

Doing Business in the United States, by Frank G. Opton and Herbert Feller

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DOING BUSINESS IN THE UNITED STATES. By Frank G. Opton and Herbert Feiler. Deventer, The Netherlands: Kluwer Law and Taxation Publishers, 1984, 294 pp.

In the preface to *Doing Business in the United States*, authors Frank G. Opton and Herbert Feiler state clearly that their aim in writing this book is "to furnish an overview" and not to produce an "academic treatise." Judging by the scope of the table of contents, the authors have achieved their goal. Unfortunately, Messrs. Opton and Feiler have taken their "overview" one step further by attempting to interpret for the reader what may best be described as the "psychology" of American businessmen and their advisors. As a result, the book's usefulness is seriously impaired.

The variety and scope of the topics presented in *Doing Business in the United States* are impressive. (Indeed, the book touches on almost every subject taught in American law schools.) The authors begin their introduction to doing business in America with a discussion of the forms of doing business, *i.e.*, through an agent, an independent representative, a branch or a subsidiary. Included within this topic are useful references to the application of U.S. immigration laws to foreigners doing business in the United States and the ability, or lack thereof, to protect the anonymity of such persons.

The authors then ramble on through such diverse topics as: constitutional law (noting that aliens enjoy many of the same constitutional rights which U.S. citizens enjoy but failing to note which of the rights aliens do not enjoy); investment in real property; contracts and sales (including an introduction to the Uniform Commercial Code); corporate law (with a useful and interesting discussion of a director's fiduciary duties); partnerships and joint ventures; banking and finance (and government regulation thereof); secured transactions (*i.e.*, Article 9 of the Uniform Commercial Code); securities regulations; bankruptcy and insolvency; and taxation.

Substantively, the most complete and best written chapters of *Doing Business in the United States* are the chapters on antitrust law, agency law and employment contracts, patents and trademarks, and accounting. The discussion on antitrust law touches on the "rule of reason" approach of recent courts versus *per se* findings, price-fixing and price discrimination, monopolization, tying arrangements, boycotts and treble damages. This chapter should be especially interesting to Europeans because of the tendency of changes in the antitrust laws of several European countries to follow changes in American antitrust laws. The chapter on agency law and employment contracts is also worth noting inasmuch as the employer-employee relationship in the United States differs significantly from the same relationship in countries such as France, for example, where the concept of

"tenure" is more pervasive. Finally, the chapter on accounting presents a good introduction to the role of accounting in American business transactions and to generally accepted accounting principles. In this reviewer's opinion, this chapter should be placed at the beginning of the book (rather than at the end), in order to emphasize immediately the difference between American and European accounting principles and the impact of these differences upon transactions in which third parties such as American banks or the Securities and Exchange Commission may be involved.

Where the authors deviate from their professed goal of providing an overview is with their seemingly endless stream of comments on the nature of American business and the American legal system. This tone is set in the first chapter, entitled "The American Scene," which contains subsections ranging from "American Law is a Misnomer" to "Political Climate" to "Capitalism." It comes as no surprise then, that there is a subsection entitled "Law" which states that lawyers are "regarded as a necessary evil." This evaluation of the legal profession, while unappreciated, will probably cause no harm and, in fact, may contribute to the formation of a common bond between foreign businessmen and their American counterparts. Unfortunately, the authors also launch an attack on American businessmen in another subsection entitled "Cancellation of Contracts" which states:

It is not unusual for a U.S. purchaser to . . . cancel a contract; and, as a rule the seller accepts such cancellation. The buyer is surprised if the seller, rather than acquiescing, insists on performance. (p. 5)

Nonperformance without cause does not, however, seem to be the norm in transactions in which this reviewer has been involved. Unfortunately, this tone continues throughout the book.

In conclusion, *Doing Business in the United States* provides a good overview of many aspects of American law, even some whose usefulness to foreign businessmen is highly questionable. The decision of the authors to impart within this book their opinion on the nature of American businessmen and their advisors, however, cannot be ignored. The negative tone of their opinion may have the effect of tainting the opinions of foreign businessmen who venture to and in the United States, thus damaging their relationships with the American businessmen with whom they will come in contact.

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