INTRODUCTION

BRUNO ZELLER*

Currently – though, encouragingly, to a diminishing extent – law students are taught subjects in neatly prepared packages. This is especially the case where legal education requires compulsory instruction in particular aspects of the domestic legal system. As an add-on, units in international and comparative law are offered as electives. The end product of such a legal education is a legal practitioner who believes that domestic laws are the only laws he or she needs to know. Indeed, this is the opinion of many law students, who have been trained and who expect to practice exclusively within a legal system. However, this assumption is misguided, as even domestic systems are not immune to international law developments. The contributions to this special edition of the *University of Western Australia Law Review*, which arose out of the 7th Transnational Commercial Law Teachers' Conference held on 25 and 26 November 2015, highlight this.

In a global commercial context, the significance of national borders is in decline. There is an increasing volume of transnational law affecting domestic legislation, such as the *Cross-Border Insolvency Act 2008* (Cth) enacting the UNCITRAL Model Law on Cross Border Insolvency. As a result, the increasing focus of the academic world is on the effect and utility of harmonising and unifying laws. However, a survey of the faculty in most (if not all) law schools would, one expects, show that the vast majority of staff still think and teach in their specific 'boxes' without any thought to interlinking the domestic law with the burgeoning volume of transnational law.

The Conference highlighted the interplay between home-grown legislation and 'imported' law, which requires special attention in the teaching process. It goes without saying that the intent of transnational law reform is to harmonise – that is, to bring together and reconcile variations in – aspects of law in respect of which participating jurisdictions have already legislated. Thus, a transnational law such as the Cape Town Convention will touch upon other areas of domestic law, beyond the direct subject matter of the transnational law,

* BCom, BEd, PhD, (Melb); MIL (Deakin). Professor, Faculty of Law, The University of Western Australia; Adjunct Professor, School of Law, Murdoch University; Fellow of the Australian Institute for Commercial Arbitration; Member, MLAANZ Panel of Arbitrators; Visiting Professor, Stetson University College of Law; Visiting Professor, Humboldt University of Berlin.

such as insolvency, the PPSA and secured financing. The task of the transnational teacher is to make sure that students understand not only the more obvious features of a new transnational law, but also where and how the law reform instrument interacts with other areas of domestic law. Arguably, knowledge of conflict of laws is the gateway into an understanding of the interrelationship between domestic law and transnational law. The most important aspect of teaching transnational law is to instill in our students a competence that does not end at the national borders.[1]

Another prominent theme of the Conference was the changing focus of transnational law. No longer is it the drafting of a body of law like the Vienna Sales Convention that attracts the attention of organisations such as UNIDROIT or UNCITRAL. Rather, law reform now occurs in specialised areas in which the business community has a special interest, such as the Cape Town Convention on International Interests in Mobile Equipment.

On that basis, a view of the transnational landscape is incomplete without considering the role of industry. Rather than viewing transnational commercial law reform through a state-centric lens, Professor Gopalan suggests that a private demandeur-centric approach is more appropriate. That is, it is the preferences of these demandeurs that determines the form and structure of transnational laws, notwithstanding that those laws are ostensibly agreed between state parties. The design of the Cape Town Convention bears this out.[2] While outcomes in transnational law arguably are more and more driven by industry, it remains the role of the state to decide whether the outcomes are in their best interest. However, as the Incoterms and the Uniform Customs and Practice for Documentary Credits (UCP) have shown, if states not implement laws, industry (in this case the International Chamber of Commerce) will incorporate soft laws as part of their contractual design.

It is therefore important, in teaching the next generation of drafters of contract, that a full view of the transnational landscape is presented, which covers the interplay between transnational and domestic laws, and between states and industry.

[1] Maren Heidemann, 'International commercial harmonisation and national resistance – the development and reform of transnational commercial law and its application within national legal culture' in Mads Andenas and Camilla Baasch Andersen (eds), *Theory and Practice of Harmonisation* (Edward Elgar, 2011) 180, 188-9.

[2] Sandeep Gopalan, 'Demandeur-centricity in transnational commercial law' in Mas Andenas and Camilla Baasch Andersen (eds), *Theory and Practice of Harmonisation* (Edward Elgar, 2011) 164.