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*Mexican Law: A Treatise for Legal Practitioners and
International Investors*, by Jorge A. Vargas

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BOOK REVIEW

**MEXICAN LAW: A TREATISE FOR LEGAL
PRACTITIONERS AND INTERNATIONAL INVESTORS.
Jorge A. Vargas ed., West Group, 1998.**

*Reviewed by Michael Wallace Gordon**

How long we have waited for this treatise! No one has before completed such a challenging, and needed, task.¹ Professor Vargas, a prolific writer who in the past decade has recently written extensively on the Mexican legal system, as well as adding some interesting writings on other systems of Spanish speaking nations,² has drawn together a distinguished group of authors for this two volume treatise.³ Professor Vargas edited the treatise, and authored eight of the twenty-eight chapters.⁴

The treatise could easily include several more volumes.⁵ Many of the chapters are quickly becoming out-of-date,⁶ partly

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1. The only other book in English about the Mexican legal system was a very brief volume entitled, *AN INTRODUCTION TO THE MEXICAN LEGAL SYSTEM*, written in 1978 by Professor James E. Herget of the School of Law of the University of Houston, and Jorge Camil, a Mexican attorney. The text was only 98 pages and thus offered a very sketchy (but very welcome) outline of the system in Mexico. Guillermo Floris Margadant's, *INTRODUCTION TO THE HISTORY OF MEXICAN LAW*, was published in 1983. It was and remains a most useful addition to a scholar's or practitioner's library, but is limited to the history of the system.

2. See, e.g., *Introductory Note, Cuba: Foreign Investment Act of 1995*, 35 I.L.M. 331 (1996).

3. Volume I of the treatise contains chapters 1-15, while chapters 16-28 are found in Volume II.

4. Chapter 28, *Contracts in Mexico: The Impact of the Codes*, has no listed author.

5. A third volume is currently in process.

6. Periodic revisions to specific chapters are in process, not necessarily by the same original chapter authors.

because of Mexico's commitments under the NAFTA and WTO.⁷ Other chapters are likely to remain useful for a more extended duration.⁸ Writing about a legal system always presents such a dilemma, no system remains static. But that does not diminish the usefulness of such a task, especially where the effort is a first

7. See, e.g., Chapter 4, on Mexico's Foreign Investment Act of 1993 discussing the 1989 Regulations which remained in force until they were replaced in 1999. Investment laws of any nation are transitory, and this chapter effectively outlines a chapter of Mexican legal history not yet completed. One hopes that Mexico's restrictive views first incorporated in the 1973 investment law, and substantially reversed by the 1993 investment law, will not return as the act of some future populist Mexican administration. Chapter 5 of the treatise, on Mexican Labor Law, in which the authors drawn extensively from Alberto Trueba Urbina's work, *Ley Federal del Trabajo*, notes that current labor law is an amended version of the 1970 Federal Labor Act, which developed from the foundation for Mexican labor law in Article 123 of the 1917 Federal Constitution. The details outlined by the authors, such as mandated hours and working conditions, are certain to be modified in the coming years. The *Maquiladora*, described in Chapter 6, is affected by NAFTA, but the *maquiladora's* predicted death is premature. The concept thrives, especially along the U.S. border where it began, and as it evolves under NAFTA mandates, it will change. Chapter 14 on Bankruptcy outlines the law under the current federal law adopted in 1943, which has been criticized as inadequate to deal with modern society. Until it does change, the chapter is a useful brief introduction. No nation's tax laws are static, and Mexico's tax law described in Chapter 17 is certain to change. The authors indeed note that the system is currently the subject of a significant overhaul, partly due to NAFTA. Gas Regulation, the subject of Chapter 18, changed significantly in 1995, and most likely these changes are not the end of the opening of the area to private (and foreign private) investment. It is another indication of the dynamics of the 1990's for Mexico's legal structure where governance of the means of production and distribution are involved. Mining Law, the focus of Chapter 19, is also the subject of some 1990's changes, which will not be the last modifications to the regime.

8. Chapters outlining some of the differences between the Mexican and U.S. legal systems will remain useful, such as those addressed in Chapter 1, as well as many of the characteristics of the constitutional structure noted in Chapter 2. Powers of Attorney as described in Chapter 3 are fairly well established, and are likely only to be the subject of some fine tuning in the near future. Chapter 3 includes very useful descriptions of the execution of a power of attorney outside Mexico, but which is intended to have effect in Mexico. Mexico's forms of business associations, and the processes of formation, are likely to remain fairly stable, and are the subject of Chapter 7, certain to be one of the chapters most well received by foreign practitioners seeking an understanding of Mexican corporate law. The regulatory framework of a franchise in Mexico, Chapter 8, will also be well received, but as franchise governance tends to be affected by many different laws, it will surely change in the near future. Chapter 16, on International Commercial Arbitration, and written by perhaps Mexico's most distinguished jurist, José Luis Siqueiros, should remain of value. Commercial law in Mexico was amended in 1993. Arbitration is enormously important in Mexico, where considerable fear and distrust of the judicial system remains the principal reason for seeking arbitration. There may be no more useful chapter for foreign persons engaged in commercial transactions with Mexico. Also of considerable value, and the subject of more extensive comments in the text above, is Chapter 21 on Tort Law, an area in its infancy in Mexico. Adding Chapter 22 on Conflict of Laws, and Chapter 23 on Enforcement of Judgments, and one has all the reason needed to acquire this treatise.

undertaking. Professor Vargas' treatise will ultimately be replaced, but will have the honored position of the first essential treatise in English on this most important legal system on our southern border.⁹

Professor Vargas' treatise is not one of those works often received and accompanied by a plea for a review, a pleasant addition to a library in return for a few kind words. I knew the treatise was about to be published at the time I was consulting on a major case in the United States involving allegations of defamation about a Mexican institution, and the U.S. federal district court had ruled that Mexican law applied. While the somewhat elusive nature of defamation law in Mexico, whether civil or criminal, is not discussed in the treatise, Chapter 21 on Tort Law in Mexico, written by Professor Vargas, provided me a very good piece to share with my clients. United States lawyers, unfamiliar with torts (delicts or extra-contractual obligations) in civil law systems, are often unhappy with the inability to provide answers to many questions about torts in these systems. Several years ago, while consulting for lawyers for a major U.S. hotel chain which was a defendant in several personal injury cases arising in their Mexican resorts, I was presented with a two page list of questions to which I submitted a brief answer "I don't know, nor does anyone in Mexico." They were questions appropriate for understanding a very developed tort law system, including numerous questions about elements of strict liability, which has a parallel in Mexico in "objective liability," but is not well developed. Professor Vargas clearly indicates tort law is not well developed in Mexico.¹⁰ I wish I had been able to send that earlier client this chapter. It presents an excellent outline of Mexican tort law and reference to the sparse bibliography in English describing Mexican tort law.¹¹

9. It is ironic and somewhat disturbing that there have existed for some time English language books, or translations of foreign books, describing other legal systems, such as *THE ITALIAN LEGAL SYSTEM: AN INTRODUCTION* BY MAURO CAPPELLETTI (1965); and René David, *FRENCH LAW: ITS STRUCTURE, SOURCES AND METHODOLOGY* (Kindred translation 1972). But the fact is that the principal interest in the Mexican legal system outside Mexico exists in the United States, and until someone in the United States wrote on the Mexican legal system, it simply was not going to be done.

10. See § 21.7 at 215 entitled *Tort Law is an Incipient but Developing Area of Mexican Law*.

11. Added to that should be Edith Friedler, *Moral Damages in Mexican Law: A Comparative Approach*, 8 *LOY. L.A. INT'L & COMP. L.J.* (1986). It is helpful in understanding the concept of moral damages, and how they appeared in the Civil Code for

Tort law is presented by the author by asking six basic questions, not unlike some of the questions I was asked by the resort owning client. Except that they include some very basic questions, such as "Does Mexico have Tort Law as part of its legal system?" The questions presented to me, contrastingly, were based on an erroneous assumption that Mexico has a highly developed tort system and the client wanted to know the unique Mexican characteristics. Although Professor Vargas answers his question "No," that answer is incomplete without his further explanation that illustrates that Mexico does have tort law, but not as a separate, specific area comparable to how we view tort law in the United States. Mexican tort law is embedded firmly in a very few provisions of the various state and federal district civil codes, supplemented by very little scholarly writing on the subject, and a handful of difficult to obtain cases. The answers which Professor Vargas gives to his questions illustrate the very different conceptual basis for torts in Mexico, with references to "extra-contractual liability," "illicit" acts, and moral damages. The author notes how important an understanding of the Mexican tort system is to the United States, by reference to the estimated twelve million U.S. citizens who travel to Mexico each year. Even if only one in 10,000 suffers a tortuous injury,¹² that means some 1200 who are likely to return to the United States possessing thoughts of obtaining compensation. Furthermore, it does not include the thousands of other foreigners injured in Mexico, and the injuries caused to Mexican nationals as well. If they are injured on the premises of U.S. owned property, forum shopping is most likely to lead to the initiation of litigation in one of the plaintiff friendly locations in the United States.

Professor Vargas uses three hypotheticals involving American visitors in Mexico to illustrate the nature of Mexican tort law. One is a tourist whose margarita consumption contributed to a fall in a hotel stairwell, another had a few beers and dove into a nearly empty hotel swimming pool, and the last a tourist who was not the victim but the cause of an injury when

the Federal District until amendments in 1982. Unfortunately, the article relies on pre-1982 authority, especially this reviewer's translation of the Civil Code for the Federal District as it existed in 1980.

12. A modest estimate considering the number of U.S. tourists who parasail, water-ski, scuba-dive, ascend steep pyramids, drive rented cars on Mexican roads in competition with Mexican drivers, and personally attempt to consume the nation's output of margaritas.

her car killed one teen and sent another to life in a wheelchair. They are grim but very typical tales that the author deftly uses to raise several very real, contemporary issues which will occur repeatedly in the years to come.

The author suggests that such cases are not for Mexican attorneys. Few Mexican attorneys are likely to introduce themselves as personal injury or tort lawyers. It is not from lack of interest but from lack of work. Most injuries are dealt with by federal social security or corporate compensation. Pain and suffering compensation and punitive damages remain unavailable. There is no profit for Mexican attorneys in tort litigation. But there may be profit for U.S. attorneys, where actions are filed in the United States for injuries suffered in Mexico. Many of these cases are dismissed under *forum non conveniens*. And many of the remainder become much less attractive when U.S. courts rule, as they routinely do, that Mexican law is applicable to a tort which occurred in Mexico. Applying Mexican law means that the Mexican law of damages is applicable, and when a U.S. plaintiff's lawyer learns about Mexican damage law, his will to proceed may diminish. The case becomes no more attractive than for the Mexican attorney. Professor Vargas outlines Mexican damages,¹³ offering a quick lesson of discouragement for tort victims and lawyers.

The second part of the chapter offers an outline, something I like to provide to new clients who are dealing with Mexican law for the first time.¹⁴ The authors outline the theory of liability for tortuous injury in Mexico, focusing on the civil code coverage of "obligations", and the special provisions in the federal labor law.¹⁵ Professor Vargas refers to a "Federal Civil Code,"¹⁶ in a manner

13. See § 21.6 at 215. A fuller exploration of such area as moral damages, and granting large attorneys' fees under "costs" provisions, would be useful in the new volume. Professor Vargas does apply the damage provisions to the three hypotheticals. See § 21.24 at 228-30. This reviewer fails to understand why the injured party in the first hypothetical would be subject to the Civil Code for the Federal District rather than the Civil Code of the State of Guerrero, where the accident occurred. The injured party was a tourist, not a worker. The third hypothetical would involve the application of the Civil Code of the State of Baja California, not the Federal District. The discussion of moral damages under the Federal District's Code would not arise.

14. I mean by clients, lawyers who have retained me to advise on Mexican law. Although admitted in Connecticut, I do not engage in general practice and directly represent any clients.

15. § 21.11-20 at 216-26.

16. § 21.13 at 218.

possibly apt to be confusing. I prefer to always refer to it as the Civil Code for the Federal District.¹⁷ This Code, as he states, is the Civil Code applicable in the Federal District.¹⁸ It is not a federal law of Mexico in the sense that it applies throughout the nation, as does the federal commercial code and the federal labor act.¹⁹ The code is more accurately referred to as the Civil Code for the Federal District rather than the Federal Civil Code. Its importance as a civil code, however, exceeds the importance of any of the thirty-one Mexican state civil codes, both because of the importance of Mexico City, and because the Civil Code for the Federal District is often the code where new ideas are first implemented, to be incorporated later by amendments to one or more of the state civil codes. For example, the important changes in Article 1916 of the Civil Code for the Federal District in moral damages in 1982, may find their way into civil codes in states such as Guerrero (Acapulco and the site of Professor Vargas' first hypothetical), or Quintana Roo (Can Cún and the site of the second hypothetical),²⁰ or Baja California (Ensenada and the site of the third hypothetical), where they could have a significant impact on resort area torts. Moral damages (*daños morales*) are determined by a formula in most Mexican states. In most states the maximum moral damage award is a percent of the compensatory damages.²¹ Thus, moral damages might total at most several thousand dollars. But moral damages in the Civil Code for the Federal District are now more open-ended, although they are not the equivalent of punitive damages.²²

Professor Vargas's hypotheticals are not set in the Federal District, and there is little likelihood that a Mexican state court outside the Federal District would apply the Civil Code for the Federal District in a tort action. But there are several thoughts

17. The name of the code is the *Código Civil para el Distrito Federal en Materia Común y para toda la República en Materia Federal*, not the *Código Civil Federal*. The title translates as the Civil Code for the Federal District in Common Matters and for all of the Republic for Federal Matters.

18. The federal district, or *Distrito Federal*, is essentially Mexico City and partially comparable to the District of Columbia in the United States.

19. The *Código Comercio*, for example, is truly a federal law. There are no state commercial codes. But each state has its own civil code.

20. As Professor Vargas discusses, Quintana Roo has partly incorporated the Civil Code for the Federal District. See § 21.15 at 219.

21. Moral damages are limited to twenty percent of the indemnification. Art. 1393, C.C.Tamaulipas. Prior to the amendment in 1982, the Civil Code for the Federal District allowed moral damages not exceeding one-third of the civil liability. Art. 1916.

22. C.C.D.F., art. 1916, as amended Dec. 31, 1982.

on that issue. First, the Civil Code for the Federal District is not only a civil code to be applied within the territory of the Federal District; by its name it applies throughout the country "for Federal Matters." There is debate as to the meaning of "federal matters," and some sense that conflicts involving "foreignness" in any aspect, including a common tort where a foreign person is involved, may qualify as "federal matters." Such a strained view of federal matters might be used either by a state court in Mexico to allow the Civil Code for the Federal District to govern liability and especially damages, or by a U.S. court applying Mexican law and persuaded of the value of this doubtful meaning. Professor Vargas does not address this debate, but outlines the prevalent doctrine of "limited territorialism," which leads to the application of the state law for matters occurring within that state.²³ Second, and clearly outlined by the author, is a much clearer doctrine that allows application of the Civil Code for the Federal District in a state court by acceptance of the Civil Code for the Federal District by specific provisions in the state code. He notes that the state of Quintana Roo (the location of Can Cún and the second hypothetical) is the one state in Mexico that departs from limited territorialism and cites its provision that applies federal law to transactions entered into abroad but executed in Quintana Roo.²⁴ But does this mean that all acts traceable to the foreign transaction shall be so governed? It is one thing to suggest that a contractual dispute ought to be so governed, and another to suggest that a tort also is covered. What if the party in the hypothetical had made his travel arrangements in Denver, but once in Quintana Roo at the hotel signed a separate contract to parasail, and was injured parasailing? Would any new contract for additional services signed in Quintana Roo be considered "effects of legal transactions entered into abroad?" There has to be some point at which the link abroad terminates, a point not yet answered in Quintana Roo law.

Does this unusual provision in the Quintana Roo law make any difference? Only if the Civil Code for the Federal District

23. § 21.15 at 220.

24. On Professor Vargas' side is the question of the meaning of the Quintana Roo provision if it does not mean what Professor Vargas suggests. Federal law (such as the federal labor act) applies not because states say it does, but because federal law may preempt state law, as it has in many fields in Mexico. Does it mean that if there is a conflict, federal law prevails? Does it not do so without the assistance of the Quintana Roo provision?

differs from that of the state of Quintana Roo. Professor Vargas notes that the two codes are "closely parallel" in many of their provisions.²⁵ But he also notes the very different approach to tort law, with Quintana Roo adopting a provision to help the local hotel industry by allowing a defense of contributory negligence to act as a complete bar to recovery in a suit by a *foreign* plaintiff,²⁶ but not by a Mexican. It is interesting to speculate whether a U.S. court would enforce a judgment from Quintana Roo in view of its law treating Mexicans and foreigners differently.²⁷ The application of Quintana Roo law to Mexican plaintiffs and the Civil Code for the Federal District to foreigners may also lead to considerably larger damage awards against foreigners, such as in Professor Vargas' third hypothetical, where the foreign party is a defendant rather than a plaintiff, were the accident in Quintana Roo.²⁸ Quintana Roo law limits moral damages to a specific amount, while the Civil Code for the Federal District includes the 1982 amendment providing for open-ended moral damages. This seems a denial of due process. Professor Vargas does not discuss this difference, which could be an important contribution in a chapter on damage theory in Mexico in a successor volume, emphasizing how the application of the Civil Code for the Federal District differs from the application of the civil code of most states, including how it would affect an injury claim against a foreigner in Quintana Roo. The concept of moral damages, as noted briefly above, is an area of considerable interest to U.S. attorneys engaged in cross border tort litigation with Mexico.

Not only do the various civil codes create an interrelationship, sometimes drawing the Civil Code for the

25. § 21.15 at 221.

26. No such bar faces a Mexican plaintiff.

27. Were the judgment to be enforced in Florida or one of the other twenty-seven states (as of early 1999) which has adopted the Uniform Foreign Money-Judgments Recognition Act, it might be denied because such different treatment rendered the trial not impartial and/or denied due process to the foreign person (§4(a)(1)), or was repugnant to the public policy of the enforcing state (§4(b)(3)). The purpose of the different treatment is clearly to allow courts to render judgments against foreigners that could not be rendered against Mexican citizens.

28. Professor Vargas suggests the use of the Civil Code for the Federal District and the Federal Labor Act for measuring damages in the second hypothetical. Since this involved a suit by a foreign tourist who arranged the trip abroad, his earlier discussion of Quintana Roo law would suggest that the defendant hotel would benefit from a provision allowing a defense of contributory negligence. The "similar" case cited by the author, *Gardner v. Best Western Int'l, Inc.*, 929 S.W.2d 474 (1996), did not involve the Federal Labor Code.

Federal District into a matter occurring in a state, but when the Civil Code for the Federal District is applicable, it may incorporate or transfer issues to the Federal Labor Code, an act which is without argument a federal law. Professor Vargas discusses this incorporation or transfer as it applies to measuring damages when an injury causes some "incapacity," whether temporary or permanent, whether partial or total, and where death occurs.²⁹ These sections are essential for a lawyer representing such cases as where injuries are incurred working for a foreign company, or even when the accident is outside the employment, but the injury creates a labor incapacity. In the former, the labor act would apply directly due to the employment relationship, in the latter, it applies because of the reference from the civil code for the measurement of damages.

Having presented the theory of the law, Professor Vargas next returns to the three hypothetical cases to discuss the application of Mexican law to these quite common occurrences. Each of the cases may be cut short because of contributory negligence, which in Mexican law in most states absolutely absolves the defendant from liability. If this assumes some ease at applying Mexican standards of negligence, Professor Vargas quickly discounts such ease with his discussion of the absence of any standard of negligence or fault in Mexican law.³⁰ This proves extraordinarily difficult for U.S. lawyers to comprehend, and for experts in Mexican law to explain to these lawyers or judges by way of affidavits or testimony. Judicial discretion reaches exceptional heights in the few tort cases heard, and reading a judgment one wonders how the matter was decided. Those that reach the stage of a determination of damages, illustrate to the American lawyer just how modest damages in a tort action in Mexico are likely to be. Professor Vargas suggests that in the three cases, assuming the defendants are found liable, damages would accrue to the woman who fell after her bout with the margaritas to be about \$69,000, to the "dry" pool diver about \$650,000, and to the tourist causing death and injury to others by her auto about \$41,000. Moral damages might be available, but Professor Vargas does not speculate on what they might be, noting correctly that there have been few instances of their application.

29. § 21.16-20 at 222-26.

30. § 21.33 at 227.

Special sections are left to discuss the interrelationship between a civil damages action resulting from a vehicular accident and a criminal action arising from the accident. Certainly not unique to the Mexican system, when the victim is Mexican and the driver is foreign, the driver is likely to be placed in custody pending payment of some indemnity. Professor Vargas notes that there may also be traffic fines imposed and compensation if public property is damaged. The latter brings to mind a young American woman who nearly thirty years ago was a tourist in Mexico and backed her car into and knocked over a telephone pole. She was charged with destruction of the national telecommunications system and jailed, later to escape with some bribes and the help of a boyfriend. One assumes she has not toured Mexico since. Suggestions to take out insurance when renting a car in Mexico ought to be heeded.³¹

A final substantive section on joint and vicarious liability ends with a comment that the "legislative technique" in the Mexican civil code, which is noted as using "simple and concise language," allows Mexican judges "ample discretion."³² That is somewhat terrifying to contemplate. Imagine a system with few limits to judicial interpretation where corruption is rampant. Many cases are "settled," in one manner or another. Avoiding participation in the Mexican tort system is sound advice.

In the chapter's conclusion Professor Vargas notes that NAFTA is beginning to change Mexico's absence of a developed tort system. Actually it is less NAFTA than the increased openness of the Mexican system which began in the mid-1980s, and for which NAFTA represents another stage, albeit the most important development to date. The NAFTA does not attempt to govern private civil actions, commercial or tort.³³ Civil litigation involving Mexican law is increasing, but perhaps less in Mexico than in the United States. Mexicans and Americans, injured in Mexico on property linked in any way to a parent or party in the United States, usually results in a suit filed in the United States for no reason other than contingent fees and the possibility of

31. This reviewer has followed that advice for some dozen trips to Mexico driving, seven directly from Florida, the others renting cars. Fortunately this reviewer has never backed into a telephone pole.

32. § 21.36 at 232.

33. Art. 2022 does suggest that private commercial disputes should be resolved considering the use of alternative disputes methods.

punitive damages. The undeveloped Mexican tort law creates significant frustration to plaintiffs' and defendants' attorneys alike, trying to locate applicable Mexican law, trying to determine the meaning of the language of the statute, and seeking interpretation in treatises or cases. Professor Vargas's tort chapter cites no Mexican cases until he presents four cases in an appendix to the chapter.³⁴ They are brief, broad principles not linked to any fact situation, and offer only a slight additional glimpse into the tort system. That often leads to a perplexing situation. A plaintiff will allege liability under Mexican law. A brief provision of the applicable Mexican civil code may be given several meanings. When a Mexican attorney is asked whether the law might be interpreted in a certain way by a Mexican judge, the answer is likely to be "it could be." But when one searches for a case where it has been so interpreted, the chances are high that none will be found. If a second question is presented to a Mexican attorney, "Do you know of any case where there has been such an interpretation?" the answer is invariably "No." A U.S. court is not likely to want to be the first court to give a particular interpretation to a Mexican law, especially when that might include granting extensive damages under Mexico's moral damages law, or allowing significant attorneys' fees in a lengthy case where the fees would be far in excess of a very modest damage award.

This tort chapter provides a valuable service beyond the discussion of Mexican tort law. It discloses the undeveloped state of that law and the dilemma in dealing with a foreign legal system which, at least in contrast to that in the United States, seems to answer very few of those questions about extra contractual liability which are increasingly being asked in United States courts.

A second chapter has recently proved helpful, not in dealing with actual cases but in discussing the financial services sector. Looking for a background to the recent developments in the financial services sector, Ramiro Solis's nearly forty page chapter on Financial Groups in Mexico was useful, at least to the date of its writing.³⁵ Unlike the chapter on torts, which ought to remain

34. Appendix 21A at 234. A second appendix, 21B at 235 presents a valuable glossary of words and terms of absolute necessity for the U.S. attorney engaged in litigation involving Mexican law.

35. See Ch. 11 at 393. The material assisted in preparing a lecture on the NAFTA

a useful guide to Mexican tort law even as some modifications are made, this chapter will quickly become principally of historical value.³⁶

Mexico operated an almost exclusively closed financial services sector for most of the 20th century. In the second part of the chapter the author outlines this history, noting little change between the late 1800s and 1982. President Lopez Portillo is credited with nationalizing the banks because of a dwindling supply of foreign currency and massive capital flight. The author gives little attention to Lopez Portillo's concurrent introduction of currency exchange controls, the first in modern Mexican history. The exchange controls proved so unsatisfactory that they were removed in December of 1982,³⁷ well before any attempt to reprivatize the banks.³⁸ Author Solis suggests the nationalization did not attract capital, indeed in fact it drove it away. It also foretold the decade of extensive restrictions on foreign investment, which commenced with the 1972 transfer of technology law,³⁹ and the 1973 law that regulated foreign investment.⁴⁰

The following half-dozen pages discuss the statutory and regulatory mechanism governing the financial sector of banking and credit. They are helpful pages and the first ten footnotes disclose a series of laws governing these areas which date 1975, 1985(2), 1990(2), 1991, 1993, 1994, 1995 and 1996, clearly illustrating the importance of this decade in fashioning a modern and more open financial system. It also indicates that more laws are likely to come, and indeed Mexico has recently been in the news as it continues to open its financial system.⁴¹

dispute resolution process under the NAFTA Chapter 14 financial services provisions, presented in Köln, Germany.

36. It is already too dated to be of use in advising clients. Since it was written some four years ago, Mexico has continued to legislate in the financial services sector, slowly opening the market to NAFTA Parties.

37. These exchange controls are discussed in Stephen T. Zamora's *Peso-Dollar Economics and the Imposition of Foreign Exchange Controls in Mexico*, 32 AM. J. COMP. L. 99 (1984).

38. That was accomplished by a Constitutional amendment in 1990 that did little other than delete paragraphs which had been added in 1982. See § 11.13 at 400.

39. *Ley Sobre el Registro de la Transferencia de Tecnología y el uso y Explotación de Patentes y Marcas*, Dec. 28, 1972, Diario Oficial, Dec. 30, 1972.

40. *Ley Para Promover la Inversión Mexicana y Regular la Inversión Extranjera*, Feb. 7, 1973, Diario Oficial, Mar. 9, 1973.

41. The continuing financial changes were also discussed in various articles in 7 U.S.-MEXICO L.J. 11, 59, 67, 159 (1999).

The driving force behind many of these recent changes are the obligations Mexico assumed in the NAFTA, which the author discusses in a very helpful section.⁴² It is an excellent history of how Mexico has been carrying out its NAFTA obligations, especially by the creation of what are called "financial groups." A table illustrates the success of these laws through mid-1996, clearly showing the principal role of U.S. financial institutions (banks, securities firms and credit institutions) in accepting the opportunities as they become available.⁴³ That is because the advantages are linked to NAFTA and, to be taken advantage of by foreign firms, an institution established in the United States or Canada may be a necessary intermediate step. It is a step not very many financial institutions in Japan and Europe have taken.

For anyone thinking of a financial services investment in Mexico, this chapter is exceptionally helpful, but even now the question must be asked: What has happened since 1996? Without understanding what Solis describes, nevertheless, reading the changes in the past few years alone would not offer a true picture of the Mexican financial services sector.

Both the chapters on torts and financial services proved useful to this author in his work on a casebook on the law of the NAFTA.⁴⁴ Indeed, anyone studying NAFTA and gaining a desire to know more of the Mexican legal system will be drawn to Professor Vargas' book.

I suspect that others will review this book in a more traditional manner, working through the two volumes chapter by chapter. I am certain I will have opportunities in the future to use other chapters as I have used the two discussed above, as well as several others in the preparation of the casebook. I have a set of Professor Vargas's books both in my law school office and my home library. I know that both sets in the years to come will gain that appearance that only considerable use lends a volume, a soft tarnish to the binding gained from affection for and frequent attention to its content.

42. See § 11.31-33 at 407-18.

43. § 11.31 at 409.

44. Ralph H. Folsom, Michael Wallace Gordon & David Lopez, *NAFTA: A PROBLEM-ORIENTED COURSEBOOK* (West Group 2000).

