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*Short Note*

arbitration, which, I was told, would include “an award-writing exercise”. As a result I got my comeuppance! I duly handed in my scribbled “award”, only to be taken aside later in the day by Gordon Hickmott, the course director, (who succeeded Ray Turner as chairman of the Institute) and was told that if it had been an exam I would have failed. However, Gordon was kindness itself, and took me under his wing, lending me his own personal precedents to use, and encouraging me to develop my award-writing skills under his personal tuition, eventually making me a member of his insurance arbitration panel.

Although over the years the Institute has developed its own award-writing course, and there are admirable courses and materials available to students on courses on arbitration or construction law at places such as the College of Estate Management, Leeds Metropolitan University, King’s College, London, and other more recently established colleges and institutions, so that no one may now fear a repetition of my experience, there has been no universally available textbook devoted to writing arbitration awards. This book now fills the gap. If it had been available when I was starting as an arbitrator I would have been saved considerable pain and grief, and a lot of embarrassment.

The layout of the book is logical and straightforward, making it easy to use and to follow. A short introduction (Pt A) by way of summary is followed by a discussion of background principles (Pt B), before getting to the meat of the book at Pt C, which is described as “The Synthesis of an Award”. That of course, is likely to be the part of the book of greatest practical use to arbitrators going about their ordinary business, or to examination candidates preparing for the award writing exam. However, before getting to that I must flag up what is, for me the most fascinating part of the book, which is Ch. 4 of Pt B, headed “An approach to decision-making”. This chapter is an in-depth approach to the whole process of decision-making as an arbitrator, and analyses the logical processes involved, showing how arbitrators must follow those processes to reach their conclusions. I found it compulsive reading, and, hopefully, it has helped me to rationalise my own thought processes. I must also mention three other sections of that chapter—on VAT, interest and costs respectively—all of which guide arbitrators step by step through these difficult areas. But it is in Pt C that the book really comes into its own. Step by step, the author guides the reader through the award-writing process with helpful notes on possible different or alternative approaches or suggesting alternative wording. One example is his suggestion of the words “Introduction” or “Background” rather than the traditional “Whereas” to describe the preamble. I remember some years ago, when this journal published the different awards in the Meadowsweet case, I thought at one stage that open warfare was going to break out on this topic! Finally Pts D and E set out possible illustrations and variations of other forms of awards, and the three appendices set out, first, the arbitrator’s checklist as used in the synthesis process, secondly a suggested illustration of how to collate and record evidence, and, thirdly, the final product of the award synthesised in Pt C.

All in all a very useful book, well constructed and practical, which should be on the shelf (or, better still, the desk) of every practising or aspiring arbitrator.

**Arbitration in China—a Practical Guide**

*by Daniel R Fung and Wang Sheng Chang (General Editors)*


**Reviewed by Graham Perry**

In 1950 China was labelled “The Sick Man of Asia”. Ravaged by Civil War and the World War II invasion by Japan, China’s economic health was frail and its outlook unpromising. Fifty-five years on by contrast, there is not a Fortune 500 or a Footsie 100 company that does not have a China strategy. China is on the move. Annual growth rates of 9 per cent have forced the outside world to change its perception of 1.3 billion citizens of the Peoples Republic of China (PRC). Today scores of western business people stay in the best hotels, conveyed to China by airlines now vying for a growing share of increasing business and tourist passenger volumes. WTO entry has now been achieved; the 2008 Olympics beckon.
BOOK REVIEWS

and the world now re-assesses the long-term impact of a revitalised, confident and assertive Peoples Republic of China.

Whereas just 30 years ago the streets of Beijing reverberated to the chants of Red Guards demanding even greater support for the Dictatorship of the Proletariat, today the dominant theme is the crucial importance of the rule of law. China has changed. Marxist-Leninist orthodoxy has yielded to initiative, innovation and experimentation with alternative forms of economic systems. Today millionaire entrepreneurs are members of the Communist Party; wage differentials have widened; economic rights have been created and a market economy (albeit prefaced with the word “socialist”) has helped to create affluence and prosperity unimaginined in 1989.

China is not at the crossroads. The choice has been made. The issue is not Which Path but How Fast. The achievement of its widely proclaimed economic goals make inevitable the elevation of the rule of law. China is becoming a pluralist society with classes, numerous centres of economic power, and the emergence of a widening political elite that stretches far beyond the reach of the Communist Party. The rule of law, and not the leading role of the Party, will increasingly be used to regulate the administration of an increasingly complicated economic and political structure—hence not only the rapid publication of statutes but also the rush to train and educate lawyers, judges and administrators.

Against this background it is timely that Arbitration in China should now be published. Volume 1 consists of 782 pages and includes reference to the historical development of arbitration in China; the main features of arbitration in China (no ad hoc arbitration, use of mediation during arbitration proceedings, problems of enforcement); interim measures; the role of the courts—limited in CIETAC arbitrations to appeals on procedural issues only and not substantive issues; and specialist arbitrations such as intellectual property, construction, property and securities. Volume II consists of 1,035 pages covering legislation issued by the PRC; judicial explanations thereof; arbitration rules of CIETAC, the Beijing Arbitration Commission and the Hong Kong Special Administrative Region.

The openness and candour of this comprehensive summary of arbitral activity in China is impressive. Compared with the quite recent reticence of the authorities to submit China’s arbitration to any independent form of scrutiny and comment, this publication makes a significant step forward. It is not churlish, however, to say that more needs to be done. Increasingly the word that is used in all jurisdictions to promote greater openness and accessibility is “transparency”. We need more statistics about enforcement in China; we need to see a reduction in the power of the arbitral institutions to issue directions and orders; we need to see more foreign nationals appointed as presiding arbitrators and in due course the availability of ad hoc arbitrations. But we should guard against expecting of China more than we deliver ourselves. Perhaps we can set the trend in the United Kingdom and practise “transparency” by, first, opening up to public scrutiny the appointment of senior judges; secondly, by ending the secrecy that surrounds the appointment of Q.Cs. and thirdly by requiring arbitral institutions to reveal the basis of their appointment of arbitrators to leading arbitrations. It would also be good to see Chinese arbitrators appointed as chairmen of UK administered tribunals. Criticism of Chinese arbitrations will be better received in China if, in the United Kingdom, we practise what we preach.

Jurisdiction and Arbitration Agreements and their Enforcement
by David Joseph
Sweet & Maxwell, 2005, 580 pages, £140, ISBN 0421 90480 1
Reviewed by Neil Kaplan

This useful book by David Joseph Q.C. is another arbitration title from a member of Essex Court Chambers. The blend of academic treatment and practical experience is its hallmark. The need for this book is neatly encapsulated by Sir Anthony Colman in his preface: