arbitration rules of international arbitral associations. The latter is a surprising inclusion because arbitration rules do not have the force of law and are not relevant for the purposes of section 7(1)(a) of the Act.

The top of page 2513 reproduces the rule contained in section 7(2)(d) of the Commonwealth International Arbitration Act. This provision was considered in *Elders CED Ltd v Dravo Corp* (1984) 59 ALR 206, although the author does not refer to it. Later in the work the case is cited in another context, but it is strange that it is not even acknowledged in a footnote at this point. The discussion in the rest of the chapter is at times superficial and disjointed.

On pages 2571 to 2577, the author discusses "arbitrability of a dispute". There is scant reference to the numerous Australian cases which touch upon the issue of the arbitrability of trade practices matters. This is an important omission.

The brief discussion of the determination of the proper law of the main contract (page 2812) leaves much to be desired. The author's statement that "the draftsperson must bear in mind that the parties' choice of proper law also includes the mandatory rules of the legal system chosen" is so obvious as not to need restatement. The interesting and fascinating question, which is not discussed, is whether the mandatory rules of another legal system apply in addition to the law designated by the parties.

In paragraph 9.70 (page 2814), the author suggests that parties choosing the proper law are free to exclude aspects of the proper law. The author cites in support of this view the classic work by Craig, Park & Paulsson on *International Chamber of Commerce Arbitration* (2nd ed, New York: Oceana Publications, 1990). It is doubtful, however, whether his view reflects either Australian law or English law.

In this reviewer's opinion, *International Commercial Arbitration in Australia* is a disappointing work. It is disjointed, poorly organised and, at times, little more than a compendium of cases and articles. However, even in this respect, I believe it cannot be relied upon because a number of important Australian cases are not referred to in the appropriate places.

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Review of J O'Donovan, *Company Receivers and Managers* 2nd edn, Sydney: Law Book Company, 1992. $275.00 plus cost of updates

Practitioners in the fields of corporate finance, insolvency and receivership will welcome Professor O'Donovan's second edition of *Company Receivers and Managers*. Since it first appeared in 1981 it has become the standard text in Australia for

legal professionals and has been the first resort of academics and students.

The production of the second edition in loose-leaf format follows the recent trend of publishers. This trend has, however, some disadvantages. The ease of up-dating may be overshadowed, or at least impaired, for many potential individual purchasers, by the substantial cost increase. The cost precludes its prescription as a student text thus limiting the book's educative role. Libraries also face the prospect of restricting access (for example, by prohibiting take away loans) to prevent removal of pages by dishonest borrowers.

The physical structure of loose-leaf bindings also causes difficulties for readers. A loose-leaf volume is bulky making it less portable than a book. It is also difficult to photocopy without releasing pages and it is difficult to keep open. Interleaving and reading except with the volume flat on a desk is virtually impossible. (Attempts to do so in bed and bath failed miserably.)

The format is, however, probably acceptable, if not welcomed, by major law firms where cost, borrowing difficulties and pilfering of pages may be less of a problem. The prospect of continuous updates in this dynamic field from Professor O'Donovan may well outweigh any of these perceived difficulties. In fact a couple of minor criticisms by this reviewer will be dealt with by Professor O'Donovan in the first update, proving the real value of the loose-leaf structure.

Turning to content, the scope of the book is specifically limited to receivers and managers of *companies*. Professor O'Donovan has resisted any temptation to cover appointments outside the corporate field, although such an exercise might well have been useful in an environment where statutory powers to appoint receivers to manage the property of other entities appears to be on the increase (see, for example, section 87A(2)(e) of the Commonwealth Trade Practices Act 1974).

The book encompasses in Part 1 receivers and managers appointed out of court and in Part 2 court-appointed receivers and managers. Each Part considers the appointment process, the effects of appointment, and the powers, duties and liabilities of the appointee. In each case Professor O'Donovan proceeds to deal with the way receivers interact with liquidators, and also with the private international law aspects and the termination of receivership regimes.

This second edition includes three new appendices which are compulsive reading. The first is a check-list of threshold issues designed to raise the awareness of potential appointers to the critical factors involved. It is most helpfully cross-referenced to the text and complements the index. Appendix Two consists of nine diverse topics on which Professor O'Donovan comments at varying length. The topics selected involve issues of current importance and relate to specific practical techniques, for example, whether the mortgagee should enter into possession itself or do so through an agent. Professor O'Donovan's comments on these eclectic developments will be of undoubted use to those contemplating using the arrangements discussed. The third Appendix gives an account of commercial and legal considerations of relevance to mortgagees in possession. It includes a discussion of insurance, income tax, capital gains tax and group tax, accounts, reports and expenses as well as the more familiar discussion of the appointment, powers, duties and liabilities of mortgagees and "their" receivers.

The second edition of the book continues the important work begun by Professor O'Donovan ten years ago. It is a clear exposition of the law, well researched and

written in plain language. However, one question of interest to this reviewer remains unanswered by Professor O'Donovan. His approach to the subject in Part 1 (out of court appointments) is coloured by the practical position that receivers are the province of *secured* creditors. In Part 2 the decision in *Bond Brewing Holdings Ltd v National Australia Bank Ltd* (1990) 8 ACLC 330 necessitated renewed recognition of the fact that the court's jurisdiction to appoint receivers is not so limited (paragraphs [17.30], [17.60], [17.180] and [17.190]). Despite the fact that courts will undoubtedly be reluctant to use the power, there is no indication in the *Bond Brewing* case that the absence of security was a governing factor in the removal of the receiver appointed by the judge at first instance. As Professor O'Donovan points out, the court's jurisdiction is open to "any party", although "the most common applicants are undoubtedly mortgagees and debenture holders in actions to enforce their securities" (paragraph [17.250]).

The corresponding right, if any, of an *unsecured* creditor to negotiate contractually with the borrower for the right to appoint a receiver out of court on default of a financial obligation is not raised in Part 1. The advent in the 1980's of unsecured lending on a massive scale resulted in a number of unsecured loan facility agreements which included (perhaps inadvertently) the contractual right of the financier to appoint a receiver to the borrower or its property. Such documents also sought to establish the appointee as the agent of the borrower, consistently with the recognised practice in secured transactions or in court appointments.

It would be interesting to test the validity of such contractual terms. Whilst it is possible that Professor O'Donovan's use of the term "debenture holders" in some paragraphs refers to unsecured creditors under any instrument acknowledging a debt, Part 1 is described as dealing with "receivers and managers appointed out of court under powers contained in mortgages or mortgage debentures" (paragraph [1.40]).[1] Readers may welcome the views of Professor O'Donovan on this question if he sees fit to expand his commentary beyond his current, self-imposed limit.

This second edition has been eagerly awaited by practitioners and academics and it has not disappointed.

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1. In paragraph [2.10], Professor O'Donovan introduces the question of who can appoint a receiver out of court by reference to the relative priority of mortgages; and in paragraph [3.10] he sets out the standard default clauses which are in fact common in practice to both secured and unsecured lending, but introduces it as a "mortgage debenture".

Review of Sally Wheeler, *Reservation of Title Clauses: Impact and Implications*, Oxford: Clarendon Press, 1992. HC $80.00

After reading *Reservation of Title Clauses: Impact and Implications* by Sally Wheeler, the reader is left with the impression that reservation of title clauses ("Romalpa clauses") are a most ineffective security device, rarely protecting the sellers of unpaid for goods in the case of the buyer's insolvency. The reader is also left feeling sorry for the hapless suppliers who have been advised by their lawyers to insert reservation of title clauses in contracts of sale, only to be defeated by the negotiating prowess of the insolvent purchaser's solicitors, whose main purpose is to erect as many hurdles as possible against recovery of any sort.

The author's expressed aim is to look at negotiation of commercial disputes in their structural context. She selects reservation of title claims as the legal framework. Her aim is to fill a gap in the available literature on negotiation models by the empirical study of commercial disputes involving a total denial of liability ("zero sum negotiation"). This is in contrast to disputes which centre on quantum of recovery, where concessions are offered by each party (for example, out of court settlement of insurance claims). Although Wheeler's study of reservation of title claims centres on suppliers (claimants) and their legal representatives, and insolvent purchasers (defendants) and their legal representatives, drawn mainly from Birmingham and the West Midlands of England, her work has relevance to an Australian context. Reservation of title clauses are a feature of commercial life here and, as in England, their legal implications are governed by common law and statute.

The study was conducted initially by interviews with 13 lawyers, 18 insolvency practitioners (managers of insolvent companies) and 32 manufacturer/suppliers. These were supplemented by documentary analysis (mostly of solicitors' files) and participant observation where possible. A total of 259 claims was examined. The fact that the number of interviewees was small compared to the number of claims appears to be a weakness in the study. Wheeler, however, making no mention of this shortcoming, describes the legal files examined as comprehensive and claims that they enable "a very detailed picture" to be built up (page 12). It would have been useful, though, to know how many of the claims were defended by the same lawyer and whether the suppliers involved made more than one claim each. This would have enabled the reader to know how many different parties were involved and the extent of personal contact, or the lack of it, with them.

Out of the 259 claims examined, only a very small proportion of claimants (15 per cent) succeeded in recovering anything; and of these 92 per cent accepted the first offer made to them, which was never higher than 50 per cent of the original claim, and often much lower. Wheeler explains this by taking us through the history of a reservation of title claim, starting with the construction of the claim (Chapter 4) and then dealing with the process of negotiation (Chapter 5). Each stage (notification, submission of claim, creditor's letter, first visit, access, etc) is illustrated with extracts from letters and interviews with the parties involved.