

AMOS &
WALTON'S

Introduction to
**FRENCH
LAW**

Third Edition

Edited by

F. H. LAWSON

A. E. ANTON

L. Neville BROWN

Amos and Walton's
INTRODUCTION TO
FRENCH LAW

THIRD EDITION

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F. H. LAWSON
A. E. ANTON
L. NEVILLE BROWN

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PREFACE

TO THIRD EDITION

It was our original intention to prepare a corrected impression of the second edition, incorporating only essential revisions and such others as could be inserted without undue disturbance of the original text. However, more substantial changes turned out to be necessary, and in view of these it seems proper to describe the present book as a new edition rather than as a new impression.

The reform of the law of matrimonial property, which was forecast in the second edition, has now been enacted and is fully examined in the appendix to Chapter XII, although the account in that chapter of the law as it was before the reform has been retained, because most couples married before 13 July 1965 will remain subject to their previous matrimonial régime. In other chapters numerous smaller revisions have been made in order to bring up to date the statement of the law. The opportunity has also been taken to correct certain minor inaccuracies or infelicities to which reviewers of the second edition kindly drew attention.

F. H. L.

A. E. A.

L. N. B.

November 1966

PREFACE

TO SECOND EDITION

The quarter-century which has elapsed since the appearance of the First Edition has seen many changes in French civil and commercial law. In consequence, the original text has required considerable revision and, in some places, complete rewriting, but an effort has been made to retain as far as possible the scope, size and general character of the work. Since the editors have worked independently of one another, the methods of revision differ slightly from chapter to chapter. Professor Lawson has revised Chapters I to VI, Professor Anton Chapters VII to X and Dr Neville Brown Chapters XI to XV; these chapters correspond to Chapters I to V, VI to X, and XI to XIV respectively in the First Edition. The editors have co-operated to avoid repetitions and to secure uniformity in method of citation. Each has seen the others' work and has derived much benefit from the criticism of his colleagues.

Professor Lawson wishes to record his thanks for valuable guidance and criticism to M. Paul Esmein, until recently Professor of Civil Law in the University of Paris, and to Professor Pierre Catala of the University of Grenoble.

Professor Anton wishes to thank in like manner Professor André Tunc of the Faculty of Law, University of Paris, and to record his gratitude to the Carnegie Trust for the Universities of Scotland for financial assistance which enabled him to spend two extended periods of study in France in law libraries and in the offices of legal practitioners.

Dr Neville Brown wishes to pay a pupil's tribute to Professor Jacques Lambert, Director of the Institute of Comparative Law in the University of Lyons, and to acknowledge his great debt to Me Louis Chaine, Notary of that city, in whose office he spent an instructive year. He also thanks Professors Pierre Bonassies of the University of Aix-Marseilles and Alfred Conard of the University of Michigan for their constructive suggestions and criticism.

The editors also express their deep sense of obligation to Mlle Mauricette Craffe, Avocat à la Cour d'Appel de Paris, who, in different ways, has been of assistance to each.

F. H. L.

A. E. A.

L. N. B.

October, 1961.

LIST OF WORKS CITED BY THE NAME OF THE AUTHORS ONLY

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ABBREVIATIONS

a.	article. The French Codes are divided into articles numbered consecutively throughout, irrespective of the sub-division of the Codes into books, titles, and chapters.
al.	<i>alinéa</i> or paragraph. In the Codes articles are not divided into officially numbered sub-articles, but the paragraphs of each article, or <i>alinéas</i> , are often cited by number for ease of reference.
anc.	<i>ancien</i> (added to a provision in a Code or statute to denote that it has been superseded or modified; cf., nouv., <i>infra</i>).
B.G.B.	<i>Bürgerliches Gesetzbuch</i> —the German civil code of 1900.
Bull. civ.	<i>Bulletin des Arrêts de la Chambre civile de la Cour de Cassation</i> . The official reports of the decisions of the civil chamber of the Court of Cassation.
C.C.	<i>Code civil</i> (1804). Where in this work the abbreviation for a Code is followed simply by a number, e.g. C.C. 1382, this refers to the article so numbered in that Code.
C. Com.	<i>Code de commerce</i> (1808).
C.E.	A judgment of the <i>Conseil d'État</i> .
C. inst. crim.	<i>Code d'instruction criminelle</i> (1811). This Code was replaced in 1959 by the <i>Code de procédure pénale</i> .
C. Pén.	<i>Code pénal</i> (1811).
C. pr. civ.	<i>Code de procédure civile</i> (1807).
C. pr. pén.	<i>Code de procédure pénale</i> (1959).
C. Trav.	<i>Code du travail</i> . This is not a Code in the usual sense of the term, but a series of consolidating statutes, which bring together much of French industrial law. It is in four books, the articles of which are separately numbered and cited, e.g. as C. Trav. II. 31.
Ch. réun.	A judgment of the four civil chambers and the one criminal chamber of the Court of Cassation sitting together as a full court.
Civ.	A judgment of a civil chamber of the Court of Cassation (since 1947 there have been four such chambers).
Civ. sect. civ.	A judgment of a civil section of the civil chamber of the Court of Cassation.
Civ. sect. soc.	A judgment of the social section of the civil chamber of the Court of Cassation.

- Civ. sect. com. A judgment of the commercial and financial section of the civil chamber of the Court of Cassation.
- Crim. A judgment of the criminal chamber of the Court of Cassation.
- D. (followed by a reference to a year alone) *Recueil Dalloz*. This is a series of law reports and law review combined, 1845 et seq. The method of presentation has varied from time to time. For example, from 1924 to 1940 there were periodical and weekly series cited respectively as D.P. or simply D., and as D.H. (*Dalloz hebdomadaire*); from 1941 to 1944 the division was into *Dalloz critique* and *Dalloz analytique*; the current series is published weekly in three parts, one containing *chroniques doctrinales* or review articles, which are cited, for example, as D. 1956, chron. 4; another containing *la jurisprudence* or case reports and notes, which are cited, for example, as D. 1957, J. 524, or simply D. 1957.524; and a third containing summaries of legislation which are cited, for example, as D. 1957, L. 156.¹
- D. (followed by a reference to a day, month and year) *Décret*. French decrees are commonly referred to only by their date, the month being indicated by a number: thus, D. 22.8.1958 refers to the *Décret* of 22 August 1958.
- D.-1. *Décret-loi*.
- Gaz. Pal. *Gazette du Palais*. This is a legal newspaper containing law reports, 1881 et seq. It is published in newspaper form several times a week, and republished in a different format bi-monthly. The bi-monthly parts are bound into one volume every six months. The reports are cited by the year, and page, for example, Gaz. Pal. 1946.2.210. Analytical digests of the cases reported in the *Gazette du Palais* and in other series of law reports are also published by the same publishers half-yearly and, in addition and periodically, useful quinquennial digests of these cases.
- J.C.P. *Juris-classeur périodique*. This is a series of law reports, 1925 et seq. It is published in three parts containing review articles, reports, and statute law. The citation states the year, part, and number of the item, for example, J.C.P. 1955.II.4131.
- L. *loi*. French statute laws may be referred to by their date and subject matter, but are often referred to only by their date, for example, L. 30 avril 1951, *portant augmentation des effectifs militaires*, or, simply, L. 30.4.1951.

¹ Since 1 January 1965 the *Recueils Dalloz* and *Sirey* have been merged under the title *Recueil Dalloz Sirey*. The citation remains the same.

<i>Les grands arrêts</i>	<i>Les grands arrêts de la jurisprudence civile</i> . A collection of leading cases decided by the Court of Cassation, collected and edited for students in 1934 by H. Capitant for use in connexion with Colin et Capitant, <i>Cours élémentaire de droit civil</i> , and last edited in 1950 by L. Julliot de la Morandière.
n ^o	number (<i>numéro</i>). To facilitate reference to treatises likely to run to several editions, it is the common practice of French legal authors to divide their texts into <i>numéros</i> which may contain one or several paragraphs.
nouv.	<i>nouveau</i> (added to a provision in a Code or statute to distinguish it from the former version of that provision; cf. <i>anc.</i> , <i>supra</i>).
O.	<i>Ordonnance</i> .
Req.	A judgment of the Chamber of Requests of the Court of Cassation (abolished by the law of 23 July 1947).
<i>Rev. Trim.</i>	<i>Revue trimestrielle de droit civil</i> .
<i>Rev. trim. dr. comm.</i>	<i>Revue trimestrielle de droit commercial</i> .
S.	<i>Recueil Sirey</i> . This is a law journal containing reports of decisions from 1831 onwards. It was formerly divided into four parts: (1) <i>Cour de Cassation</i> ; (2) <i>Cours d'appel et tribunaux</i> ; (3) <i>Jurisprudence administrative</i> ; and (4) <i>Lois et décrets</i> , and is cited thus: S. 1939.2.98. From February 1955 to June 1956 the <i>Recueil Sirey</i> was temporarily merged with the <i>Recueil Dalloz</i> , but subsequently resumed separate publication in three parts, review articles, reports, and statute law. The reports are now cited S. 1958, J. 384 or, simply, S. 1958.384. ¹
Soc.	A judgment of the social chamber of the Court of Cassation (abolished by the law of 23 July 1947).
<i>Travaux de la Commission.</i>	<i>Travaux de la Commission de Réforme du Code civil</i> . A Commission to revise the civil code was set up in 1945, and 7 volumes of its proceedings have so far been published dated 1945-6, 1946-7, 1947-8, 1948-9, 1949-50, 1950-1, 1951-2; it has also published an <i>Avant-projet de Code civil, Première Partie</i> , 1955, which is a draft of the Preliminary Book and Book One (Natural Persons and the Family) of a revised Code.
Trib. civ.	A judgment of the <i>tribunal civil</i> (now <i>tribunal de grande instance</i>) of the place whose name follows the abbreviation.

¹ The *Recueil Sirey* was reunited with the *Recueil Dalloz* with effect from 1 January 1965.

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CHAPTER I

A GENERAL VIEW

1. DESIGN AND PURPOSE OF THE PRESENT WORK

It is the design of this book to offer to readers of English a general account of the principles and institutions of French civil law, together with a much briefer sketch of commercial law. It is offered primarily to practising lawyers, not merely those practising in the United Kingdom, but to all who practise in what are known as common law countries, that is to say, those which have taken large masses of their law from England. Over fifty years ago the late Dr. Ernest Schuster addressed such lawyers in the following terms:

The steady expansion of international commercial dealings, the greater frequency of marriages between members of different nationalities, and the constantly growing number of causes facilitating and widening changes of domicile on the part of persons engaged in mercantile, industrial, or scientific pursuits have largely increased the number of the occasions on which English lawyers have to consult an advocate practising in the country of which the law has to be applied, and in ordinary commercial cases that course no doubt has many advantages. But in cases where questions arise as to matters on which the conceptions of English law differ materially from those of continental law (e.g. as to the validity of marriages, the effect of marriage on property, as to settlements and trusts, as to the nature and effects of testamentary dispositions, as to powers of appointment and similar topics) the communication between English and foreign lawyers, as experience shows, frequently leads to difficulty and misunderstandings. For this reason a knowledge of the main principles of foreign law is of direct practical advantage to any practitioner who is likely to have to deal with international questions. The main conceptions of continental law are based on identical principles; any lawyer who has mastered these principles as applied in any particular system . . . has mastered the difficulties which intervene in the communications with foreign lawyers. He will understand the answers to his questions because he will put his questions in a way which a foreign lawyer will understand.¹

If that was true in 1907, it is more urgently so in 1961. All the factors mentioned by Dr. Schuster have increased in weight and importance as the world becomes smaller and travel faster and more frequent. Moreover, international organizations now exist which he could not have foreseen, some of them clearly tending towards the closer association characteristic of federations. In one of them, the

¹ E. J. Schuster, *The Principles of German Civil Law*, p. v.

Common Market, the United Kingdom has applied for membership. All the present members are governed by private laws which share a common legal grammar and technique quite unfamiliar to the average English lawyer and intelligible by him only at the cost of considerable effort. There can be no doubt that a study of French law provides the most convenient line of approach to these various laws.

French law is made up of many parts, each of which constitutes a separate discipline and, as often as not, falls under the jurisdiction of a separate set of courts.¹ The most fundamental distinction is between public and private law. Questions relating to government and public administration are in general withdrawn from the courts which administer justice between private persons or corporations, and committed to separate administrative courts headed by the *Conseil d'État*, which exercise, *inter alia*, the sort of control over administrative authorities and tribunals exercised in England by the ordinary courts.² One part of public law, revenue law, is treated quite separately and is more independent of the rest of the law than, for instance, in England. Even within private law there are important distinctions. Labour law is highly developed as a separate discipline and, at first instance, usually administered in special courts; and very much the same is true of commercial law. Criminal law is yet another important branch of law, but this is administered by the same judges as administer civil law, though in courts which are technically distinct.

Thus civil law is only a small portion of French law. It is, however, the portion which, more than any other, demands the attention of common lawyers, and for two main reasons.

In the first place, it is much the most highly developed and systematized.³ It is not only the oldest, but the one that has been taught longest in the universities. Thus it has, in a pre-eminent degree, formed the minds of French lawyers and has become a sort of legal grammar applied not only to questions arising from civil intercourse, but also to questions falling under other disciplines and other jurisdictions. To quite a considerable extent, labour law and commercial law are mere supplements to civil law. For example, both are mainly concerned with the operation of certain kinds of contract; they therefore assume the existence of a general law of

¹ This is brought out exceptionally well, *passim*, in R. David and H. P. de Vries, *The French Legal System* (New York, 1958), and *Le droit français* (2 vols., ed. R. David, Paris, 1961).

² See L. Neville Brown, 'The Reform of the French Administrative Courts', 22 *Modern Law Review* (1959), p. 35.

³ Professor R. David emphasizes its superiority, in this regard, over administrative law; cf. *Le droit français*, 1, p. 117.

contract, which can only be found in the civil law. Moreover, although the administrative courts subject administrative contracts to special rules, for the most part they apply the rules applicable to civil law contracts. Thus a foreign lawyer who has obtained an elementary knowledge of civil law can easily move outwards into the other branches of French law. No other branch sheds so much light on the entire system.

Secondly, it presents the greatest initial difficulties to the student educated in the common law. This is partly because it is so systematic and, like other bodies of coherent but unfamiliar thought, can be mastered only as a whole and by a steady conscious effort. In comparison, the other parts of French law are more like collections of separate rules which can be understood piecemeal. But another source of difficulty is its very Frenchness. It has grown up over centuries as part of the general experience of the French people, an experience very different in many respects from that of the English-speaking peoples. As will be explained later,¹ the enactment of the Civil Code in 1804 made it seldom necessary for French practitioners or judges to apply a knowledge of pre-revolutionary French law in the solution of problems. Nevertheless, surprising as it may seem to those who have been taught to regard the French as an exceptionally logically minded people, French civil law is not completely intelligible as a system of logical thought, but is as historical as the common law.²

A brief sketch of commercial law is added because of its close connexity with some parts of civil law. Moreover, a common lawyer might expect to find some matters treated in a study of civil law which a Frenchman would look for under the rubric of commercial law, such, for example, as the law of sale.

This book does not purport to serve as a textbook or to render recourse unnecessary, in a concrete case, to expert opinion or to standard works of authority. It may rather be described, as offering to practitioners a 'guide to the drafting of cases for opinion on French law'. However, it is addressed also to academic lawyers and law students, in the hope that they may be induced to look outside their own law and make a first approach to an unfamiliar legal system.

2. THE DOMAIN OF FRENCH LAW

Just as the common law of England has extended the sphere of its influence far beyond the country of its origin, so the law of France has been adopted as a model by a score of different nations all over

¹ p. 5, *infra*.

² See F. H. Lawson, *A Common Lawyer looks at the Civil Law* (Ann Arbor, 1953).

the globe. But while English law reigns only in those countries to which it has been carried by English conquerors or colonists, the law of France has been chiefly disseminated by means of voluntary imitation and free adoption. And that this has been possible is mainly due to the codification projected by the revolutionary assemblies and carried into effect by Napoleon.¹

When the Revolution broke out France had long held, almost without a rival, the leading place in Europe. The French language was well on the way to succeeding Latin as the common speech of the civilized world; French culture commanded general admiration and imitation. But this admiration and imitation did not extend to her law. Few foreigners thought it worth while to study her meagre legal literature; few foreign students sought admission to her law-schools. The Revolution and the Empire, by the alarm, as well as by the nationalism, which they excited in other countries, did much to deprive France of the pre-eminence which she was winning by the methods of peaceful penetration. It was the Codes which, from the French standpoint, saved the situation; and ever since the *Code civil* was promulgated, France has done a great export trade in law; indeed, until the publication of the German Civil Code in 1896, she had a practical monopoly in this commerce. And the nineteenth century was a period particularly favourable to the propagation of French legal institutions. It was an age of nation-making. In Europe it saw the creation, or the remaking of Germany, Italy, Belgium, Roumania, Bulgaria, and Greece; on the American Continent it saw the birth of fifteen new nations; while in the East it saw Japan, Siam, Turkey, and Egypt opened to the penetration of European ideas. Of these twenty-five nations almost all sought to mark their accession to political maturity, or their adhesion to the European circle, by a general revision and codification of their laws; and in almost every case the model followed was that of the *Code Napoléon*. This Code was attractive in form; it was written in French; it was, or seemed to be, easy to understand; it claimed to be catholic, in the true sense; it was secular without being irreligious, and democratic without

¹ It may perhaps be a matter for regret that there would seem to be no reasonable probability of the domain of the common law being extended in the future beyond its present boundaries—boundaries which nowhere pass outside the world of English-speaking governments. This, however, is part of the price which we must be content to pay for the privilege of an uncoded law. (These words, written in 1935, are still substantially true if one neglects the spread of English constitutional ideas. It is, however, worth mentioning that Israel has accepted the aid of the Harvard Law School in codifying its law, and that some common law ideas, not hitherto in force in that country, may be accepted. Moreover, many Israeli lawyers, originally trained in continental European law, find the common law attractive on closer acquaintance.)