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Book Notes

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BOOKNOTES

MUSICIANS AND THE LAW IN CANADA

By Paul Sanderson

(Toronto: Carswell, 1985) 258 pages

Reviewed by Leslie Harris

In an area not before capsulized in one work, Sanderson unravels the intricacies of the music industry, examining its intertwining business and legal aspects. Somewhat brief (the text is fewer than 200 pages), it is a valuable source for those requiring a general knowledge of the complicated music industry. It is also a worthy starting point for those undertaking in depth research of a particular aspect of the music world. The book is fully referenced to U.S., U.K., and Canadian cases, as well as to legal and non-legal articles. The author rightfully explains that there are not many Canadian cases in the music and its related areas. Foreign jurisdictions may prove to be meritorious illustrations and are, therefore, included in the text even though such cases are not necessarily, and may never be, followed in Canada. The appendices of the book contain various sample contracts for music publishing, agents and managers, live performances, recording and merchandising, in addition to checklists which are helpful in drafting these agreements.

As copyright is the basis of all rights underlying the entertainment field, it is natural that Sanderson begins the book with an overview of the Canadian copyright system. This is followed by the relevance of U.S. copyright laws to Canadian artists. The focus then turns to copyright protection of musical works, audio recordings, and audio-visual recordings. Chapter two discusses assigning and licensing musical copyright. Chapter three explains the business of music publishing and the relevant legal implications. Chapter four outlines the various violations of copyright, the remedies, offences, and defences.

Part II of the book departs from copyright and focuses on performers, live performance, and related activities. The first four chapters in this segment are on labour, agents and managers, live performance, and recording. These chapters generally discuss the topic, then make a clause-by-clause analysis of the relevant contracts. The final chapter in this section is on merchandising, which involves other types of intellectual property other than copyright, namely, trade mark and passing off.

Part III discusses structuring business affairs. There are sections on personal service contracts, business entities, and income tax issues.

As is evident, the book deals with a broad range of issues with respect to musicians and the law. For some, the edition may be too complicated; for others, it may lack in specifics. In general, people interested in the music industry, those involved in the field, and lawyers dealing with the music business will welcome the book and find it a useful summary of the unique industry of music.

NATURAL LAW AND JUSTICE

BY LLOYD L. WEINREB

(Cambridge, Mass.: Harvard University Press, 1987) 320 pages

This is a dated book – and deliberately so. Weinrib's self-imposed task is to rescue a classical notion of natural law from jurisprudential obscurity and to demonstrate its neglected relevance and contribution to the social dilemmas of modern society. In the first half of this erudite offering, he relates an historical narrative about the political career of natural law from the Greeks through to contemporary debates in the writings of John Finnis, David Richards, and Ronald Dworkin. The second half focuses on the more general question of normative ordering. In particular, he explores the relations between liberty, equality, and justice. Throughout this understated and wide-ranging volume, Weinrib seeks to solve the central puzzle of the human situation – individual freedom and responsibility in a causally determined universe. In a suggestive, if rather vague, solution, he recommends an idea of social justice that comprises a deft union of the distinct ideas of desert/liberty and entitlement/equality. Weinrib's success in elaborating and defending

this idea is similar to his own concluding judgment on humanity's record at establishing meaningful freedom within a morally indifferent universe: "He neither achieves what he aspires to achieve, nor gives over the aspiration."

ON ETHICS AND ECONOMICS

BY AMARTYA SEN

(Oxford; New York: Basil Blackwell, 1987) 131 pages

Although this slim volume is directed to economists, its message is one which lawyers would do well to heed and which they ignore at society's peril – when ethical theory is divorced from practical analysis, both are impoverished. Based on the 1986 Royer Lectures in California, this prolific and influential thinker provides a thoroughgoing critique of economics' tendency to distance itself from ethical debate and the missed opportunities for mutual enrichment. Eschewing professional jargon, Sen ranges broadly and insightfully through the received wisdom and traditional literature. As has come to be expected from such an eminent author, his ideas demand a profound realignment of the academic project. They are suggestive and stimulating in their relevance to other disciplines, like law. Unless questions of normative value and technical analysis come to be seen as intimately related, any answers given will be deficient.

PERSPECTIVES IN CRIMINAL LAW

BY ANTHONY N. DOOB & EDWARD L. GREENSPAN, eds

(Aurora, Ont.: Canada Law Book, 1985) 349 pages

This book is a collection of essays to commemorate John Edward's founding of the Centre of Criminology. Although it might be expected they would revolve around criminological concerns, the editors chose to include selections that engage sociological, criminological, historical, and legal viewpoints. The essays range from conventional to critical approaches to criminal law and, as the title suggests, a number of perspectives are presented. One cannot expect to find a unifying strand in a collection such as this and the

reader will not find the whole to be any greater than a sum of its parts. That is not to say that the book is not of any value. In fact, the book contains a thoughtful selection of essays that makes for interesting reading for those who have had previous exposure to the study of criminal law. Readers who have grown tired of the bread-and-butter issues of culpability, justifications of punishment and *mens rea*, will be delighted to find in this collection a selection of less accessible topics that include a political theory of control and an examination of Disney World as a model of modern techniques of social control.

RED, WHITE, AND BLUE: A CRITICAL ANALYSIS OF CONSTITUTIONAL LAW

BY MARK TUSHNET

(Cambridge, Mass.: Harvard University Press, 1988) 328 pages

As has become his intellectual trademark, Mark Tushnet provides a provocative and uncompromising critique of American constitutional law and theory. Combining and reworking his ideas and arguments in the last few years, it is a critical *tour de force* that leaves no constitutional stone unturned. Whereas the first part of the book takes to task all the different jurisprudential attempts to justify judicial review of legislative and executive activity, the second half examines the doctrinal product of the courts and teases out its political assumptions and consequences. Although it will irritate or disturb many, he refuses to offer his own alternative proposal for how the courts should proceed. This project is rigorously critical of the whole American constitutional tradition. In short, Tushnet insists that the very features of the American liberal tradition that make judicial review necessary also guarantee its continuing illegitimacy. The relevance of this book for Canadian scholars and lawyers cannot be underestimated. At the very least, Tushnet's critique ought to be confronted and, if possible, responded to by those seriously concerned with the practice and theory of charter litigation.

THE AMERICAN TORT PROCESS

BY JOHN G. FLEMING

(Oxford; New York: Oxford University Press, 1988) 271 pages

John Fleming is a highly respected scholar who has made important contributions to the understanding and development of the tort process. In this book, he offers an introduction to the American system for Commonwealth lawyers. As expected, it is a readable, informed, and instinctive work. It lays no claims to being comprehensive or definitive. Rather than explore the substantive content of American doctrine, he concentrates on the institutional context which gives shape and direction to it. His broader goal is to suggest how process and substance interact and give American law its distinctive character. Although he skirts some of the more compelling issues on the agenda, such as its replacement by a welfare scheme, Fleming has produced a thoughtful and worthwhile volume.

THE CONDITIONS OF DISCRETION: AUTONOMY, COMMUNITY, BUREAUCRACY

BY JOEL F. HANDLER

(New York: Russell Sage Foundation, 1986) 450 pages

In this excellent book, Joel Handler brings the insights of political theory, social science, empirical research, and plain common sense to the study of large scale bureaucracy. He crafts them together in an accessible and non-technical style. Although his contextual focus is on the development, design, and distribution of special educational services to handicapped children, his study offers a revealing and hopeful look at the interaction between bureaucratic discretion, expect knowledge, and lay opinion. Anchoring his discussion in a broader critique of the prevailing liberal foundations of bureaucratic governance, he probes its institutional and substantive limits. In its place, he suggests the possibilities for a more community-informed theory of substantive justice, institutional roles, and popular participation. It is a stimulating and rewarding book.