

## BOOK REVIEWS

Supplement to Review of Marcus S Jacobs, *International Commercial Arbitration in Australia: Law and Practice*, 2 Loose-leaf Volumes, Sydney: Law Book Company, 1992. \$490.00 plus cost of updates.

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In the December issue of *The University of Western Australia Law Review*, I reviewed Marcus Jacobs QC's text, *International Commercial Arbitration in Australia: Law and Practice* ((1992) 22 UWAL Rev 440).

Since then I have discussed my review and many aspects of international arbitration in general with the learned author. Clearly there are some additional comments which I should make.

1. I made some comments concerning Mr Jacobs' treatment of the scope of international arbitration agreements. I felt that the Australian authorities, particularly those dealing with trade practices claims, should have been discussed. Some of these cases, though not all, deal with the scope of domestic arbitration agreements and not international arbitration agreements. I accept Mr Jacobs' point that it is open to argument that different principles should apply to the construction of an international as opposed to a domestic agreement. I also acknowledge that Mr Jacobs' other book, *Commercial Arbitration, Law and Practice* (Sydney: Law Book Co, 1990) contains an analysis of the authorities on the scope of domestic arbitration agreements.
2. On the issue of the curial law of an arbitration, I was critical of Mr Jacobs' reference to arbitration rules. My view is that an arbitrator is bound to determine the curial law by applying the appropriate choice of law rules. Mr Jacobs has since explained that he did not intend to challenge this proposition. He was simply referring to a situation where an arbitrator had made a determination, in accordance with rules of law, as to what the curial law is. In these circumstances, the determination of the arbitrator would be taken into account by the court for the purposes of section 7(1)(a) of the International Arbitration Act 1974 (Cth). I may therefore have misunderstood what he said.
3. I pointed out that Mr Jacobs' book did not make reference to the Singapore International Arbitration Centre. The Rules of the Centre were, in fact, contained in the first release to the book, published in Volume 2 in June 1992. Unfortunately, the release was not provided to me by *The Law Review*, who in

turn had not received it from the publisher.

4. I referred to Mr Jacobs' discussion of the Sea Carriage of Goods Act 1924 (Cth) on pages 1875 and 1876. I pointed out that he did not refer to the Carriage of Goods by Sea Act 1991 (Cth) which will repeal the 1924 legislation. However, amendments to the International Arbitration Act 1974 (Cth), incorporating the Carriage of Goods by Sea Act 1991 (Cth), were also published in the same release in June 1992.
5. Mr Jacobs and I have had an extensive discussion about the international enforcement of arbitration agreements and awards. We both recognise that arbitral awards are more freely enforceable internationally than court judgments but that there have been instances where the international enforcement of awards has been very difficult.
6. I was critical of Mr Jacobs' frequent quotations from other sources. I now accept that Mr Jacobs' intention was to give Australian writers some knowledge of the views of overseas writers. He regards this as particularly important in a subject like international commercial arbitration.
7. Finally, my review did not deal with Volume 2 of his work. I say unreservedly that this contains a useful and convenient compilation of primary sources, particularly the rules of many international arbitration associations.

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## Review of Griffith University Law School, *From Barter to Bargain: Introduction to Contract Law, Video and Guide*, Sydney: Law Book Company, 1992. \$200.00.

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This review is not of a book but of a video and accompanying printed Guide. The opening words in the description of the "Aims of the Video" on page 3 of the Guide tell us that "This video was produced to provide students with visual illustrations of some common — and sometimes amusing — contract situations which focus on the nature of agreement".

The video comprises six "vignettes" each of which portrays a very simple contractual transaction. They are intended, according to page 3 of the Guide, to "demonstrate the development of the concept of agreement from its origins in the process of barter and exchange through to a complex modern commercial transaction". The first vignette, "Barter and Exchange", is of the process of barter (mangoes for bananas), the conclusion of which is an exchange of goods. The second, "The Road to Tipperary", is of a written offer conveyed from the offeror by a messenger on horseback, and a signed acceptance which is brought back by the same messenger.