BOOKS RECEIVED

Belgium *


Under normal accounting standards, the enterprise is viewed as a going concern continuing for the foreseeable future. This idea underlies the Law of October, 8, 1976, relating to the accounts of Belgian companies as recently amended (Royal decree of September, 12, 1983) in order to meet the requirements of the Fourth EEC Directive on companies' accounting methods. The amendment is also in accord with company law governing the perpetuation of companies.

In the present economic climate, however, there is a need to address enterprise discontinuity, such as scaled-down and reduced workforces. This book is devoted to the legal problems which arise in such situations both in the law relating to companies' accounts and in company law. The various contributions examine the area from several standpoints: discontinuity in a group perspective; discontinuity from the perspective of the external controller; and discontinuity from the perspective of the liquidator. The book also studies the role of the courts under both Belgian and EEC legislation.


Economic difficulties experienced in Western Europe in the seventies and early eighties have resulted in both a considerable increase in the volume of bankruptcies and in a renewed interest in the field of bankruptcy law.

Creditor problems and strategies in bankruptcy were the focus of the annual seminar, held in 1982, by the CDVA (The Business Law Commission) of the University of Liège Law School. The proceedings reported in this volume examine, inter alia, the principle of equality among creditors, the principle governing secured creditors, the phenomenon of creditors who claim assets as

* Submitted by Jean-Marie Chandelle, Assistant à la Université Libre de Bruxelles.

owners, and problems surrounding enforcement of creditor claims. After a brief analysis of the role of "ordre public" (public policy), the book addresses problems peculiar to claims against certain debtors such as the state, state enterprises, and multinational business ventures. The proceedings conclude with a reconsideration of the main technical rules of bankruptcy law.

The book is noteworthy in two respects. First, it provides a description of how Belgian bankruptcy law operates in practice. Second, it depicts the crisis situation and shows how bankruptcy law adjusts, primarily through case law, to both creditor interests and the interests of the national economic system.


This book is the result of a most interesting and unusual experiment conducted by two experts in the field of banking laws in Belgium. Struck by the recent French and Belgian case law developments relating to banks' liability to third parties as suppliers of credit, Professors Simont and Bruyneel submitted a hypothetical case to leading experts in various jurisdictions for two principal reasons: (1) to assess the originality of the French and Belgian positions, and (2) to determine whether the same results could be reached by alternative means in other jurisdictions.

French and Belgian courts have ruled that banks may be tortiously liable to third parties, with whom they have no contractual relationship, for having supplied money to business ventures which were not creditworthy if, as a result of the banks' intervention, such third parties altered their positions so as to believe that such ventures were trustworthy and able to meet their obligations.

The Simont–Bruyneel hypothesis may be summarized as follows. A bank grants credit facilities to an enterprise which, after careful scrutiny, it has every reason to believe creditworthy. The debt is secured by adequate securities and the debtor is required to provide periodical reports on its operations and developments. The business venture appears to do quite well and the bank extends additional credit. As a result, third parties are led to believe that the enterprise in question is creditworthy. However, the bank later discovers that it has been shown forged reports and that the debts far exceed the financial capabilities of the business which goes bankrupt. The question is whether a third party may hold the bank liable for the economic loss. May the bank be sued for negligence?

The book provides a number of opinions by outstanding experts from France, Belgium, Italy, Spain, the Federal Republic of Germany, Switzerland, the Netherlands, the United Kingdom, and the United States, which highlight a sharp contrast between the French and Belgian approach, on the one hand,
and the lack of any such liability in the common law jurisdictions on the other hand. In between these extremes, the remaining civil law systems demonstrate a marked tendency to reject such liability for technical reasons because of stricter definitions of causation or as part of a policy favoring banking institutions.

The study, which relies upon the comparison of segments of facts rather than legal concepts, concludes with two syntheses: one, by Professors André Bruyneel and Lucien Simont, involving banks' liability as suppliers of credit, and the other, by Professor Ludo Cornelis, addressing general principles of torts.


Professor Alexis Jacquemin is well known for his contribution to the advocacy of an economic analysis of the law as well as to the development of "the law of the economy."

This collection of essays, a substantial number of which were written by judges, is devoted to a close scrutiny of how judges of the Belgian courts – particularly commercial courts – and the Court of Justice of the European Communities address problems of, inter alia, economic recession and increased state intervention in the economy. The book complements Professor Jacquemin's earlier work in the field for which he was awarded the "Prix Francqui" for 1984–1985, one of the most coveted prizes given for academic contribution to the study of law in Belgium.

*Brazil*


This book deals with several controversial issues arising out of application of Law No. 6.404/76, which has profoundly altered the corporation law in Brazil. Among other topics, the author analyses the transfer of corporate control, the *ultra vires* theory, problems arising out of excessive increases in capital that injure minority shareholders, and corporate groups. The author also proposes a solution for the problems created by the unprecedented growth of cooperative corporations, problems that demand consistent, well-defined judicial treatment in order to eliminate doubts and guide interpreters of the law.

* Submitted by Modesto Carvalhosa, Member of International Faculty, *Journal of Comparative Business and Capital Market Law.*

Shareholder agreements, as a statutorily regulated device, were first introduced into Brazilian law by Law No. 6.404/76. Through a systematic analysis, the author establishes the limits of such agreements and the alternatives available to corporations attempting to render registered agreements more effective. The author considers four aspects of shareholder agreements: the nature and characteristics of such agreements under the Law; the objectives of such agreements – which may concern voting rights or the purchase or sale of shares; the validity of the agreement – which in extreme cases depends on whether the corporation is closely or publicly held; and the effectiveness of the agreement – statutory filing and registration requirements and the possibility of obtaining specific performance.

On the disputed issue of the enforceability of voting agreements, the author argues that the corporation has a legal duty not to consider votes cast contrary to the agreement’s provisions because the corporation is bound by the agreement.


The author develops an analysis of the corporate structure from the viewpoint of the power to control the corporation. The book focuses on the conflicts of interest that occur inside and outside of corporations with respect to the exercise of, and compliance with or resistance to, the control power. This third edition places great emphasis on interpreting Brazilian law in the light of Law No. 6.404/76, which took effect in 1977.


At the beginning of 1983 the Brazilian Securities Commission commenced publication of a quarterly review addressing the legal and economic aspects of topics relevant to the securities market. The review contains three permanent sections: (1) An Overview of the Securities Market – a report on the important facts that directly influenced the market during the quarter; (2) Regulatory Action by the Securities Commission – the Commission’s rules, regulations, and releases; and (3) Information to the Market – notice of proposals for the adoption of new or amended rules, as well as data relating to the performance of institutional investors.

In addition, the review includes articles and essays by jurists and other


_Federal Republic of Germany*


The phenomenon of corporate power (its use and the mechanisms of its control) remains a source of constant debate in the major Western countries. The contributions to this volume emanate from a colloquium organized by the Law Department of the European University Institute in Florence. The discussions are noteworthy in three respects. First, they review recent developments in the United States, the United Kingdom, and the Federal Republic of Germany. Second, the contributors from the various national systems present an interesting amalgam of diverging theoretical and political views. Third, a number of disciplines, including law, economics, sociology, and political science, are represented. The volume thus presents a broad spectrum of factual and legal developments, policy issues, and theoretical approaches relating to the complex problems of corporate governance. As a comparative and interdisciplinary study of one of the fundamental aspects of highly developed socio-economic systems – corporate enterprise governance – this book has much to recommend itself.


For a long time, prospectus liability was a dead subject in German law. The traditional statutory provisions, dating from 1896, are restricted to the listing of stock at the stock exchange. For sixty years (1912 to 1982) there was no litigation in this area. In 1969, similar provisions were enacted as to the distribution of certificates issued by mutual funds. The attempt to create

* Submitted by Friedrich Kübler and Klaus Hopt, Members of International Faculty, _Journal of Comparative Business and Capital Market Law._
Books received

general provisions requiring a prospectus and imposing prospectus liability for improper issuance and distribution of securities failed in the 1970s for political reasons. Recently, however, the courts have begun imposing a general rule of prospectus liability that has been more severe than the existing statutory provisions. This development has stimulated a rather heated discussion regarding the legal basis of such a rule, its reach, and its relationship to the existing legislation. Professor Köndgen's study presents a clear and precise description of the state of the law as well as an interesting and well-reasoned discussion of the most controversial issues.


In this excellent book, Ebke considers the third party liability of auditors under United States and German law. The book, presented as a doctoral thesis to Münster University Law School, provides both a comprehensive assessment of the American law and a sophisticated comparative law analysis. The book concludes with the author's views on and proposals for the German law.

Under German law, there is no possibility of full third party liability of the auditor absent intentional misrepresentation. In contrast, U.S. law permits such liability. But, according to Ebke, prophylactic improvements in auditing standards and practice — for example, greater auditor independence, more meaningful balance sheets, development of principles of orderly book-keeping and disclosure, and self-regulation of the profession — are more important than a broader rule of liability.

The book has an extensive appendix outlining the relevant American and German statutes and regulations, the generally accepted auditing standards, the Financial Accounting Standards Board statements of financial accounting standards, and a comprehensive index to European, North American, Australian, and other court decisions.

Japan *


This volume is part of the Iwanami's Basic Law series. Twelve scholars examine the legal implications of the corporate enterprise in modern society. Topics include corporate social responsibility, control of major Japanese enterprises, general corporate governance and employee participation, capital

* Submitted by Katsuro Kanzaki. Member of International Faculty, _Journal of Comparative Business and Capital Market Law._
market regulation, public subsidization of private enterprises, and the multina-
tional corporation.

*Kin'yūtorihikihō Taikei* (Treatise on the Law of Banking Transactions). Edited
Volumes. n.p.

The six-volume treatise provides a comprehensive overview of banking
transactions and regulation. The treatise also contains discussions by legal
scholars, economists, bankers, and administrators which facilitate understand-
ing in this area.

*Shokentorihikihō Shinpan* (Securities Exchange Law). By Takeo Suzuki and

This is the much awaited revised edition of Suzuki–Kawamoto Securities
Exchange Law. Since publication of the original edition in 1968, a number of
significant regulatory developments have occurred: disclosure requirements for
publicly-held companies have been greatly amended; tender offerings have
become the subject of special regulation; securities company sales practices are
more intensively regulated by both the Ministry of Finance and the
broker–dealer association; and banks are allowed to engage in the sale and
distribution of public bonds. The new edition examines these and other
developments.

Two Volumes. n.p.

These volumes contain a section-by-section analysis of the stock corporation
law as set forth in the Commercial Code and the Law Regarding Exceptional
Japanese stock corporation law was substantially amended in June 1981 and
the revision of the ten-volume commentary on corporation law is under way.
This two-volume commentary is a handy and useful tool for both practitioners
and law students.

*Switzerland*

Edited by W. von Steiger. Helbing & Lichtenhahn Verlag AG, Bâle &

*Submitted by Anne Lachat-Heritier, member of the Geneva bar.*
The *Schweizerisches Privatrecht* is a collection which, ultimately, will provide a general description of Swiss private law. Books on general principles, family law, contracts, and commercial law have already been published; some are available in French and German. In 1982, the second volume on commercial law was published in German. The volume begins with an excellent report on corporations by C. von Greyerz. The second part of the book, written by Dr. H. Wohlman, describes with great clarity the *société à responsabilité limitée* (limited liability partnership), a legal form rarely used in practice. This volume provides — as do many others of *Schweizerisches Privatrecht* — all basic information on Swiss law and all necessary references to recent developments and trends. The volume is an indispensable reference on Swiss corporate law.

**United Kingdom**


This book contains an explanation of the system of documentary credits issued under the International Chamber of Commerce (ICC) system, its operational limits, and the interrelationship between the ICC system and English law. In chapter two, the workings of the system are described. Chapters three through twelve discuss relevant aspects of English law. Chapter thirteen deals with fraud and is an additional chapter in this revised edition. Chapter fourteen outlines the modified rules which will be published shortly. The work concludes with a substantial appendix containing some fifty digests of relevant cases.


The main purpose of the new edition is to take account of the numerous judgments which entail "refinements" of the law rather than major changes. Sections of the Act are set out in bold type, followed by detailed commentary. The bulk of the work is contained in part one (sections 1 to 65 of the Act), which deals with the definition, nature, and purpose of bills and a discussion of forgery. Part two concentrates on the cheque (sections 73 to 82 of the Act). Part three is concerned with promissory notes (sections 83 to 87 of the Act). Part four discusses conflicts (section 72 of the Act) and part five deals with pleadings, evidence, damages, and related matters (rules of evidence, sections 3, 21, 100; as to damages, section 57; and as to interest on damages, sections 9(3) and 57 of the Act). Part six examines lost bills and notes (sections 69 to 70 of the Act). Finally, part seven concludes with a discussion related to insolvency of parties (sections 97(1) and 317 of the Companies Act of 1948).


This practical treatise is designed for lawyers, accountants, and company secretaries. The book contains forty-two chapters contributed by seventeen practising lawyers and accountants and is presented as a continuous text. Thus, the contributors' names are acknowledged in the chapter headings in the contents page and not within the text. The book details the effects of: (1) the Second EEC Directive on company law, enacted in the Companies Act of 1980; and (2) the Fourth EEC Directive on companies' accounts, enacted in the Companies Act of 1981, together with Parliament's reforms to check abuses involving directors' loans and insider dealings. The new rules on dividends, directors' duties, disclosure of directors' dealings and purchase of own shares, and the requirement imposed upon directors to consider the interests of employees are also examined.


This book is written by a factor who has been practicing for over twenty years. In the introduction the author deals briefly with the origin of factoring, its development in Europe and the United Kingdom, and its definition. The author divides the subject into several broad areas: use and practice, the relationship between factor and client and between factor and debtor (including the insolvency of the debtor), and conflicts with third parties. In part five, the book examines the insolvency of the client. The concluding two parts address international factoring and its future direction.

Throughout the book, reference is made to the 1984 White Paper, A Revised Framework for Insolvency Law (Cmd. 9175). Where appropriate, aspects of tracing and retention of title provisions in terms of sale are included.
Books received


