

document and then examines how the industry treats it. This provides valuable insights in an area where the law has, as it often does in the commercial world, lagged behind.

The book, however, shows some idiosyncrasies. The most fundamental is its title which may prove to be misleading to the first-time reader. It does not suggest that it deals with only one particular aspect of the sale of goods carried by sea - the bill of lading.

Further, in dealing with the transfer of property in the goods and the risk therein, it does not deal with the INCOTERMS that are commonly used in international trade that will affect the time when the transfer of both property and risk in the goods takes place. The coverage of the fundamentals relating to the letter of credit is also rather simplistic. It is perhaps unfortunate that it does not document in more detail the law relating to letters of credit. More emphasis should have been placed on explaining the rules governing the tender of documents before going into how the documentary duties of the seller translate into practice.

It may be that the author assumes that the reader has knowledge of these basic concepts used in the international sale of goods. That may be very true in most cases, but it does detract from the usefulness of the book to persons new to this area and who wish to use it for a comprehensive coverage of the law.

At the end of the day, however, the work is a commendable one. The book does provide a valuable insight into the legal aspects of a contract for sale of goods carried by sea, as well as providing the practical perspective. In the sense that its focus is on the role of the bill of lading in a contract of sale as well as a document used to raise credit by way of a letter of credit, it takes a refreshingly different look at the bill of lading and the central role it plays in international trade. In the ultimate analysis, it will prove to be useful to both practitioner and student alike.

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PHIPSON ON EVIDENCE. By M. N. HOWARD, PETER CRANE AND DANIEL A. HOCHBERG. (Eds.) (14th Edition) [London: Sweet & Maxwell. 1990. ccxxv + 1239 pp. Hardcover: S\$560.20]

THE editors of this fourteenth edition of *Phipson On Evidence* ("**Phipson**") have made two major structural changes. There is first, a reshuffling of certain chapters. As a result the topics on relevancy, admissibility and weight are discussed together in Chapter 7. Perhaps in an attempt to emulate *McCormick on Evidence* with the view to a more logical organisation of text, topics on the preparation and conduct of trials have been placed in the earlier chapters. This change has made the book a little tidier. It does appear, however, that there is still room for im-

provement. Chapters 11 and 12 should be combined as a single chapter, otherwise the sub-headings in these two chapters are misleading. Chapter 13, "Evidence taken after trial" could logically follow Chapter 10, "Evidence taken before trial". The second change saw the removal of the extensive passages of illustrations throughout the thirteenth edition. The illustrations were useful mainly to students, but were of marginal utility to practitioners who are probably the main users of this book.

While the typographical errors in the main text of the previous edition have been corrected, new errors have appeared in the text: "principals" for "principles" at page 496, and in the case index, where, for example, "*Lui Mei Lin* [1989] 1 All E.R. 359" is cited as "*Lui Mei Liu*" and is sandwiched between *Littledale v. Liverpool College* [1900] 1 Ch. 19 and *Lively v. City of Munich* [1976] 1 W.L.R. 1004 (the latter case is also misprinted as "[1976] 1 W.I."). Typographical errors are also found in the general index. It should, in fairness to the editors, be said that such errors ought to have been picked up by the publishers.

The general index itself is less than perfect (typographical errors aside) because words and phrases have been included which are unlikely to be of any use. For example, one finds: "Horse, sound or unsound" and is led to a page which discusses what are questions of fact, citing, as an example, that the question whether a horse is sound or unsound is a question of fact.

Phipson has been criticised for lacking an overall concept of evidence law in the modern context. Little has been done to meet that criticism. Its lengthy commentary and analysis of *Lowery v. R.* [1974] A.C. 85 in the context of similar fact evidence is puzzling. *Lowery* raised an important issue relating to opinion evidence and character evidence, namely whether psychiatric evidence is admissible to show which of two accused persons has the more aggressive personality. The editors instead went on an expedition (roping in *R. v. Turner* (1975) 60 Cr. App. R. 80 and *R. v. Bracewell* (1979) 68 Cr. App. R. 44 in the process) in similar fact territory and arrived at nowhere. The summary of the test in *Boardman v. D.P.P.* [1975] A.C. 421 as being one of "striking similarity" is also not absolutely correct as it does not represent a balanced view since the opinion of the Court of Appeal in *R. v. Mansfield* [1978] 1 All E.R. 134 was not referred to at all.

The commentary on exclusion of documents protected by privilege, particularly the use of injunctions in such cases somehow seems shallow without reference to Scott J.'s illuminating guidance on the exercise of judicial discretion in *Webster v. James Chapman & Co (afirm)* [1989] 3 All E.R. 939, and to a lesser extent, Slade L.J.'s judgment in *Guinness Peat Properties Ltd. v. Fitzroy Robinson Partnership (a firm)* [1987] 2 All E.R. 716.

Another area in which confusion may be generated is the over-simplification of the test in deciding whether a statement is admissible as part of the *res gestae*. The editors propound a three-part test of

- (i) whether the identification was spontaneous;
- (ii) whether there was an opportunity for concoction; and
- (iii) whether there was any possibility of error.

This was based on the judgment of Lord Ackner in *R. v. Andrews* [1987] A.C. 281. *R. v. Andrews* tagged along with *Ratten v. R.* [1972] A.C. 378 in removing the technicalities of "contemporaneity" as required in *Bedingfield* (1897) 14 Cox C.C. 341. However, the word "spontaneous" was clearly not intended by Lord Ackner to be the basis of a simplistic test. His Lordship had not only used the word within parenthesis, but went on to explain that "to be sufficiently spontaneous it must be so closely associated with the event which has excited the statement, that it can be fairly stated that the mind of the declarant was still dominated by the event." Indeed, the test suggested by the editors is a summary of the summary by Lord Ackner, but omitting his Lordship's points about the "possibility" (as opposed to "opportunity") of concoction and the circumstances in which a statement was made. There is a dogged determination to treat the topic of *res gestae* as part of logical relevance when it ought really to be considered as an inclusionary exception to the fundamental exclusionary rule against hearsay (and other rules against admissibility such as certain evidence of bad character).

It might be observed that anecdotes such as that found at the end of paragraphs 11-24 at page 214 are most unusual in books of this nature.

One area of noticeable improvement is the treatment of "Presumptions", which now commands a chapter by itself. However, there is still a trace of reluctance in offering an enlightened approach to a topic which has infected readers of evidence with "a sense of hopelessness". Its statement (at page 72) that "conflicting presumptions, however, neutralise each other, and leave the case at large to be determined solely on the evidence given" seems to be an expression of despair.

Practitioners will, nonetheless, continue to find *Phillips* a compendious resource book, but students are best advised to be faithful to *Cross on Evidence* which expounds conceptual rules with greater clarity and perception. The present editors have yet to establish their own style and stamp on the book, and in spite of the structural changes, it still bears the style of John Buzzard imprinted over three editions since 1970. Although that style has served practitioners usefully, it suffers from a paucity of purpose and lacks impact because it wavers between a choice of encyclopaedic style and a structured and analytical style depending on the topic. Eventually, it is hoped that the editors will settle for one or the other, or preferably, a compendium of both styles throughout the book.

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