

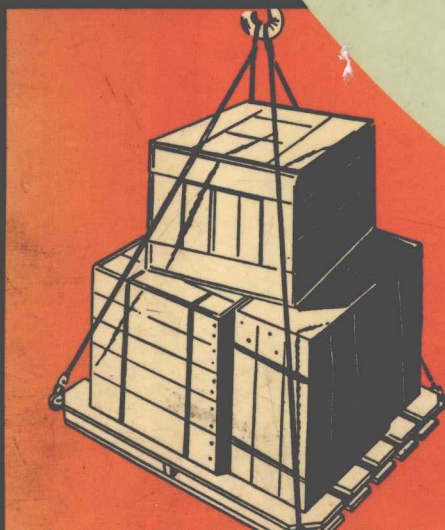
SCHMITTHOFF'S EXPORT TRADE

The Law and Practice of International Trade

Clive Schmitthoff

Seventh Edition

STEVENS



SCHMITTHOFF'S EXPORT TRADE

THE LAW AND PRACTICE OF INTERNATIONAL TRADE

BY

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SEVENTH EDITION

*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 Molloy,
De Jure Maritimo et Navale, 1676

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PREFACE

THE aim of this book is to give a concise account of the law and practice of international trade. We are told by economists and politicians that the promotion of exports is vital to the well-being of this country; this book endeavours to explain how modern export is transacted.

The book is intended for the use of businessmen and their professional advisers, and the growing number of students who study the law of international trade as part of their syllabuses in legal and business studies. The fact that this book is written for lawyers and laymen alike has not presented a serious difficulty. In my experience businessmen engaged in the promotion of foreign trade are able to appreciate the meaning of legal principles, if explained to them without undue stress on legal terms of art; they talk the same language as commercial lawyers, dealing with the same subject from a different angle. I have endeavoured to give guidance to the newcomer and the expert by describing the elements of legal institutions with which I have to deal, before treating their special functions in the practice of international trade.

In recent years great changes have taken place in the climate and atmosphere of the law of international trade. The United Nations have established the Commission on International Trade Law (UNCITRAL) and charged it with the task of promoting "the progressive harmonisation and unification of the law of international trade." These aims have thus received recognition by the highest international authority. They reflect the experience that the expansion of international trade is in the interest of all countries, industrialised and developing, of free market economy and of socialist state planning. That these aims are practically attainable in many fields of international trade law is shown by the almost world-wide acceptance of the rules relating to documentary credits. These rules were developed by the international business community; their customs have proved to be one of the most potent sources of the law of international trade, thus continuing the tradition and inspiration of the old law merchant.

The accession of the United Kingdom to the European Communities, has affected the pattern of trade in the United Kingdom. Whilst this book continues to treat international trade in its global setting, the effect of the membership of the United Kingdom of one of the great regional groupings of the world is also taken into account in this work. In particular, the Competition Law of the EEC is treated in a separate chapter, in which the Community legislation and the decisions of the European Court are considered, and the Part on Customs Law deals with the free movement of Community goods and export documentation in inter-Community transactions.

Account is taken of the major events in this lively and active branch of commercial law. Among the recent Acts to which reference is made are the Unfair Contract Terms Act 1977 (with its definition of international

supply contracts), the Patents Act 1977, the State Immunity Act 1978, the Arbitration Act 1979, the Carriage by Air and Road Act 1979, and the Customs and Excise Acts 1979. A note is added on the Sale of Goods Bill, at present before Parliament. The Carriage of Goods by Sea Act 1971, to which are appended the Hague-Visby Rules relating to bills of Lading, came into operation in 1977. The Hamburg Rules on Bills of Lading, which will be considered by an international conference in 1980, are noted. Full attention is given to the legal problems of containerisation. The treatment includes the following new topics: fraud in documentary credit transactions, on demand guarantees and performance bonds, reservation of property clauses, the UNCITRAL Arbitration Rules 1976. Reference is made to the latest publications of the International Chamber of Commerce, such as the addition of the term “f.o.b. Airport” to Incoterms, and the pamphlets on Contract Guarantees, Adaptation of Contracts, and Extortion and Bribery. Approximately 100 new cases of English, Commonwealth and American courts and of the Court of the European Communities are noted.

It has become necessary to add a new Part which deals with Long Term Contracts. These are contracts which have as their object the construction of works and installations abroad. The topics treated in that section relate, among other subjects, to an analysis of the principal provisions of the FIDIC Contract Form, the Guidelines of the World Bank, the General Conditions of the European Development Fund of the EEC, the pre-contractual stage, tenders, tender bonds, hardship clauses, and third party interventions.

There have also been considerable developments in commercial practice. The activities of multinational enterprises extend to the field of export and new forms of joint ventures have emerged. The non-negotiable sea waybill, the forwarder's through bill of lading, and the data freight receipt have gained in popularity. The Institute of Freight Forwarders has published the 1978 edition of their Standard Trading Conditions. All these developments are noted and the new Standard Trading Conditions of the Freight Forwarders are reproduced in Appendix 4, by kind permission of the Institute.

It is my pleasant duty to record my sincere thanks to all who helped me in the preparation of this edition. The persons and organisations who willingly gave me help and information are too numerous to be listed here but the following should be mentioned. First, I wish to thank the readers and reviewers who drew my attention to changing trade practices and shortcomings of previous editions; I have learned much from their comment. Mr. Arnold W. G. Kean C.B.E., Secretary and Legal Adviser to the Civil Aviation Authority, helped with the revision of the sections on carriage by air and aviation insurance. Dr. Mary Vitoria, of the English Patent Bar, kindly revised the chapter on Patents and Trade Marks. Dr. Valentine Korah, Reader in Law at University College, London, read the chapters on Restrictive Trade Practices in the United Kingdom and The Competition Law of the European Community and made most helpful

suggestions. The Export Credits Guarantee Department gave valuable assistance by bringing the chapter on Export Credit Guarantees up to date. Mr. A. H. J. Muirhead, Deputy Director of the British National Committee of the International Chamber of Commerce, kindly kept me posted of the latest developments planned by this important institution. I am especially indebted to my friend Mr. Peter Crowley, B.A., Barrister, who willingly agreed to read the proofs and to accept responsibility for the preparation of the index; he carried out these tasks with great care and competence and made some valuable suggestions for the improvement of the text. The following very kindly allowed the inclusion of copyright matter: H.M. Stationery Office, The London Court of Arbitration, The International Chamber of Commerce and the Institute of Freight Forwarders.

The law of the export trade is, as already observed, the most active branch of commercial law and changes and new developments occur constantly. It is, therefore, important that the reader should be in possession of the latest information as soon as possible. The present edition will be kept up to date by notes in the section on the Export Trade in the *Journal of Business Law* which is published by Messrs. Stevens & Sons Ltd. in London.

The law is stated as on September 1, 1979 unless another date is given.

C. M. S.

29 Blenheim Road,
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September 1, 1979

[*Note*]

1. The Sale of Goods Act 1979 received the Royal Assent on December 7, 1979 (see p. 7).

2. Exchange Control has been removed in the United Kingdom. The Exchange Control (Scheduled Territories) Orders have not been revoked (see pp. 71 *et seq.*).

December 13, 1979

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