

BOOK REVIEWS

The Law of International Business Transactions by Robin Burnett (The Federation Press, Sydney, 1994) pages i-xxxiv, 1-284, bibliography 285-7, index 288-96. Price \$58.00 (hardback) \$43.00 (soft cover). ISBN 1 86 287 1310 (hardback) ISBN 1 86 287 1221 (soft cover).

According to the Preface, Robin Burnett has written this book to assist newly graduated students and their mentors, experienced practitioners, who identified a need for an Australasian work less ambitious in scope than that of *Schmitthoff's Export Trade*.¹

The book is divided into two parts. Part I deals with goods and Part II with the international services trade.

Section 1 of Chapter 1 deals with formation and performance of the contract between buyer and seller for the international sale of goods. This section contains a useful, if brief, discussion of the impact of the *United Nations Convention on Contracts for the International Sale of Goods* ('CISG'). There is a relative paucity of literature available in Australia on the impact of the CISG on international sale of goods transactions. The author integrates the operation of the CISG with other regimes affecting international sale of goods, including the Sale of Goods Act regime.² There is a good discussion of the operation of the CISG, including the connecting factors that must be satisfied before the CISG applies.³ The balance of Chapter 1 deals with the rights and duties of the parties and the passage of risk from the seller to the buyer. The author has not noted that John Honnold's magisterial work, *Uniform Law for International Sales under the 1980 United Nations Convention*,⁴ is now in its second edition.⁵ Chapter 1 concludes with a discussion of *force majeure* and the operation of the doctrine of frustration.

For the reviewer's part, a second edition of this work should give some more attention to *force majeure* and the operation of the doctrine of frustration. This is because the process of international sale of goods transactions is fraught with difficulties, not only directly affecting the carriage of the goods from the seller to the buyer, but also relating to matters of political risk. The author has not taken note of Ewan McKendrick's *Force Majeure and Frustration of Contract*,⁶

¹ Clive Schmitthoff, *Schmitthoff's Export Trade: The Law and Practice of International Trade* (9th ed, 1990).

² Robin Burnett, *The Law of International Business Transactions* (1994) 2-3.

³ *Ibid* 5-6.

⁴ John Honnold, *Uniform Law for International Sales under the 1980 United Nations Convention* (2nd ed, 1991).

⁵ Burnett, above n 2, 285.

⁶ Ewan McKendrick (ed), *Force Majeure and Frustration of Contract* (1991).

which is a comprehensive treatment of the law and difficulties governing *force majeure* and frustration.

Section 2 of Chapter 1 covers areas relating to the contract of sale and some of the standard trade terms and conditions which have emerged as a result of international commercial practice, namely Incoterms. There is a useful treatment of the principal Incoterms, as well as of their practical implications. Although this treatment is comparatively brief,⁷ it should be remembered that there is no other Australasian treatise, to the reviewer's knowledge, which contains even a rudimentary analysis of Incoterms. The advantage of the author's work in this regard is that it disseminates useful knowledge and commentary on the operation of Incoterms.

Chapter 2 is concerned with the international carriage of goods. The introductory material⁸ provides a useful summary and contextual account of the significance of the international carriage of goods. This is particularly useful for novice lawyers. The treatment of sea carriage of goods is fairly traditional. There is a short account given of conference line freight arrangements.⁹ This is an aspect of sea transport which receives little, if any, attention in standard works on maritime law. The author's account of electronic bills of lading and the impact of Electronic Data Interchange ('EDI') is, once again, novel and informative. There is also a treatment of the CMI uniform rules for sea way-bills.¹⁰

The treatment of sea transport of goods is pitched at an introductory level, which is in keeping with the purpose of the book, and it has the added advantage of being up to date, dealing with the Carriage of Goods by Sea Act 1991 (Cth). Section 2 of Chapter 2 deals with the air transport of goods, and Section 3 deals with transit insurance. The reviewer would prefer to see an expanded treatment of marine insurance in a future edition of this book.

Chapter 3, Financing an International Transaction, deals with the services offered by banks to facilitate international trade transactions. Particularly useful features of this chapter are the diagrams illustrating the operation of open account transactions, documentary collections and the procedure governing the issue of letters of credit.¹¹ The author provides an accurate and timely assessment of the operation of the *Uniform Customs and Practice for Documentary Credits 1993*.¹² Chapter 3 concludes with an analysis of counter trade which is an alternative to using the documentary credit system.

Chapter 4 deals with the impact of government regimes on international sales of goods. The treatment of this area is divided into inter-governmental agreements, and domestic legislation and practices governing international business transactions. The former encompasses the *General Agreement on Tariffs and*

⁷ Burnett, above n 2, 30-64.

⁸ Ibid 65-9.

⁹ Ibid 72-3.

¹⁰ Ibid 94-6.

¹¹ Ibid 134, 135, and 137.

¹² UCP 500, Revision 1993.

Trade ('GATT'). Once again, this is a particularly useful feature of the work because of the paucity of readily accessible literature on GATT. The latter area concentrates, in a useful introductory manner, on the operation of the customs clearance system. Finally, there is a discussion of the process of 'dumping', and within this, a helpful flow chart illustrating the operation of the anti-dumping enquiry procedure.¹³

Chapter 5 deals with the framework of international regulation impacting on international trade in services. The particularly useful feature of this chapter is that it puts together, in a readily accessible form, the principles which underpin the international trade in services. Chapter 5 provides the backdrop to Chapter 6 which deals with international agreements affecting services trade. The first section of this chapter deals with services trade in the European Community. The justification put forward by the author for discussing European Community Law in the Australasian context is that the underlying principles such as free movement of workers and the allied right of establishment have a potential impact, by way of cross-fertilisation, on the Close Economic Relations ('CER') between Australia and New Zealand.¹⁴ In the reviewer's opinion, this is clearly right. The jurisprudence developed by the European Court of Justice can provide much of the intellectual underpinnings to the operation of the CER between Australia and New Zealand. The domestic analogue is the Mutual Recognition Act 1992 (Cth), which serves as the template for mirror legislation throughout Australian States and Territories. Another reason why the discussion of the European Community position affecting the provision of cross-border services is of interest is that Australasian businesses or corporations wishing to establish operations within the European community can take advantage of the freedom of movement of workers and of the right of establishment.

Complementing the discussion of the European Community position is the discussion of the services trade between Canada and the United States. This is followed by a discussion of the same trade between Australia and New Zealand which focuses on the CER Treaty, and subsequent agreements and protocols.

Chapter 7 concludes the book with a discussion of the multilateral agreement on trade and services. The focus of this chapter is on the *General Agreement on Trade and Services* ('GATS').

In the reviewer's opinion, *The Law of International Business Transactions* is a useful, timely and worthwhile contribution to the literature in this field. The principal advantages of the book are that it makes available to newly graduated lawyers and their mentors the salient legal principles governing international transactions in goods and services within a moderate compass. Although the reviewer has identified areas where more in-depth treatment would be desirable, this is not to suggest that the book is flawed because of the level of treatment given. It must be remembered that the book is an introductory account of areas

¹³ Burnett, above n 2, 214.

¹⁴ *Ibid* 234.

of law which receive virtually no systematic exposition in undergraduate law courses. The book is a useful bridge between law school and practice.

Moving from content to style, the book possesses a number of features which, in the reviewer's opinion, should characterise modern legal writing. There is a detailed Table of Contents and Index. There is an orderly arrangement of headings and sub-headings, and a progressive yet systematic treatment of the areas within the compass of the book. The author writes succinctly and clearly, and the author's wealth of knowledge and experience in the area emerges clearly through the written text. The use of diagrams and tables enhances the readability and clarity of the text, and this is important in an area like International Business Transactions Law where a transaction is underpinned by many specific legal relationships.

The book is pitched at the professional legal market. Not all professional legal problems will be resolved through recourse to this book (although it is an excellent starting point). Bearing these factors in mind, the reader might wish to consult treatises and monographs which have been written on the subject-matter of each chapter. Although a Select Bibliography is provided,¹⁵ the reviewer would like to see more extensive footnoting and cross-referencing to the secondary literature in a future edition, so that the reader is guided more specifically to the salient sources.

The Law of International Business Transactions is a welcome and useful contribution to the academic literature in this area. There is probably little excuse now for Australian law schools not to offer an undergraduate course in International Business Transactions Law because that gap has been admirably filled by this text. The book will probably serve also as a useful primer to postgraduate study in this area. In the reviewer's opinion, the author and publisher, The Federation Press, are to be congratulated for writing and publishing this work which more than meets the author's modest aspirations.

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¹⁵ Ibid 285-7.

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