

Book Reviews

Justices Hans Joachim Faller and Theodor Ritterspach prepared the decisions for translation. The overwhelmingly difficult and demanding task of actually translating them was carried out – in an excellent and indeed awe-inspiring manner – by I. Fraser, P. Aliferis, and D.C. Umbach.

The selection deserves wide dissemination and, no doubt, will become an indispensable research tool of a wide range of scholars. Court and publishers have begun a long overdue and unreservedly laudable project. Roman Herzog, then President of the Federal Constitutional Court and now President of the Federal Republic of Germany, writes in his Preface to the collection that “[i]n the future such decisions will be published on a continuing basis.” As four years have gone by since the publication of this initial compilation, I hope that his words have not been forgotten in the Court or with the publishers.

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Book Notes*

Parisi, Francesco. *Liability for Negligence and Judicial Discretion* (2nd ed.). International and Area Studies. Research Series, No. 82. Berkeley: University of California, 1992. Pp. xxiv, 443. Index.

Francesco Parisi wrote a book not for those who do law, but for those who love law: His treatise upon negligence and judicial discretion reaches back to Roman foundations (even back to Adam and Eve, p. 27) and ends with modern theories on fault and negligence. Parisi's work is historical, comparative and critical. It was and is a challenging book.

In the main the book is structured chronologically. After a short introduction the author describes the early roots of liability, starting with the biblical *lex talionis*. He then turns to Roman law, to its adoption in medieval civil law and to canon law. Part I ends with the sixteenth century,

stressing the achievements of Donellus (for whose ideas the author shows much sympathy (pp. 130-31)). Part II explains how natural lawyers dealt with the problem of fault and the difficulties in setting their ideas into the civil law codifications, that is the French Civil Code and the German BGB. In part III the author leaves the civil law systems and focuses on the development of modern common law, concentrating on its American form. When in part IV the reader is confronted with contemporary theories on negligence, he or she will look at them with much deeper, much “older” knowledge.

The strength of Parisi's work lies in his description of Roman law and in his ability to show its influence on the development of the common law of torts as well as of civil tort law systems. Even where no direct influence of Roman law is shown, the work gives us a clear view of the striking parallels legal systems develop when confronted with the problem of negligence. But Parisi's intention goes further than giving mere descriptions of other people's ideas. His deep insight into the subject enables him to evaluate and criticize the different concepts. In the end, the reader understands why the unsolved riddles of negligence are still unsolved and thus (particularly if he or she has a civil law background) will have a greater tolerance towards the judge's discretion in negligence cases.

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Deubner, Christian. *Deutsche Europapolitik: Von Maastricht nach Kerneuropa?* Baden-Baden: Nomos Verlagsgesellschaft, 1995. Pp. 217.

Whoever is interested in the EU “multiple speed”, “variable geometry”, “concentric circles” or “diversity” formulas will find in this book an analysis of all the flexibility answers written into the Maastricht Treaty. The issue is definitely seen through a German lense. The book should be considered as scholarly support of the famous position paper of CDU/CSU *Bundestagfraktion* of September 1 1994 which formally initiated

* Publication of a book note does not preclude subsequent fuller review

the discussion about a core Europe under the influence of a Franco-German alliance.

The title ends with a question mark. This does not mean that the author has any doubts about the configuration he favours: An EU of 15 members limited to the *acquis* of the internal market. This would be governed by existing hard EC rules and procedures. A hard core Europe run under intergovernmental procedures would rally the countries willing to make further progress in the other fields, under French and German leadership. The Benelux countries would have the function of a useful go-between among the central partners. The core EU would be constituted by the countries joining EMU by January 1, 1999. The countries of the core would have a blocking minority at the European Council when deciding according to Art.109(j) TEU on the entry into the 3rd stage of EMU. If the European Council would not take the right decision, the core countries would go it alone. Other partners would swallow this according to the "normative power of the factual". The author does not raise a question which comes to the mind of the reader: What would be the attraction of such a Union for its other Members?

H. Etienne

Van Houtte, Hans. *The Law of International Trade*. London: Sweet & Maxwell, 1995. Pp. xli, 414. Index. £100.

The distinction between public and private law retains, *a titre juste*, its attraction in European legal discourse despite the assaults from the other side of the Atlantic. But in some areas, even the most orthodox will accept that even as a practical matter it makes little sense. International Trade is one such area. For the purists this field covers the law of GATT and the WTO which governs and pits State against State and, at most, individuals against public authorities. There are many courses of International Trade in which discussion of a private contract of sale across national boundaries would be a UFO – something to be dealt with in International Business Transactions. The attractiveness of the van Houtte book is that it belongs to those books with a far more holistic view of the

subject and moves with ease from the substantive law of non-tariff restrictions, through international contracts of sale, through letters of credit. Procedurally, both private and public, domestic and international procedure and remedies are discussed. Because of its extensive scope packed into a relatively short format it should be regarded as that useful type of Handbook which introduces the field to newcomers and helps locate a problem in its correct contexts, after which more elaborate sources would have to be consulted. At £100 it is aimed at the practitioner. A student edition would be welcome.

JHHW

Korah, Valentine. *An Introductory Guide to EC Competition Law and Practice*. (5th ed.). London: Sweet & Maxwell, 1994. Pp. li, 316. Index. £19.95.

Valentine Korah's *EC Competition Law and Practice* has achieved a well deserved dominant position on the market. Its yellow covers should be recognized as a trademark worthy of protection. Fifth edition of an introductory classic.

JHHW

Steyger, Elies. *Europe and its Members. A Constitutional Approach*. Aldershot, UK/Brookfield, USA: Dartmouth Publishing Company, 1995. Pp. xi, 145. Index. \$59.95.

Europe and its Members: A Constitutional Approach has a most tantalizing set of chapter titles: The F Word; Grabbing for Power; Drawing the Battle Lines; Nailing the Caskets and Destiny Unknown. But behind most of them is a rather straightforward, often thin, legalistic description of the most well known elements of the Community legal order which have over the years been characterized as "constitutional" – direct effect, supremacy, the question of competences (a good chapter!) et cetera. Given its ambitions, the book is woefully under-researched, shorn of theory and evidently oblivious to a rich and growing literature which understands constitutionalism in its broad political, social and economic context. Even the finest baker