system. There are too many examples of "mistakes" and of trials miscarrying because of the way the media has influenced the public and in particular the jury. Time for an inquiry which would focus attention on the problem? I think so.

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Review of Marcus S Jacobs, *International Commercial Arbitration in Australia: Law and Practice*, 2 Loose-leaf Volumes, Sydney: Law Book Company, 1992. $490.00 plus costs of updates

International arbitration is now a very important topic. Arbitration is fast eclipsing litigation as the preferred method for the resolution of international commercial disputes. The appearance of a two volume loose-leaf service devoted to *International Commercial Arbitration in Australia* by Marcus S Jacobs QC is therefore a matter of great interest. Its publication is certainly timely. Volume 1 of the work consists of text comprising some 47 chapters examining various aspects of international arbitration. Volume 2 contains primary materials - namely, the Australian legislation and rules of international arbitral organisations.

Despite the timely appearance and impressive size of the work, this reviewer is disappointed with the content, particularly of Volume 1. My overall impression of this volume is that it is largely a compendium of quotes from other sources. In places it appears to be little more than a digest of the views of others and it lacks coherence, fluency and consistency. The organisation of chapters, and parts of chapters, is at times confusing. Many of the references are to materials from overseas. This, by itself, is certainly not a criticism in a work dealing with international arbitration but there are many Australian sources, both secondary and judicial, which are not included. This is surely an omission in a book dealing with international commercial arbitration in *Australia*. The author appears overawed by the views of others. There is too little "Jacobs" and too much quotation from those who have written before.

My reservations commence with the Preface. The author tells us that the law of international commercial arbitration in Australia was "dramatically transformed" when the Commonwealth Parliament passed the International Centre for the Settlement of Investment Disputes ("ICSID") Implementation Act 1990. While Australia's accession to the Washington Convention was undoubtedly a step forward, it is surely going too far to describe it as a "dramatic transformation" of the relevant law in Australia. There have been relatively few arbitrations under the auspices of the Washington Convention. The enactment of the UNCITRAL Model Law, which provided a new international law for domestic arbitrations in Australia, was much

more significant.

Chapter 1, the introduction, is an unusual mixture of various unrelated topics. On pages 551 to 553, there is a discussion of "arbitration versus litigation in international commercial dispute resolution". One of the arguments asserted against international commercial arbitration by the author relates to enforcement problems. But I would have thought that if there was one factor above all others which has made arbitration more popular than litigation it is the fact that arbitral awards are much easier to enforce internationally than court judgments. Both the New York Convention and the ICSID or Washington Convention have been ratified by over 80 countries. In consequence, arbitral awards are readily enforced internationally. There is no convention providing for the international enforcement of court judgments which comes close. Immediately after dealing with enforcement problems, Mr Jacobs sets out arguments in favour of international commercial arbitration. He refers to an article by R J Graving, "The International Commercial Arbitration Institutions: How Good a Job are they Doing?" ((1989) 4 American University Journal of International Law and Policy 319 at 325) which adverts to the ease with which arbitral awards are enforced internationally by virtue of treaties. This is precisely the point.

A whole chapter, albeit a short one of only four pages, is devoted to a comparison between ad hoc arbitrations and institutional arbitrations. The discussion is superficial; one wonders why it was graced with a chapter of its own.

Chapter 3 is entitled "Relevant Legislation and International Conventions". One would imagine this to be a major chapter of some length. It is but nine and a half pages. Some of the topics included in this chapter are surprising. Why, for example, is "proof of foreign law" included in it?

Chapter 4 is entitled "International Institutional Arbitration Associations (including the UNCITRAL rules)". There is a reference to many of the international arbitration institutions and all those active in Australia. But there are some important omissions such as the Singapore International Arbitration Centre.

The scope, formal requirements and validity of arbitration agreements form the subject of Chapter 5. The determination of the scope of an arbitration clause is an important topic. Mr Jacobs refers to numerous American authorities but to only one Australian case - *Tanning Research Laboratories Inc v O'Brien* (1990) 61 ALJR 211. However, there have been many Australian cases concerning the scope of an arbitration agreement and it is surprising that these are excluded. Relevant decisions include *White Industries v Trammel* (1983) 51 ALR 779 and *Allergan Pharmaceuticals Inc v Bausch and Lombe Inc* (1985) ATRP 40-636.

On pages 1875 to 1876 Mr Jacobs discusses section 9 of the Commonwealth Sea Carriage of Goods Act 1924 which makes certain arbitration agreements void. Incidentally, the heading employed by him is confined to "section 9(1)" of the Act, though the first case discussed deals with section 9(2). No reference is made to the more recent legislation, namely, the Commonwealth Carriage of Goods by Sea Act 1991 which repeals the 1924 legislation.

Chapter 8 deals with the enforcement of arbitration agreements. On page 2512 the author deals with stays under section 7 of the Commonwealth International Arbitration Act, implementing the New York Convention. Section 7(1)(a) provides for a stay where the curial law of the arbitration is that of a convention country other than Australia. In the discussion the author refers to the curial law and also to the

arbitration rules of international arbitral associations. The latter is a surprising inclusion because arbitration rules do not have the force of law and are not relevant for the purposes of section 7(1)(a) of the Act.

The top of page 2513 reproduces the rule contained in section 7(2)(d) of the Commonwealth International Arbitration Act. This provision was considered in *Elders CED Ltd v Dravo Corp* (1984) 59 ALR 206, although the author does not refer to it. Later in the work the case is cited in another context, but it is strange that it is not even acknowledged in a footnote at this point. The discussion in the rest of the chapter is at times superficial and disjointed.

On pages 2571 to 2577, the author discusses "arbitrability of a dispute". There is scant reference to the numerous Australian cases which touch upon the issue of the arbitrability of trade practices matters. This is an important omission.

The brief discussion of the determination of the proper law of the main contract (page 2812) leaves much to be desired. The author's statement that "the draftsperson must bear in mind that the parties' choice of proper law also includes the mandatory rules of the legal system chosen" is so obvious as not to need restatement. The interesting and fascinating question, which is not discussed, is whether the mandatory rules of another legal system apply in addition to the law designated by the parties.

In paragraph 9.70 (page 2814), the author suggests that parties choosing the proper law are free to exclude aspects of the proper law. The author cites in support of this view the classic work by Craig, Park & Paulsson on *International Chamber of Commerce Arbitration* (2nd ed, New York: Oceana Publications, 1990). It is doubtful, however, whether his view reflects either Australian law or English law.

In this reviewer's opinion, *International Commercial Arbitration in Australia* is a disappointing work. It is disjointed, poorly organised and, at times, little more than a compendium of cases and articles. However, even in this respect, I believe it cannot be relied upon because a number of important Australian cases are not referred to in the appropriate places.

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Review of J O'Donovan, *Company Receivers and Managers* 2nd edn, Sydney: Law Book Company, 1992. $275.00 plus cost of updates

Practitioners in the fields of corporate finance, insolvency and receivership will welcome Professor O'Donovan's second edition of *Company Receivers and Managers*. Since it first appeared in 1981 it has become the standard text in Australia for