Conclusion

This book will not rival in popularity important English textbooks in fields such as torts or contract. *Treitel on Contract,* 7th ed, 1987, is one of the most successful of these, for it has attracted a large readership not just in England and throughout the common law world, but even in civil law countries. *Remedies for Breach of Contract* will appeal to a more specialised readership: academic comparative lawyers and their students, law reformers, legal experts from the various countries covered who happen to make remedial problems in contract the subject of their particular interest.

Yet this book is no less significant a contribution than *Treitel on Contract* for it represents an important step on the road to the development of a common European jurisprudence in the field of private law and of commercial law in particular. Even if the unification of the private law in Europe and in the world at large cannot be expected within any foreseeable time span, special international reform measures of the kind exemplified by the Vienna Convention for the International Sale of Goods and even reforms confined to national systems can expect to benefit very greatly from the painstaking work which Treitel has undertaken.

H κ LÜCKE

Contract Law Today/Anglo-French Comparisons, Donald Harris, Denis Talion (eds), Oxford University Press, 1989, 414 pp, A$130, ISBN 0-19-825593-4.

Two of the most exciting developments in Europe are at present the establishment of a single market in the European Economic Community by the end of 1992 and the end of socialism in Eastern Europe. At first sight, these developments may have little to do with contract law. The single market will not necessarily bring about a uniform law of contract. Even in federal states like Australia, Canada and the United States, the law of contract varies from province to province, from state to state. Nor did liberalisation of Eastern Europe lead to great changes in the law of contract, so far. But at second thought, the consequences of both developments for contract law are stupendous. Eastern European states are at the moment desperately in search of new legislative framework to accommodate the liberal market economy. This will result in new regulation of economic contracts. In the EC, the establishment of a single market will increase the need for harmonisation and unification of contract law.

A major stumbling block on the road to such harmonisation is the lack of uniformity of concepts between the various jurisdictions within the EC. In the first place, there is the Great Dividing Range between the common law systems of England and the Irish Republic on the one side of the Channel, and the civil law systems on the other (Scotland complicates this metaphor somewhat). *Contract Law Today / Anglo-French Comparisons,*

edited by Donald Harris and Denis Talion, tries perhaps not to bridge this Channel, but rather to provide a Channel underneath, enabling the reader to take a look at the other system from within. But before turning to the book, let met put it in one more perspective. What perhaps is not always appreciated by common lawyers, is the lack of uniformity between the various civil law systems. The French and the German approach to legal problems are not only quite apart, but the legal terminology employed is also different. And even where the terminology at first seems the same, the meaning of the various key words such as contract, family, property, tort or **'cause', 'enfant** naturel', 'faute' and 'propriété', soon comes out to be different. Whenever harmonisation is to be considered, these differences in terminology will first have to be clarified.

This being said, there is no doubt that the major distinction in Europe, and as far as I can judge in the world, is still the one between the common law and the civil law. England and France epitomise these 2 great legal traditions. In order to appreciate their differences in method — and their resemblances in outcome — a comparison between the contract law of England and France is particularly appropriate.

This book deserves a wide audience. The regular comparative law book is often written from one point of view only or suffers from superficiality. David's celebrated *Major Legal Systems*, despite Brierly's influence, remains a civil law book, which is not easy reading for the common law student — as I found out when teaching comparative law **at** the University of Sydney in 1990. A volume of national reports on a specific subject often suffers from the fact that the contributors have not been able to immerse themselves in the other legal systems treated in the volume.

This book does not suffer from either of these problems. Its authors include some of the major contract lawyers of England and France, who in no less than 8 three-day conferences had the opportunity to discuss its various chapters. The editors would have preferred a more **extensive** preparation, which would have allowed them a more informed choice. However, their choice has resulted in a well balanced book. The subjects which they selected are the binding nature of contractual obligations, **the** domain of contract, the **pre-contractual** obligation to disclose information, the effect of changes in circumstances on long-term contracts, remedies, and — perhaps somewhat unexpectedly — the distribution of cars: a complex contractual technique.

When I first read this book 4 years ago — the French edition was published in 1987 — I much admired its approach. Rereading it in the English version late in 1990, my admiration has only grown. In the following paragraphs, I will try to give a brief description of the various chapters.

Under the heading 'The Binding Nature of Contractual Obligations', P S Atiyah in ch 2 repeats his well-known challenge ('The Rise and Fall of Freedom of Contract') of the traditional theory of contractual liability as based upon the agreement of the parties. On the basis of Fuller's article on 'The Reliance Interest in Contract Damages', **(1936, 1937)** 46 *Yale Law Journal* **52, 373,** Atiyah argues that the protection of reliance has

changed the map of contract law. G Rouhette, equally famous in the French speaking world for his determined attack of the principle of the autonomy of the will, tries to debunk the myth of the supposed supremacy of the said principle.

In ch 3 on 'The Domain of the Contract', B Rudden and C Jauffret-Spinosi discuss some quite distinct problems. The first is the demarcation line between contract and non-contract, which may arise if parties do not wish to be legally bound, or are in a pre- or post-contractual phase. The second problem is the demarcation between administrative and private contracts.

A major difference between the 2 systems comes up with regard to 'The Pre-contractual Obligation to Disclose Information' (ch 4). Whereas J Ghestin finds a trend in French law towards an obligation to disclose, B Nicholas finds no such trend in English law. It might have been interesting if the authors had included references to the debate on this question which is currently going on in Law and Economics circles. There, on the one hand, it is argued that an obligation to disclose one's available information renders the gathering of such information economically unsound. On the other hand, disclosure of information would seem to make contracting more efficient.

Another difference, this time with England taking the lead, becomes apparent in ch 5 on 'The Effect of Changes in Circumstances on Long-term Contracts'. English law, as set out by J Bell, has developed the doctrine of frustration to deal with the effect of changes in circumstances, whereas France has limited the domain of this doctrine to administrative law, as explained by I de Lamberterie.

Yet another point of difference is that of 'Remedies' (ch 6). As D Talion observes in his contribution to this chapter, the whole notion of remedies is alien to the French. Both his paper and that of A Ogus concentrate on the issue, whether or not creditors have the choice between specific relief and monetary compensation or not. Traditionally, English law is very reluctant to provide specific relief, whereas in French law specific relief is considered the most natural remedy. In French civil law, that is, for as Talion points out this is different in French administrative law. In explaining the English position, Ogus takes some knowledge of the common law for granted. It is, however, to be doubted that all non-English readers will immediately grasp the meaning of concepts such as a 'Mareva injunction'.

As I mentioned above, the choice of ch 7, 'The Distribution of Cars: A Complex Contractual Technique', may leave some readers a little puzzled. However, the subject is well chosen for at least 2 reasons. First, it establishes a link between the law of contract and trade practices law. Secondly, it serves to illustrate the role which European law does already play at present. This chapter once more illustrates some fundamental differences between French and English law, notably with regard to the impact of the law on practice. This chapter is also interesting, since it shows how the English authors, in the absence of an abundant case law and regulation, take a more empirical approach to their subject.

The book concludes that the 2 legal systems compared are both very close and very different. Many are the false similarities and false approximations. However, some traditional contrasts, such as the one relating to administrative contracts, are exaggerated. The book draws 3 categories of conclusions. The first category is that of the different scope of contract in England and France (where agency, employment contract and trust will be treated under this heading) and of public versus private law. A second category of conclusions relates to the attitudes of lawyers. The study shows that whereas French law gives greater weight to evaluating the behaviour of the parties, English law is primarily interested in the exchange of economic value. Secondly, French lawyers think in terms of rights, English lawyers in terms of remedies. Thirdly, the book concludes that English lawyers use arguments based on the consequences of rules, whereas French lawyers explain rules by reference to general principles. In a third category of the institutional context finally, the book shows, surprisingly perhaps for the common lawyer, the far greater number of reported cases in France and the different function of French courts, as compared with England.

It would not be difficult to have opted for other subjects. Intention and certainty, offer and acceptance, consideration and estoppel, writing and capacity, conditions, warranties and terms, fitness of goods and services, exclusion and exemption clauses, risk, delivery and payment, mistake and misrepresentation, duress and illegal contracts (the examples are taken from Whincup's *Contract Law and Practice,* Deventer, 1990) might equally well have been singled out. The choice for the topics included in this book however does provide sufficient proof for the conclusions set out above.

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