

## BOOK REVIEW

UNDERSTANDING COMMERCIAL LAW by Philippa Gerbic and Leigh Miller (Authors), 7th ed, LexisNexis, 2010. 714 pp, recommended retail price NZ\$98 (paperback).

*Understanding Commercial Law* (published by LexisNexis) has been a popular textbook for many years since publication of the first edition in 1988. Its popularity is evidenced by the fact that it can be found in the catalogue of many New Zealand libraries, whether those in a university or those for the general public, and that it is categorised very often as “short loan” or even “not for loan”. The latest version of this book so far is its seventh edition, with the law updated to 1 October 2010. This does not mean the law stated in the book is “out of date”, as the law in most of the areas of commercial law in New Zealand has not been significantly changed since then.

There is no clear definition and scope of “commercial law”. Commercial law, however, affects all of us in our everyday lives, because as a reality all of us live in a commercial world. Modern commercial law in New Zealand stemmed from law merchant which was an integral part of English common law. Historically, doing business was treated as a privilege and merchants were regarded as a special class of people. Traders always tried to find more efficient ways to negotiate and conclude a deal. Over time, some practices became widely accepted and were often referred to by traders, and thus they became customary rules. Those customary rules were then recognised or adopted by the courts in dealing with disputes between merchants, by which the customary rules became a part of common law. Most of those common law rules relating to commercial activities were later codified. Nowadays, taking part in commercial/business activities is no longer deemed a privilege and everyone may be a merchant to some extent. For example, it is very difficult to determine whether a person buying and selling items on Trade Me is a merchant or not. Cheques (and internet banking) are now widely used by average people, not only by traders as in the 16th to 19th centuries. Governments now actively intervene for the promotion of competition and the protection of consumers. These changes mean that today commercial law affects almost all of us and it becomes more necessary or desirable for everyone, not only lawyers and merchants, to know some basic commercial law rules.

The problem, however, is that commercial law in New Zealand is complicated and not easy to understand. This is more so for those who do not have knowledge about New Zealand law or who come from a non-common law jurisdiction, and those whose first language is not English. Ideally, a person who wants to learn about commercial law should have first learned about the legal system and the law of contract in New Zealand. For a manager of a business or an average person in New Zealand, this is impractical because of the stress of time and cost. For students doing business studies, a more common situation is that they are required to do the commercial law course without completing New Zealand Legal System and Contract Law papers as a prerequisite.

*Understanding Commercial Law* would appear to provide a solution to these difficulties. The book is aimed at "non-lawyer learners and students whose first language is not English".<sup>1</sup> The authors of this book noticed the needs of those who do not have a legal background but need to learn commercial law in New Zealand. The goal of this book is to make such a transition easier and the principles of commercial law in New Zealand "more accessible and easier to understand".<sup>2</sup> This book does seem to cater for its target readers' needs, and achieves its overall purpose of making commercial law more accessible and easier to understand. This goal is achieved or achievable to a large extent.

First of all, the writing style is wonderful for beginners. The book is written in simple and plain English. Legal English, with a lot of jargon and special ways of expression, is inherently difficult. This is so even for a native English speaker or a law student, let alone for a non-native English speaker or a reader without a legal background. Due to the nature of law and especially the precision and accuracy requirements of legislation, it is always a challenge to explain law in simple and plain language. *Understanding Commercial Law*, however, succeeds in this aspect to a large extent. Headings and subheadings are well numbered. Statements of the law are put into short paragraphs according to the contents. Shorter and simpler sentences and words are used wherever it is possible to do so. Expressions more often used in daily life are also preferred by the book, for example, in explaining the rules of passing of property under the Sale of Goods Act 1908, the word "ownership" is used.<sup>3</sup> Where the use of a long sentence is unavoidable, the sentence is often broken down into listed bullet points with each point in a short and simple sentence/phrase. In addition, sentences are organised following the natural flow of thinking. For example, most compound sentences in the book are written in such a way as "although a division of the District Courts, the tribunals have a different focus ...",<sup>4</sup> "in order to..., the stronger party must rebut the presumption",<sup>5</sup> and "if this is not so, then...".<sup>6</sup> This reduces the degree of difficulty in reading and understanding. The book also highlights key words and concepts in the main text in bold and the meaning of most of them can be found in the glossary to the book.

Secondly, the book has its own effective way of explaining legal concepts and principles. It uses diagrams and flowcharts to illustrate legal concepts and processes. It also provides examples to illustrate the concepts and legal principles. The examples include sections of an Act, very brief case summaries and hypothetical scenarios (see all three examples at page 217 of the text). Most of the hypothetical scenarios are very simple and short, sometimes only in a few words, yet they are very helpful nonetheless. For example, in explaining the legal concept of "duress", one of the examples given is "a threat to burn down a factory unless the contract is made".<sup>7</sup> Another example explains rule 2 of the passing of property under s 20 of the Sale of Goods Act 1908. Immediately after describing the situation to which the rule applies, the example is given: "the parties agree that, before the buyer will pay for a car, the seller will have a broken headlight

<sup>1</sup> Philippa Gerbic and Leigh Miller *Understanding Commercial Law* (7th ed, LexisNexis, Wellington, 2010) at v "Preface".

<sup>2</sup> At v.

<sup>3</sup> Philippa Gerbic and Leigh Miller, above n 1, at 357.

<sup>4</sup> At 48.

<sup>5</sup> At 205.

<sup>6</sup> At 49.

<sup>7</sup> At 202.

replaced".<sup>8</sup> With the diagrams, flowcharts and examples, the book is more like a series of lecture notes well-tailored for the target readers, and provides significant assistance in understanding the elusive legal concepts and principles. The book also helps readers understand important legal principles by briefly summarising the key points of the principles, alongside the main text, in a coloured "notepad" area, which not only draws the readers' attention to their importance but also provides an effective opportunity for the revision of those rules.

Thirdly, the book is well structured and organised. Before the main text, there is a collection of glossary terms. Glossary entries are listed in alphabetic order and each has a succinct and clear explanation. The glossary section goes beyond that of a law dictionary, because only those words or phrases that are most relevant to the topics, which are also printed in bold throughout the main text, are listed and defined in the glossary. Using this glossary rather than a general law dictionary saves readers a lot of time. The case appendix, put immediately after the main text, is also a helpful and efficient tool for readers. While it is beneficial to read the original case judgments when studying law, this is very time consuming and it may be difficult for those without a legal background or for non-native English speakers. Important cases are noted in bold in the main text and in the examples following each paragraph. They are further discussed in the case appendix. For each case noted in the case appendix, clear citations are provided and the key facts, issue(s) and decisions are listed in bullet points. Each chapter is also well structured in a convenient way. At the beginning of each chapter, there is a table of contents followed by "Key Learnings", which outline the main learning outcomes expected. After the main text of each chapter there is a summary of the most important legal concepts and principles stated in the chapter. At the end of each chapter is a "Students' Glossary" which lists important terms that students are expected to understand, define and describe. If a student is not sure about the meaning of those terms, he or she may go back to the main text of that chapter to scan for the words printed in bold or simply refer to the glossary.

The topics covered are also logically organised. The book, in chapters one to three, first provides readers with a general introduction to law and the New Zealand legal system, which is valuable for those without the necessary background knowledge of law and New Zealand law. Then, in chapters four and five, the book briefly introduces the most important and basic concepts and principles concerning business organisation and contracts, which are important and helpful in aiding the understanding of other areas of commercial law. Chapters seven to 12 are introductory statements of the law concerning particular areas of law, namely, the law on consumer protection, sale of goods law, law on agency, law of tort, law of property and the law of privacy. It is a pity, however, that for unknown reasons, chapter seven "Consumer Legislation" does not include some of the most important consumer legislation, for example, the Credit Contracts and Consumer Finance Act 2003 and the Motor Vehicle Sales Act 2003. Looking at the lives of New Zealanders, these types of transactions are very common and affect the daily life of almost all of us. It is conceivable that, due to the limited space available, the book does not cover other topics of commercial law, such as the laws on insurance, banking, guarantee, and insolvency etc. These topics are arguably more suitable for inclusion than the "law of employment" (chapter six) and the "law of privacy". A possible reason for the inclusion of those topics may be the book being targeted at students of commerce rather than students of law.

---

<sup>8</sup> At 359.

Fourthly, the multi-levelled index at the end of the book, in conjunction with the logical structure, the clear table of contents, table of cases and table of statutes, allows information on a particular topic, case or legislation to be easy to find. While the main entries are listed alphabetically, contents relating to a main entry are listed together under that main entry as sub entries in alphabetical order. Each main entry and/or sub entry refers to paragraph numbers in the main text. Cross referencing of entries/sub-entries within the index is also available. Important cases (printed in bold in the main text) are also included in the index as entries, with their full citations and summaries available in the case appendix part in the book. Such a considerate arrangement significantly helps targeted readers find the particular information they need more efficiently.

Finally, we must mention the authors of the book. They are/were either teaching commercial law at New Zealand universities and/or practising commercial law in New Zealand. This equips them with an effective understanding of commercial law in New Zealand and the needs and difficulties of students studying commercial law.

All of the above, notwithstanding the minor drawbacks in topic coverage, entitles the book to worthy inclusion in the LexisNexis' *Understanding* series, with its excellent readability and accessibility to commercial law in New Zealand among its most significant features. Although it is aimed at "non-lawyer learners and students whose first language is not English",<sup>9</sup> the book can also be used as an introductory text or a stepping stone for lawyers or students whose first language is English, by providing them with a helpful overview and basic understanding as preparation for their further study or research of commercial law.

We look forward to the following edition coming soon.

DR ZHIXIONG LIAO\*

---

<sup>9</sup> Above n 1.

\* Dr Zhixiong Liao, Lecturer in Te Piringa – Faculty of Law, University of Waikato. He teaches Commercial Transactions, Contract Law and Land Law. Before joining the Faculty, he practised law in China and New Zealand, mainly in commercial law, tax law and overseas investments.