

D.M.DAY

The Law of International Trade



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by D M Day LL M
Senior Lecturer in Law,
Wolverhampton Polytechnic

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Preface

This book is intended to provide an introduction to the study of the main areas of the law relating to the international sale transaction, a study which is increasingly finding recognition as a subject in its own right. This subject cuts across the traditional boundaries of law so that the student seeking basic material from most standard works must amass an expensive collection of books, large parts of which he will not need and the relevant sections of which do not all relate their material to his subject. There are works specifically on the subject, but there is a large gap, which it is hoped this book will help to fill, between the brief outlines and the major work on the subject. The most important statutory material and standard contract terms which play such a large part in this area have been included as appendices.

The arrangement of the book calls for some explanation. A learned judge once remarked that while the decision he had come to might be inconvenient to businessmen, it was his duty to state the law as he saw it. The converse is equally true. The transactions of businessmen are not undertaken with the object of smoothing the paths of lawyers and certainly not those of students and their mentors. The international trade transaction is a complex piece of machinery, each part related to the whole so that it is difficult fully to understand any part without a knowledge of the rest, which makes for difficulties in beginning. The student is thus in a somewhat similar position to the party who was unable to obtain a job until he was a member of the appropriate union, whose rules allowed no one to join unless he was already employed in the job. In an attempt to overcome this impasse this book begins with an outline of the main features of the transaction and their legal implications, which is designed to explain as far as possible those references in the earlier sections to matters dealt with more fully in later sections. This has obviously led to some repetition but this seemed preferable to constant cross-references. The subject has enough difficulties without adding that of having to read a book in two or three places at once.

For the same reason, the sale contracts have been dealt with after the mode of carriage of goods on which they are based. Any established form of sale contract is shaped inevitably by the type of transport the

parties envisage for the goods and it is difficult to understand the details of the sale contracts without a grounding in the carriage contracts. This is particularly true of the fob and cif contracts and the law on the carriage of goods by sea.

Some matters have not been dealt with in detail. International trade may involve elements of innumerable branches of law, such as company law, revenue law and competition law, which could only be satisfactorily dealt with in a book of this size by seriously curtailing the treatment of the principal areas. For the same reason the administrative machinery and the details of the documentation of exporting have been considered only in so far as they are necessary for an understanding of the law. The book assumes a knowledge of the general law of the sale of goods (since there are many excellent books on this topic at all levels) but references to the general area have, it is hoped, been made as comprehensible as possible, and the most relevant part of the Sale of Goods Act 1979, that which deals with the transfer of property, has been included as an appendix.

I wish to express my gratitude to Associated Humber Lines Ltd for permission to reproduce their bill of lading form, to the International Chamber of Commerce for permission to reproduce their Uniform Customs and Practice for Documentary Credits and Uniform Rules for a Combined Transport Document, to the Institute of London Underwriters for permission to reproduce their Cargo Clauses and to the Institute of Export for permission to include their definition of an fob contract in the text.

I have endeavoured to state the law as at 31 December 1980.

D M D

March 1981

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