

International Sale of Goods in the Conflict of Laws BY JAMES FAWCETT, JONATHAN HARRIS and MICHAEL BRIDGE [Oxford: Oxford University Press, 2005. cxiv + 1458 pp. Hardcover: £195]

International Sale of Goods in the Conflict of Laws is both the thickest and the most expensive addition to the ever growing Oxford Private International Law Series, weighing in at more than 1500 pages inclusive of contents and tables. Although the Series is intended for both scholarly and practitioner readers, some additions skew more obviously to one side of the readership than the other. Whereas, for example, *The Transfer of Property in the Conflict of Laws* (reviewed elsewhere in this same volume at page 385), with its law reform agenda, will find greater interest amongst scholars, *International Sale of Goods in the Conflict of Laws* reads much more like a traditional textbook, and will probably prove more useful to practitioners.

The breadth of the subject-matter of this book is intimidating but the authors clearly rise to the challenge. In the introduction, the authors present the various definitions of international sale of goods under both the *UN Convention on the International Sale of Goods 1980*, often referred to as the *Vienna Convention*, as well as the *Hague Sales Conventions 1955 and 1986* as well as the definition of sale of goods under the UK *Sale of Goods Act 1979*, highlighting their similarities and differences. However, as they explain, “international” for the purposes of the conflict of laws is very different and far wider than “international” under the various conventions. The book accordingly addresses cases of sale of goods whenever there is a foreign element in the conflicts sense, *e.g.* where there is a choice of jurisdiction clause in favour of a foreign jurisdiction or a choice of foreign law as the applicable law even though the transaction is otherwise domestic. The one notable omission from the scope of the book is an extensive discussion on consumer contracts. As the authors explain, special jurisdictional and choice of law rules apply to consumer contracts as compared to commercial contracts, reflecting different policy concerns. Despite the focus on commercial sales, there are occasional discussions on consumer sales, such as that in Chapter 13 on choice of law for contract (at 757–759). Given the already considerable volume of the book, the authors’ decision is completely understandable, particularly since, as they explain, a book on that very topic is planned for the Oxford Private International Law Series.

Like many textbooks on the subject, *International Sale of Goods in the Conflict of Laws* is divided into three parts reflecting the classic issues in the conflict of laws: jurisdiction; choice of law; and recognition and enforcement of foreign judgments. The three parts are of unequal length, with the bulk of the book roughly equally divided between Parts I (“Jurisdiction”) and III (“Choice of Law”).

Part I (“Jurisdiction”) of the book opens with an introduction to the complex jurisdictional rules that presently exist in the United Kingdom, with some cases falling within the European rules on jurisdiction whereas others fall within the traditional English rules. The complexities involved in differentiating between the Brussels I Regulation, the Brussels Convention and the Lugano Convention are also highlighted. The remaining chapters of Part I deal with the various claims that can arise in the context of a sale and the jurisdictional issues that arise under each type of claim as well as some specialised issues. Broadly, there are four types of disputes: (1) contractual (comprising, in general, Chapter 3 “An Action in Contract Between the Buyer and Seller: Jurisdiction under the EC Rules” and Chapter 4 “An Action in Contract Between the Buyer and Seller: Jurisdiction under the Traditional English Rules”), (2) tortious (comprising Chapter 6 “Torts Arising out of the International Sale of Goods: Jurisdiction”), (3) property (comprising Chapter 7 “Property Matters Arising out of the International Sale of Goods: Jurisdiction”), and (4) restitutionary (comprising Chapter 8 “Restitution and the International Sale of Goods: Jurisdiction”). Apart from these five chapters, there are three chapters dealing with more specialised issues of jurisdiction. Chapter 5 concerns jurisdictional problems arising out of a transfer of contractual rights between seller and buyer such as when the sale takes the form of a CIF contract. Chapter 9 deals with jurisdictional issues with respect to multiple-party claims while Chapter 10 deals with jurisdictional issues in e-commerce.

Part II, the shortest of the three parts, deals with the recognition and enforcement of foreign judgments, and comprises of a single chapter. As the authors explain, few sales specific problems arise in relation to recognition and enforcement, and hence the brevity of the chapter. Chapter 11 of this Part is perhaps the chapter least specific to the subject-matter of the book. Whereas the rest of the book spends a significant amount of ink explaining the general rules of the particular topic, the discussion will almost invariably turn to how the issue

will arise in the context of an international sale and what special considerations the context carries. Not so Chapter 11, which simply sets out the general rules on recognition and enforcement as any traditional conflict of laws textbook would. It is certainly arguable that this chapter could have been omitted with the authors simply explaining that no special concerns were raised by international sales in the context of recognition and enforcement. After all, it seems highly unlikely that anyone would refer to this solitary chapter rather than to a specialised text such as Briggs and Rees, *Civil Jurisdiction and Judgments*, 4th ed. (London: Lloyds of London Press, 2005) should a problem with recognition or enforcement arise.

Like Part I, Part III ("Choice of Law") opens with an introductory chapter on the nature of choice of law problems in the context of international sales. The main types of disputes are likewise accorded individual chapters. Chapter 13 covers contract, Chapter 17 covers tort, Chapter 18 covers property and title and Chapter 19 covers restitution. As was the case for jurisdiction, a chapter is dedicated to the transfer of contractual rights and obligations (Chapter 14) and a chapter is dedicated to e-commerce sales. Chapter 20 deals with the difficult issue of concurrent claims. The remaining two chapters, Chapters 15 and 16 deal with the *Hague Conventions* and the *Vienna Convention* respectively.

As already noted, a significant part of the book is dedicated to the setting out of the general rules on conflict of laws. This is necessary as a precursor to addressing the problems arising out of the context of international sales. There are also many issues that, although arising in the context of international sales, are not unique to international sales. For example, Chapter 20, which deals with the issue of choice of law for concurrent claims, addresses an issue that is hardly unique to international sales. Many parts of Chapter 13 are also equally relevant outside the international sales context, such as the difficult question of the choice of a choice of law where there is a battle of the forms (see 673–676). The same is true of much of the text. The result is that *International Sale of Goods in the Conflict of Laws* may well prove a useful reference even where a particular question does not arise out of an international sale, particularly as the authors occasionally offer interesting solutions differing from those offered in the existing literature. For example, on the issue of choice of law in the context of the battle of the forms, although the authors are broadly supportive of Danneman's suggestion (from G. Danneman, "The 'Battle of the Forms' and the Conflict of

Laws" in F. Rose, ed., *Lex Mercatoria — Essays on International Commercial Law in Honour of Francis Reynolds* (London: Lloyds of London Press, 2000) at 199) that the validity of the choice should be tested against both putative laws to determine if there is a true conflict, they differ as to how such a true conflict, which arises when both putative laws would determine that the parties have agreed as to a choice of its law, should be resolved. Whereas Danneman suggests that both choices be ignored in such a scenario, the authors propose that the *lex fori* be applied instead to choose between the two. Although this reviewer prefers the solution offered by Danneman, it can hardly be said that one view or the other is clearly right.

Apart from an exhaustive account of issues of conflict of laws, the authors also frequently delve into the relevant substantive laws, not simply those of England but also of other jurisdictions, to assist in an understanding of the issues. The authors also frequently provide insight into particular sales practices and standard forms, something the international sales novice will appreciate.

It should be noted that, although published in 2005, the law is stated as at 1 June 2004. The text therefore does not address decisions such as that of the European Court of Justice in *Owusu v Jackson* [2005] 2 WLR 942, which abolished the practice of declining jurisdiction on the basis of *forum non conveniens* where jurisdiction was derived under the *Brussels Convention* on the grounds that the alternative forum for trial was a non-Contracting State to the Convention.

According to the *World Trade Report 2006*, world merchandise export exceeded US\$10 trillion in 2005 (see http://www.wto.org/english/res_e/booksp_e/anrep_e/wtr06-0b_e.pdf at xix). This marked a growth of some 13% from the previous year. This massive sum, together with prospects for further growth, makes the importance of addressing conflict of laws issues in the context of international sales obvious. *International Sale of Goods in the Conflict of Laws* does this in a clear, logical and comprehensive way and is a worthy addition to the growing library of titles in the Oxford Private International Law Series. Whilst its natural audience is those interested in international sales, scholars and practitioners not directly concerned with international sales will do well to keep the book in mind as a reference as it addresses many issues which, whilst relevant to international sales, are not unique to the context.

reviewed by KELVIN F.K. LOW