

Robert Bradgate Nigel Savage

COMMERCIAL LAW

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Robert Bradgate MA(Cantab), Solicitor
Lecturer in the Unit for Commercial Law Studies
Sheffield University

Nigel Savage BA, LLM, PhD
Professor and Head of Nottingham Law School
Nottingham Polytechnic
and Consultant Director of Training
Frere Cholmeley

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Commercial Law

Preface

One of the functions of the preface to a new book is to justify the book's existence. Why 'Commercial Law'?

Recent years have seen considerable growth in student interest in commercial law, reflecting its increasing importance to practitioners. However, whereas students (and teachers) of its 'sister' subject, consumer law/protection, are well served with a range of good text books from which to choose, our experience teaching commercial law to undergraduate students on law degree courses led us to the view that there was no single textbook suitable which adequately met the needs of most students on a modern commercial law course. There are a number of excellent monographs, dealing with discrete topics within commercial law, such as sale, agency and insurance. There is also Professor Goode's *'Commercial Law'*; an excellent book which shows that commercial law can be taught and studied in a modern, contextual and integrated fashion. However, in our experience, Goode contains too much for most undergraduate students. It rightly finds a place in practitioners' libraries, and, in its first edition, has already received the accolade of citation in the appellate courts.

This book is intended first and foremost for use by undergraduates studying commercial law for the first time. Our aim has been to produce a book which, while not avoiding difficult issues, would be accessible to undergraduate students, and one which would be both stimulating and readable. It is easy for the study of commercial law to become the study of a series of unconnected contracts. In real life, one commercial transaction will often be a composite of several contracts, and we have therefore sought to describe how the legal rules work in their practical commercial context and to show how the different topics may fit together within the context of a commercial transaction. Moreover, we would suggest that commercial law does exist as an identifiable subject, being more than merely the sum of its parts, and we have sought to highlight the recurrent themes which run through the subject. Does the law effectively respond to commercial practices, facilitating commercial activity? How can rules and concepts developed in the 19th century in the context of dealings between merchants be applied to the very different commercial conditions at the end of the 20th century? How can the one set of rules meet adequately the needs of commerce and of consumers; and how is the distinction between the two to be drawn? How can the law accommodate the challenge posed by the increasing use of new technology in commercial transactions? How can the law escape from the straitjacket imposed by the doctrine of privity?

One of the difficulties which faces anyone writing about, or teaching, 'commercial law' is to decide what should be included. We have cautiously proposed a definition of 'commercial law' in chapter 1, but a book which

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attempted to cover all aspects of the subject would either become hopelessly superficial or encyclopaedic in size and prohibitively expensive. We have chosen to deal in detail with those subjects which we feel best illustrate the role of commercial law in facilitating commercial activity and accommodating changing commercial practices, and which illustrate the way the different contracts may combine within the context of one transaction.

Clearly any book on commercial law must examine the law of sale of goods, the paradigm commercial transaction, and Part III is therefore the heart of the book. We have contrasted the law of sale with the law relating to other contracts of supply, and we have included a brief examination of the law relating to contracts for services. The sale is likely to be arranged through agents, and in Part II we therefore examine the law of agency and the role of agents in commercial transactions while in Part IV we examine the ways in which the sale may be financed. In Part V we examine the law of international sales. International trade law may be regarded as commercial law *par excellence*; here we see the clearest examples of the pragmatism of commercial law in responding to commercial practices, and some of the most pressing problems facing modern commercial law. Here too we see how the various separate components come together in one transaction. In Part VI we examine the options available for dealing with problems which may arise when things go wrong in the course of the transaction. The chapter on insurance is not intended to provide a detailed exposition of the law of insurance, but to outline its principles in order to describe its role in commercial transactions and its importance in reallocating the risks of commercial operations. Finally we describe the various options available to the parties to resolve any dispute which does arise; it is striking that English commercial law offers not only substantive principles, but also procedures, specifically designed to meet the special needs of commerce.

In Part I we describe the legal background against which the rules relating to particular contracts must be seen. In chapter 1 we describe the ambit of the subject and seek to identify its essential principles and the common threads running through the subsequent parts. In chapter 2 we outline the essential principles of contract law. Experience suggests that although most students have already studied the law of contract, many of them have forgotten much of it by the time they come to commercial law; indeed, some do not even appreciate that commercial law is concerned with contracts, or that the law of contract is a part of commercial law. Obviously we could not, and we have not tried to, set out the whole of the law of contract; instead we have sought to restate the essential principles and at the same time to approach the subject in a practical way, concentrating on those aspects of contract law relevant to real life commercial activities and/or the remainder of the book.

Writing a book is an act of self-exposure. Having described our objectives we must wait for others to assess how far we have succeeded in meeting them. Traditionally the second function of a preface is to offer thanks to those who helped in its production. This book has been a long time in the writing; we initially proposed to deliver a manuscript within a time scale which, in retrospect, was hopelessly optimistic. Since then we have made, and broken, several promises as our work has been interrupted by new work responsibilities, house moves, job changes and family commitments. Thankfully our publishers did not insist on the sanctity of contract, and our first debt of gratitude is therefore due to them, for their initial enthusiasm for

the project and their continuing support. We must also express our thanks for and, frankly, amazement at, the speed with which the typescript was converted into a finished product: thanks to the power of new technology the proofs were in our hands almost before we had finished the typescript.

Secondly, thanks are due to many of our past and present colleagues and students: our discussions with them have greatly helped shape the views expressed in this book, even if they may not have been aware of it. We would particularly single out Peter Jones at Nottingham and John Birds at Sheffield who provided particularly helpful comments on parts of the book, although John resisted all our entreaties to write the chapter on insurance.

Thanks again to the power of the word-processor, we prepared much of the typescript ourselves, but thanks are due to Jean Bunn and Sam Wardle, secretaries at Nottingham Law School, who assisted with the typing and copying. Finally, thanks are due to our partners, families and friends whom we have seriously neglected in order to complete the typescript. Without their love, support and understanding we might not be finished yet. This book is dedicated to them.

The sharp-eyed may notice that our names appear on the cover of this book in the reverse order to that on our previous collaboration, '*Business Law*'. Coincidentally that may reflect our respective shares of the responsibility for the work. However, there is a Nottingham precedent. When Nottingham Forest reached the League Cup Final in 1978 they were led out at Wembley by Brian Clough. When they returned in 1979 it was Peter Taylor's turn. This time it was Bradgate's turn to go first.

Robert Bradgate
Nigel Savage
Nottingham
January 1991

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