Drafting and Negotiating International Commercial Contracts
A practical guide

by Fabio Bortolotti
“Only dishonest people need contracts”, an old gentleman told me once. “Honest persons may trust each other and their word is better than a piece of paper”. Explaining that an exchange of words may be a contract would have been a waste of time. I would have missed the gentleman’s point which was that two people in good faith limit themselves to negotiating the basic contents of their deal and then adapt them when necessary to their reasonable respective needs, in the light of the circumstances. They see no interest in taking care of possible future events in sophisticated contractual clauses. Too many business people are not very far from sharing that view and are glad to enter into contracts reduced to the minimum. The result of this optimistic behavior is often an unfavorable but costly litigation. It may be catastrophic in international economic relations when lawyers with no sufficient international practice are involved, let alone in the absence of any lawyer.

Fabio Bortolotti’s book was written for such business people and their inexperienced lawyers. It does not just mean that it is their interest to buy it. The success of the first edition is the best evidence that it has been already understood. What I mean is that, when writing, Fabio Bortolotti put himself in the reader’s shoes, with his huge experience of a practicing lawyer who advised companies going international for the first time. He knows exactly what the reader needs to know and has the skill to convey the appropriate message. Professor Bortolotti is not only a practitioner but also a fabulous teacher.

This combination explains that this practical guide is not another do-it-yourself publication. It does not provide only useful recipes concerning contract drafting and negotiation. It also explains the institutional and legal framework of international contracts. As well as what to do, the reader learns why it should be done that way and what will happen if it is not.

The structure of this second edition follows the pattern of the first one, but with significant additions. For instance, concerning the important issue of the law applicable to international contracts, the consequences of the substitution of the 1980 Rome Convention in 2009 by the Rome I Regulation are carefully explained. Likewise, the replacement of the 1998 ICC Rules of Arbitration by the 2012 Rules is taken care of and the reader’s attention is drawn to the new important cases with respect to litigation before State courts.

But, as it was to be expected from the Chair of the ICC Commission of Commercial Law and Practice, Fabio Bortolotti provides an authoritative analysis of some of the ICC model contracts. In particular, the new 2010 Incoterms® and the Model International Sale Contract, reviewed and updated in 2012, are the object of an enlightening presentation. Those are among the many contributions of the ICC to the lex mercatoria. Exactly as Diogenes countered the claim that there is no such thing as motion by standing up and walking away, the ICC model contracts, among other international standards such as the UNIDROIT Principles, their existence is a direct answer to these scholars who find unacceptable to admit that a rule of law can have a private origin and not necessarily stem from a state or inter-state legal order.

Among many others, this is a further good reason to read this book.

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