework may have been the incentive for an arresting, if dubious, innovation in casebook editing. The editor has carved out the great bulk of the pertinent labor cases for a separate eighty-page chapter entitled: "A Case Study of the Territorial and Other Approaches to the Interpretation of Regulatory Statutes: Regulation of Labor Relations in the International Transportation Industry."<sup>6</sup>

Another major block of material deals with jurisdictional and procedural problems of litigation with foreign elements, notably questions of personal jurisdiction over non-residents and obtaining evidence abroad, spiced with sovereign immunity materials imported from the traditional public international law course. Whether this material might not be better and more easily taught in a procedure course is a troublesome, but perhaps irrelevant, question. One will search procedure casebooks in vain for an adequate treatment of these important issues.

Better than one-third of the casebook is devoted to the law of industrial property and, more precisely, the international patent and trademark systems with emphasis on the reconciliation of

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<sup>5</sup> *Id.* at ix.

<sup>6</sup> *Id.* at 135-218.

patent and trademark "monopolies" with the antitrust laws. With its imaginative and probing notes on a multitude of troublesome issues, this is the most impressive portion of the book. Some teachers may, however, find the copious detail a pedagogical impediment. It is doubtful that casebooks should attempt to do double-duty as treatises.

The final one-quarter of the book is entitled "National and International Regulation of Government Barriers to International Trade," a subject which tends to break down into two separate topics. The first might be described as the American domestic law of tariffs and tariff-making. The second half of this imperfect dichotomy may be characterized as the substantive law of the General Agreement on Tariffs and Trade (GATT) including the domestic interpretation of that law. Much of this last portion of the book is strikingly thin in comparison with the intensive treatment of earlier topics.

The editor's decision to give a detailed treatment of a limited number of topics bearing on international business accounts in large part for both the strengths and weaknesses of the book. I prefer to discuss its weaknesses first because in my mind they are outweighed by its strengths.

No survey of the "field" is presented by this book. It can be taught side by side with the Stein-Hay and the Bittker-Ebb works with no substantial overlap. Nor is there a significant undertaking made to prepare students to cope with the legal systems of other countries. For both these reasons, the book may therefore be deemed too specialized for some schools with only a single transactions course. Perhaps more weighty is the objection that the student will come away with very little understanding of the international business transactions he is supposedly studying. The regulatory materials are offered the student without explanation of the typical kinds of transactions under regulation. A similar criticism can of course be leveled at many domestic substantive law courses, but it is a particularly serious criticism in the international area where the student typically arrives at law school with even less knowledge of the relevant commercial practices than in other courses in his curriculum. What is still missing from the market is a casebook that will approach international transactions from a functional perspective, introducing students both to the business context under regulation and to the international economic problems giving rise to the regulation, as a framework for understanding the legal materials to be studied.

The strengths of the book are in some measure the mirror

images of its weaknesses; the concentration on a few topics permits analysis in depth of the material covered. The topics chosen are highly teachable; in keeping with American law teaching tradition, court decisions have been emphasized. Much of the material is closely related to the content of domestic law courses, notably the materials on procedure and industrial property. Teachers of trade regulation will probably feel particularly at home with this book.

Yet the strengths of the book are more than essentially organizational. The foregoing comments give far too little credit to the energy and imagination lavished on this work of scholarship. This is more than a casebook. It is a compendium of research materials arranged in a highly analytical form shot through with penetrating insights and stimulating suggestions. In many cases the extensive notes carry one well beyond the secondary literature in the field. Whatever casebooks may follow, *Regulation and Protection of International Business* will remain a staple research source for scholar and practitioner alike for a long time to come.

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COMPARATIVE LAW AND SOCIAL THEORY. By Jerome Hall. Baton Rouge: Louisiana State University Press. Pp. 167. \$5.00.

Comparative law is a discipline of rapidly growing significance, a reflection of the increased contacts not only between the major civil and common law systems of the Western world, but also of the active entry of non-Western legal systems into the modern family of nations and international organization. Moreover, the comparative study of such fields as contract, tort, commercial law, administrative law, anti-trust law and many others, is becoming increasingly important in the development in public international law, through the "general principles of law recognized by civilized nations."<sup>1</sup> These principles are a source of law not only for the International Court of Justice, but are also referred to in an increasing number of international arbitration agreements, especially between governments of developing countries and foreign private investors.

But comparative law is also a dangerous discipline. A little comparative law, as superficial comparison of codes or cases, can be extremely misleading, since it ignores the structure and the social context within which a particular legal concept or principle operates.

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<sup>1</sup> STATUTE OF THE INTERNATIONAL COURT OF JUSTICE, art. 38(1)(c).