BOOK REVIEWS

Uniform Law on International Sales Under the 1980 United Nations Convention by John Honnold (Kluwer Law and Taxation Publishers, Deventer, 1982) pp. 1-586, ISBN 90 6544 045 3.

The author, John Honnold, is Schnader Professor of Commercial Law at the University of Pennsylvania, a distinguished American commercial lawyer, and author of standard U.S. works on base. He was the founding Secretary-General of the United Nations Commission on International Trade Law (UNCITRAL). He set a pattern of scholarly and collegiate research for that body which explains the volume and quality of its work during its short history. More recently, Professor Honnold was elected Goodhart Professor of the Science of Law at Cambridge.

The production of this book marks a milestone in international trade law, the adoption of the Vienna Convention on Contracts for the International Sale of Goods. Fifty years after Ernst Rabel and his colleagues took on the task of unification and harmonization of sales law, the Vienna Convention was approved by sixty-two States and eight international organizations, in an astonishing display of consensus. Seventy-four of the eighty-eight articles were unanimously approved, the remainder being approved by a two-thirds majority. The States represent a political, economic, and geographic range which would have exceeded the wildest hopes of Rabel. Australia took a prominent part in the preliminary work, was represented at the Diplomatic Convention, and is now giving consideration to ratification of the Convention.

Professor Honnold has set himself a modest task: to assist in the understanding and application of the new law. The book is in two parts: the historical context and development of the Convention; and a detailed analysis and general commentary on its provisions, explaining their interaction and application by means of a series of examples taken from modern commercial transactions. Particular attention is given to problems of interpretation, through analogous developments and institutions in national legal systems. There is a series of Appendices, setting out the text of the Final Convention, a concordance, and the texts of the Hague Conventions of 1964 on the Formation of Contracts and Contracts for the International Sale of Goods.

But the importance of this work does not lie in the production of an excellent manual for what may be an international law of great significance. Its importance lies in its value as a scholarly commentary on the product of a 'decade-long seminar on comparative law', illustrating the modern use of comparative law as a tool of law reform in the field of sales. The Convention may govern many thousands of transactions in the years to come, fulfilling the traditional role of contract in giving effect to the expectations of the parties and supplying answers to problems that parties have failed to solve or to perceive. These parties may well have different economic, commercial, and political backgrounds. To the extent their expectations are or can be articulated, these may correspondingly differ. The fulcrum of the Convention, therefore, is interpretation of its provisions and the contracts it governs. Professor Honnold charts a course through the maze of earlier drafts and working notes and papers of the Convention, giving the source of particular ideas and concepts and compromises. Since the decision in *Fothergill* v. *Monarch Airlines*,[1] common lawyers have seen *travaux préparatoires* in a new light. If the Vienna Convention is ratified and given legislative force in Australia, a new regime will govern international contracts for the sale of goods differing in its concepts, its institutions, and its procedures

[1] [1980] 3 W.L.R. 209.

from the legacies of Sir Mackenzie Chalmers. Deprived of familiar resources and tools of interpretation, we must then turn to other legal systems for guidance. Given the problems of amending a multilateral Convention (not unlike a Constitution), courts must consciously emphasise flexibility and uniformity in the development of principles which can regulate contracts for an indefinite period. The commentary in this book, based on comparative methodology with extensive bibliographic notes, will be invaluable. It certainly would not attract the criticism of Lord Diplock in *Fothergill* v. *Monarch Airlines* when he dismissed much learned commentary as containing 'more assertion than ratiocination',[2] thus rightly having little influence on the minds of judges.

This book makes some important observations on the future development of domestic sales law in the field of commercial contracts, by analogy with the Convention. The necessity to agree multilaterally made most State representatives reflect on the proper allocation of costs between contracting parties of unanticipated or improbable events in the course of their transaction. It also raised the fundamental issue of the social and economic functions of sanctions for breach of contract. These are areas where the common law has developed its own peculiar view. Agreement was reached in the Convention on 'force majeure', although the ambiguity of the provisions may cloak dissent. But the priority and availability of remedies defied agreement, and machinery now exists (in article 28) to ensure that the Convention has not enlarged the scope of operation of specific performance in common law jurisdictions. The emphasis on procedures could also benefit domestic sales law. In many circumstances, the Convention requires parties to communicate with each other. This enlarges available courses of action for the parties and is commercially more realistic. The parties' conduct, subsequent to the contract, now has an importance in fixing the scope of their contractual relations that was previously lacking.

Problems do remain with the operation of the Convention. Some gaps are already apparent, and others will emerge. For Australian lawyers, the interaction of Convention law and existing sales law will be difficult. There may be no easy answer as to whether and how the Convention applies. We will have to characterize problems by their factual content rather than be controlled by the existing doctrinal labels of our law. But in commercial transactions, Australian lawyers and businessmen have gained considerable experience in applying foreign legal systems. It will now be necessary to domesticate that experience. Professor Honnold's work will be an invaluable guide.

MARY E. HISCOCK*

Assessment of Damages for Personal Injury and Death by Professor Harold Luntz (Butterworths, Australia, 1983) pp. i-xvii, 1-570. Price $49.00. ISBN 0 409 491322.

This is the second edition of Professor Luntz's acclaimed study of the principles for the assessment of damages for personal injury and death in Australia. In his preface the author laments the need for a second edition, as he had hoped that the Australian Woodhouse Committee would have seen the end to the 'fault' system of personal injuries compensation at common law. At the time he wrote his preface the author saw little chance of a National Compensation Scheme being implemented in the foreseeable future. Ironically, since the completion of the book there has been a change of government at the Federal level, accompanied by a revival of the debate over a 'no fault' National Compensation Scheme. Professor Luntz's provocative critique of the law of damages thus assumes a new relevance. He notes that there has been much judicial activity since the first edition, particularly in the highest courts in England, Australia and Canada, but is quick to point out that while the decisions of the courts have to some extent reduced the illogicality of the subject, they have also made more apparent 'the inadequacy of the mechanism available to the courts for doing justice in those cases which have come before them'.[1]

[2] *Ibid.* 225.

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[1] Luntz, *Assessment of Damages for Personal Injury and Death* (Butterworths, Australia 1983) p. viii.