
This is a marvellous book, an absolute must for anyone who is seriously concerned with the private international law of what we once called contracts but now have to call contractual obligations. There is no need to read any more of this review: just buy it.

The scheme of the Rome I and Rome II Regulations is intended, as Mr McParland says at [3.10], to be one by which a national court allocates qualifying obligations to one Regulation or the other: there should be “no third place or halfway house between the two Regulations”. As with the Regulations, so with the OUP texts. For, although their styles diverge to a degree, and although they each describe, in particular, the relationship between the two Regulations, Mr McParland’s book fits easily alongside that of Mr Dickinson on the Rome II Regulation, and means that the private international law of obligations in civil and commercial matters is covered as seamlessly in scholarly exegesis as it is in legislation. We now have two English commentaries, of the highest quality, which means that, with only one addition, there is no need to look any further afield to learn what there is to be learned on the topic. The one exception is for the “Specific Contracts” chapter of Dicey, which has the distinct virtue of refocusing the general treatment of the Regulation on the issues and concerns of contracts of a dozen or so types. But, when all this is taken together, commentary at the highest level is now completely fulfilled by English books, which draw on continental writings to the extent that any of it is helpful, and synthesise it all to produce text which is accurate, comprehensive and above all usable. It is a very happy state of affairs.

Mr McParland’s book is written in the easy and fluent style of the professional advocate. That is just as well, for he spends a considerable part of each chapter plotting the crab-like progress of law reform in the European Union: when charting the tortured paths which led to the text of the Article as specifically adopted, lucid writing does make the story easier to read. For those who just wish their commentary to tell them what an Article does and does not mean, this material is easily skipped over; but, when it may be necessary to look at these travaux préparatoires, the better to resolve uncertainty or ambiguity in the legislative text, they will be clearly and conveniently found. One wonders where a busy barrister finds time to do this, but the only answer vouchsafed (at vii) is that it was done “during the course of my everyday practice”. This is truly amazing.

The general approach of the book is to proceed by reference to the Articles, producing something which is not quite a commentary in the European tradition, but which is closer to that than has been the customary English approach. When one wishes to know, for example, whether a contract, which contains an express choice of court but makes no mention of the parties’ choice of law, is one whose governing law is identified by Art.3(1), it will be easy enough, under the clear and accessible analysis in Chapter 9, to see the distinct lines of argument and, if it is necessary, select between them. Readers who are also concerned with questions to which, for example, the consumer contract provisions of the Brussels I Regulation may or may not provide a clear answer will also gain much from reading Mr McParland’s analysis of the issues relating to their governing law. Mr McParland is painstaking in exposing the difficulties which may or do result from the legislative text, but his reasoning allows him to reach provisional conclusions which readers will be likely to find to be persuasive. Only rarely did this reviewer feel that there might have been more to say. For example, the distinction drawn at [16.11] between the existence of a party’s consent and the validity of that party’s consent, once it is found to exist, is perhaps not so clear that everyone will be sure that they can tell on which side of the line a particular objection will fall. The distinction was originally made (or asserted) in the Giuliano-Lagarde Report. But anyone who teaches the common law of contract—and some of us, who still do that, may have trouble in shaking the dust of the common law from our boots—may list and look at the various factors which lead to the conclusion that a party
may be able to call the validity of the contract into question, and will wonder where they stand in relation to Art.10. The problem presumably results from the common law’s concern for the validity or voidability or deniability of the contract as a source of obligation, which may not be congruent with the line which separates the existence of consent from its validity, as well as from the fact that consensus ad idem plays an inconsistent, almost duplicitous, role in the common law of contract formation. But, when a second edition comes along, as it surely will, there will be more opportunity for Mr McParland to augment the very few parts of this work, of almost a thousand pages, in which a little more elaboration would have been even more helpful.

The principal point of this short review was to tell anyone interested enough to wonder that they should buy the book. In this case, which is a special one, it will serve no necessary or proper purpose to offer little asides. This book is a magnificent achievement, for which all serious commercial lawyers will be in the author’s debt. There is no more to be said.

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