
MANN ON THE
LEGAL ASPECT
OF MONEY

SEVENTH EDITION

CHARLES PROCTOR



OXFORD

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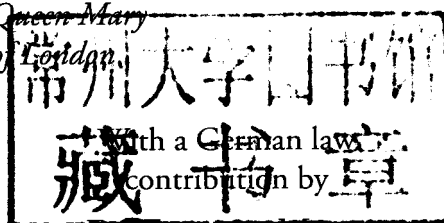
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FOREWORD TO SIXTH EDITION

My father never said what or who actually inspired him to write *The Legal Aspect of Money*. His formation, including his doctoral thesis 'Die Sachgründung in Aktienrecht' (The payment for shares in kind) at Berlin University, was in the field of company law. However, he must have had a latent awareness of problems of monetary law and practice. He was the grandson of a banker, partner of Mann and Loeb in Frankenthal in the Palatinate, which was sold to a predecessor bank of the Deutsche Bank in 1913. His father was concerned in liquidating some of the bank's affairs after 1918 and my father was a trainee for a short time in the successor bank. He grew up amid the uncertainties of currency exchange rates and restrictions in the French zone of occupation and during the great inflation in Germany. An intimate friend of his father since schooldays was Karl Hellferich, a pupil of Georg Friederich Knapp and author of the well-known book on money, whose dazzling bureaucratic and business career, as well as his extreme political views, must have meant that his name was frequently mentioned. Two of his professors at Berlin University, Martin Wolff and Arthur Nussbaum, each wrote on the law of money and would have discussed the legal consequences of the stabilisation of the mark in 1924. Finally the famous case of *Adelaide Electric Supply Co v Prudential Assurance Co* in 1934 was at the right moment for someone of his background, anxious to establish himself. My father wrote, 'in the summer of 1936 I had decided to write a book on the law of money: a number of cases which were before the courts in those years appeared to make a systematic investigation and presentation of the subject necessary, particularly since no work on it in the English language was available'.

Since my father's death on 16 September 1991, correspondence has been found in the archives of Oxford University Press (OUP). In particular the readers of the original manuscript are revealed, about whom my father often asked, but never discovered. His letter of 15 December 1937 addressed to OUP reads: 'I write to ask whether you would be prepared to publish a book which I have just completed... the questions dealt with in the book are at the present moment of great practical importance.' On 18 December my father was requested 'to be good enough to forward us your MSS...' and a further letter on 7 January 1938 states 'We are having your manuscript read but fear that there will be a little delay before we can come to a decision.' An internal memorandum to Sir Humphrey Milford, the publisher, refers to a previous proposal from my father in January 1934 (he had arrived in England in October 1933), to translate and explain the new German company law, which had been declined, and goes on to say that 'there is a considerable risk

that the [book] would either be too much a book of the moment or too vague to be useful. Unfortunately Cheshire who would have advised is just leaving for a tour of Malaya.'

On 30 December 1937, Kenneth Sisam of OUP asked Albert Feaveryear, author of *The Pound Sterling* (1931) to read the manuscript. Feaveryear replied on 10 January 'I have no hesitation in saying that it [the book] should be most carefully considered for publication ... Dr Mann must be regarded as having written, I think, a pioneer work.' In order to obtain an opinion on the international law, on the advice of Professor J.L. Brierly, the manuscript was sent to Professor D.J. Llewellyn Davies at Birmingham University. He answered on 22 March 1938: 'I find that Dr Mann does his work with extraordinary thoroughness and I do not believe that there can be any questions as to his accuracy. This is entirely in keeping with the opinion which I found of his work when I was a member of the staff of London University when he used to attend my seminars in Private International Law ...'.

Mr J. Mulgar, of OUP, made an offer for the publication of the book on 29 March, but felt that the work 'might benefit by a certain polish in its English style'. My father accepted the terms on 30 March and asked for an early date of publication in view of the number of relevant international conferences in the late summer. The manuscript was read by Sir Paul Harvey, compiler of *The Oxford Companion to English Literature*, as an expert editor, with suggestions for improvement and corrections. Final revisions were completed on 29 July; the order to print 750 copies was given on 5 September; my father's preface was dated 12 October, his wedding anniversary, the date of the prefaces of all subsequent editions. Judging by the dates on the letters of thanks for complimentary copies, the book of 334 pages must have been published at the end of November 1938, at a price of 21 shillings per copy.

Meanwhile, on 22 June 1938, the Senate of the University of London agreed that upon receipt by the Senate of four published copies of the thesis, the degree of Doctor of Laws be conferred upon my father as an internal student at the London School of Economics. After this there was correspondence between the University and OUP as to whether the title page should bear an inscription that the thesis had been approved for the degree. A compromise was agreed that the preface should state that the book had been accepted for the LL.D degree. The Senate resolved on 18 December that all conditions had been met and to confer the degree.

In his preface, my father extended thanks for reading the manuscript to Mr L.C.B. Gower, later Professor Gower, the well-known expert on company law and subsequently Vice Chancellor of Southampton University; and to Dr K. Wolff of Paris, son of Martin Wolff, my father's fellow student in Berlin and subsequently a distinguished concert pianist. The preface to the Fifth Edition, 1992, referred to the 'remarkable ... Kenneth Sisam' who accepted the book and to the 'unfailing help and courtesy which his publishers have at all times extended to him'.

Foreword to Sixth Edition

The book was started in the summer of 1936, written in a foreign language and completed when my father was aged thirty. By then he had established a law practice; completed the LLM degree in 1936 at the London School of Economics; had children in 1935 and 1937; and conceived and written the book.

In thanking Charles Proctor for completing the Sixth Edition of *Mann on the Legal Aspect of Money*, one must be pleased that my father's work and spirit will continue. Just as my father dated his prefaces on October 12, this foreword commemorates the seventieth anniversary of the wedding of my parents.

David Mann

12 October 2004

(With thanks to the Oxford University Press,
for making their archives available.)

PREFACE TO THE SEVENTH EDITION

As was the case with the sixth edition of this work—and, indeed, as has been the case with all of my other literary efforts—the present edition of *Mann* appears on a date significantly later than originally intended.

There are a number of reasons for this unhappy state of affairs. Amongst many other candidates, the most obvious culprit is the financial crisis in the eurozone which most unreasonably refused to stand still while I was attempting to write about it. But, in truth, the fault lies squarely with Kipling's unforgiving minute and its perennial refusal to yield the necessary sixty seconds' worth of distance run. Considerations of time and space have inevitably meant that the choice of materials and subject matter for inclusion within the text has been a selective and subjective process, not least because the precise boundary lines of monetary law as an independent subject have become increasingly difficult to define.

These challenges notwithstanding, it has been my privilege and my pleasure to complete another edition of this work. I very much hope that this title will endure, so that the benefit of Dr Mann's wisdom will continue to be available to academics and practising lawyers who find it necessary to navigate their way through the monetary minefield.

I would like to extend my thanks to those who have helped to bring this work to completion. Dr Caroline Kleiner and Dr Florian Mohs respectively provided me with very useful memoranda on recent French and German law developments that are relevant to various aspects of the text, whilst Gabriel Gomez-Giglio prepared a very informative briefing on the 'pesification' issues considered in Chapter 19. In addition a number of my colleagues on the Monetary Law Committee of the International Law Association were kind enough to provide ideas and materials for inclusion in the text. It will also be apparent from my earlier comments that I must extend my grateful thanks to Oxford University Press, not only for achieving the publication of this text but also for their patience throughout. Any errors, omissions, or infelicities are, of course, my responsibility.

My most grateful appreciation goes to my children, Charles and Emma, who have endured a difficult period with fortitude and without complaint.

Preface to the Seventh Edition

I have endeavoured to state the law on the basis of the materials available to me on 31 March 2012.

Charles Proctor
London EC2
31 May 2012

Afternote: It is with sadness that I must record the death of David Mann in Basel, on 20 August 2012. He was instrumental in ensuring the continuation of his father's work and took a very keen interest in both the Sixth and Seventh Editions of this book.

PREFACE TO THE FIRST EDITION

'Although the civil law is not of itself authority in an English Court it affords great assistance in investigating the principles on which the law is grounded.'—

Blackburn J in *Taylor v Caldwell* (1863), 3 B. & S. 826

In general words, the object of this work is to treat the legal aspects of money in a systematic and comprehensive manner. There were, however, so many obstacles on the way to this goal which the author was unable to overcome in their entirety, that he must ask for the reader's indulgence. In support of this plea for leniency a few observations may perhaps be offered. The first cause of the difficulties lies in the fact that there does not seem to exist any English (or American¹) work dealing with the subject as defined above. The century from the end of the Bank Restriction period to the outbreak of the Great War in 1914, which witnessed so rich a development in the field of law, was marked by an unheard-of stability of economic and, consequently, of monetary conditions. It is, therefore, not surprising that lawyers were led to regard money, not as a problem of paramount importance, but as an established fact. This security was not shaken until the great and sometimes even chaotic disturbances of the monetary systems with which every country has been visited since 1914,² and which deeply imprinted themselves on the economic situation and the law not only of foreign countries but also of this country. Though it was never doubted that, whatever happened, the pound sterling remained the same in character and (internal) value, business men and courts were confronted with many intricate questions which originated from the depreciation or collapse of foreign currencies or from the changes in the international value of the pound. Thus, many important decisions of the English courts came into being, and yet it is probably no exaggeration to say that, in so far as the fundamental legal problems of money are concerned, the observations of Sir John Davis on the *Case de Mixt Moneys*³ still were the only English source of information, and that in respect of many questions of detail there was no guidance at all in the otherwise rich treasures of the common

¹ The book by Bakewell, *Past and Present Facts about Money in the United States* (New York, 1936), is only of very limited value.

² A survey is given by Griziotti, 'L'évolution monétaire dans le monde depuis la guerre de 1914', *Rec* 1934 (48), pp. 1 sqq.

³ (1604) Davis's Rep. (Ireland) 18.

law. There is obviously a gap to be filled, but, in view of the lack of preliminary studies on the one hand, and the immense number of problems and foreign material on the other, this gap is so great that it could not be attempted to give more than a first introduction on the lines of a general survey of and a guide to an inaccessible, though theoretically fascinating and practically vital, part of the law.

The choice of problems suitable for and requiring discussion has been restricted to three groups. In the first place, all those questions have been included which, for the sake of systematical elucidation, had to be answered; for it is believed that the subject demands particular care in putting and arranging the questions, in drawing clear distinctions and demarcations, and in working a way through the labyrinth of material. Secondly, all those questions have been dealt with which have been raised or answered in the cases decided by English courts; it is hoped that all, or at least all important, cases have been considered, but as some have been hunted up which hitherto have escaped the attention due to them, the suspicion is justified that there are many more either hidden in the reports or known but treated under the head of other than purely monetary problems. Thirdly, only those problems have been treated which had been, or might reasonably be expected to be, of practical importance from the point of view of English (municipal or private international) law; mere theory and speculation have in general been eliminated, though in the first part it was necessary to give a certain amount of space to theory; the question of which problems might become important for the law of this country is naturally a difficult one, but in such connections judgment has been based on the experiences of foreign countries.

Within these limits the legal aspects of money will be discussed from a purely legal point of view. Though economic theory will not be disregarded, it is no disparagement of it to say that its usefulness for legal research is not very great. Anglo-American monetary science has undoubtedly neglected the problem which from the point of view of the law is the vital one, namely nominalism and its various phenomena. In this respect it has therefore been necessary to have resort to the research of continental economists. Nevertheless, the lawyer's gratitude is due to those economists who have dealt with the economic and, more particularly, the monetary history of Great Britain, to which the law will have to attribute considerable importance. Mr Feavearyear's short but excellent book on *The Pound Sterling* (1931) is of particular assistance.

Though this book is devoted to the discussion of English law, an extensive space has been conceded to comparative research. The usual argument that comparative studies are necessary and useful because they place a wealth of experience at our disposal, and show what is right and what is wrong with us, is fortified by many circumstances. When Sir John Davis wrote more than 300 years ago, he largely drew on continental scholars, and if his observations have been accepted by the common law, as in the absence of other material they seem to have been, it follows

that the sources of the English law of money are to a great extent of foreign origin. This may perhaps also be regarded as a justification for the fact that it is a lawyer originally trained under a foreign legal system who now ventures to revive the study of the law of money. Furthermore, the developments since 1914 have given rise to an abundance of foreign decisions and legal literature to which international value may justly be ascribed. In France, Italy, and Germany three important works have been published by Mater, Ascarelli, and Nussbaum respectively. The writer is particularly indebted to Professor Nussbaum,⁴ who by his indispensable treatise as well as by many other publications dealing with various monetary problems paved the way for further research to a greater extent than any one of his contemporaries. Finally, it appears that in many foreign laws monetary problems have not been regulated by legislative measures, but left to be moulded and solved by judge-made law. This is a further reason why a comparison with English law is interesting.

The foreign material is so vast that the selection presented to the English reader is bound to be incomplete. Paramount importance has been attributed to the decisions of Supreme Courts; decisions of courts of first and second instance have generally been disregarded, because it is believed that decisions of such courts are very often unsuitable for comparative research, as their authority, under no circumstances binding, is especially assailable, and as the picture they convey can, therefore, too easily become misleading. Legal literature will be referred to rather eclectically, though a much greater quantity of books and articles have been consulted. All available decisions of the Supreme Court of the United States which 'are always considered with great respect in the courts of this country'⁵ and many decisions of American State Courts have been used. Otherwise, comparative research has chiefly been directed to French and German law. The method of dealing with comparative material will vary. Sometimes it will be used as a mere illustration; in other connections it will be referred to as a persuasive, or at least supporting, authority; in a third group of cases it will serve as a contrast to elucidate a rule of English law or to test its soundness.

Within these limits and on these foundations an attempt has been made to investigate the legal aspects of money, the subject being divided into two distinct parts the difference between which needs emphasis: the first part deals almost exclusively with English money in English municipal law, and comparative material is used for the single purpose of showing the position of a given domestic currency within

⁴ Formerly Professor at Berlin University, now visiting Professor at Columbia University in New York. Professor Nussbaum has announced that he is engaged in preparing a comprehensive study of the legal aspects of monetary theory and practice which, prepared under the auspices of the Columbia Council for Research in the Social Sciences, will 'primarily rest on Anglo-American law and will consider as well important developments which have occurred since the publication of the German volume'. See the article in 35 (1937) *Mich. L.R.* 865, which constitutes the first chapter of the forthcoming volume.

⁵ *Beresford v Royal Insurance Co*, [1937] 2 All ER 243 (CA), at p 252 B *per* Lord Wright.

the frame of the given domestic law. Where questions connected with a currency other than the domestic one are considered in the first part, this is due to the necessity of elaborating certain connections between both. But otherwise, all questions relating to foreign currency, ie to the position of a currency within the ambit of a municipal or private international law of a country other than that to which the currency belongs (eg American money in England, German currency in France), have been reserved for the second part. It is the present writer's experience and conviction that this separation between domestic and foreign money obligations is absolutely essential for a clear exposition of the subject although it cannot be carried through without exceptions, and although it may sometimes cause inconvenience or overlapping. There is in each case not only a difference of problems, but there are also many differences of approach to the problems, which make it impossible to apply to the one case, without qualification, considerations operative in, or decisions relating to, the other.

The final revisions of the manuscript were completed on 29 July 1938; decisions and literature which appeared after that date could not be taken into consideration.

F. A. M.

London

12 October 1938

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