
BOOK REVIEWS

CHRONIQUE BIBLIOGRAPHIQUE

Alex L. Parks. *The Law and Practice of Marine Insurance and Average*. Centreville, Md: Cornell Maritime Press, 1987, 2 vols. Pp. 1516 [\$190.00 U.S.]. Reviewed by William Tetley, Q.C.*

Should an author review another author's book? Should a book be reviewed by a friend of the author?

These are difficult questions but not too difficult when the book is a good one, and *The Law and Practice of Marine Insurance and Average*¹ is a very good book.

In November, 1987, Alex Parks took me aside and told me that he had just learned he had inoperable cancer. A day or two later he showed a number of us the advance copies of his book which he had just received, the summation of a lifetime of law practice, teaching and scholarship. Early this year Alex Parks died; that friendly, generous, humorous man will be missed by hundreds of friends not merely in Portland, Oregon, but around the world. He has left, however, something which very few people are able to leave — an oeuvre which thousands will remember him by.

Persons interested in marine insurance will be pleased to know that at last there is a book on both American and United Kingdom marine insurance law as well as references to the law of Canada, Australia and New Zealand. Parks collaborated with Brian Waltham and Jonathan Lux from London, Jack Cunningham from Vancouver, Derek Hentze from Sydney, T.J. Broadmore from Wellington, Carter Quinbey from San Francisco, Martin Detels Jr. from Seattle and Paul Wonacott from Portland. Parks, in his typically generous fashion, describes them as "Associate Authors" on the frontispiece. With the help of these experts the book is able to cut across jurisdictions so that in genuine comparative law fashion, inner truths are revealed which otherwise would not have come to light in the exposition of a single national law.

The U.K. *Marine Insurance Act, 1906*² is the mother of all Anglo-Saxon insurance acts including the acts of British Columbia, Manitoba, Ontario, New Brunswick and Nova Scotia. It was a brilliant codification of existing

*Professor, Faculty of Law, McGill University.

¹A.L. Parks, *The Law and Practice of Marine Insurance and Average* (Centreville, Md: Cornell Maritime Press, 1987) [hereinafter *Marine Insurance and Average*].

²(U.K.), 6 Edw. 7, c. 41.

marine insurance law by Sir Mackenzie Chalmers, the legal giant who also drafted the *Sale of Goods Act, 1893*³ and the *Bills of Exchange Act, 1882*.⁴ America has never adopted a marine insurance but as Parks pointed out, the U.S. follows the 1906 Act so that the jurisprudence from England, the U.S. and other nations flows back and forth enriching the law of those who receive and of those who give.

Throughout his text Parks, like American judges and practitioners, follows the 1906 Act and its jurisprudence. It is an incredible tribute to Chalmers, and Parks himself pays generous tribute:

"Chalmer's introduction to the first edition will be found reproduced in *Chalmer's Marine Insurance Act, 1906* (8th ed. by E.R. Hardy Ivamy, London: Butterworths, 1976). This little volume is a classic and should be in the library of every underwriter, broker, and admiralty lawyer involved in the field of marine insurance."⁵

The same could be said of Parks' book.

Parks has a light and unaffected style. His purpose is to inform — he does not presuppose knowledge and hence this very large text in two volumes. There is a fine historical introduction with not too much time spent on the oft-told tale of Lloyd's coffee house. Thereafter, he explains conscientiously and in detail the marine insurance contract, the policy, principles of construction (but not the civil law rules of interpretation), the relationship of agents and brokers, the premium, insurable interest, disclosures and representations, warranties, the perils clause, exclusions, the Inchmaree clause, actual and constructive loss, general average, salvage and sue and labor. It is all there.

But that is only volume one. The second volume deals with the running down clause, particular average, P. & I., shipbuilders' liability, subrogation, direct action, reinsurance, practice and procedure.

Each reader will have his own favorite chapters — mine were general average, P. & I. and direct action — or at least they attracted my particular interest at this time. In each chapter, Parks presented a succinct explanation of the maritime law of the subject in question before explaining the marine insurance law attached to it.

Is the text perfect? No, but what is? The book has a very limited index while the discussion deals only with common law jurisdictions ignoring the

³(U.K.), 56 & 57 Vict., c. 71.

⁴(U.K.), 45 & 46 Vict., c. 61.

⁵*Marine Insurance and Average, supra*, note 1 at 11 n. 6.

civil law. On the other hand, the common law and the *Marine Insurance Act, 1906*⁶ have dominated world marine insurance for at least two centuries.

Alex Parks is gone but his friends will remember him while his book will attract new friends for a long time.

Walt Whitman said:

Camarado this is no book you hold. This is a friend. And you forgive your friends. You like everything they do with good intentions.

Marine Insurance and Average, this beautifully presented, readable oeuvre will be a friend to all who read and use it, whether or not they knew Alex Parks.

⁶*Supra*, note 2.

D. Lasok & P.A. Stone. *Conflict of Laws in the European Community*. Abingdon, Oxford: Professional Books, 1987. Pp. xx, 460 [£24.5]. Reviewed by P. John Kozyris*

*Conflict of Laws in the European Community*¹ constitutes an excellent conspectus of the various kinds of conflict-of-laws issues that may arise in the multitudinous contexts of the European Economic Community ("EEC"). Conflict of laws is broadly conceived to include most of private international law, extending beyond choice of law to questions of quasi-federalism as well as to jurisdiction and judgments. The authors appear thoroughly conversant with the relevant aspects of EEC law, including in particular the decisions of the EEC Court of Justice, as well as with the national law pertaining to the same subject. The book's style maximizes clear, effective communication, and its chapters are packed with valuable data. In fact, so much information is concisely imparted, that the work resembles a compact but also sophisticated encyclopedia. At the same time, however, the nature of the work precludes any substantial discussion of conflict-of-laws doctrine and methodology as well as any sustained comparisons with other private international law systems.

The book begins with the "federal" or "supranational" aspects of the EEC, its institutions and its legal position. The legal personality and status of the Community and its capacity both in the international (*e.g.* its *jus missionis* and *jus tractatus*) and in the domestic (*e.g.* as employer or tort-feasor) contexts give rise to many questions of choosing the applicable law. To the extent that the EEC treaties and secondary norms govern these issues, they prevail over the domestic law of the member states as the supreme law of the Community. But a good number of issues are not expressly covered by these sources and, therefore, they are subject to national law under domestic conflicts principles aided sometimes by implications drawn from the pertinent Community law. For example, Article 215(1) of the Rome Treaty² provides that "the contractual liability of the Community shall be governed by the law applicable to the contract in question", but gives no guidance on how such law is to be chosen. The related disputes may be adjudicated by the national courts under their own conflicts rules. When the parties refer the dispute to the European Court under Article 181 of the Rome Treaty,³ a new composite system of conflicts must be generated by such court.

*Professor of Law, The Ohio State University.

¹D. Lasok & P. Stone, *Conflict of Laws in the European Community* (Abingdon, Oxford: Professional Books, 1987).

²Treaty establishing EEC, 25 March 1957, 298 U.N.T.S. 3.

³*Ibid.*

The second "federal" question is even more directly wedded to conflicts choices: it relates to the international applicability of Community law, especially its extraterritoriality in contexts such as antitrust law. Most of the answers here are contained in the text of the Community law itself.

In addition to issues of Community personality, institutions, status, legal order and internationality, those provisions of Community law which seek to effectuate the purposes of the Community, for example the unification of the internal market, often use terms which need definition or implementation at the national level on a residual basis and which may present problems of choice of law. For example, the rules which prohibit discrimination on the grounds of nationality leave the determination of nationality to domestic law, including its own conflicts rules.

A whole chapter of the book is devoted to an explication of the various substantive areas where Community law in effect pre-empts, supplements or at least seeks to harmonize the various domestic laws in areas such as labour, social security, competition, the professions, banking, insurance and product liability. Choice-of-law issues surface here in an incidental manner, e.g. matters related to social security are relegated to the law of a person's workplace (*lex loci laboris*, Article 13 of Regulation 1408/71) or exceptionally to that of his habitual residence. Special mention is made regarding the *Directive on Products Liability*⁴ which is silent both on the sphere of applicability of its own provisions and on the domestic law applicable to those issues that the *Directive* does not cover. The authors propose certain creative and sound solutions focusing on the place of delivery of the product to the ultimate purchaser.

In searching for a conflicts model for the EEC, the authors next briefly review and contrast the Polish and American systems, opting in favour of legislative codification in the Continental pattern rather than leaving the matters to the slow and fragmentary case law process.

The short discussion on the American law of jurisdiction and choice of law is very well informed and up-to-date. It makes many valid, albeit occasionally excessive, criticisms of the inherent uncertainties, as well as the biases, built in the new American approaches which maximize the choices available to plaintiffs and favour the *lex fori*.

There follows an elaborate analysis and commentary on the Brussels *Convention on Jurisdiction and Enforcement of Judgments in Civil and Commercial Matters* of 1968.⁵ As is typical for most of the work, the authors

⁴*Directive on the Approximation of the Laws, Regulations and Administrative Provisions of the Member States concerning Liability for Defective Products*, 85/374 OJ L210/29.

⁵78 OJ L304/36 (in original 1968 form); 78 OJ L304/77 (as am. in 1978).

do not limit themselves to stating the law "as is" but offer refreshing interpretative suggestions and blunt opinions of what they view as wrong turns either of the Community institutions or of the member states.

The last major part of the book is devoted to the EEC *Convention on the Law Applicable to Contractual Obligations* of 1980⁶ which has not as yet come into effect. The discussion is thorough and provocative, and includes considerable comparative law information, especially as it regards the notions of "characteristic performance" and "mandatory rules" which are unfamiliar in the common law systems. The comprehensiveness of the book is exemplified by its inclusion of chapters on choice of law for bankruptcy and for torts, and on arbitration, as well as by the addition of appendices with the full texts of the two major EEC Conventions.

Given the tight packaging of so much information in the book, the index is necessarily brief and only indicative of the general area where the search should be conducted. But with those limits, it is first rate.

I am not aware of any other single-volume source in the English language on the private international law implications of the European Community. As such, it is highly valuable to all conflicts specialists outside the EEC who need a compact, lucid, intelligent, comprehensive guide in that area.

⁶OJ L266.