INTERNATIONAL CONTRACTS: THE LAW AND PRACTICE OF INTERNATIONAL CONTRACTS. By A.E. Karmali and N.R. Kantawala, 1977. N.M. Tripathi Pvt. Ltd., Bombay. Pp. xxx+449. Price Rs. 80.

WITH THE rapid industrialisation of the countries of the globe, tremendous development in the communication system, development of specialized techniques and know how, and also with the shift from archaic *laissez-faire* era towards a social welfare state, a large number of commercial transactions are entered into for the promotion of commodities in order to meet the human needs. A large number of commercial contracts in the international community are entered into because "we seem to have steadily moved towards a phase of social order in which all these relations arise from the free agreement of Individuals."[1] The reasons for the immediate result of the agreement is due to the fact that the "movement of the progressive societies has hitherto been a movement *from Status to Contract.*"[2] And, "for a developing industrial society contract supplied the legal instrument which enabled men and goods to move freely."[3] Thus, the contracts raise complex as well as multiple problems in the international commercial society pertaining to the proper laws as applicable to the formation of the contracts—their interpretation, perfomance, discharge, *etc.* These problems do arise because the different men with different notions and interests come in conflict and contrast with different municipal laws. Moreover, code of conduct has not evolved till now in this field. A.E. Karmali and N.R. Kantawala[4] have rightly prefaced :

> International contracts ... its principles and application assume far greater importance in the modern world of International Commerce and industry than ever before. Complex situations arising out of International Contracts between foreign parties raise various intricate questions which need careful study.[5]

There is a dearth of literature in the pedagogy of international contracts, a branch of conflict of laws. Since the publications of *International Contracts* by G.C. Cheshire in 1948 and *Principles of Conflict of Laws and International Contracts* by R.H. Graveson in 1951, there has not appeared any book on the subject in depth. The book under review by the authors, who are advocates of long standing, has undoubtedly enriched the conflict of laws jurisprudence. The book, therefore, must be rated as a worthy

1. Sir Henry Maine, From Status to Contract, extract from Maine, *Ancient Law* 99-100 (1917) in Vilhelm Aubert (ed.), *Sociology of Law* 30 (1969).
2. *Id.* at 31.
3. W. Friedmann, *Law in a Changing Society* 89.
4. A.E. Karmali and Kantawala, *International Contracts* (1977). (Hereinafter referred to as *International Contracts* or the book under review).
5. *Id* at viii, preface.

contribution to the conflicts of laws jurisprudence in general and to the law and practice of international contracts in particular.

The book under review is divided into five parts. Part I of the book is entitled "The Law of International Contracts" and is divided into thirteen chapters. Under chapter 1 the authors have discussed the significance of international contracts which have

> opened up wide vistas for the application of the law of international contracts to transactions occurring almost at every moment of time in the different parts of the countries of the globe....The application of international contracts to every day economic and commercial life of the countries of the different parts of the world will at once go to emphasise that its importance is of great practical utility and benefit.[6]

Varied and complex difficulties do arise in the nature of international contracts because they are inherent and apparent in their "application to different aspects and various facets of the economic and commercial nature of the international trade transactions".[7] The authors have raised the following problematic and intricate queries in the study of the subject under review:

—What are the principles which govern the formation of an international contract ?

—What is the nature of an international contract ?

—What principles govern an international contract when entered into between two nationals of different countries ?

—What law will be applicable in regard to the formation of international contract ?

—What will be the law which will govern the parties in regard to the sale of an immovable property ?

—What will be the law which will be applicable in regard to the sale of movable property ?

—If there is a sale of a patent, by what law will the international contract be governed or in regard to the sale of an assignment of a patent ?

—What will be the principles to govern an international contract regarding the contract of insurance, or in regard to negotiable instruments, or in regard to marine insurance, or in regard to carriage by air, carriage by sea, or in regard to the sale of goods between persons of two different countries ?

—What are the basis for an action for damages for breach of an international contract, or in what cases an international contract is rendered infructious and can be avoided on account of commercial frustration ?

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6. *Id.* at 1.
7. *Ibid.*

—When does an international contract be discharged by performance ?
—What are the basis and principles governing the discharge of an international contract on account of illegality ?
—In what manner are the principles of conflict of laws applicable in regard to an international contract ?
—What is quantum of damages that may arise in regard to breach of an international contract ?
—In what manner is a contract rendered frustrated on account of circumstances beyond the control of parties, *e.g.* war, *etc.* ?
—What are the conventions which affect international contracts ?
—What are the trade practices and wages recognised by the international business community ?
—What is the law in regard to special contracts which affect nationals of different countries ?
—To consider the questions such as *lex contractus, lex solutionis,* and *lex monatae, lex situs, etc.*

The choice of the subject (as it would be evident from the above scheme) is highly appreciated since the literature on the law and practice of international contracts has been in a state of utter dissatisfaction, and, therefore, needs continuous endeavours as well as conscious efforts to make it to come of age. The queries raised above are penetrating. The authors have succinctly discussed these fascinating as well as interesting questions with an argumentative vigour (as a votary of law ought to have done) in the following chapters (chapters 2 to 13[8]) of this part. Reliance on foreign case law has been made critically. The discussion in almost all the important cases is stimulating and penetrating, and their impact assessed in a scholarly manner. Though the authors have taken meticulous care for every detail yet they have ignored the presentation of the recent case-law, and the citation of the studies conducted by the 'Banking Laws Committee[9], on the subject. Probably it is because of the following of the conceptual framework of inquiries of Cheshire and Graveson. It is hoped that the authors would include the discussion in the next edition of the book.

.Foreign Corporations play a vital role in international contracts. The nature of foreign corporations, the capacity in which services may be effected on foreign corporations in regard to claims for and against dissolved foreign corporations, and winding up of dissolved foreign corporations may give rise to international claims. International claims may give rise to delictual liability, *i.e. ex-contractu* or *ex-delicto.* In the light of this important development the authors have given a discursive consideration to the subject of foreign torts in chapter 12.

The final chapter (chapter 13) briefly evaluates the application of the doctrine of *renvoi* in the execution of international contracts. The authors

8. *Id.* at 13-153.
9. Appointed by the Government of India.

have unhesitatingly relied on the discussion on the theories of the doctrine of *renvoi* as propounded by Cheshire[10] and Graveson[11]. The authors have concluded the consideration of *renvoi* in the words of "an eminent jurist" Graveson:

> There is no legal reason to prevent a court applying the doctrine to any question in the conflict of laws in which its application would lead to a just and convenient decision. It would be difficult to exclude the doctrine if parties to a contract, in expressly choosing the proper law, made clear that it was to include that system's rules of private international law.[12]

It seems that the authors have better realised :

> To borrow from the sobering words of an international lawyer,[13] writing in terms of his own discipline :
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> > To be sensitive on *principle* to intricate interconnections, proportionality, reciprocity, secondary effects and conflicts of values, one ought not to shrink from "relativizing" even the values held by the contextualist....[I]n a world of ideological confrontation and nuclear suspense international lawyers might do well to curb their zeal, contract their horizons, and Think Small.
>
> What follows is an attempt to "Think Small" in the realm of choice of law policy and method.[14]

However, a candid exercise is expected from the authors in the next edition of the book keeping in view the following observation made in regard to the doctrine of *renvoi* pertaining to international contracts in particular, (anyway, the present reviewer restrains himself from making any assessment on the observation herein) :

> ... the various legal standards involved in a conflicts situation should be evaluated and rated in terms of their relative progressiveness, soundness, fairness and societal vitality.[15]

In parts II to V of the book under review the authors have simply reproduced the bare texts of the international conventions; international trade documents; practices and usages as recognised by the International

10. Cheshire, *Private International Law* (9th ed., 1974).
11. Graveson, *Conflict of Laws* (7th ed., 1974).
12. *Supra note* 4 at 152-53.
13. Lipson, International law, in 8 *Handbook of Political Science* 415, 438 (1975).
14. Anos Shapira, "Grasp All, Lose All" : On Restraint And Moderation in the Reformulation of Choice of Law Policy, 77 *Columbia Law Rev.* 248 at 255 (1977).
15. *Id.* at 252.

Economic Community, precedents, text of statutes—English and Indian appertaining to the nature and scope, modes and manners of contracts. The authors have nowhere in the book discussed the significance or practice of these provisions in the Indian perspective. The utili and critical evolution of these provisions cannot be overemphasised from the Indian perspective. The critical evolution of any legal system in Indian context is the need in the developing ambit of legal education in India. To quote :

> Unhappily, we have to note ... that the Bar and the Bench have been generally immune to what Cheshire called 'the fatal fascination' of the subject. Owing perhaps to a lack of suitable text-books on Indian conflict law and inadequate indexing of cases in the leading law reports, many useful decisions over the past quarter century given by Indian courts (and juristic commentation thereon) are not even referred to. English decisions are being referred to, but only through headnotes or through summaries of the main principles afforded in leading and authoritative, English treatise on conflict of laws....
>
> The real problem seems to be that there are very few lawyers interested or competent in the subject; and, what is worse, the number of academic specialists in the subject is pitifully small. The latter has the consequence far more fateful than the present professional illiteracy of the Bar. Unless a whole generation of students is trained soundly in the substantive domain of conflicts law, the development of conflicts jurisprudence in this country will continue to be retarded. Law schools in India may well consider making instruction in the subject *with adequate reference to Indian materials* compulsory, rather than optional. Of course, similar demands can be made for other subjects; but it remains incontrovertible that conflict of laws is among the last developed subjects in India.[16]

It is hoped that in the next edition of the book the authors would, in the light of the above observations, make necessary improvements to make the work more useful and to ensure to "make the rule of law serve the rule of life"[17] in the developing society wherein the contracts are "affecting human lives in multifarious ways."[18]

In the views of the present reviewer the price of the book may be inhibitive to a large number of persons who might be interested to purchase the book.

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16. Upendra Baxi, Conflict Of Law, IX *A.S.I.L.* 507-08 (1973).

17. Justice V.R. Krishna Iyer, U.G.C. Workshop on Legal Education, Chandigarh, 1976, p. ix.

18. *Supra* note 16 at 508.

The above discussion does not belittle the intrinsic merits of the book under review. Anybody looking for the fundamentals of the law and practice of international contracts will find it of immense use. The present reviewer commends the study of this important work to lawyers, law-teachers, law-students, and law-researchers alike. The style of presentation by all standards is lucid and excellent. A study of this work is not simply useful for the specialist but also for those whose interests are controvertible in multifarious ways in the transaction of international contracts in varied aspects.

A table of cases and an index are of immense use to all those who are interested in conducting further studies on the topic. However, the wanting of a fairly exhaustive bibliography does not lessen the utility of the book. But if it were there it would have been an added attraction.

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