

## BOOK REVIEW

### COMMERCIAL LAW

by

**R.M. Goode**

[Penguin Education, 1982, 1119 pp. £ 14.95]

The writer, R.M. Goode, is the Crowther Professor of Credit and Commercial Law and Director of the Centre for Commercial Law Studies at Queen Mary College, University of London. His previous major works were on the Law on Hire-Purchase<sup>1</sup> and more recently on areas of Credit and Security.<sup>2</sup> This recent work by the learned writer is a major undertaking spanning eight years and exhibits all the erudite learning one has learnt to expect from the pen of Professor Goode. The publicity blurb on the cover of the book claims for it the description of being "the most up-to-date, comprehensive book on the theory, and practice of commercial transactions". This review will not attempt a detail comment on the text but a broad survey of its major features.

#### **General Structure of the Book**

The Book is divided in 6 major parts: (i) the Foundation of Commercial Law; (ii) Domestic Sales; (iii) Bills of Exchange and Other Instruments; (iv) International Sales; (v) Commercial Credit and Security: Structure and Principles; (vi) Specific Forms of Business Finance.

#### **The Main Features**

The central feature of the book is its devotion to the basic concepts that lie at the foundation and commercial law. Professor Goode describes his work as follows:

"This book falls broadly into two halves though not so divided sequentially. The first is concerned with theory and is relatively abstract. The second is devoted to what may be termed applied commercial law, in which I have attempted to show how typical financing operations are set up, the parties involved, the documents and forms of security used and the relevance of the principles previously enunciated to the resolution of a variety of common practical problems."<sup>3</sup>

<sup>1</sup>Goode, *Hire-Purchase Law and Practice*, 2nd ed. (London: Butterworths, 1970)

<sup>2</sup>Goode, *The Consumer Credit Act* (Butterworths, 1979)

<sup>3</sup>From Preface, R.M. Goode, *Commercial Law*

This is a most laudable approach and fills an important gap in the extant literature of commercial law. Most commercial law texts suffer from the lack of a synthesis of statement of legal principles from case-law and statute with the commercial context in which they operate. Professor Goode is surely right in stating that "it is impossible to have a clear perception of commercial law without at least a basic understanding of the mechanism of the transaction under consideration, the parties affected and the documents they employ."<sup>4</sup> It is the reviewer's experience as a student of commercial law that much of the teaching of the subject in our law schools is confined to the impartation of bare legal rules and provisions without reference to the context in which these rules derives its cogency and applicability. The strength of a combined approach is demonstrated by Professor Goode's treatment of security interests in chapters 25 — 27. Here the writer discusses the conceptual framework and uncovers a host of problems in his analysis of the forms of credit and security. The difficult issues of perfection of securities and priorities is addressed ably and potential solutions suggested.<sup>5</sup> The writer also does not flinch from providing a critique of the state of the law:

"...the rules of English law as to perfection and priorities are seriously defective. Perhaps the most fundamental weakness is the lack of any uniform policy or set of rules. Each type of security is evolved separately and is governed by its own particular rules."<sup>6</sup>

Another example of the value of a combined treatment of law in its context is the discussion under Part Six (Specific Forms of Business Finance) of the general financing considerations in the selection of the security instrument from the creditor's and debtor's point of view. The factors which influence their choice of a particular security instrument: tax, accounts, enforceability and publicity are highlighted, thus providing the reader an insight to the growth of such instruments.

The claim to be the 'most up-to-date' text could also be supported as important chapters on the Finance Lease and Financing against Stock Receivables are included. There is a lacunae in the present textbooks on these topics.

In the area of banking law the writer also discusses in detail the whole range of negotiable instruments, the duties of collecting and paying bank. Here again the distinctive approach of the book draws the student into visualizing the processes of the transaction.<sup>7</sup>

In the sphere of international sales the writer sketches for the reader the characteristics and organization of International Sale Transactions. A good number of documentary examples is also included; this is a most welcome feature as it brings home to the student the 'reality' of the transaction.

<sup>4</sup>R.M. Goode, *Commercial Law* at p. 37

<sup>5</sup>*Ibid.*, pp. 767-785.

<sup>6</sup>*Ibid.*, pp. 786-784.

<sup>7</sup>For example the Journey of a cheque through the clearing system at pp. 488-490.

The Financing of International Trade is another area which an up-to-date account is given. For example, apart from the statement and description of the law in respect to documentary credits the newer creations of standby credit and performance bonds also received a clear and concise treatment.

Throughout the book the key international conventions are referred to and analysed. The traditional treatment of commercial law on contract law, domestic sales, condition sale and hire-purchase is given concise treatment.

#### **Concluding Remarks**

It is churlish to complain about the difficulties of the book. This is not an elementary text on commercial law.<sup>8</sup> The basic methodology of the writer has resulted in a singularly heroic attempt on a "synthesis (which) also necessitates a blending of the purely commercial elements with the underlying principles of the law of property and trust."<sup>9</sup> This dialectical approach of conceptual analysis with the practical context of the operative rules demands careful reflection and thought before one can arrive at some understanding. For the persevering the result is not just a recollection of dry rules but the sharing of "the intellectual excitement of commercial law, which has constantly to adapt itself to the challenge of new business methods, new instruments and new technology."<sup>10</sup>

Two suggestions however may be made: Chapter 3 on some aspects of Contract Law could be omitted and the book be printed on a better quality paper. There are already good texts on Contract law and its inclusion in an already massive book of 1119 pages may be of questionable value. The paperback edition (Penguin) is on poor quality paper which suffers from rapid deterioration. Undoubtedly, the change to better quality paper may increase the already high price. This would be unfortunate as it may put off the ordinary student from purchasing a worth-while text.

Other than the complaint on paper quality the production of the book is commendable. The contents of the book are clearly laid out and the tables of legislation, statutory instruments, conventions and Rules with a full table of cases (containing alternative citations) carefully indexed are further fine features of this book. The Index is also very detailed and extensive which is a great boon to the busy practitioner.

<sup>8</sup>For example Chapter 2 on Basic concepts of Personal Property require considerable effort to grasp the complex conceptual discussion.

<sup>9</sup>Foreword by H. Street at p. 21.

<sup>10</sup>The Author's Preface at p. 25.

This book represents a major breakthrough in commercial law writing and should find a place in the library of every lawyer, banker, business financier and student of commercial law.

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