

OXFORD

TRANSNATIONAL COMMERCIAL LAW

TEXT, CASES, AND MATERIALS

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CONSULTANT ON INTERNATIONAL COMMERCIAL LAW AND PRACTICE: JEFFREY WOOL



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OXFORD
UNIVERSITY PRESS

OXFORD

UNIVERSITY PRESS

Great Clarendon Street, Oxford OX2 6DP

Oxford University Press is a department of the University of Oxford.
It furthers the University's objective of excellence in research, scholarship,
and education by publishing worldwide in

Oxford New York

Auckland Cape Town Dar es Salaam Hong Kong Karachi

Kuala Lumpur Madrid Melbourne Mexico City Nairobi

New Delhi Shanghai Taipei Toronto

With offices in

Argentina Austria Brazil Chile Czech Republic France Greece

Guatemala Hungary Italy Japan Poland Portugal Singapore

South Korea Switzerland Thailand Turkey Ukraine Vietnam

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Published in the United States
by Oxford University Press Inc., New York

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First published 2007

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British Library Cataloguing in Publication Data
Data available

Library of Congress Cataloging in Publication Data
Data available

Typeset by Newgen Imaging Systems (P) Ltd, Chennai, India
Printed in Great Britain
on acid-free paper by
Ashford Colour Press Ltd, Gosport, Hampshire

ISBN 978-0-19-925166-7

5 7 9 10 8 6 4

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PREFACE

This book has its origins in a postgraduate course which has for many years been taught in the Oxford University BCL/MJur programme and has proved very popular with students, whether from common law, civil law, or other jurisdictions. Its primary aim is to place transnational commercial law firmly on the academic map in much the same way as other pioneering works have done for subjects such as international economic law and corporate insolvency law. A key characteristic of the subject is that it is not based on national law but is supranational in its approach. This means that this work can be used as a coursebook in all countries where the students have a reasonable command of English. Indeed, our hope is that it will encourage the development of parallel courses around the world and that the teachers will interact with each other, comparing notes, sharing experiences, and offering suggestions for improvement. We might in due course envisage an annual gathering of teachers of transnational commercial law to discuss emerging issues.

The book seeks to provide the student with an insight into the way in which uniform laws governing cross-border commercial transactions have developed, the sources of transnational commercial law, and the instruments and institutions which have helped to fashion it. Its focus is on international instruments sponsored by four organizations in particular: the International Institute for the Unification of Private Law (UNIDROIT); the United Nations and its specialist agency, the United Nations Commission on International Trade Law (UNCITRAL); the Hague Conference on Private International Law; and the International Chamber of Commerce (ICC). But we have also included instruments produced by regional organizations, notably the European Community, the Organization of American States (OAS) and Mercosur. In order to make the work as easy to use as possible, summary and full tables of contents, tables of conventions, model laws, uniform rules, codes and the like, and a very detailed index have been prepared by the publishers, Oxford University Press.

Transnational commercial law raises issues of intense theoretical as well as practical interest. But the theory can be understood only in the context of the business background, and in the second part of this work we have selected a range of typical cross-border transactions—sale, agency, banking, secured transactions, and the like—to illustrate the problems and policy issues which international lawmakers have to confront, the techniques used to surmount impediments to business, and

the various ways of accommodating competing interests. We have not confined ourselves to hard law, such as international conventions, model laws, and regulations. There has been a growing appreciation of the value of soft law, for example, uniform trade rules and contract terms, and scholarly restatements of contract law such as the UNIDROIT Principles of International Commercial Contracts and their European counterpart, the Principles of European Contract Law, prepared by the Commission on European Contract Law. We hope the student will find the study of transnational commercial law as exciting and challenging as we ourselves have done.

In the preparation of this work we are indebted to a number of people. First and foremost is Jeffrey Wool, Head of Aerospace Law and Policy at Freshfields Bruckhaus Deringer and secretary and general counsel of the Aviation Working Group, the industry body for aviation finance and regulation. Jeffrey had originally been a co-author of this volume, contributing greatly to the early stages of its development, but the pressures of a busy international practice made it impossible for him to continue in that capacity. Happily we have continued to enjoy his services as a consultant on international commercial law and practice, and hope he will find the time to join in teaching courses based on this volume. He is also co-author of the companion volume to this work, *Transnational Commercial Law: Primary Materials*, produced with the present authors.

Others who helped us greatly are: Professor Alan Boyle, of Edinburgh University, who kindly read the chapter on international law and saved us from a number of errors; Professor Basil Markesinis, formerly of University College, London, and Oxford University, who provided a like service in relation to the chapter on comparative law and gave us insights into new approaches; Professor Dan Sarooshi, of Queen's College, Oxford, who gave us illumination on the rights of non-State parties affected by a State's breach of its obligations under an international convention; Professor Reinhard Zimmermann, of the Max-Planck Institute for Comparative and International Private Law, who kindly made available prior to publication an electronic copy of *The Oxford Handbook of Comparative Law*, edited by him and Professor Mathias Reimann; Luke Adams, of Edward Elgar Publishing, who was equally helpful in providing us with an advance electronic copy of the *Elgar Encyclopaedia of Comparative Law*, edited by Professor Jan Smits; Adam Kramer, Catherine Lee, and Paul-John Loewenthal, who were at different times research assistants for the project and who helped us greatly with literature searches and proofreading; and the British Academy, which generously provided us with a grant for research assistance.

Last but not least, we owe a considerable debt to Oxford University Press for steering this work through to publication. We should particularly like to thank Rachel Mullaly, senior commissioning editor; Rebecca Howes, assistant commissioning

editor; Darcy Ahl, production editor; Faye Judges, commissioning assistant; John Ralph, copy-editor; Margaret Hibbert, who prepared the tables; Kim Harris, the indexer; Tony Williams, the proofreader, and Newgen Imaging Systems, the typesetters. To all of them we express our gratitude.

Roy Goode
Herbert Kronke
Ewan McKendrick

26 April 2007

ACKNOWLEDGEMENTS

Grateful acknowledgement is made to the following authors and publishers for their kind permission to reprint the copyright material which appears in this book:

Ashgate Publishing Limited	Lexis Nexis Butterworths
American Bar Association	Louisiana Law Review
American Law Institute	Loyola Law Review
The British Institute of International and Comparative Law	Lustus Forlag
Brill	Michigan Journal of International Law
Brooklyn Journal of International Law	Michigan Law Review
Bruylant	Mohr Siebeck
Cambridge University Press	Netherlands Law Review
Centre for Commercial Law Studies	Northwestern School of Law
Queen Mary, University of London	Office for Official Publications of the European Communities
Dickinson School of Law	Pace University School of Law
Duke University School of Law	Penguin Books
Edward Elgar Publishing	Princeton University Press
European Journal of Law Reform	Sellier European Law Publishers
FindLaw	Singapore Academy of Law
Hachette Livre	Professor Rolf Stürner
Hart Publishing	Sweet & Maxwell
Helbing & Lichtenhahn	Texas International Law Journal
Professor Norbert Horn	T.M.C. Asser Press
Informa Law	Tulane Law Review
Institute of International Banking Law & Practice	Professor Frederick Tung
International Chamber of Commerce (ICC)	UCLA School of Law
International Institute for the Unification of Private Law (UNIDROIT)	United Nations Commission on International Trade Law (UNCITRAL)
Israel Law Review Association	University of Pittsburgh School of Law
Iustus Vorlag	University Press of Virginia & Scottish Academic Press
Lawyer's Co-operative Publishing	Professor Catherine Walsh
	Wolters Kluwer

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