BUTTERWORTHS BANKING AND FINANCIAL LAW REVIEW 1987. By Loo Choon Chiaw (Ed.). [London: Butterworths. 1987. xxxvii + 327 pp. Hardcover £64.00.]

THE horizons of banking and financial law have rapidly expanded in recent years partly because of the innovation of bankers and the development of transborder securities and banking transactions. Bankers, lawyers and other practitioners in this field can no longer rely exclusively on standard practitioner texts such as Paget on *Banking Law*. They have instead to rely either on specialized law journals or law reports. Quite often these journals are infrequent and provide only summaries of cases. Busy practitioners would find reading the lengthy law reports too time consuming. Moreover the law reports often do not easily give the practitioners a grasp of the overall trend of recent developments. This work seeks to fill this gap by giving in-depth and up to date coverage of the latest developments in this area of law. With the abundance of topics in this field, the editor has had to make a judicious choice in the selection of topics. Otherwise, the effectiveness of this work would have been blunted as detailed analysis would have to be sacrificed to width of coverage. In making his choice, the editor Loo Choon Chiaw an English trained Singapore practising lawyer, has wisely chosen the "problem orientated approach". The problematic areas often faced by bankers have been identified and the 15 specialist contributors have focused their skills and experience to offer valuable advice on these areas. This approach has produced a finely-honed and incisive book sculptured to meet the particular requirements of bankers and their legal advisers.

As an illustration, we have Mark Hoyle's extremely useful paper on banks and Mareva Injunctions which deals with such practical questions as how to avoid a claim for defamation if a cheque is dishonoured because of the grant of an injunction. Due to the multiplicity of banking transactions and the constant pressure to maintain speed in their operations, banks are sometimes troubled by the problems of

wrongful or mistaken payments. Peter Ellinger's paper on defences for wrongful payment by banks would provide some measure of comfort to bankers. Ellinger also deals with the unsatisfactory legal position of the periodic statement of account as an "account stated". A useful suggestion is made to emulate the Canadian bankers in the use of verification agreements to impose a contractual duty on customers which has been approved in a Canadian case. Frank Ryder in another paper deals with the difficult legal issues associated with a bankers' right to recover mistaken payments.

Bankers would agree that another problematic area is that of securities for loans and advances. Recently, the Singapore High Court was faced with the novel and difficult question on the legal status of a letter of hypothecation of shares given by a stock broking firm to a bank as security. It was decided by Chao Hick Tin J.C. in *Re Lin Securities Pte. Ltd.* [1988] 2 M.L.J. 137 that the letter of hypothecation created a floating charge on all the present and future shares in the possession of the company. Unfortunately, due to the scope of his paper, Robert Pennington did not cover this issue. Perhaps in a future edition of this work, this interesting legal issue may be reviewed. Pennington provides a valuable analysis on fixed charges over future assets of a company. The efficacy of creating fixed charges over a company's stock-in-trade, work in progress and trade debts is also discussed. All important decisions since *Siebe Gorman & Co. Ltd.* v. *Barclays Bank Ltd.* [1979] 2 Lloyd's Rep. 142 are analysed. Another current problem on securities is whether it is legally possible for a bank to take a charge over the customer's deposit with itself. William Blair's paper deals with this problem. Blair also discusses the efficacy of the 'flawed assets' arrangement. The recent decisions of *Re Charge Card Services Ltd.* [1986] 3 All E.R. 289, and *Re Brightlife Ltd.* [1986] 3 All E.R. 673 are also featured.

Documentary letters of credit have overtaken bills of exchange as the primary mode of payment in international trade. The doctrine of strict compliance is a vital part of its operation. However it means that bankers are faced with difficult problems when genuine errors are detected. What discrepancies can be disregarded? Can payment still be made notwithstanding material discrepancies? Clive Schmitthoff answers these questions and others in his paper.

Documentary letters of credit were originally intended for use in the sale of goods. In the words of Kerr L.J. in the foreword, this field has been "altered out of recognition by the development of performance bonds, standby letters of credit and other instruments". Peter Cresswell deals with these developments. In particular, he focuses on unfair calling and the use of injunctions to stop payments. Apart from the leading cases, Cresswell also gives an account of the 1978 ICC Uniform Rules for Contract Guarantees. He correctly points out that these rules do not apply to first demand bonds. Lamentably, these rules have not been widely accepted or used because of the limited range of issues covered by these rules and the failure to apply to first demand bonds. As far as this reviewer is aware, the ICC itself has recognised these shortcomings and it has undertaken new efforts to draft a new set of rules for contract guarantees. It may be some time before the new rules are published by ICC. Perhaps it can be discussed in some future edition of this work.

The perennial problem faced by banks is of course fraud. The landmark decision of the Privy Council in *Tai Hing Cotton Mills* v. *Liu Chong Hing Bank Ltd.* [1985] 2 All E.R. 947, has caused much consternation among bankers. It is critically discussed in Loo's, Ellinger's and Tony Shea's papers. The scope of duty of care in negligence is never closed. Loo takes a timely stock of the expanding scope of the banker's duty of care. He focuses on: the scope and implications of the basic banking contract; bankers' tortious duty towards customers and non-customers; bankers' duty when enforcing security; the relevance of standard banking practice; the implication of bank rules and the vulnerability of security obtained from non-customers. He further apprises bankers of the precautions they should take to safeguard themselves against actions for negligence.

Selangor United Rubber Estates Ltd v. *Cradock (No. 3)* [1968] 2 All E.R. 1073 identified a new source of liability as far as the bankers are concerned: constructive trusteeship. Tony Shea surveys the recent developments in this difficult area.

As if to emphasize the practical utility of this work, Richard Youard has produced specimen investment management and management agreements. In his paper on legal issues relating to fund management, Youard discusses the effect of regulatory legislation on the operations of fund managers in the UK. The much talked-about Financial Services Act 1986 and the Company Securities (Insider Dealing) Act 1985 are discussed. The rights and duties of fund managers under common law are also discussed.

One problem which has hitherto been given only cursory attention in banking textbooks is that of illegality in relation to banking transactions. Furmston has now filled this gap in his paper.

Youard is not the only contributor to have produced a specimen agreement. At the end of a very practical paper on subordination of debts, Lingard has produced a specimen subordination agreement and a specimen priorities deed.

Banks as creditors are always interested in the law of insolvency, law has undergone an overhaul recently in the United Kingdom. Muir Hunter gives his expert survey of the impact of the new Insolvency Acts. Related to the question of insolvency is the issue of Romalpa clauses. Hudson explains how these reservation of title clauses affect the banker.

Prior to insolvency, the issue of default and restructuring of loans usually arises. As exemplified by the Latin American Debt Problem, this area could give rise to colossal problems. Keith Clark focuses on the various techniques of restructuring in relating to sovereign and corporate borrowers.

The editor must be commended for mustering together so many renowned experts to contribute to a single work. Many of their names are well known to lawyers, having authored leading textbooks which have been often cited as authorities in courts of law. This reviewer expects that this work would also be cited in court in support of counsel's proposition in a case determining an issue discussed in it. Therefore it is not surprising that the standards of scholarship are

exceptionally high. What is surprising is that this work is wonderfully practical. It is full of nuggets of wisdom that can immediately be translated into action. This work could have been more complete if it had covered revolving underwriting facilities (RUFs) and notes issuance facilities (NIFs) which are increasingly replacing syndicated loans. My one small complaint about this work is its price, which may be beyond the reach of some practitioners. However, to the bankers no doubt it is a worthwhile investment in terms of the amount a banker may save in avoiding the costly pitfalls described in this work. Nevertheless, a cheaper soft cover edition would be welcome.

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