

SCHMITTHOFF

**THE LAW AND PRACTICE OF
INTERNATIONAL TRADE**

TWELFTH EDITION

CAROLE MURRAY

DAVID HOLLOWAY AND DAREN TIMSON-HUNT



SWEET & MAXWELL

SCHMITTHOFF THE LAW AND PRACTICE OF INTERNATIONAL TRADE

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What would this island be without foreign trade, but a place of confinement to the inhabitants, who (without it) could be but a kind of hermites, as being separated from the rest of the world; it is foreign trade that renders us rich, honourable and great, that gives us a name and esteem in the world.

*Charles Montagu,
De Jure Martis et Navis, 1675*

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SCHMITTHOFF
THE LAW AND PRACTICE OF
INTERNATIONAL TRADE

To

**Robbi
Rose and Maeve
Karen and Katrena**

PREFACE

This twelfth edition of Schmitthoff appears almost 65 years on from the date of the book's first publication in 1948. The original work was one of great vision and breadth and, although international trade law has remained in a state of constant change and development since that first edition, the present authors are continually impressed with the manner in which the structure and insights of Professor Schmitthoff have stood the test of time. We must continually acknowledge a great debt to the original author of the work.

Since the publication of the eleventh edition in 2007, international trade law has continued its rapid pace of development, with numerous important decisions in the English Courts in the law of sales, carriage of goods, trade finance and international dispute resolution, and an ever increasing volume of European case law and legislation. There have also been significant developments in what might be called international, or transnational, commercial law, with the appearance of updated versions of the ICC Uniform Rules for Demand Guarantees No.758 and of Incoterms 2010. Although the book continues to be written from a common law perspective, it is perhaps a theme in its evolution that it is dealing with ever more international sources as trade law becomes increasingly international in character.

Overall there has been an attempt to make the work more relevant and easier to use and to reflect the ever changing focus of the law and practice of international trade transactions. As with previous editions, the central focus is on the export sale contract and the traditional documentation associated with it and on the carriage and financing elements of international trade. In relation to finance, whilst UCP 600 had just come into effect shortly before publication of the previous edition, this new edition provides more detailed coverage of its operation and includes the important Court of Appeal decision in *Fortis Bank v Indian Overseas Bank*, one of the first cases to provide guidance on the interpretation of UCP 600. In relation to carriage generally, discussion is included of the UN Convention on the Carriage of Goods Wholly or Partly by Sea, referred to as the "Rotterdam Rules" (although these are yet to form part of English law).

The book contains detailed coverage of developments in international dispute resolution and of the major English and European cases on matters relevant to international trade litigation such as applicable law and jurisdiction, stays of proceedings and injunctions (including anti-suit injunctions). Additionally, attention has been given to developments in international commercial arbitration. Coverage of the latter topic is broader in focus and includes material on the new ICC Rules of Arbitration and the recent IBA Rules of Evidence in International Commercial Arbitration. The chapter on English law and foreign law has been revised to reflect the replacement of the Rome Convention by Council Regulation (EC)

593/2008 on the Law Applicable to Contractual Relations (the Rome I Regulation), as well as the coming into force of Council Regulation (EC) 864/2007 on the Law Applicable to Non-Contractual Obligations (the Rome II Regulation).

In relation to the public law dimension of international trade law, the book contains an extensively revised chapter on electronic commerce and considers the impact of the Council Directive (EC) 2000/31, the “e-commerce directive”, and recent judgments from the Court of Justice of the European Union, as well as the burgeoning use of electronic documents in international trade and current legal issues associated with selling over the internet. The customs law chapter now includes a detailed discussion of the replacement of existing customs legislation in the EU by the Modernised Customs Code (Council Regulation (EC) 450/2008), due to take effect in 2013, and of other fundamental changes which were made to EU law in 2008 and 2009. Additionally the chapter on Export Credit Guarantees has been substantially reworked to provide a fuller treatment of this subject. Charles Redfearn, Deputy General Counsel at the Export Credits Guarantee Department, is due particular thanks for his detailed assistance with this chapter. Finally, the WTO Chapter also records the Russian Federation joining the WTO in August 2012 after 18 years of negotiations.

As with previous editions, numerous debts of gratitude have been incurred in the production of the work. As mentioned above, the greatest debt is undoubtedly owed to Professor Schmitthoff himself for his outstanding contribution to the subject in general. The present authors would also like to remember here the contribution of Leo D’Arcy, former author, who was an inspiring colleague and friend. In relation to the present edition specifically sincere thanks are extended to Arianna Adreangeli from the University of Edinburgh for her invaluable comments on the competition law chapter and to John O’Flaherty for assistance with the proofing of that chapter. Thanks are also due to Simone Lamont-Black from the University of Edinburgh for very helpful comments on the carriage chapters, and to Thomasz Hara and Jessica van der Meer for detailed and helpful assistance with legal research for the manuscript. The authors would also like to thank those at Number 5 Chambers and the University of Edinburgh for their invaluable support and goodwill throughout the completion of this project.

Finally we are extremely grateful to the editorial staff at Sweet and Maxwell for their work in the production of this edition, and particularly to Nicola Thurlow and Allegra Holbrook for their patience and professionalism throughout.

Carole Murray
David Holloway
Daren Timson-Hunt

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