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978-1-107-02808-1 - Commercial Contract Law: Transatlantic Perspectives

Edited by Larry A. Dimatteo, Qi Zhou, Séverine Saintier and Keith Rowley

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COMMERCIAL CONTRACT LAW

This book focuses on the law of commercial contracts as constructed by the US and UK legal systems. Leading scholars from both sides of the Atlantic provide works of original scholarship focusing on current debates and trends from the two dominant common law systems. The chapters approach the subject areas from a variety of perspectives – doctrinal analysis, law and economic analysis, and social-legal studies, as well as other theoretical perspectives. The book covers the major themes that underlie the key debates relating to commercial contract law: role of consent; normative theories of contract law; contract design and good faith; implied terms and interpretation; policing contract behavior; misrepresentation, breach, and remedies; and the regional and international harmonization of contract law.

Contributors provide insights on the many commonalities, but more interestingly, on the key divergences of the United States' and United Kingdom's approaches to numerous areas of contract law. Such a comparative analysis provides a basis for future developments and improvements of commercial contract law in both countries, as well as in other countries that are members of the common law systems. At the same time, insights gathered here should also be of interest to scholars and practitioners of the civil law tradition.

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Commercial Contract Law

TRANSATLANTIC PERSPECTIVES

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Robert Bradgate

Edward Bramley Professor of Commercial Law Emeritus

This scholarly book brings together commercial and contract law scholars from both the United States and the United Kingdom. The impetus for this project was a symposium held on 9–10 September 2011 to celebrate the lifetime achievements in this field by Robert Bradgate, Edward Bramley Professor of Commercial Law Emeritus at the University of Sheffield, United Kingdom.

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of Arizona, Brooklyn Law School, and the University of Copenhagen. His principal teaching and research interest is contract and commercial law. Along with Hastings Professor H. G. Prince and Professor Nathan Crystal, he is the co-author of a widely used casebook, *Problems in Contract Law*, published by Aspen and now in its sixth edition.

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Foreword

It was a privilege for me to be invited to attend the symposium in Sheffield in September 2011 that has given rise to this book. I imagine the invitation was the result of my long association with the School of Law at Sheffield rather than any perception that I have current expertise in the comparative law of commercial contracts. However, I derived enormous benefit from my attendance.

The sharing of knowledge and expertise among legal experts from different jurisdictions is essential to the development of the law. It is also important that, at a time when the laws of the United Kingdom are more than ever influenced by developments in the European Union, we do not forget the heritage that we share with other common law jurisdictions, particularly in relation to our fundamental concepts and basic principles. One of the most formative and durable influences on my judicial career was the time I and other British judges and lawyers spent with American colleagues in Edinburgh, London, and Washington DC, in 1999 and 2000 as part of the Anglo-American Legal Exchange. The historical similarities in our respective laws bind us together and our more recent divergences enable each of us to see how our own laws and practices may yet develop.

And so to the world of commercial contracts. Notwithstanding their common origins, the laws of the United Kingdom have developed differently from those of the United States. Most noticeably, they have diverged in relation to the duty of good faith and the doctrine of unconscionability. American judges have been more interventionist than their British counterparts. In the United Kingdom, the biggest source of regulation and calibration of unequal bargaining power now derives from obligations imposed on the Member States of the European Union. However, even in areas where there are no or few such obligations, the judicial development of our law does not always replicate the approach of American courts. Thus, for example, our approaches to construction, to implied terms, and to remedies differ significantly.

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All this makes the comparative methodology that permeates this book particularly useful. Leading scholars from the United States and from the United Kingdom have come together to bring their varied expertise to bear on these important issues. Their approaches are refreshingly diverse. Some contributions resemble ones with which I was familiar as a Professor of Law thirty years ago. Others, particularly the more theoretical ones, are expressed in a language with which I was previously unfamiliar. Taken together, the contributions provide a unique and extremely valuable set of insights into our respective commercial contract laws. The book will help academics and practitioners on both sides of the Atlantic, and in Continental Europe, to appreciate where there is hope for harmonisation or approximation and where there is not. It is a most stimulating collection that should enhance the understanding of all those concerned with the development of the law of commercial contracts, both within and beyond the academic world.

I congratulate the organisers and the contributors to the September 2011 symposium. It is entirely appropriate that it can now reach a wider audience through this original and excellent book, which is a fitting celebration of the achievements of Professor Robert Bradgate, which inspired it.

Maurice Kay
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