

1982

Book Review: The Law of Banking, Third Edition, by Ian F. G. Baxter

Benjamin Geva

Osgoode Hall Law School of York University, bgeva@osgoode.yorku.ca

Source Publication:

Canadian Bar Review. Volume 60, Number 3 (1982), p. 534-538.

Follow this and additional works at: https://digitalcommons.osgoode.yorku.ca/scholarly_works



Part of the [Law Commons](#)

Recommended Citation

Geva, Benjamin. "The Law of Banking, Third Edition, by Ian F. G. Baxter." *Canadian Bar Review* 60.3 (1982): 534-538.

This Book Review is brought to you for free and open access by the Faculty Scholarship at Osgoode Digital Commons. It has been accepted for inclusion in Articles & Book Chapters by an authorized administrator of Osgoode Digital Commons.

Book Reviews

Chronique bibliographique

The Law of Banking. Third Edition. By IAN F. G. BAXTER. Toronto: The Carswell Co. Ltd. 1981. Pp. xi, 568. (\$67.50)

The first edition of the book was published in 1956. It was "intended to be a text on the law of banking written around the Canadian Bank Act".¹ The second edition came out in 1968 and expanded the coverage of the book to include chapters on the law of negotiable instruments and recent developments in provincial law governing secured transactions. The third edition, the subject matter of this review, is designed "to give greater emphasis to international banking and to introduce material on the 1980 Bank Act".² It does not include materials on provincial law governing secured transactions.

The book consists of 236 pages of text, and a 332 page statutory appendix. The text is divided into five parts. Part A deals with private law aspects of bank-customer relations. It discusses the contractual and quasi-contractual elements of this relationship and the general nature of bank accounts. Part B, titled "Negotiable Instruments", outlines the law under the Bills of Exchange Act.³ It first deals with the historical origins and modern functions of commercial paper, as well as with commercial paper's essential elements and the fundamental rules applicable to it. Subsequently, the author discusses the specific rules applicable to cheques, promissory notes, and bills of exchange. Part C deals with international transactions. It discusses conflict of laws questions under the Bills of Exchange Act, outlines major private law aspects pertaining to the financing and payment of export-import transactions, and concludes with an account of euro-currency transactions.

The last two parts of the text are centered around some aspects of the new Bank Act.⁴ Part D, is titled "Banks and Banking Law Revision Act, 1980". It outlines the components of this omnibus

¹ *The Law of Banking and the Canadian Bank Act* (1956), preface.

² See preface to the third edition.

³ R.S.C., 1970, c. B-5 (as am.).

⁴ Part I of Banks and Banking Law Revision Act, S.C., 1980, c. C-40.

statute, of which the Bank Act is Part I, and then gives an overview of the Bank Act. Subsequently, it deals with the licensing of foreign banks in Canada, in conjunction with extensive comparative comments on foreign banks in the United States, the United Kingdom, Japan, Hong Kong, West Germany and the Netherlands. Finally the author deals with the business powers of a bank. He first singles out the more contentious issues of financing leases and accounts factoring, and then deals with banking business in general, with particular emphasis on powers in relation to opening branches, dealing with negotiable instruments and documents of title, giving unsecured loans, dealing with capital stock, providing data processing services, giving inside loans, and dealing with investments and securities. Part E discusses securities for advances. Specifically it is concerned with the provisions of the Bank Act relating to the use of property as collateral security for advances, and with the law relating to personal securities or guarantees.

The text is followed by a lengthy appendix containing the Bank Act (but not the entire Banks and Banking Law Revision Act, 1980 as may be inferred from the Contents), The Bills of Exchange Act, the International Chamber of Commerce Uniform Customs and Practice for Documentary Credits, and the International Chamber of Commerce Rules for Collections.

The book covers much the same material as current editions of classic United Kingdom banking law textbooks.⁵ As claimed by the author, "[t]he purpose of this book . . . is to provide a text dealing with important typical operations in the conduct of retail and wholesale banking".⁶ Accordingly, the author found it to be inappropriate "to include an analysis of all the law relating to the internal corporate management and governmental regulation of banks".⁷ However, some aspects of this excluded category are discussed. There is a substantial discussion on foreign banks in Canada⁸ as well as some reference to the conversion of financial institutions and the establishment of the Canadian Payments Association.⁹ The book does not discuss constitutional issues relating to the regulation of banking transactions.

Some aspects of "retail and wholesale banking" have been left out. The book does not cover provincial legislation applicable to transactions carried on by banks, as for example statutes governing

⁵ See *e.g.*, Paget's Law of Banking (8th ed. 1972, by Megrah and Ryder); Lord Chorley, Law of Banking (6th ed., 1972, assisted by J.M. Holden).

⁶ P. 170.

⁷ *Ibid.*

⁸ Ch. 10, Part I.

⁹ Both topics are dealt with at pp. 173-174.

secured transactions. Nor does the author deal with the interaction between provincial law applicable to banking transactions and the Bank Act.¹⁰ Likewise, the book does not deal with credit cards, electronic funds transfers, or in general with issues raised by recent technological developments or the "electronic revolution" in payment mechanisms. Nor does the author discuss the validity or usefulness of the concept of "banking" in an era of emerging wide range "financial services" provided by non-banks. Coverage is thus limited to common law principles governing bank-customer relationship and federal legislation. However, some relevant aspects of federal legislation are not dealt with. For example, the author does not discuss provisions governing interest and charges included in the Bank Act¹¹ and other statutes.¹²

To sum up: the book deals with major aspects of the common law and federal legislation governing banking transactions in Canada. Since "banking law" is too vast an area to be covered in a short textbook, it is understandable that the author had to be selective in picking up the various topics. As demonstrated, his choice is underlined by a common theme and as such is basically defensible.

Generally speaking, the book is not written from a critical or even analytical standpoint. Purporting to state, describe, and explain the law,¹³ the author seems to put greater emphasis on rules than on principles. Perhaps he is too faithful to this approach, as he frequently avoids extrapolations or abstractions. For example, he outlines the rules governing the rights of parties to a letter of credit,¹⁴ but does not introduce the concept of "the autonomy of the letter of credit". He deals with rights under guarantee arrangements,¹⁵ but does not discuss the basic relationship between the guarantor's undertaking and that of the principal debtor. Such an analysis could provide an answer to the question of whether the principal debtor's defences benefit the

¹⁰ See *e.g.*, *Rogerson Lumber Co. Ltd v. Four Seasons Chalet Ltd* (1981), 29 O.R. (2d) 193 (C.A.), dealing with the interaction between the Bank Act and the Ontario Personal Property Security Act, R.S.O., 1980, c. 375.

¹¹ Ss 201-204.

¹² See *e.g.*, Interest Act, R.S.C., 1970, c. I-18.

¹³ Occasionally this approach might not be entirely helpful. See *e.g.*, the analysis of s. 165(3) of the Bills of Exchange Act, p. 77. While the author's reading of the provision is consistent with its literal meaning, such reading disregards the historical background for enacting of the section, and the function it was designed to fulfil, as explained by Falconbridge, *On Banking and Bills of Exchange* (7th ed., 1969, by Rogers), p. 860. See also the detailed account of Scott, *The Bank is Always Right: Section 165(3) of the Bills of Exchange Act and its Curious Parliamentary History* (1973), 19 McGill L.J. 78.

¹⁴ In Ch. 7.

¹⁵ In Ch. 14.

guarantor. It could also explain the difference between a letter of credit and a guarantee.

Occasionally the author introduces a functional analysis into the discussion. For example, he explains the different functions of various negotiable instruments¹⁶ or the use of a financing lease as a credit extension device.¹⁷ Also, on some points the author adopts a critical attitude. For example, there is a subtle criticism of the rules pertaining to the fictitious payee under section 21(5) of the Bills of Exchange Act.¹⁸ The author is also dissatisfied with transporting the "arms length" test into Part V of the Bills of Exchange Act.¹⁹ He is also critical of the lack of a theoretical basis for the liability of an issuer of a letter of credit.²⁰ He further criticizes the treatment of foreign banks under the Bank Act,²¹ and persists with his criticism on the allocation of forgery losses under the Bills of Exchange Act.²² These examples and others are exceptions to the basic presentation which is a concise account of the principal legal features of the subjects presented.

The organization of the book is coherent and logical, but unfortunately not without problems. For example, it is logical to separate the bank-customer relations materials from the negotiable instruments chapters, and to insert the former prior to the latter, as was done by the author. Yet many of the issues raised in conjunction with the bank-customer relations subject, arise in situations involving the use of cheques. This applies to topics like certification of cheques, the bank's duty to honour cheques, payment of money by mistake, and estoppel in relation to payment by mistake. All these topics are presented in Chapter 1, before the discussion on negotiable instruments. This seems to be a premature presentation of such topics.

The book is not detailed enough to be a treatise. Nor is it an introductory text on the subject matter. Its language is terse, to the point of being not infrequently cryptic. Beginners might find the discussion somewhat difficult to follow. An obvious exception is Chapter 8 dealing with eurotransactions. This is an excellent descriptive chapter giving the essentials of a subject entirely unknown to most lawyers. The emphasis of this chapter is however on the mechanism of the market and not on the legal questions arising in the course of the market's operation.

¹⁶ Pp. 61, 104.

¹⁷ P. 187.

¹⁸ See his reference to the "metaphysical learning" on the subject at p. 70.

¹⁹ P. 109.

²⁰ P. 152.

²¹ P. 177.

²² Pp. 76-78.

In the final analysis the book serves as: (a) an introductory text on major aspects of the Bank Act, a lengthy and intimidating piece of legislation; (b) a concise account of principal features of common law and federal statutes governing basic banking transactions; and (c) a reference book containing leads and directions for further and deeper research. In these three respects the book is a contribution to practitioners' libraries.

BENJAMIN GEVA*