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Surrey: A Lawyer's Guide to International Business Transactions

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BOOK REVIEWS

A reading of *Common Market Cartel Law* creates an awareness of the broad discretion accorded to the EEC Council and Commission for planning and directing the competitive economy of the Community. The Sherman Act in the United States and the antitrust laws that have followed it have been supplemented by a few guide lines issued from time to time by the Federal Trade Commission in certain areas, but in general the legislative and administrative agency approach in the United States with respect to the antitrust laws has been more like the approach of some religious sects to Bible study whereby every man is entitled to interpret the laws in his own fashion—but at his peril. In contrast, the approach of the Common Market to antitrust regulation is manifested in the injunction to the Council and the Commission that they issue comprehensive regulations implementing and interpreting in detail the more general statements of policy laid down in the Rome Treaty.¹⁴ This process is understandably proceeding in a deliberate manner. *Common Market Cartel Law* conveys a vivid notion of how many problems remain unresolved and how many problems this process can create.

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A Lawyer's Guide to International Business Transactions. Edited by Walter Sterling Surrey: Joint Committee on Continuing Legal Education of the American Law Institute and the American Bar Association, 1963, \$35.00, pp. 1071.

Starting from practically nothing ten years ago, the list of guides, how-to-do-it books, symposia, and similar materials on international legal practice has grown today to awesome proportions. A recent addition, and a very welcome one, is this impressive compilation sponsored by the ALI-ABA Joint Committee on Continuing Legal Education.

The *Lawyer's Guide* includes contributions from over twenty-five writers, including many familiar names. The various authors are obviously well-informed and at home in their fields.

There are sections on trade control regulations, foreign licensing, foreign laws relating to direct investment, insurance, financing, antitrust, United States taxation, the various regional trade blocs such as the EEC and EFTA and a final section on international litigation and arbitration.

The volume, in many ways, is just what its title suggests; it is a *guide* to international business transactions, and, as such, it is surely a useful starting point for the lawyer faced with the problems of dealing across national boundaries. You will not, for example, find in the *Guide* a country-by-country list of income taxes throughout the world, but the *Guide* does tell you

its individual members or classes of them is not too theoretical and has indicated less certainty concerning the course of German judicial decisions on this point. See Proceedings, Conference on Antitrust in the European Communities, American Bar Association, Section of Antitrust Law, Brussels, September 23-25, 1963, p. 154.

¹⁴ Article 87 of the Rome Treaty directs the Council of the Community to issue the necessary regulations or directives to put into effect the general principles of articles 85 and 86. See CCH Common Market Rep. ¶ 2201.

where they may be found. A major purpose of the *Guide* is to help organize the search for answers and it fulfills this purpose more than adequately.

Three sections are worth special attention.

Lawrence Eckstrom's contribution on foreign licensing is a thorough-going checklist of points to be considered in any license. Most of the law he cites is domestic United States law, but this is probably because few cases on foreign licensing are available. The more valuable portions of his discussion, to me, are the specific point-by-point analyses of license agreement provisions; there is even a short exercise on weights and measures, with some tips on clarity of communication. An elaborate and useful form license agreement is included as an appendix.

United States taxation of foreign operations receives the detailed consideration that this vital subject is entitled to. Relevant Internal Revenue Service forms are included in an appendix, and the overall treatment of this most complex area is very good. Yet this section raises a real question about the continued usefulness of the *Guide*. The recent Treasury activity in the area of allocating income between an American parent and its foreign subsidiary is accurately predicted, but further important administrative developments have occurred since the publication of the *Guide*. Indeed, all foreign law and United States law relating to foreign transactions is changing so rapidly that without continuing supplements, the *Guide* may soon be obsolete. The editors themselves are well aware of this problem, however, and frequent updating supplements will probably be forthcoming.

The final section worth special mention contains material dealing with international litigation and arbitration. This is a particularly thoughtful discussion, and helps show why the statistical probability of litigating international agreements is so low. The special problems attendant on international litigation are well presented, and the advisability of arbitration provisions in agreements is made clear. I would like to have seen the section carried further, to include a candid discussion of the rather delicate process of selecting good foreign counsel, and of techniques of negotiation across national boundaries. Most international lawyers soon learn that negotiation by letter alone can be disastrous, and that one all-day face-to-face conference can accomplish more than months of letter-writing. Practical considerations like these are touched on from time to time throughout the book, but it would be helpful, in a supplement, to devote a specific section to them.

I have only a few other quarrels with the *Guide*, and these are not large. First, some of the emphasis seems wrong for the typical lawyer working in the international field. One of the largest sections of the book, nearly one-sixth of its total, is devoted to the Export-Import Bank, the Agency for International Development, and other major institutional sources of financing. This is surely worth knowing about, but I doubt very much that most private lawyers need such an elaborate presentation. And at the same time, I found practically no coverage of the day-to-day legal problems one runs across in operating through distributorships abroad. The unwary should be warned, for example, that a lump-sum payment may be due a terminated exclusive distributor, even if the original appointment agreement with him

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expressly waives such payment, and even if the termination is strictly in accordance with the provisions of that agreement.

Despite these and a few other reservations, I found the book a highly useful tool. Bibliographies are elaborate, and suggested agreement provisions are frequently provided. The styles, though varied, are generally clear and no less readable than most law review articles. If one can find a message in such a diversified reference volume, it is that the American lawyer cannot hope to be expert enough to know all the answers in the field of international business, but he can, with the aid of books such as the *Guide*, determine what are the important and relevant questions, and where the answers may be found.

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Doing Business Abroad. Edited by Henry Landau: Practising Law Institute, 1962, \$30.00, pp.731 in Two Volumes.

With the ever increasing involvement of many medium and small size corporate clients in foreign business ventures, the lawyer in general corporate practice will be called upon more and more to have at least a basic understanding of problems involved in doing business abroad. The two volume publication, *Doing Business Abroad*, edited by Mr. Henry Landau, should serve as an excellent introduction. These volumes were published by the Practising Law Institute in 1962 and represent the contribution of twenty-three legal and tax experts.

While these volumes should be part of the library of any lawyer having an interest in international business law, they must be used with some care. Unfortunately the books were published shortly before the sweeping changes in the Internal Revenue Code occasioned by the 1962 Amendments relating to foreign operations of United States taxpayers. Thus much of the United States tax planning commentary in the books is already out of date. The comments, for example, with respect to the use of a branch of a domestic subsidiary which was clearly out of favor at the time the contributions to these volumes were prepared, ought to be carefully re-examined in light of the 1962 Internal Revenue Code legislation.

Not all the United States tax commentary, however, has been outmoded by the 1962 Amendments to the Internal Revenue Code. Of particular interest is the discussion on Western Hemisphere Trading Corporations and foreign tax credits. Even with respect to the 1962 Amendments there are some general comments concerning that legislation which, at the time of publication of these volumes, was pending before Congress. For those who may become involved in litigation involving the United States taxation of foreign income, the selected legislative history, contained in the second volume, of taxation proposals submitted to Congress periodically since 1953 will be of interest