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Russell on Arbitration (21st ed.)

The Rt Hon. the Lord Hacking

"No apology is needed for the fresh appearance of a standard textbook. Law, like a never-ending stream, bears all its editions away" wrote Anthony Walton in his Preface to the *Seventeenth Edition of Russell on the Law of Arbitration*. In the task which faced the new editors of *Russell*, David Sutton, John Kendall and Judith Gill, no apologies are needed for their decision to sweep away the texts of all earlier editions of this important work. After the enactment of the Arbitration Act 1996 which largely, but not completely, codifies English arbitration law, the new editors of *Russell* had no choice but to rewrite the book from end to end. I believe they have excelled in their task and yet I much miss Anthony Walton's whimsical exposition of arbitration law and all those quotations which, by the time he reached his last edition in 1982, were everywhere... in his Preface, in chapter heads, or just popping out of the text of the book. I was never quite sure whether the author and his readers were getting off on the right foot in the quotation which opened Chapter 1 of several of Anthony Walton's editions, "Honest men dread arbitration more than they dread law suits" but this, and much else in Anthony Walton's writing, added colour to *Russell*. When settling down to a book it is always a great pleasure to hear the author's voice. Though we have now lost the voice of Anthony Walton it is nice to have new voices in its place. I do not know all of the new authors well enough to hear their voices in the new text but I certainly know one author well enough to hear the voice of "immediately springing to mind"!

The fact is that this new edition of *Russell* is a superb book. It has a logical sequence from its beginning to its end. It is well written and presented in short lucid paragraphs. What is arbitration? What are its sources? What are its advantages and disadvantages? The scene is well set in Chapter 1: I thought the chapters on the constitution of the arbitral tribunal (Chapter 4) and upon the conduct of arbitrations (Chapter 5) were particularly good. They, like so much of the book, are full of practical advice. How do you find suitable candidates for arbitral appointments?

What is the selection process for arbitrators in institutional and non-institutional arbitrations? This edition of *Russell* is magnificently brought together as a practical textbook for practitioners. This is not to state that we will not still want to stretch our hands out to the scholarship and philosophy of arbitration in *Mustill & Boyd* nor to study the valuable commentary in a number of other arbitration publications which are available to us. They are all, however, newborn babies to *Russell* which is within 18 months of its 150th birthday!

Added to its orderly presentation is the appearance of checklists as we go through each stage of the arbitration process. It also makes the useful suggestion, on page 221, to the arbitral tribunal, which is seeking to tailor its procedures to the case before it, that it is not a bad start to use section 34(2) of the Arbitration Act 1996 as its checklist! I like too the Appendices beginning with a Glossary. I think it is sensible to include the text of the Arbitration Act 1996 and the Statutory Instruments bringing it and the Rules of Court into force (Appendix 2) but I question whether we need to have the texts of the Arbitration Acts of 1950, 1975 and 1979 in Appendix 3. Perhaps they can be dropped from the next edition. It was good to have the section on statutory arbitration taken out of the text and placed into Appendix 4. I particularly enjoyed, remembering the debates over whether we should adopt the UNCITRAL Model Law, to be able to identify in Appendix 5 the most significant impact of the UNCITRAL Model Law on the Arbitration Act of 1996. A reviewer, if for nothing else to show that he has diligently applied himself, likes to come up with some substantive points of criticism. Every so often I thought I found one. It seemed to me, for example, *Drummond v. Hamer* should not any longer be good law after section 17 of the Arbitration Act 1996 had improved the process in which a party-appointed arbitrator can become the sole arbitrator. Alas, the new editors of *Russell* were correct to recite *Drummond v. Hamer* on page 132. There is no way around the rather formal procedure which section 17 retains from section 7 of the Arbitration Act 1950. I am uncomfortable that there should still be different tests upon whether the court will grant leave to appeal depending on whether the arbitration arises out of "a standard form contract" or out of (as termed during the passage of the 1979 Act) the "one-off contract". As a matter of law, there is no logic in this distinction—any more than there was logic in the creation of the "special category disputes" in the 1979 Act. It was, of course, a compromise which enabled the 1979 Act to obtain the support it needed to get on to the statute book. In its commentary on section 69 the DAC Report, in my view rightly, does not identify different treatment for arbitrations arising out of "standard form contracts" or "one-off contracts". As Lord Diplock concedes in *The Nema* and *The Antalos*, there could be circumstances when a point of "general public importance" arises in a "one-off contract". It is only here that I differ at pages 430 to 432—and only slightly—with the editors of this new edition of *Russell*. For the rest, I must therefore content myself in pointing out to them a few errors in the footnotes!

So it is that this excellent new edition of *Russell* has "borne the earlier editions away". But the editors have achieved something which is rather remarkable in this age. Anthony Walton's last edition did its work over 453 pages. The new editors have done their work over 455 pages. Not bad, when I look around my bookshelves and observe almost every book to which I have subscribed since I began practice of the law has quadrupled in size. *Russell* can still be held in one hand and slipped into a briefcase. Well done David Sutton, John Kendall and Judith Gill!