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An Agricultural Law Research Article

**Book Review: Grain Contracts and Arbitration:
For Shipment from the United
States and Canada**

by

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GRAIN CONTRACTS AND ARBITRATION: FOR SHIPMENT FROM THE UNITED STATES AND CANADA. By Albert Slabotzky. London: Lloyds of London Press, (1984) Pp. 109.

*Reviewed by Leon E. Trakman**

Albert Slabotzky is well qualified to write about contracts used in the shipment of grain. Vice-President of the Continental Grain Company (North American division), he is very aware of the fact that “[p]oorly drafted instruments create the risk of large losses” (p.1) and that “[t]oday, all participants in the grain trade pay rather close heed to the language of their contracts” (p.2). He demonstrates repeatedly that grain traders no longer transact in the faithful expectation that performance will be rendered at some future date; their contracts are carefully worded “if only in defence” (p.2) and their reliance upon clear documentation is considered to be a very necessary component in successful trading across national boundaries.

This little book about grain contracts, however, offers a deeper and more pervasive insight into international trade in grain. It illustrates that, for many businessmen, the international trade contract is the “law” of the transaction. Detailed in its terms and comprehensive in its ambit of operation, the contract often reflects the sophistication of trade associations, the experience of lawyers and the extensive exposure of businesses to market analysis.

Implicit in the study is a reminder that the commercial-legal community engaged in international grain shipments must keep in constant touch with the *context* that surrounds their business transactions. How grain agreements are negotiated and drafted should be

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the product of their deliberate and cautious planning, not the consequence of casual chance or mere coincidence. Freely bought and sold in international markets, grain is subject to constant trade instabilities and price fluctuations. Trust in the informal resolution of differences, then, is least likely to subsist when the cost of settling commercial differences is outweighed by the benefit of terminating the trade relationship. This is especially likely to arise when long-distance associations and impersonal bargains among grain merchants undermine naked reliance in informal negotiations and trust in agreements by handshake.¹

Typically, grain contracts are too complex to be concluded informally. Government restrictions on grain trading are extensive: complex shipping arrangements have to be devised (p. 42-44), payment terms must be agreed upon (p. 44-49), and provision must be made for "breaches, defaults and damages" (p. 62-68). Similarly, "basis trading", or simply, trading in grain futures, requires that the parties agree on how futures are to be "fixed", what fixing deadline should be adopted, when to make orders to buy futures, and what to do should the buyer fail to give up such futures (p. 49-54). Parties to grain contracts, in addition, must decide what circumstances constitute *force majeure* (p. 66-68), how they should draft strike clauses (p. 68-70), what forms of marine insurance to secure (p. 70-72), and how to provide for ocean freight, lay-time and demurrage by contract (p. 73-83).

The grain contract is therefore a complex document that states far more than the price and quantity of each order: it provides for the present and the future: and it regulates both performance *and* nonperformance. As such, it is the fountainhead of each grain transaction.

Slabotzky certainly does *not* present a detailed theory of bargaining; nor does he propose a sophisticated methodology on how to negotiate and draft grain contracts and settle grain disputes. The strength of his book lies in its practical character. It emphasizes that carefully devised documents contain their own built-in devices for the resolution of disputes; they are well tested in industry and well understood by businesses. Suitably formulated, such agreements also reduce needless recourse to law. With these practical ends in mind, the book explains the meaning and significance of

1. For classical writings on the capacity of the business community to reach agreement on the basis of informal relations, see especially Macaulay, "Non-Contractual Relations in Business: A Preliminary Study," 9 *Prac. Law* 14 (1963); Beale & Dugdale, "Contracts Between Businessmen: Planning and the Case of Contractual Remedies," 2 *Brit. J. L. & Soc.* 45 (1975). These observations of domestic business, however, are less readily applied to international trade in which the development of informal business associations are impeded by social, cultural, political and linguistic barriers to trade. This is not to suggest that businesses engaged in international trade are unable to reach agreement *per se*, only that they are more likely to do so on the basis of formalized documents, the contents of which are commonly understood in the trade.

well appreciated price-delivery terms like F.O.B., C. & F., and C.I.F. that are incorporated by reference into grain contracts (p. 23-26). It demonstrates how GAFTA and FOSFA provisions can properly be embodied in grain agreements;² and how commercial arbitration can be initiated, consolidated, and implemented (p. 83-103).

If the primary private order of business is to be the cornerstone of commercial law, practitioners like Albert Slabotzky can offer important insights so as to keep business law abreast of trade practice. For these reasons, instruction in commercial negotiations and viable settlements within specific trades is necessary in order to maintain the ongoing link between what businesses do and what they ought to do as a matter of both law and commercial practice.