

## BOOK REVIEW

*China's Journey Toward the Rule of Law: Legal Reform, 1978-2008* BY CAI DINGJIAN AND WANG CHENGUANG, eds. [Leiden: Koninklijke Brill NV, 2010. xxiv + 560 pp. Hardcover: €182.00, US\$236.00]

Rule of law seems to be experiencing a bit of a dark period in China right now. Corruption is endemic; popular protests against unlawful government actions seem to be at an all-time high; and at the same time, and somewhat paradoxically, the party-state has become increasingly aggressive in suppressing people who are seeking to use law rather than violence to express grievances and felt injustices against public officials. Universities have even been told that academics should not talk about the constitution and constitutionalism.

The present climate has caused many observers and scholars of Chinese law to argue that China is now “retreating” from rule of law—that it is moving backwards toward a not too distant past when law was seen as the enemy of party-led progress. And certainly, there is evidence to support this view. Between 1990 and around 2005, China experienced a legal renaissance of sorts. Constitutional-legal institutions were able to assert true authority. Public interests and public impact litigation and legal advocacy were encouraged and even celebrated. Lawyers were able to use the law, and the courts, to at least try to advance claims of injustice, and while they often failed, they did not need to fear political retribution.

But in such times as these, it is useful to remember that the long-term and the short-term operate according to different logics. Long-term trajectories are often punctuated by short-term disruptions. Europe retreated from political liberalism during most of the 1930s, but by the 1950s, European liberalism was nevertheless back in full flower, and has been ever since.

I have always suspected that Chinese scholars tend to take a longer view when looking at rule of law development in China. Why this is the case, I won't speculate. But when Chinese legal scholars look at the development of some area of law, or of the Chinese legal system *en toto*, they seem much more likely to locate ‘developments’, not simply within five-year or ten-year trajectories, but over a generation or two. And particularly during times of seemingly countercyclical devolution, it can be useful to be reminded of the deeper trajectories of the *longue durée*.

Along these lines, *China's Journey Toward the Rule of Law*, edited by Cai Dingjian and Wang Chenguang, represents a distinct and important addition to the English-language literature on rule of law in China. Over the past three decades or so, there have appeared a great many English-language books and academic articles looking

at rule of law in China, in many different aspects. But the overwhelming majority of these are written by scholars working out of the Anglo-American legal academic community, or otherwise have been written primarily for persons working out of that community. As such, they are informed by the concerns and interests of that community. By contrast, *China's Journey Toward the Rule of Law* is written by Chinese legal scholars, and it does not seem particularly oriented towards a distinctly Anglo-American academic readership. Citations and references are almost exclusively to Chinese texts and Chinese writers. Moreover, to this reviewer, who has spent some twenty years reading the legal scholarship written by Chinese for Chinese, the style and manner of discussion/presentation is also distinctly 'Chinese' in aesthetic and analytic character. This is not to imply that the contributions to this volume are not quite critical. The contributors are quite aware that China continues to face many obstacles in its on-going pursuit of rule of law, and they devote significant attention to problems of enforcement, corruption, and political and cultural resistance.

The volume examines China's engagement with rule of law sectorally. It includes chapters on the constitution, administrative law, criminal justice, the judiciary, legal education and the legal profession, public interest litigation, market regulation, foreign investment protection, intellectual property and environmental protection. Chapters tend to focus on doctrinal developments, before discussing obstacles to better implementation or further developments. Invariably, the starting point for these chapters' investigations is not 2005 or 2000. It is—as the volume's title suggests—1978, the transition from the Cultural Revolution to "Reform and Opening Up".

And in doing so, they do remind us how China's engagement with rule of law does indeed look different from the perspective of the *longue durée*. Legal systems are grown, not constructed. They are the accretional product of the complex and often spontaneous emergence of myriads of everyday institutions and practices. And it is in the complexity of the sum total of these institutions and practices, in their mutual embeddedness and interdependence, that the true resilience of a legal system lies. Viewing these developments over the longer term, these chapters remind us that China's legal system is the product of thirty years of development that has been as much (if not more) organic than strategic. They show that this trajectory does indeed appear to be driven by its own distinct and complex logic, one that operates largely outside the party-state's recent emphasis on policy-based rather than law-based governance. This is not to imply that today's short-term retreat is not without important consequences, or that it is not something we should be concerned about. But it is a retreat that operates within a larger developmental trajectory that we should not completely lose sight of.

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Very soon after this volume was published, its lead editor, Cai Dingjian, passed away from stomach cancer. Cai was one of China's first real scholars of China's constitutional law (as opposed to simple constitutionalism) as it was re-emerging following the trauma of the Cultural Revolution. He probably was more influential in the development of that law *qua* law than any other scholar. This was not accidental. Cai was deeply committed to the emergence of a constitutional law in China. He

was both brilliant and unassuming, discovering a living constitutional law where few else could see it.

Cai never claimed or demanded credit for his immense accomplishment in this regard. It is therefore easy to overlook what a monumental accomplishment his was. Over a century later, we still revere A.V. Dicey for his discovery of a constitutional law in England. Cai Dingjian's contributions to China's constitutionalism are every bit of equal accomplishment. He is of equal stature, and his accomplishments deserve to be held in the same awe.

It is because of his efforts, I believe, that constitutional discourse and constitutional scholarship will survive the party's recent political assault. His was and is precisely the power of the *longue durée*—a power that brute efforts at momentary political oppression cannot reach.

MICHAEL W. DOWDLE

Assistant Professor

Faculty of Law, National University of Singapore

*The Construction of Commercial Contracts* BY J.W. CARTER [Oxford: Hart Publishing, 2013. lxii + 674 pp. Hardcover: £125.00]

*The Construction of Commercial Contracts* by Professor J.W. Carter is an ambitious book. Its stated aim is to “explain as a coherent whole the principles which regulate the construction of commercial contracts” (at p. vii). As will be seen, it more than meets this lofty aim, and is a valuable contribution to an area of work that is not only difficult, but also of immense practical importance. The book achieves its aim by explaining construction as constituting three separate stages: the identification of context (and terms), the determination of the meaning (and legal effect) of a contract, and, finally, the application of a contract to the factual circumstances that have arisen (see p. vii). This central thesis is primarily supplemented by detailed references to English and Australian law, but references to other Commonwealth jurisdictions (including Singapore), as well as the UNIDROIT principles, CISG and the American Restatement (Second) of Contracts, are also made where relevant. The structural result is a book neatly organised around seven parts, with Parts I to III setting out the general concepts and themes behind the book, in addition to the general principles that apply to the construction of commercial contracts. Parts IV and V discuss the first of the three stages of construction, that is, discerning the context of the contract. Part VI discusses the meaning of the contract, and Part VII finishes off with the application of the contract. But quite apart from the structural clarity with which the book is organised, the book is also appropriately presented to different audiences. For the academic or student who may be interested in the conceptual background to the rules of construction, the book does not disappoint. The book, just to raise one of many examples, devotes a considerable number of thoroughly researched pages to discussing the history and evolution of the parol evidence rule. For the practitioner

who may be interested in a quick reference material to the present law, the book has conveniently-placed 'articles' that summarise the law cogently and accessibly.

The book's central thesis that construction is best understood as a series of separate stages is timely. The lack of an established structure within construction makes it difficult for the subject to be approached clearly, which is exacerbated by the fact that issues within construction tend to shade into each other. The separation of construction into stages is also well supported by case law. As the book points out, Lord Wilberforce had in *Reardon Smith Line Ltd v. Yngvar Hansen-Tangen* [1976] 1 W.L.R. 989 (H.L.), distinguished between ascertaining the meaning or legal effect of the words used, and how the words of a contract apply to a factual situation (at p. 7). In addition, Lord Wilberforce also held that the contract must be placed in its context before construction can properly begin. This separation is also likely to resonate with readers in Singapore. As is perhaps well known, the interpretation of contracts in Singapore must now be discussed in the light of the important Court of Appeal decision of *Zurich Insurance (Singapore) Pte Ltd v. B-Gold Interior Design & Construction Pte Ltd* [2008] 3 S.L.R.(R.) 1029 [*Zurich Insurance*], which is supplemented by *Sembcorp Marine Ltd v. PPL Holdings Pte Ltd* [2013] SGCA 43 [*Sembcorp Marine*]. Contractual interpretation in Singapore, as outlined in *Zurich Insurance*, inevitably involves a discussion of the parol evidence rule and the so-called contextual approach. Whilst related, it is important to realise that they are not the same. While the parol evidence rule governs the admissibility of extrinsic evidence to aid in the interpretation of contracts, it does not directly tell us *how* to interpret. That is informed by the contextual approach. This distinction is recognised by the prescribed two-step framework in the interpretation of contracts in *Zurich Insurance*. The first step is to consider whether the extrinsic evidence sought to be adduced can in fact be admitted. The Court of Appeal in *Zurich Insurance*, after an extensive study of the relevant case law, concluded that although the parol evidence rule (as embodied in s. 94 of the *Evidence Act* (Cap. 97, 1997 Rev. Ed. Sing.)) still operates as a restriction on the use of extrinsic material to affect a contract, extrinsic material is admissible for the purpose of interpreting the language of the contract. Assuming that the contract is one to which the parol evidence rule applies, no extrinsic evidence is admissible to contradict, vary, add to or subtract from its terms. This is followed by the second step of interpreting the contract. While the Singapore courts do not yet (expressly, at least) identify a third step of application, such a step is implicit in the courts' decisions in this area.

The book's discussion of the preliminary stage of placing the contract in its proper context is both learned and extensive. Chapter 6 discusses the role of context in the construction process and includes an in-depth discussion of the historical background. Chapter 7 touches on the scope of context, an important area in a period when context has been said to include almost anything. If there is a particular chapter that will interest readers in Singapore, it will be Chapter 8, which discusses the difficult issue of the exclusion of certain types of extrinsic evidence. In Singapore, the admissibility of extrinsic evidence to interpret contracts is subject to several restrictions, even though the Court of Appeal has indicated in *Zurich Insurance* and *Sembcorp Marine* that the scope of admissible evidence is very wide. Most prominently, whether the extrinsic evidence is admissible depends on whether it is: (a) relevant (*i.e.* it would affect the way in which the language of the document

would have been understood by a reasonable man); (b) reasonably available to all the contracting parties; and (c) relates to a clear and obvious context. The admissible evidence is also said to be very broad and is not confined to empirical facts. In addition to these rules set down in *Zurich Insurance*, the *Evidence Act* also governs the admissibility of extrinsic evidence in Singapore. Given the close affinity between the *Evidence Act* and the old common law concerning the exclusion of extrinsic evidence, the book's discussion on the subject will be a valuable addition in the local context. As mentioned above, the book includes a detailed discussion of the evolution of the parol evidence rule at common law, particularly its effect on the evidence in relation to terms and construction.

Insofar as evidence to construction is concerned, the book's discussion on evidence of the parties' prior negotiations and subsequent conduct is just as detailed as other parts. In summarising the justifications (at p. 268) and criticisms (at pp. 269, 270) for the exclusion of prior negotiations, the book offers an obvious resource for Singapore readers interested in considering the admissibility of such evidence in Singapore. In this regard, *Zurich Insurance* arguably departed from the present English position (embodied in *Investors Compensation Scheme Ltd v. West Bromwich Building Society* [1998] 1 W.L.R. 896 (H.L.) and, more recently, *Chartbrook Ltd v. Persimmon Homes Ltd* [2009] 1 A.C. 1101 (H.L.)) by accepting the possibility of admitting extrinsic evidence in the form of prior negotiations and subsequent conduct. However, it was also held that such evidence would likely be inadmissible for non-compliance with the requirement that the parties' intentions be objectively ascertained and the threshold requirement that the context be clear and obvious. However, this apparently broad approach has since been cut back by comments made by the Court of Appeal in *Sembcorp Marine*, to the effect that the question remains open for future consideration, and that even if such evidence were allowed in the future, that should be done with "full consciousness of the concerns [relating to admissibility]... and in compliance with the pleading requirements... prescribed" (at para. 75).

The book's discussion on the admissibility of subsequent conduct (at pp. 270-275) is likewise going to find an interested audience in Singapore (and elsewhere). In *Gay Choon Ing v. Loh Sze Li Terence Peter* [2009] 2 S.L.R.(R.) 332, the Court of Appeal held that subsequent conduct that was in direct contradiction of the terms of the concluded contract could not be admitted to interpret the contract concerned, although it also noted the sentiments in *Zurich Insurance* that the admissibility of such evidence requires further scrutiny in the future. A detailed scrutiny has so far not been undertaken, but there have been Singapore cases that have tangentially discussed the issue. For example, in *Lian Hwee Choo Phebe v. Maxz Universal Development Group Pte Ltd* [2009] 2 S.L.R.(R.) 624, the Court of Appeal held that a contract must generally be interpreted as at the date it was made and in light of the circumstances prevailing on the date. In doing so, it endorsed the long-standing objection against the use of subsequent conduct in interpreting contracts stated in *James Miller & Partners Ltd v. Whitworth Street Estates (Manchester) Ltd* [1970] A.C. 583 (H.L.), that is, to interpret a contract beyond its date of creation would result in "a contract [meaning] one thing the day it was signed, but by reason of subsequent events meant something different a month or a year later" (at 603). However, to be fair, the court probably did not intend to endorse this objection specifically in relation to the use of subsequent conduct. The point remains, however, that the admissibility

of subsequent conduct to interpret contracts in Singapore remains an open question, and the book can only add to the existing scholarship that might be useful in this undecided area in Singapore law.

The book's discussion of the meaning and application of the contract is very welcome. Indeed, as the book points out, very little has been done by way of theoretical analysis of the concept of meaning in the common law of contract (at p. 357). A theoretical framework, such as the one presented by the book, allows for a better understanding of the process of discerning meaning, even if the meaning of a contract is a very practical issue. In doing so, the book advances five main elements as constituting the theoretical analysis of meaning: (a) the concepts of meaning and legal effect in construction; (b) a "perspective rule"; (c) the concept of a "standard of interpretation"; (d) the "choice of meaning" process; and (e) what factual raw material is available in construction. This discussion is likely to find especial relevance in Singapore. In this regard, the Court of Appeal in *Zurich Insurance* cautioned that the contextual approach did not allow a court to contradict or vary the terms of a contract on the pretext of "interpreting" it. It noted that neither ambiguity nor the existence of an alternative technical meaning is a prerequisite for the court's consideration of extrinsic material. Instead, the court will *first* take into account the plain language of the contract together with relevant extrinsic material that is evidence of its context. Then, if, in the light of this context, the plain language of the contract becomes ambiguous (*i.e.* it takes on another plausible meaning) or absurd, the court will be entitled to put on the contractual term in question an interpretation which is different from that demanded by its plain language. The existing canons of interpretation continue to be relevant as well, although they are only a guide and not exhaustive. Stated thus, the Singapore approach appears simple, but the simplicity can be explained by various binding provisions in the *Evidence Act*. Nonetheless, the book's discussion of the elements described above can shed light on why the approach is as such in Singapore, and how such the approach is justified.

The book's discussion on the third and final stage of construction, *viz.* application, sheds practical light on how the concepts of context and meaning are to be actually applied to a real contract. Thus, the book's stated objective in this regard is largely to discuss how contracts are to be applied in particular fact situations (at p. 493). Although the Singapore courts have not expressly identified such a third stage of the construction process, this may be implicit in their analyses. For example, it was said in *Zurich Insurance* that the interpretation of standard form contracts and documents intended for commercial circulation should generally be guided by a restrictive examination of the context. Thus, in *Ascend Foodstuff Solution Pte Ltd v. Lim Tian Sye Trading as Eng Kee Chye Huat* [2009] SGDC 31, a tenancy agreement, which is required by s. 6(d) of the *Civil Law Act* (Cap. 43, 1999 Rev. Ed. Sing.) to be in writing, was treated as a type of contract where extrinsic evidence could not be considered so readily. The District Court held that this was one type of contract where the courts "must exercise restraint in its interpretation so as not to engender commercial uncertainty and encourage pointless litigation" (at para. 35). Similarly, the Court of Appeal noted in *Master Marine AS v. Labroy Offshore Ltd* [2012] 3 S.L.R. 125 that a performance bond was a document which the court should be restrained in its examination of the external context and extrinsic evidence. Like a standard form contract, there is a presumption for these documents that all the

terms of the agreement are recorded within it. Indeed, because the purpose of such documents is to ensure expediency in payment, there is commercial sense in ensuring that the beneficiary and bank can determine quickly if the demand is valid simply by looking at the bond instrument itself, and not to the external context. While conceived as an aspect of admissibility, these decisions can easily be explained on the basis of the book's third stage of construction as well.

In summary, *The Construction of Commercial Contracts* is a worthy addition to any collection. It sets out to explain the principles of the construction of contracts, and it has certainly done so. It is certain to appeal not only to the academic searching for conceptual understanding of some of the most difficult areas of the interpretation of contracts, but also to the practitioner who seeks a quick reference to the present law. Its contributions to the scholarship in this area of law are immense, and contract scholars will certainly find its influence difficult to ignore in future works to come. While this review has concentrated mainly on the relevance of this book in the Singapore context, that is only because of the context in which this review appears, and should not be misunderstood as suggesting the book has a limited, Singaporean audience. Far from it: *The Construction of Commercial Contracts* is highly recommended to any reader interested in this difficult area of law in any jurisdiction.

**GOH YIHAN**

Assistant Professor

Faculty of Law, National University of Singapore

*International Handbook on Unfair Competition* BY FRAUKE **HENNING-BODEWIG**, ed. [Oxford: Hart Publishing, 2013 (co-published by Verlag C.H. Beck, Hart Publishing and Nomos Verlagsgesellschaft). xxxiv + 653 pp. Softcover: £214.00]

The law of unfair competition stands at the intersection between several spheres of law: these include tort law, antitrust law, intellectual property law, consumer protection law and various statutory regimes regulating specific areas of commercial conduct. Given the divergence between the legal traditions of different legal systems, particularly between the common law and civil law based jurisdictions, the organisational structure of this area of the law varies dramatically from country to country. The scope of unfair competition encompasses areas of conduct as diverse as product design, sales, advertising, marketing and other commercial dealings with a trader's competitors, customers, and parties upstream or downstream from the business. While all these legal systems recognise the importance of regulating the behaviour of traders in the marketplace to ensure compliance with their respective ethical norms of fair conduct and honesty, their individual approaches towards responding to these issues depend very much upon the architecture of their respective legal regimes.

Given the expansive scope of the types of legal prohibitions that might come under the banner of 'unfair competition'—including acts of imitation, deception, disparagement, misappropriation, misrepresentation, breach of confidence and other

dishonest or unethical commercial practices—this is an area of law that is particularly difficult to rationalise within an overarching conceptual framework. The complex nature of the subject is compounded by the fact that some segments are located within the private law realm, where enforcement relies on private actions undertaken by injured competitors, while other segments are enforced by public authorities and regulatory agencies which may be guided by consumer protection and public interest considerations. Some countries, influenced by civil law traditions, have gone down the path of regulating unfair competition by means of a general statutory clause against such conduct, such as the *action en concurrence déloyale* in France, while others have preferred to develop specific sets of rules for specific kinds of commercial conduct that might be regarded as unfair. This makes it very challenging for legal scholars from one jurisdiction to navigate through the unfair competition landscape of another, unfamiliar, jurisdiction because of the fundamentally different ways in which each country has responded to unfair competition as a legal problem. However, with the publication of this book, such an enterprise may not appear as daunting as before.

This book provides readers with a comparative overview of the unfair competition laws of 21 countries, across six continents, with substantial coverage of the relevant laws of the major developed economies in North America and Europe. An impressive array of 25 authors, including the editor of the book, have contributed to this 26-chapter volume—a distinguished group comprising senior and junior law academics, legal practitioners and researchers from all over the world. There are four main sections in the book. The first section introduces the historical roots of unfair competition law and its relationship with other more established spheres of law. The second and third sections explore the international and regional legal instruments concerned with regulating acts of unfair competition, including the major intellectual property conventions (the *Paris Convention for the Protection of Industrial Property*, 20 March 1883, 828 U.N.T.S. 305, 21 U.S.T. 1583, administered by the World Intellectual Property Organisation; the *Agreement on Trade Related Aspects of Intellectual Property Rights*, 15 April 1994, 1869 U.N.T.S. 299, 33 I.L.M. 1197, administered by the World Trade Organisation), European Union Directives (e.g., EC, *Commission Directive 2005/29/EC of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No. 2006/2004 of the European Parliament and of the Council ('Unfair Commercial Practices Directive')*, [2005] O.J. L 149/22, and EC, *Commission Directive 2006/114/EC of 12 December 2006 concerning misleading and comparative advertising*, [2006] O.J. L 376/21) and non-European trade agreements with provisions that require their signatories to address unfair competition issues. The fourth section, which comprises the bulk of the volume, contains 21 country reports which map out the relevant legal terrain in Australia, Austria, Brazil, Canada, China, France, Germany, Hungary, India, Italy, Japan, Lithuania, Netherlands, Poland, South Africa, Spain, Sweden, Switzerland, Turkey, United Kingdom and the United States of America.

There are at least three broad reasons why this book should be regarded as a welcome addition to any law library. First, it gives easy access to a wide variety of legal jurisdictions, many of whose laws are only comprehensible to those familiar

with their respective native languages, to an English-reading audience. In addition, key legal terms in French and German, for example, are identified and explained in English to give the reader a more nuanced understanding of the jurisprudential contours of these legal systems. Furthermore, each country report includes a very substantial bibliography of reference materials relevant to the unfair competition laws of that particular jurisdiction. Secondly, despite the relatively modest length of each country report, the authors have succeeded in providing the reader with a sufficiently comprehensive picture of the different facets of their respective unfair competition law regimes. General clauses in statutes are analysed alongside leading case law from national and, in the case of Europe, supranational tribunals. Activity-specific regulations dealing with diverse practices, from ambush marketing to comparative advertising, and from trademark dilution to consumer protection regulations, are also examined in some detail. Thirdly, through the first few chapters of this book, the editor has done a very commendable job of constructing a helpful conceptual and thematic framework for understanding the many different moving parts that make up the machinery behind each country's unfair competition laws. Seen through the different subject matter lenses of other adjacent areas of law—tort law, intellectual property law, consumer protection law and antitrust law—a more holistic understanding of unfair competition law emerges. Unfair competition law is presented as a legal framework supported by multiple pillars: an interest in protecting honest entrepreneurs, an interest in protecting consumers from conduct that might distort their purchasing decisions, an interest in facilitating market efficiency and so forth.

One hopes that the collaborative efforts behind this book will continue beyond its publication so that future editions of this valuable repository of legal information may materialise. Developments in the law of unfair competition should interest a wide spectrum of readers within the international legal community, including legal scholars, students and practitioners working in the fields of tort law, intellectual property law, antitrust law and consumer protection law. Should such a future edition of this book come to fruition, this reviewer would suggest the following refinement—instead of arranging the country reports alphabetically, perhaps they could be categorised according to the organisational approaches they have adopted (*viz.* 'general clause' or activity-specific rules?) towards their national unfair competition laws, or perhaps their policy attitudes (*viz.* welcoming or sceptical?) towards this frequently nebulous, and occasionally controversial, sphere of law. This could spark off further inquiry into other interesting questions relating to the similarities and differences between the unfair competition law frameworks of the jurisdictions examined—for example, do the Commonwealth countries have unfair competition laws similar to those found in the United Kingdom, or have the legal systems of the former French or Dutch colonies inherited 'French-style' or 'Dutch-style' approaches to tackling this issue? To what extent has the absence of the influence of European law affected the development of unfair competition law in these non-European countries?

BURTON ONG

Associate Professor

Faculty of Law, National University of Singapore

*Offshore Commercial Law in Bermuda* BY IAN R.C. KAWALEY, ed. [London: Wildy, Simmonds and Hill Publishing, 2013. lxxv + 626 pp. Hardcover: £165.00]

The opening chapter alone holds forth the promise of a tantalising read, unusual for a book on commercial law. It begins with an account of English adventurers bound for Virginia who are shipwrecked off Bermuda. This sets the scene for the subsequent settlement of the uninhabited islands by the British in 1609. The incident fires the imagination of the Bard. He references the “Bermoothes” in *The Tempest* (1st ed., 1623), conceiving “the islands as a place where valuable property could be safely hidden” (at p. 3). Fact, fiction and fortune are masterfully blended into a cocktail of factors explaining Bermuda’s development as an offshore financial centre. It is evident that painstaking efforts were made to create a legal work that is at once both practical and scholarly. This book rejects the patois of the commercial marketplace for a more elegant literary style which flows right through the book and lends cohesiveness to the contributions by some 25 authors. The result is a comprehensive manual for offshore business in Bermuda and one which is a reflection of the country’s sophistication as an offshore financial centre.

Ian R.C. Kawaley was appointed as Chief Justice of Bermuda in April 2012 when he also became Head of the Commercial Court, a division of the Supreme Court of Bermuda. Kawaley is not only the editor of the book; he also displays considerable academic vigour by personally authoring 5 of the book’s 27 chapters. Leading by example, he helms a formidable team of eminently qualified contributors to this work, comprising top-notch legal practitioners, economists, and private client and insurance specialists in Bermuda.

The book is arranged in four parts. Part I provides an overview of the “Legal Development of Bermuda as an Offshore Financial Centre”. Kawaley traces the historical development of offshore commercial law, offshore entities, and of Bermuda as a commercial and insurance centre right down to modern day.

Part II is entitled “Establishing Offshore Vehicles”. It meticulously sets out the menu of business vehicles available. The Bermuda offshore company and various forms of partnership structures are considered. It also explores the broad regulatory framework applicable to industries such as insurance, trust and private client, and offshore funds. For instance, the section on trusts profiles the advantages of a private trust company, highlights asset protection trusts, and also delves into the issues relating to divorce and trusts (apparently, an issue of significant interest). A few chapters are then dedicated to shareholders’ rights, minority rights, directors’ liability, arrangements, amalgamations and re-domestications. Bermuda’s established position as an international financial centre is made manifest by the numerous comparative references to either the laws or academic works of other countries.

“Commercial Dispute Resolution” issues are addressed in Part III with an analysis of the institutions involved and resolution methods available. Geoffrey Bell Q.C. provides a fascinating insight into Bermuda’s litigious beginnings and the involvement of the very top echelons of London silk in commercial litigation. The launch of the Specialist Commercial Court in 2006 was a strategic move. It brought in its wake, not only the obvious benefit of positioning Bermuda favourably *vis-à-vis* other jurisdictions, but also the spillover effect of stimulating specialisation in other areas of

law. In this third part, the exploration of the anatomy of a dispute goes all the way to considering the winding-up of companies under Bermuda's insolvency law as well as the restructuring of insolvent companies.

Part IV is entitled "Relations with the Onshore World". Bermuda is not just a denizen of a covert world of 'offshore' commercial centres. She has terrestrial relationships, obligations and accountability. Chapter 18 is the start of Part IV and contains an authoritative piece by Saul M. Froomkin Q.C. He alludes to the Group of 20's meeting in London in April 2009 which considered three lists prepared by the Organisation for Economic Co-operation and Development: a white list of 40 jurisdictions (being those who have concluded at least 12 bilateral information exchange agreements); a grey list comprising 30 tax havens regarded as eminently respectable offshore financial centres such as Luxembourg, Switzerland and Singapore; as well as a black list, comprising four jurisdictions. As Bermuda was not specifically mentioned, it piqued curiosity and begged the question as to which list Bermuda belonged. A little personal research was called for. It led to the discovery that Bermuda was on the white list. By subtle and effective implication, it placed Bermuda in a league above those in the grey list.

A substantial chapter is dedicated to "Conflict of Laws in Bermuda". Conflict of laws is a significant consideration in a multi-jurisdictional transaction but one that is oft-neglected in order to focus on domestic commercial laws. Its inclusion in this book gives international investors in Bermuda a firm grasp of the various other jurisdictions whose laws might potentially be relevant. A comprehensive survey is also made of the topics of "Enforcement of Judgments", "Judicial Cooperation in Cross Border Insolvency" and "International Treaties Relevant to Offshore Commercial Law in Bermuda".

The penultimate chapter of Part IV raises a delicate issue for lawyers in several offshore jurisdictions—"Establishing Ethical Parameters for an Offshore Legal Practice". The offshore world has suffered from bad press. Public perception of offshore centres has been blighted by Somerset Maugham's allusion to a "sunny place for shady people" (*Strictly Personal* (1941) at p. 156) and movies depicting criminals, Wall Street honchos and politicians squirreling their ill-gotten gains in offshore accounts. It was therefore refreshing to see ethics and "International Treaties" being mentioned—the message is clear: Bermuda is open for offshore business but she is equally open about her international obligations and intention to honour those obligations. Kawaley makes a compelling nine-point "Conclusion". He speaks of a "patchwork quilt of legal rules which has a strong British thread running through it, but which has been woven together by artisans from almost every corner of the globe before being wrapped in a Bermudian flag. This quilt can, unsurprisingly, be comfortably donned by the highly cosmopolitan clients of the jurisdiction, who create Bermudian companies, partnerships and trusts although they hail from the Americas, Asia, Europe and, increasingly, the Middle East and Africa as well" (at p. 604).

This book, with its thorough attention to detail, is a handbook for those involved in advising clients about offshore jurisdictions. It recommends Bermuda as an international financial centre of choice because of the clarity with which quotidian issues

are both identified and addressed. It also creates a framework for analysing and comparing other offshore jurisdictions to Bermuda.

**LEENA PINSLER**  
Adjunct Associate Professor  
Faculty of Law, National University of Singapore