

*Offshore Commercial Law in Bermuda* BY IAN R.C. KAWALEY, ed. [London: Wildy, Simmonds and Hill Publishing, 2013. lxxv + 626 pp. Hardcover: £165.00]

The opening chapter alone holds forth the promise of a tantalising read, unusual for a book on commercial law. It begins with an account of English adventurers bound for Virginia who are shipwrecked off Bermuda. This sets the scene for the subsequent settlement of the uninhabited islands by the British in 1609. The incident fires the imagination of the Bard. He references the “Bermoothes” in *The Tempest* (1st ed., 1623), conceiving “the islands as a place where valuable property could be safely hidden” (at p. 3). Fact, fiction and fortune are masterfully blended into a cocktail of factors explaining Bermuda’s development as an offshore financial centre. It is evident that painstaking efforts were made to create a legal work that is at once both practical and scholarly. This book rejects the patois of the commercial marketplace for a more elegant literary style which flows right through the book and lends cohesiveness to the contributions by some 25 authors. The result is a comprehensive manual for offshore business in Bermuda and one which is a reflection of the country’s sophistication as an offshore financial centre.

Ian R.C. Kawaley was appointed as Chief Justice of Bermuda in April 2012 when he also became Head of the Commercial Court, a division of the Supreme Court of Bermuda. Kawaley is not only the editor of the book; he also displays considerable academic vigour by personally authoring 5 of the book’s 27 chapters. Leading by example, he helms a formidable team of eminently qualified contributors to this work, comprising top-notch legal practitioners, economists, and private client and insurance specialists in Bermuda.

The book is arranged in four parts. Part I provides an overview of the “Legal Development of Bermuda as an Offshore Financial Centre”. Kawaley traces the historical development of offshore commercial law, offshore entities, and of Bermuda as a commercial and insurance centre right down to modern day.

Part II is entitled “Establishing Offshore Vehicles”. It meticulously sets out the menu of business vehicles available. The Bermuda offshore company and various forms of partnership structures are considered. It also explores the broad regulatory framework applicable to industries such as insurance, trust and private client, and offshore funds. For instance, the section on trusts profiles the advantages of a private trust company, highlights asset protection trusts, and also delves into the issues relating to divorce and trusts (apparently, an issue of significant interest). A few chapters are then dedicated to shareholders’ rights, minority rights, directors’ liability, arrangements, amalgamations and re-domestications. Bermuda’s established position as an international financial centre is made manifest by the numerous comparative references to either the laws or academic works of other countries.

“Commercial Dispute Resolution” issues are addressed in Part III with an analysis of the institutions involved and resolution methods available. Geoffrey Bell Q.C. provides a fascinating insight into Bermuda’s litigious beginnings and the involvement of the very top echelons of London silk in commercial litigation. The launch of the Specialist Commercial Court in 2006 was a strategic move. It brought in its wake, not only the obvious benefit of positioning Bermuda favourably *vis-à-vis* other jurisdictions, but also the spillover effect of stimulating specialisation in other areas of

law. In this third part, the exploration of the anatomy of a dispute goes all the way to considering the winding-up of companies under Bermuda's insolvency law as well as the restructuring of insolvent companies.

Part IV is entitled "Relations with the Onshore World". Bermuda is not just a denizen of a covert world of 'offshore' commercial centres. She has terrestrial relationships, obligations and accountability. Chapter 18 is the start of Part IV and contains an authoritative piece by Saul M. Froomkin Q.C. He alludes to the Group of 20's meeting in London in April 2009 which considered three lists prepared by the Organisation for Economic Co-operation and Development: a white list of 40 jurisdictions (being those who have concluded at least 12 bilateral information exchange agreements); a grey list comprising 30 tax havens regarded as eminently respectable offshore financial centres such as Luxembourg, Switzerland and Singapore; as well as a black list, comprising four jurisdictions. As Bermuda was not specifically mentioned, it piqued curiosity and begged the question as to which list Bermuda belonged. A little personal research was called for. It led to the discovery that Bermuda was on the white list. By subtle and effective implication, it placed Bermuda in a league above those in the grey list.

A substantial chapter is dedicated to "Conflict of Laws in Bermuda". Conflict of laws is a significant consideration in a multi-jurisdictional transaction but one that is oft-neglected in order to focus on domestic commercial laws. Its inclusion in this book gives international investors in Bermuda a firm grasp of the various other jurisdictions whose laws might potentially be relevant. A comprehensive survey is also made of the topics of "Enforcement of Judgments", "Judicial Cooperation in Cross Border Insolvency" and "International Treaties Relevant to Offshore Commercial Law in Bermuda".

The penultimate chapter of Part IV raises a delicate issue for lawyers in several offshore jurisdictions—"Establishing Ethical Parameters for an Offshore Legal Practice". The offshore world has suffered from bad press. Public perception of offshore centres has been blighted by Somerset Maugham's allusion to a "sunny place for shady people" (*Strictly Personal* (1941) at p. 156) and movies depicting criminals, Wall Street honchos and politicians squirreling their ill-gotten gains in offshore accounts. It was therefore refreshing to see ethics and "International Treaties" being mentioned—the message is clear: Bermuda is open for offshore business but she is equally open about her international obligations and intention to honour those obligations. Kawaley makes a compelling nine-point "Conclusion". He speaks of a "patchwork quilt of legal rules which has a strong British thread running through it, but which has been woven together by artisans from almost every corner of the globe before being wrapped in a Bermudian flag. This quilt can, unsurprisingly, be comfortably donned by the highly cosmopolitan clients of the jurisdiction, who create Bermudian companies, partnerships and trusts although they hail from the Americas, Asia, Europe and, increasingly, the Middle East and Africa as well" (at p. 604).

This book, with its thorough attention to detail, is a handbook for those involved in advising clients about offshore jurisdictions. It recommends Bermuda as an international financial centre of choice because of the clarity with which quotidian issues

are both identified and addressed. It also creates a framework for analysing and comparing other offshore jurisdictions to Bermuda.

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