COMMERCIAL ARBITRATION. By SIR MICHAEL J. MUSTILL & STEWART C. BOYD. [London: Butterworths. 1989. lxxvii + 835 pp. Hardcover: £90.00]

IN a very short time, Mustill and Boyd has become the standard text on commercial arbitration. A work on English arbitration published shortly after the first edition of this work avoids any competiton with the work under review by heaping generous praise on it. Judge Bernstein's book, *Handbook on Arbitration Practice* appeared in 1987, five years after the publication of the first edition of *Mustill and Boyd* and in his author's note, Judge Bernstein refers to that edition "as one of the great legal textbooks of my time" and suggests that since his book is concerned with practice rather than with the law, he and his co-authors are "relieved from the task of rivalling" Mustill and Boyd. This plea of no contest is a valid one not only as far as the law is concerned but also as far as practice is concerned. An academic is not supposed to understand the difference between law and practice but it would appear that *Mustill and Boyd* excel other works on English arbitration both as regards the statement of the law as well as regards the statement of practice or procedure of arbitration.

Since the law on commercial arbitration both in Malaysia and Singapore is based on English statutes, the work is an indispensable tool to the lawyer concerned with commercial arbitration in this region.

It is interesting to note how a major work, especially one written by a serving judge, can influence the course of the law. Mustill and Boyd attempt a statement of the principles that could be extracted from the cases like the *Nema*[1] on the exercise of the statutory discretion of the court to review the award of the arbitrator. They state the law in terms of a presumption against review and consider the instances in which the presumption may be rebutted. A recent Court of Appeal decision has resorted to similar analysis, showing the direct and indirect influence that *Mustill and Boyd* now exerts on matters of law concerning commercial arbitration.

A few criticisms of a great work may be offered. The authors do not face the issue of arbitrability of disputes in a convincing manner. They present the view that almost any dispute including those involving the criminal law are arbitrable disputes. This goes against the notion of arbitrability that has been built up in other common law jurisdictions, especially the United States. It goes against theory for one would think that issues implicating public interests are not for disposal by a purely consensual process.

Another feature is that on controversial issues, the law is stated in a rather soft fashion. Lord Justice Mustill has expressed definite views on the issue of the use of *lex mercatoria* as an applicable law in arbitation. But, the views in the book on this topic are muted, leading perhaps to an unjustified impression that the co-author does not share the trenchant, and in this reviewer's view well-justified, criticisms of *lex mercatoria* that had been made by the judge in his individual writings.

There is also little to be gathered from this work on the English attitude to international commercial arbitration. Though in the distant days when Brittania really did rule the waves, the distinction between the two was diffuse, it is meaningful now. The answer may be that the work is really about domestic

English arbitration. But, the appendix belies the answer for in it are contained the English statutes which incorporated the ICSID Convention and the New York Convention on the Enforcemnt of Foreign Arbitral Awards as well as the UNCITRAL Arbitration Rules and the Model Law. The text, however, contains little explanation of these instruments which deal mainly with international commercial arbitration. It must be conceded that dealing with this area which is distinct would have made the text longer and cumbersome.

In a beautifully produced book, there are still many spelling errors which could have been avoided. (A few examples: "most" for "must" at p. 10;reference to *Techno-Impex* at p.70; "calcelling" for "cancelling" at p. 127). Foreign reviewers of books originating from this part of the world have the nauseating and supercilious habit of going on pointing out such errors. It is no comfort to know that such errors are made in the best produced works that originate in England. They have to be avoided and major publishers who sell books at exorbitant prices surely have greater means to ensure that they are avoided.

These are minor criticisms of a work that is a pleasure to read. It is a work of great industry, thought and care. It is an example to the academic world in that it shows that amidst the flurry of practice and trial of cases, a leading judge and a busy practitioner can get together to produce a work that is excellent by any academic yardstick. One wonders why academics for whom society creates time and leisure for research do not produce works that emulate *Mustill and Boyd* in larger numbers.

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