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SCHOOL OF LAW

NORTH CAROLINA JOURNAL OF INTERNATIONAL LAW AND COMMERCIAL REGULATION

Volume 2 | Number 2

Article 11

1977

Book Reviews

North Carolina Journal of International Law and Commercial Regulation

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Recommended Citation

North Carolina Journal of International Law and Commercial Regulation, *Book Reviews*, 2 N.C. J. INT'L L. & COM. REG. 209 (2016).

Available at: <http://scholarship.law.unc.edu/ncilj/vol2/iss2/11>

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Book Reviews

ARBITRATION IN SWEDEN. Stockholm: Stockholm Chamber of Commerce, 1977. pp. 212.

Arbitration in Sweden, published by the Stockholm Chamber of Commerce, was written by a group of Swedish lawyers with both practical experience and theoretical expertise in international commercial arbitration. It is probably unique as an exposition in the English language—the *lingua franca* of international trade — of the arbitration law of an individual national jurisdiction presented in relation to international legal instruments and to judicial decisions and practices in the field of arbitration. Practical lawyers engaged in this field might wish for a complete set of similar legal handbooks covering the world as a whole.

The book has a clear purpose. It is stated on its jacket that Sweden in recent years has become a center of international arbitration and that a great number of important contracts in East-West trade and elsewhere provide for arbitration in Sweden. These contracts are thereby often subject to Swedish law. It is further stated that a compelling reason for using arbitration clauses in international commercial contracts is the fact that a foreign arbitral award is enforceable in national jurisdictions in greater measure than is a foreign court judgment. The publisher adds: "Swedish arbitral awards stand in the best possible chance of recognition abroad since Sweden without reservations has ratified the main international conventions on arbitration." Sweden has acceded to the Geneva Convention of 1927 for the Execution of Foreign Arbitral Awards and the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards.

The international instruments just mentioned are not dealt with in detail in the book, but are referred to when relevant to the exposition of Swedish arbitration law. That is also the case with respect to the 1976 UNCITRAL Rules adopted in 1976 by the United Nations Commission on International Trade Law [UNCITRAL] and the "ICC Rules," i.e., the rules adopted in 1975 by the International Chamber of Commerce in Paris. Reference is also made to what is called "SCC Institute Rules," which are of importance when parties arbitrate under the auspices of the Arbitration Institute of the Stockholm Chamber of Commerce. While the book refers, when necessary, to previously existing international rules, its main function is to interpret the Swedish legislation relating to arbitration agreements and proceedings, and to explain the recognition and enforcement in Sweden of foreign awards. The authors also deal with the enforcement abroad of Swedish awards.

The book is an invitation to States and private enterprises with transnational commercial functions to consider Sweden as a suitable

locale for arbitration. Therefore it is important that the authors have explained clearly how the arbitration law of Sweden functions in connection with the international conventions, and that they have presented the Swedish legal texts of the latter and their construction in the light of Swedish case law. The foreign clients are invited to look over the legal scenery to decide if it is to be regarded as attractive. But the clients are normally private businessmen or trade officials, and it must be noted that *Arbitration in Sweden* is hardly intended to directly help such consumers. It is a book by lawyers addressed to lawyers in foreign countries who are advisers to those engaged in or responsible for foreign trade in their respective countries. It is, therefore, hardly possible to recommend the book to businessmen. In fact, it is regrettable that the authors have not tried to give the first chapter, "Introduction," a style adjusted to the layman's needs. The chapter is so brief and compact that the reviewer (who happens to be a Swedish lawyer) felt compelled to translate the text back into its original Swedish in order to check its accuracy. This procedure did not disclose anything objectionable, but the criticism above relating to its literary style remains valid.

In the following chapters, however, the authors give both an authoritative and, for the lawyer, a relatively easily understood presentation of both legislative and case law in Sweden relating to the procedural law of arbitration. Several questions concerning both the construction of the relevant statutory law, and the import of the law applied in arbitration cases, have been the subject of controversial opinions among Swedish lawyers in recent years. The authors of the book present these problems and controversies objectively and in detail, and refer to the opinions presented in a lively legal literature on arbitration (in Swedish!). While in controversial matters *Arbitration in Sweden* may not always, it seems to the reviewer, present "the better law" or "the better opinion," the reader is constantly kept aware of areas where traffic obstacles may be met.

It is useful to the reader that the book presents a translation into English of the two Swedish Arbitration Acts of 1929, as amended in the light of later arbitration conventions. The Acts state the law applicable to arbitral proceedings in Sweden. No choice of law problems occur as to the procedure, but several of the statutory rules of procedure may be excluded by agreements between the parties.

In arbitration proceedings in Sweden as well as in other countries, the arbitrator must make a choice of the substantive law applicable to the matter in dispute. Shall Swedish law always apply as the *lex fori*, or shall a choice of law clause be selected on the basis of an evaluation of the relation of the transaction in dispute to different legal systems? *Arbitration in Sweden* has little to say on this subject. A rather academic question is raised however: which system of conflict law shall be chosen in order to find the applicable substantive law? The authors

seem to answer this question by stating that, "the autonomy of the parties may be allowed decisive effect here." It is true that the parties in commercial transactions, with few exceptions, may agree on the choice of applicable substantive law. But the authors do not seem to realize that it is under the authority of the Swedish system of conflict of laws, which also applies to arbitral proceedings, that the parties are allowed to agree on the choice of applicable substantive law. A foreign lawyer who contemplates advising a client to accept or suggest arbitration in Sweden might wish to know something of the conflict rules in the Swedish system of law, which in arbitration proceedings in Sweden will indicate the applicable substantive law in a case where no choice of such law has been made by the parties. However, in Sweden few cases on this point exist from which conclusions can be drawn, and statutory provisions are extremely scarce. The judge or the arbitrator may find himself in a situation where he has to "make" a conflict ruling considering the nature of the dispute and its objects, and based on whatever recommendations he can find in legal writing.

The lack of energetic efforts to tackle the choice of law problems is a weakness in an otherwise learned, exceptionally complete, and useful book. It might serve as a model for scholarly writers in other countries and for the Chambers of Commerce that are willing and ready to help to make the new transnational economy work.

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INTERNATIONAL PRIVATE TRADE. By **Andreas F. Lowenfeld.**
New York: **Matthew Bender, 1975.** pp. xii, 302. **Documents
Supplement. Table of Cases. Index.**

This volume, the first of a series on *International Economic Law* by Professors Lowenfeld and Thomas Ehrlich, promises well for the remainder of the series. It is principally a short casebook dealing with international contracts for the sale of goods between private parties. However, it contains several unusual features which make it as valuable to the practitioner as to the student.

The body of the work comprises only 129 pages with the balance taken up by the documentary supplement. The 129 pages include only fourteen reports of decisions, on fifty-four pages. There are twenty-six pages of "Note and Questions" raising interesting problems related to the cases, and some forty-nine pages of text material. As might be expected, the author makes no attempt to provide comprehensive coverage. He concentrates instead on the central conceptual elements of private international contracts.

Problems discussed include the essential elements of a C.I.F. contract, the consequences of its breach, excuse for nonperformance, and the functions of the document of title. A section on dispute settlement focuses on jurisdiction over absent defendants and on choice of law, arbitration, and choice of forum clauses. Another substantial section covers letter of credit, particularly the questions of "irrevocability" and "strict compliance."

In this selective approach inheres the special merit of the volume. The student or novice practitioner is introduced to the central concepts of international sales contracts, his understanding unhampered by the jungle of technical detail which so often grows up around this subject. The experienced practitioner may in only a short time refresh his understanding of the overall context and goal of drafting international sales contracts, and perhaps see new approaches to familiar problems.

The principal feature of interest to the veteran will be the documentary supplement and the author's integration of it into the text. Half of the supplement is devoted to excerpts from the Uniform Commercial Code, from the English Sale of Goods Act, and from the Revised American Foreign Trade Definitions. Also included with this material are complete reprints of the Uniform Customs and Practice for Documentary Credits, approved by the International Chamber of Commerce in 1975, and of the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (1958). All of these documents are not frequently found together, and all are extensively cross-referenced in the text.

Most helpful and unusual of all is the publication in full of the standard form contracts and letter of credit forms used in international sales of goods by a number of modern American firms. These forms, filling out the other half of the supplement, were supplied by Bethlehem Steel Export Corporation, U.S. Steel International, Westinghouse Electric Co., the North American Export Grain Association, Metropolitan Bank and Trust Company of New York, and by other American corporations and banks. Also included is a form supplied by the United Nations Economic Commission for Europe, and the Standard Sales Contract Form and Purchase Contract Form used by a Soviet state enterprise. The forms are also well integrated with the text. They are generally not available elsewhere to the practicing lawyer, and should prove a fruitful source of ideas for drafting. Their collection and publication with all the "fine print" will be a great service to many attorneys.

The book contains mostly references to Anglo-American law and cases, and at first glance would appear to be lacking a global perspective. The author acknowledges this, but points out that the international law merchant which is his subject was influenced substantially by the English courts during the long period of British commercial ascendancy. He also points to the international character of the law

merchant, contending that it is with minor exceptions the same around the world. Nevertheless, there seem to me to be several sections (particularly those on dispute resolution) which would have benefited by the consideration of other national systems.

International Private Trade is not intended to compete with more comprehensive treatises such as Schmitthoff's *The Export Trade*. Professor Lowenfeld intended it to be material for part of a course on International Economic Transactions. It fulfills that role admirably, and will be a valuable reference as well to the practicing lawyer. We can look forward eagerly to the forthcoming volumes of this series, some of which will cover East-West Trade, the International Monetary System, and International Investment.

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