

## **BOOK REVIEWS**

### **LIVRES NOUVEAUX**

*Exclusion Clauses in Contracts.* By David Yates. London: Sweet & Maxwell, 1978. Pp. xxi, 197.

This book is a thoughtful and insightful examination of a legal problem (actually, a set of interrelated legal problems) that has vexed courts, lawyers and scholars for most of this century. Ever since the rejection of nineteenth century *laissez-faire* concepts, common law jurisdictions (and other legal systems as well<sup>1</sup>) have been attempting to define the relationship between the right of parties to conclude their own contractual arrangements, including a limitation of either or both parties' liability, and the obligation of the legal system to protect not only the interests of the weaker party, but also, indirectly, society as a whole.

The book was intended, in part, as a guide to the legislation pending in the British Parliament during the drafting of the text. The bill emerged, in time for its definitive inclusion in the book, as *The Unfair Contract Terms Act 1977*.<sup>2</sup> Readers outside Great Britain, however, can also profit from the author's treatment of the subject. In fact, the author has deliberately broadened the scope of his work by helpful comparisons of the British legislation and the Uniform Commercial Code in the United States. References are also provided to U.S., Canadian and other Commonwealth decisions and secondary sources.

The concept of exclusion clauses is quite broad, defined by the author as "any term in a contract restricting a remedy or a liability arising out of a breach of a contractual obligation".<sup>3</sup> In addition to the standard exculpatory clauses which generally comprise this category, the author also discusses other contractual provisions which at times can have the same effect of limiting a party's rights in the event of a breach: certain arbitration clauses, liquidated damages clauses, and, in insurance contracts, excepted perils clauses and "promissory" warranties.

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<sup>1</sup> See, e.g., Alpa, *Protection of Consumers Against Unfair Contract Terms: Legislative Patterns of Controlling Adhesion Contracts in Europe* (1979) 15 *Willamette L. Rev.* 267.

<sup>2</sup> 1977, c. 50 (U.K.).

<sup>3</sup> P. 1.

In the days of hand-crafted contracts, an exclusion clause was merely another clause that appeared in the contract as a result of the parties' bargaining (which may or may not have been on equal terms). The evolution of standard form contracts, however, created serious doubts as to the validity of such clauses. While it remained true that a party was liable for whatever document he or she signed voluntarily (assuming there was at least the opportunity to read it beforehand), the courts were uncomfortable about enforcing a clause that appeared to be clearly weighted in favour of the party that drafted the form and which was not the result of any bargaining process.

While the tension between the two principles is apparent and the situations in which it arises are ubiquitous, the law has not been able to devise a simple way of dealing with the problem. For example, the author devotes a relatively long section of the book to an analysis of the law relating to exclusion clauses appearing on the reverse side of printed tickets; the many factual and policy variations result in a variety of solutions to similar problems.

In the United States, there have been several efforts to provide a solution to the dilemma. The *Restatement of Contracts* recognizes the factual problem: "A party who makes regular use of a standardized form of agreement does not ordinarily expect his customers to understand or even to read the standard terms".<sup>4</sup> The subsequent statement of the law is an attempt to balance the respective interests of the parties:

Although customers typically adhere to standardized agreements and are bound by them without even appearing to know the standard terms in detail, they are not bound to unknown terms which are beyond the range of reasonable expectation.<sup>5</sup>

A similar analysis was provided by the late Karl N. Llewellyn, who suggested a solution that, "[r]ooted in sense, history, and simplicity, . . . is an answer which could occur to anyone":<sup>6</sup>

Instead of thinking about "assent" to boiler-plate clauses, we can recognize that so far as concerns the specific, there is no assent at all. What has in fact been assented to, specifically, are the few dickered terms, and the broad type of the transaction, and but one thing more. That one thing more is a blanket assent (not a specific assent) to any not unreasonable or indecent terms the seller may have on his form,

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<sup>4</sup> *Restatement (Second) of Contracts* § 237, Comment *b* (Tent. Draft No. 5, 1970).

<sup>5</sup> *Ibid.*, § 237, Comment *f* (Tent. Draft No. 5, 1970).

<sup>6</sup> Llewellyn, *The Common Law Tradition: Deciding Appeals* (1960), 371.

which do not alter or eviscerate the reasonable meaning of the dickered terms.<sup>7</sup>

The British legislators opted for a test of reasonableness in determining the validity of exclusion clauses,<sup>8</sup> whereas their American counterparts adopted the concept of unconscionability.<sup>9</sup> The former, of course, is in fact a test of validity or enforceability, whereas the latter eschews both definition and test of validity and focuses on the remedy available to courts in the event that unconscionability is found. Yates prefers the American solution for two reasons. The concept of unconscionability is essentially subjective and consequently "can cater for the susceptibilities of the particular parties to the agreement in a way that the more objective criterion of reasonableness does not".<sup>10</sup> In addition, the concept of unconscionability gives the court the ability to consider the conduct of both parties to the agreement, including their conduct subsequent to the making of the contract, which the test of reasonableness does not.

Yates has concentrated on one aspect of the problem that has bothered other commentators: the distinction that appears to be called for between commercial and consumer transactions. Yates agrees with the popular conception that these two situations should be treated differently by the law, presumably because of a business person's ability to protect his or her interest. Yet this assumption is too facile if it is intended as a serious analysis, for business people are also forced into accepting standard form agreements, which they are unlikely to read; they too can be unfairly surprised by the specific terms of the contract into which they have entered.

In fact, the concept of unconscionability is applicable in commercial settings. For example, in *C. & J. Fertilizer, Inc. v. Allied Mutual Insurance Co.*,<sup>11</sup> the Supreme Court of Iowa found a provision in a commercial insurance policy to be unconscionable. The policy had been obtained by the fertilizer company to provide it with protection in the event of, *inter alia*, burglary. When an incontrovertible burglary occurred, however, the insurance company disclaimed liability on the ground that the occurrence did not fall within the policy's explicit but unusual definition of "burglary". After an extensive review of the difficulties of form contracts, the

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<sup>7</sup> *Ibid.*, 370.

<sup>8</sup> *The Unfair Contract Terms Act 1977*, 1977, c. 50, s. 11(1) (U.K.).

<sup>9</sup> U.C.C. § 2-302 (1972).

<sup>10</sup> P. 190.

<sup>11</sup> 227 N.W. 2d 169 (Iowa 1975).

Court concluded that, by virtue of the unexpected definition, the liability-avoiding provision in the policy was unconscionable.

Yates is proud of the empirical research he undertook in preparing the book.<sup>12</sup> He claims to have conducted his research "amongst the business and consumer communities".<sup>13</sup> Most of his statements, however, seem to reflect an emphasis on the interests of the business community. For example, he tells us that his conclusion about the inadequacy of the state of the law "to provide a solution to the commercial problems of commercial men" was based on information "which was given with great enthusiasm by legal departments of the various business interests consulted".<sup>14</sup> In contrast, his major conclusion about the consumer interest has to do with "the apparent influence [it] now carries with both the legislature and the judiciary".<sup>15</sup>

There is, no doubt, an economic justification for the interest of businesses in seeking to exclude or limit their liability in certain circumstances. Llewellyn eloquently described it in these terms:

The content of the standardized terms accumulates experience, it avoids or reduces legal risks and also confers all kinds of operating leeways and advantages, all without need of either consulting counsel from instance to instance or of bargaining with the other parties.<sup>16</sup>

Yates is neither so eloquent nor so helpful. In slightly over two pages, he assays to highlight the concepts of transaction costs and the optimal distribution of loss in a society. While this is admittedly a brief book, a somewhat more extended treatment of this subject would have been expected, particularly in light of the academic literature on the economic analysis of the law that has appeared in recent years.<sup>17</sup>

Yates shows insight in his major criticism of the attempts of both the common law and the legislature to deal with the subject of exclusion clauses: they both mandate an analysis of the terms of the contract *aside from* the exclusion clause in order to ascertain the parties' intentions and thereby determine if effect should be given to the exclusion clause. Yates persuasively argues that the exclusion clause is very fundamentally a part of the agreement and

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<sup>12</sup> P. v.

<sup>13</sup> *Ibid.*

<sup>14</sup> *Ibid.*

<sup>15</sup> *Ibid.*

<sup>16</sup> Llewellyn, *supra*, note 6, 362.

<sup>17</sup> See, e.g., Epstein, *Unconscionability: A Critical Reappraisal* (1975) 18 J. Law & Econ. 293; Posner, *Economic Analysis of Law* 2d ed. (1977), especially 84-88; Kronman & Posner, *The Economics of Contract Law* (1979), 67 *et seq.*

that no understanding of the parties' real intentions can be gained if such clause is excluded, even initially, from consideration. He suggests that the proper task of the court is to "interpret the contract as a whole, including the exclusion clause, to ascertain what was agreed, and [the court] may then interfere to protect the consumer interest in accordance with a statutory criterion, in the light of the contract as a whole".<sup>18</sup> This approach certainly appears more fruitful and more respectful of the parties' expectations.

In summary, this book is an excellent introduction to what is still a complicated subject for which our legal systems are slowly groping for reasonable solutions. To the extent that it has caused us to reflect more deeply on the subject and has presented us with, if not completely new ideas, at least a concise analysis of existing concepts, this book is a welcome addition to the legal literature in the area and should be of great interest to scholars, judges and lawyers on both sides of the Atlantic and throughout the world of the common law tradition.

Thomas M. Haney\*

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<sup>18</sup> P. 187.

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*Legal and Institutional Aspects of the International Monetary System: Selected Essays.* By Joseph Gold. Washington: International Monetary Fund, 1979. Pp. xx, 633.

"In these days, there are many new fields in which international law is developing. Monetary law as a sector of public international law is largely a postwar phenomenon, and the Fund is at the center of it" (p. 390). With this focus, Joseph Gold, General Counsel and Director of the Legal Department of the International Monetary Fund, has written scores of essays over the past three decades on law and the international monetary system. Associated with the Fund virtually since its inception, Mr Gold has been a direct participant in the shaping of international monetary law and, given his scholarly gifts, he has also been a prime elucidator of the details and direction of its evolution. The volume under review represents a collection of fourteen articles, most of which have been published previously in various legal journals during the period 1967 to 1977. Each article has been slightly edited and brought up-to-date with a short concluding note on the consequences of the Second Amendment to the Fund's Articles of Agreement which became effective on April 1, 1978.<sup>1</sup> It is useful to have these articles collected in one volume since they comprise not only a ready source of reference for students of monetary law, but also a *tour d'horizon* of the legal principles, structures and mechanics of the world's financial system within which the Fund occupies such a central role.<sup>2</sup>

The volume opens with an extended introductory essay which weaves together two major themes: the desirability, even necessity, of a world monetary system regulated by international law, and the need for flexibility in the operation and development of that system. In 1944 the Bretton Woods conference<sup>3</sup> ushered in a new legal order to which the major nations of the non-communist world bound themselves. Though characterized by various economic and political crises throughout its life, it remained intact until August 15, 1971,

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<sup>1</sup> Articles of Agreement of the International Monetary Fund. Second Amendment effective April 1, 1978 pursuant to modifications approved by the Board of Governors in Resolution No. 31-4, April 30, 1976, *Summary Proceedings* (1976).

<sup>2</sup> For a short initial overview of this topic, see Gold, *The International Monetary Fund and International Law, An Introduction* (1965).

<sup>3</sup> Delegates from 45 countries met at Bretton Woods, N.H. in July, 1944 and agreed to the establishment of a post-war international monetary system. The delegates drafted the Articles of Agreement (a multilateral treaty) which constituted the charter for the new International Monetary Fund, the entity designed to administer the new system and itself created by the Articles.

when the United States unilaterally decided to cut the dollar's tie to gold and consequently to allow the value of its currency to respond more directly to changes in underlying market forces (p. 95). The regime of floating exchange rates which followed this decision placed most members of the Fund in a position of illegality since they were now acting in deliberate contravention of international obligations to which they had previously committed themselves. A skeptic may have been tempted to see this as renewed evidence of the truly anarchic condition of inter-state relations which remain essentially unregulated by the fragile structure of public international law, but Mr Gold is firmly convinced of the contrary. Even during the period of widespread illegality prior to acceptance of the Second Amendment,<sup>4</sup> there remained an impulse toward legality of which the Second Amendment itself is evidence. States continued to seek a legitimacy which exonerated and rationalized policies resulting from political and economic necessities. States seem to abhor uncertain environments and law does provide order and coherence. With the Second Amendment the law adapted to changing circumstances.

Throughout the history of the Fund there has been a dynamic tension between the responsibilities of the Fund and the sovereign right of states to pursue independent policies. Mr Gold delicately and eloquently addresses the implications of this tension as they have become more apparent in recent years. During the liquidity debates of the 1960's<sup>5</sup> the Fund began to see its central monetary authority eroded by the assertiveness of the Group of Ten.<sup>6</sup> The

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<sup>4</sup> *Supra*, note 1.

<sup>5</sup> The destabilizing effects of the U.S. balance of payments deficit was a highly contentious issue during the 1960's. It was clear that the deficit had to be reduced but this reduction, it was feared, would have caused a severe decline in world reserves (illiquidity) which were composed to a large extent of U.S. dollars. A new method of creating liquidity was therefore needed and after years of debate (mainly between the industrial nations), a new reserve asset, the Special Drawing Right, was created under the auspices of the Fund. On July 28, 1969 the Special Drawing Account of the IMF came into being when the First Amendment to the Articles of Agreement was ratified. Modifications were approved by the Board of Governors in Resolution No. 23-5, May 31, 1968, *Summary Proceedings* (1968).

<sup>6</sup> The Group of Ten originated when the Fund entered into the General Agreements to Borrow with ten of the major industrial nations in 1962. Subsequent to that, the Group of Ten became a distinct "caucus" within the Fund and, because of its economic and financial power, exerted a preponderant influence over the international monetary system. The ten members are the United States, the Federal Republic of Germany, the United Kingdom, France, Italy, Japan, Canada, the Netherlands, Belgium and Sweden.

post-Second Amendment Fund has clearly seen the balance of authority shift inexorably in the direction of the states which compose the Fund, especially of those states whose weighted voting power remains preponderant. The author expresses no surprise at this since he realizes that states must be concerned with the distribution of power in the world, a distribution which is affected by the solution of even the most sophisticated monetary problem (p. 124). Monetary law evolves within this context. After three decades of intimate involvement in inter-state negotiations, Mr Gold's political sense is finely tuned.

The Fund has been given a mandate to promote the maintenance of a stable system of exchange rates, to facilitate convertibility between the currencies of its members, to provide balance of payments financing in cases of non-fundamental disequilibrium, to monitor and manage global liquidity and, most recently, to promote the flow of resources to developing members. The amended Articles of Agreement<sup>7</sup> give the Fund the legal authority to accomplish these goals; however, this authority is subject to certain constraints. In two essays on the role of sanctions or "pressures" in the Fund's operations,<sup>8</sup> Mr Gold examines the effects of these constraints on the Fund's ability to enforce its decisions. For example, although it is no longer illegal for a nation to allow its currency to float, nor does there exist any binding norm which would force a nation to change an untenable exchange rate for its currency, the Fund has the ability to exert certain pressures, such as increasing burdens or denying benefits even to the point of forcing a member to withdraw from the Fund, to encourage compliance. However, due to the high majorities necessary to activate enforcement measures, the formal remedies of the Fund remain largely unused. Even so, the Fund has been enjoined to continue "firm surveillance" in its monitoring of the system and a graduated series of remedial actions remains possible.<sup>9</sup> In the end, however, Mr Gold asserts that it is cooperation and not coercion upon which the reformed global monetary system has been based. The author notes, however, that "in monetary affairs the modern international law of cooperation is affected by centrifugal as well as centripetal forces" (p. 236).

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<sup>7</sup> *Supra*, note 1.

<sup>8</sup> " 'Sanctions' of the Fund", ch. 3 (originally published (1972) 66 Am. J. Int'l L. 737); " 'Pressures' and Reform of the International Monetary System", ch. 4 (originally published (1974) 7 J. Int'l L. and Pol. 423).

<sup>9</sup> For an extensive treatment of the Fund's leverage in its stand-by arrangements with members, see Gold, *The Stand-By Arrangements of the International Monetary Fund* (1970).



Mr Gold further explores the constraints within which the Fund operates in essays<sup>10</sup> which discuss the "political" bodies in the Fund and the legal techniques which have been utilized to modify the Fund's organization. The Outline of Reform<sup>11</sup> which was finally presented by the Committee of Twenty<sup>12</sup> in 1974 set the stage for the Second Amendment.<sup>13</sup> The Committee made the presumption that reform of the system could best be effected through the legal technique of amendment of the Fund's Articles rather than any alternative techniques. This was reminiscent of the decision taken seven years previously to create new reserve assets (Special Drawing Rights) also through amendment of the Articles (p. 138). The Outline specified thorough changes to be made in the Articles and in the institutional structure of the Fund. Although the Second Amendment represented an extensive overhaul of the existing Articles, the reform fell short of that originally envisaged by the drafters of the Outline, for it was conceded that total reform would have to be an evolving process. As Mr Gold makes clear, monetary law develops cautiously and pragmatically.<sup>14</sup>

Ultimate authority within the Fund remains with the Board of Governors with each member represented by one governor. Although each member is formally equal in keeping with the guiding principle of uniformity (the subject of another essay in the volume<sup>15</sup>), the varying strengths and diversity of the members are recognized by the mechanism of weighted voting in the decision making of the Board. Since the Fund's underlying rationale is economic in nature, this mechanism is considered justified. The Executive Board, coin-

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<sup>10</sup> "Legal Technique in Creation of a New International Reserve Asset: SDR's and Amendment of the Fund's Articles", ch. 2 (originally published (1969) 1 Case W. Res. J. of Int'l L. 105); "International Monetary System and Change: Relations Between Mode of Negotiation and Legal Technique", ch. 5; " 'Political' Bodies in the Fund", ch. 6 (originally published (1977) 2 J. Int'l L. and Econ. 237).

<sup>11</sup> "Outline of Reform" in International Monetary Fund, *International Monetary Reform: Documents of the Committee of Twenty* (1974), 748.

<sup>12</sup> Established in 1972 as an *ad hoc* committee of the Board of Governors of the Fund. Its mandate was to study the international monetary system and make recommendations concerning its reform.

<sup>13</sup> *Supra*, note 1.

<sup>14</sup> For detailed information concerning certain legal changes with respect to the status of SDR's, gold and currencies, see Gold, *SDR's, Gold and Currencies, Third Survey of New Legal Developments*, IMF Pamphlet Series No. 26 (1979).

<sup>15</sup> "Uniformity as a Legal Principle of the Fund", ch. 13 (originally published (1975) 7 Law and Policy in Int'l Bus. 765).

posed of twenty directors representing various constituencies made up of one or more members, is in continuous session to direct the Fund's operations and also reaches its decisions through weighted voting. The Managing Director and staff report to the Executive Board. An Interim Committee, modelled on the Committee of Twenty itself and supposedly preparing the way for a powerful central Council of the Fund, is responsible for supervising the continuing reform of the monetary system but is proscribed in its present form from taking decisions. Meanwhile the major industrial nations continue to meet as the informal Group of Ten,<sup>16</sup> or the more exclusive Group of Five,<sup>17</sup> to exert significant influence even to the point of acting as a tacit steering group for the Fund's activities. (The animosity which this has caused among the members excluded from the Group has been partly mollified by the constitution of the Interim Committee.) Notwithstanding the growth of the Fund's institutional structure, the most important constraint built into the newly reformed Fund is the requirement for an eighty-five per cent favourable vote for most major decisions (p. 27). In effect, the United States and the European Economic Community each retain the legal right to veto motions.

Given the structural limitations within which the Fund operates, there still exists significant scope for the organization to exercise its mandate. While there is no mechanism for self-amendment of its Articles, the Fund possesses the ability to vary certain provisions of its charter in order to enable it to adapt to unforeseen circumstances. In another essay,<sup>18</sup> Mr Gold lucidly discusses this dimension and extrapolates its possibilities to other areas of developing international law. Similarly, the author explains the powers of the Fund to dispense with certain requirements normally expected of its members and, more unusually, to suspend the operation of certain charter provisions.<sup>19</sup> Both powers are designed to increase the Fund's flexibility and Mr Gold's explication of them will prove useful not only for students of monetary law but also for students of international organization in general.

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<sup>16</sup> *Supra*, note 6.

<sup>17</sup> The United States, the United Kingdom, the Federal Republic of Germany, France and Japan.

<sup>18</sup> "Amendment and Variation of Their Charters by International Organizations", ch. 8 (originally published (1973) 9 *Revue Belge de Droit International* 50).

<sup>19</sup> " 'Dispensing' and 'Suspending' Powers of International Organizations" ch. 9 (originally published (1972) 19 *Nederlands Tijdschrift voor International Recht* 169).

The subtle adaptability of the Fund's operations is further exemplified in an essay<sup>20</sup> on conditionality and unconditionality in the use of the Fund's resources. Drawings by a member from the various tranches assigned to it may be subject to certain conditions imposed by the Fund. Drawings beyond the gold tranche elicit scrutiny to ensure that the member's policies are such that they will necessarily be temporary in nature. The Fund has the responsibility of safeguarding its resources and of encouraging the conformity of the policies of its members with the interests of international stability. Mr Gold explains that in the course of its history, the Fund has learned that a too inflexible definition of conditionality tends to be counter-productive. In the present environment, therefore, the Fund's credit tranche policies have been formulated in general terms and conditionality is defined on a case-by-case basis.

This collection of essays has no conclusion — intentionally so, we might suspect. Mr Gold's conception of international monetary law is neither static nor complete. The shifting forces that define the limits of law are particularly volatile in the realm of monetary law. Principally through the work of the Fund, which to no small extent has been the work of Joseph Gold, a coherent body of law is developing and adjusting to a changing world.

This book certainly has my recommendation. It is a useful compendium and even the non-specialist will find it a helpful survey, if not in its entirety, at least in substantial part. However, the reader will find that there is some minor repetition of material, due to the nature of the various essays presented.

Louis W. Pauly\*

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<sup>20</sup> "Use of the Fund's Resources: 'Conditionality' and 'Unconditionality' as Legal Concepts", ch. 11 (originally published (1971) 6 J. Int'l L. and Econ. 1).

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*Medico-Legal Aspects of Family Law.* By B. M. Dickens. Toronto: Butterworths, 1979. Pp. xi, 145.

It has often been remarked that in the area of medical law there are no "right" answers, in the sense that there is no obviously correct or better solution to a given problem; rather, there are "right" questions to be asked in coming to a decision on what course of action should be adopted. Dickens' book raises such questions in relation to artificial insemination, birth control, abortion, genetic counselling, *in vitro* fertilization and embryo transfer, and medical treatment of minors. Each of these topics is the subject of a separate chapter.

For such an extensive range of controversial issues, this is a relatively short work. But it seems that Dickens has recognized (what this reviewer believes to be true) that in dealing with such topics, any one of which could itself be the subject of a book, there is no middle ground between an exhaustive study and a relatively short but comprehensive work. It is to the book's credit that it is concise, precise and accurate, and, because of a certain density of style, conveys much information in few words.

These factors mean that the book must be read with care and that attention to nuance is important. Where Dickens indicates there is doubt on a point, he means that there is genuine doubt, and not just, for instance, that he is academically querying some well-recognized approach of the law.

Readers (including this reviewer) will not agree with all the conclusions drawn on what the law probably is in ambiguous areas, nor will they agree with all the recommendations or proposals put forward. But such consensus cannot be expected. One of the book's contributions is that it adds to the dialogue which must take place with respect to medico-legal problems.

Because of the way in which the book is organized — under specific topics — there is some repetition, as Dickens himself notes in the preface. In fact, reading the book as a whole gives one a sense of reading a series of papers. This repetition, however, has the advantage of accessibility for persons only wanting to make use of a chapter on a particular topic. Similarly, for reasons of accessibility, it is probably a happy accident that the contents of this book did not form part of a larger work on family law as originally intended by the publishers, thus making it available to a wider range of readers.

The book is a valuable reference source for Canadian law in the areas covered. It includes a case list and a table of relevant statutes.

There is constant reference to American law on medico-legal issues, which is most useful, as this is more developed than Canadian law and may indicate trends which will be followed in Canada. Occasionally, however, United States authorities may be relied on too strongly as far as their relevance in demonstrating the legal situation in Canada is concerned. For example, *Roe v. Wade*<sup>1</sup> seems to be used to support the statement that “[t]here appears to be no legal obligation . . . to promote the live birth of an unborn viable foetus” (p. 58). This may or may not be the case in Canadian law, but perhaps it could have been made clearer that the Canadian position on this matter will depend on many factors other than just a United States Supreme Court decision.

In conclusion, *Medico-Legal Aspects of Family Law* is a valuable introduction to the medico-legal field for those unfamiliar with it, and is a complete and rapid source book for those specialized in this area of law. It will be of use to a much wider range of persons than just those involved in the practice of family law.

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<sup>1</sup> 410 U.S. 113 (1973).

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