Book Reviews

Klaus Peter Berger (ed.), *The Practice of Transnational Law,* The Hague: Kluwer Law International (2001), pp. i–xiv and 1–228

Globalization. My law classes, from human rights law to contracts law, address the question of what can the law do to cope with internationalism. Students want to know what impact lawyers are having on the globalization process. International lawyers, dealing with cross-border transactions on a daily basis, must be using creative measures to harmonize the legal systems of the world. Right? Wrong!

At least not according to Germany's Münster University. In a survey of 2,700 practitioners in 78 countries, Münster's scholars asked lawyers in 1998 if they are utilizing international rules in contract formation and for designating forms of dispute settlement. The results were disappointing. Nearly 70 per cent of the lawyers surveyed had not heard of anyone using transnational law during international contract negotiations. Forty-three per cent of the respondents admitted to being afraid to use transnational law.

Berger's publication compiles eight articles from authorities in the field of commercial law, who were asked to react to the Münster survey results and to comment on today's practice of transnational commercial law. The general issue at hand was whether, in the drafting of international contracts, lawyers stick to the legal language of their own country, or are they making use of the evolving rules of a transnational system? How do the French and English partners draft a contract? What do the Japanese and Americans do? Well, the answer is: lawyers are not using UNIDROIT or the Vienna Sales Convention.

The survey respondents admitted they lacked information on the new *lex mercatoria* (common contract law for multi-state transactions), and needed assurance that the new laws would be beneficial to their clients. In a field where differing laws of countries can be barriers to smooth legal negotiations, the editor/author Klaus Peter Berger suggests that lawyers are in a unique position to design a contract system that better suits transnational transactions. Armed with knowledge and a resolve to modernize transnational practice, lawyers could quickly make a change.

In his chapter, Friedrich K. Juenger analyzes the question from the viewpoint of the United States. For Americans, considering rules and institutions outside the practitioner's home state is a common aspect of practice. Coming from 50 separate, albeit similar, legal systems, American lawyers are familiar with the underlying

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principles of private international law (which they justifiably label 'conflict of laws'). Juenger admits, however, that American lawyers are generally unaware of the transnational commercial rules. He warns: '[b]lissful as such ignorance may be, it hardly promotes progress.'

Such parochialism causes confusion and poor relations between parties in the international commercial world. And, with the intensification of globalization in finance and business in the late 20th and early 21st centuries, it is apparent that today's laws, and professionals, lag behind the needs of international business. The goal of this collection of commentaries is an ambitious proposal for modernizing the international legal profession, giving it better tools to serve its clients in the changing global economics. For this purpose, it also includes contributions by Michael J. Bonell on 'The Unidroit Principles and Transnational Law', by Yves Derain on 'Transnational Law in ICC Arbitration', by Emmanuel Gaillard on 'Transnational Law: A Legal System or a Method of Decision-Making?', and by Norbert Horn on 'The Use of Transnational Law in the Contract Law of International Law and Finance'.

The book is a quick read with 132 pages of text, followed by 95 pages of charts detailing the survey conducted by Münster University. The chapters, with discussions on the history and practice of transnational law, were interesting and thought provoking. However, two complaints may be leveled against it. First, as is often the case with Kluwer publications, the book at EUR 84 (USD 72/GBP 52) is priced beyond what most academics and students can afford. This is unfortunate, as the stated purpose of the authors was to make information on the practice of transnational law available to more members of the profession. Secondly, the text is poorly edited with numerous English language mistakes. For the price asked, one would expect a better-edited piece of work.

Maureen B. Fitzmahan

Jan Ramberg, *International Commercial Transactions*, 2nd ed., Paris: ICC Publishing SA (2000), pp. 1–516

Jan Ramberg has been serving as Vice President of the ICC Commission on International Commercial Practice and as Chairman of the Working Party on Incoterms 2000. He is uniquely qualified to explain the Incoterms and their context in international commercial transactions and he does so in some 180 pages of text in a very lucid and straightforward manner.

After an introduction to the general principles of international commercial contracts, the first part of the book deals with specificities of contracts of sale, payment modalities, protection against breaches and changed circumstances, trade terms and terms of carriage, the distribution of the risk of loss, damage or delay, insurance, financing, and dispute settlement. In the second part, the book goes into