BOOK REVIEW

BUSINESS ARBITRATION — WHAT YOU NEED TO KNOW — by Robert Coulson. New York. American Arbitration Association, 1980. 151pp. Price US$5.00.

The aim of this slender book is to provide a handy guide to commercial arbitration procedure for the use of arbitrators as well as businessmen and their lawyers. The author emphasises the simplicity, informality, privacy and above all the promptness of arbitration, as a method of adjudicating disputes in contrast with the complexity and dilatoriness of the judicial machinery, quoting statements from President Carter ("the judicial system is heavily overburdened with excessive civil law suits") and Chief Justice Burger ("we must in the public interest move towards taking a larger volume of private conflicts out of the courts and into the channels of arbitration") in support.

After outlining the basic principles, explaining "arbitration clause" and "submission agreement" in simple and straightforward language the book sets out the steps to be taken: initiation of the arbitration process, selection of the arbitrator, preparation for the hearing and presentation of the case. It also discusses briefly evidence and proof, the limits of the arbitrator's authority, the conduct of the hearing and the essential elements of the award. In subsequent chapters detailed descriptions are given on arbitration in the textile industry, in the construction industry and in what is called the "casualty industry", that is, insurance claims for motor car accidents.

Naturally, arbitration is examined in the context of the American business world as conducted under the commercial arbitration rules of the American Arbitration Association. The full text is given of the general commercial arbitration rules, the rules relating to the specific industries mentioned, together with the Code of Ethics for Commercial Arbitrators, the United States Arbitration Act and the Uniform Arbitration Act. These are, no doubt, most convenient to American arbitrators, but persons connected with arbitration in other English-speaking countries must treat them with caution and bear in mind the provisions of their relevant statutes.

One of the most significant differences relates to the role of the courts in respect of awards. In the United States the award should be the "end of the road" disposing the issues conclusively as "final arbitration is not compatible with judicial review". The author adds that "an occasional mistake . . . is the price that must be paid for a healthy system of binding arbitration". Judicial review, nevertheless, is possible but it concerns itself only with defects in the procedure, not with the evidence or the merits of the case. An award may be vacated on grounds stated under three broad headings: (a) arbitrator's misconduct, (b) the arbitrator acting in excess of authority, and (c) his failure to meet statutory requirements of due process, for example contravention of public policy, violating criminal law or granting punitive damages.

A competent court may also modify an award if (1) there was a miscalculation of figures or a mistake in the description of any person, thing

or property referred to in the award; or (2) the arbitrators have made an award upon a matter not submitted to them and the award may be corrected without affecting the merits; or (3) the award is imperfect in a matter of form not affecting the merits of the controversy.

Although the grounds are narrowly drawn, the earlier statement of the author that the award is not subject to judicial review does not quite stand up. It may, however,be true that there are relatively few motions to vacate or modify awards, "because commercial arbitrators do not write opinions explaining the reasons for their decision" and therefore any "undisclosed error of judgment is . . . virtually immune from attack". The view expressed in *Wilkins* case, 169 NY 494, 62 NE 575, in the following words:

> Where the merits of a controversy are referred to an arbitrator . . . his determination either as to law or the facts is final and conclusive . . . [it] cannot be set aside for mere errors of judgment, either as to law or as to the facts.

In England, Australia and New Zealand under the relevant statutes (Arbitration Act 1950 (UK); Arbitration Act 1902-1970 (NSW); Arbitration Act 1891-1934 (SA); Arbitration Act 1958 (Vic); Arbitration Act 1908 (NZ)) an application to remit or set aside an award can be made to a court of relevant jurisdiction, in New Zealand the High Court. An award may be remitted for reconsideration if (a) there is defect or error patent on the face, or (b) error in the facts or as to the principle on which it is based, or (c) material evidence has been discovered after the making of the award, or (d) misconduct on the part of the arbitrator. The grounds for setting aside an award are either that (1) the arbitration or the award has been improperly procured by deceiving the arbitrator or fraudulently concealing material evidence, or (2) the arbitrator misconducted himself.

The main difference, in contrast to the American system, is that English, Australian and New Zealand courts have power to set aside an award for error of law appearing on the face of it, though this jurisdiction will not lightly be exercised: *Gunter Henck* v *Andre & Cie SA* [1970] 1 Lloyd's Rep 235. In the view expressed by the New Zealand Supreme Court it must plainly appear on the face of the award that the arbitrator has wrongly decided a question of law: *NZ Insurance Co Ltd* v *Pihema* [1967] NZLR 285; *Wellington City* v *National Bank of New Zealand Properties Ltd* [1970] NZLR 660. To avoid mistakes in New Zealand an arbitrator may, and if directed by the court must, state a special case: *Re an Arbitration, Broughton and Renown Collieries Ltd* [1941] NZLR 227.

Returning to the book, special attention should be drawn to chapter 5 dealing with international arbitration. Persons involved in any commercial disputes between traders in different countries will find it a valuable introduction to the "smorgasbord of systems" that operate in the world, and the list of major arbitral institutions may help them to establish the required contacts. It will still be necessary, however, to go further and to study the relevant international conventions and arbitration agreements. The bibliography following the chapter sets out the most important publications relating to this topic.

From the point of view of a New Zealand arbitrator the most useful parts of the book are chapter 1, setting out the basic steps to be followed in arbitration proceedings together with the checklist on page 127 which

gives a brief summary of the same, and chapter 5 dealing with international arbitration. The other chapters are orientated to specific industries in America and their applicability in New Zealand is questionable. Chapter 4, "Automobile Injury Claims", especially the paragraph on uninsured motorist claims, has no relevance at all, but it may be of interest to students of comparative insurance and tort law.

All in all, subject to the warning already given that the relevant differences in law should always be borne in mind, the book can be of some help to persons involved in commercial arbitration proceedings.

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