

**Principles of International Financial Law, 2nd edn**, by Colin Bamford, (Oxford: Oxford University Press, 2015), 408 pages, £115, ISBN: 978-0-19872-210-6.

Earlier this year, the second edition of the modern classic *Principles of International Financial Law* by Colin Bamford was published. This is a rich book and a second edition was well deserved. It not only discusses typical property law issues such as the perfection of security interests, but also such diverse topics as fiduciary duties (which are essential to the bank tort law discipline that is blossoming both in the UK and on the continent), contract interpretation and money transfers. Also, and I will return to this point below, the book covers a host of financial transactions, such as repurchase agreements (repos), suretyships, derivatives and structured finance.

The richness of the book immediately shows when its chapters are summarised: The first chapter introduces the special position of financial law and highlights some specific features, including its international character. Bamford here makes a convincing argument that the property and contract law principles dissected by him are of equal relevance to litigation and transaction lawyers concerned with financial law. Yet I would say that this applies not only to financial law, but to other branches of law as well: a labour law transaction lawyer, for instance, should have a deep understanding of the principles that are tested in litigation so as to be able to give sound transaction advice. And vice-versa: a labour law litigator should know how transactions are negotiated so as to be able to properly understand the labour contracts he is litigating.

Chapter 2 answers fundamental questions regarding money, such as: whose currency is the euro and where do payments settle? It has important paragraphs on virtual currencies (including bitcoin) and the euro and explains, inter alia, the societal and state theory of money. The chapter concludes with a discussion of exchange controls and the relevant IMF Agreement art.VIII(2)(b). The following chapter (Ch.3) concerns payment, includes practical issues such as Target2, set-off and netting, and introduces the Settlement Finality Directive.

Chapter 4 elaborates on the distinction between personal and property rights and between legal and equitable ownership. Trusts and multiple ownership, as applied in, for instance, syndicated lending, bond issues, project finance and fund management, are also covered. Interesting observations are made on the Lehman Brothers case (more accurately: Lehman Brothers International (Europe)). Chapter 5 continues to discuss property,

covering “choses in action” and “choses in possession” as different kinds of property and different ways to enforce.

Chapter 6 has the international bond market as its topic, and it describes, in a succinct and lucid way, its development. Focus is had on custody structures and this is one of my favourite chapters. However, I regret that the discussion of bond custody structures did not take a more general approach, as it could easily have been extrapolated to the custody of equities and other financial instruments, which are held in similar ways.

Chapters 7 and 8 concern fiduciary duties, both more generally (Ch.7) and how they apply in financial markets (Ch.8). Paragraph 7.98 contains an excellent summary of the English law concept of fiduciary duties, while Ch.8 discusses, among other things, aspects of fiduciary duties in financial transactions (including derivatives) with sophisticated clients. These are chapters that will be of interest especially to the litigation lawyer. Fiduciary duties are a hot topic, at least in the Netherlands, specifically in liability cases concerning derivatives concluded between banks and small and medium-sized enterprises.

Chapters 9 and 10 treat security interests under both contractual and property law. Contractual security (dubbed “credit support”) is discussed in Ch.9, and includes multiple obligors, suretyships, “almost guarantees” (such as comfort letters), performance bonds and letters of credit, credit derivatives and subordination. Property law security interests are covered by Ch.10. The interests discussed include mortgage, charge, pledge and ownership. This chapter also pays attention to ways of limiting the debtor’s liability, such as through structured finance, third party security and non-recourse lending.

Chapter 11 concerns the construction of financial contracts. It discusses interpretation of contract and elaborates on the differences between the common law and civil law approaches to contract interpretation. The argument is made that the common law approach, which considers the parties’ intention more objectively than civil law does, is the better one. I will come back on this point, too.

Because of its broad approach, this is not only a rich, but also an important book. It approaches financial law from a property and contract law (together: commercial law) perspective, a perspective that is not commonly associated with financial law. Financial law is still too often associated with regulatory, i.e. administrative law only, while it—as this book convincingly shows—is a functional area of law where various areas of law, including administrative and commercial law but also tort law and even criminal law, are fully and fundamentally integrated. The approach taken by Bamford, in which focus is had on commercial law without losing sight of the regulatory environment, is certainly to be applauded.

On the other hand, the commercial law–administrative law distinction remains of importance, especially as regards its territorial application. Where administrative law has been harmonised to a large extent, most notably

in the EU but also globally, commercial law can still be characterised as mainly national in nature. Capital requirements for banks, for instance, are harmonised globally and even more so in the EU, where prudential supervision has been unified in the Eurozone area. The commercial law that cements the bricks constituting the assets of which a bank's capital and its balance sheet are built, on the other hand, has been largely left unharmonised, and important differences remain to exist between various jurisdictions, also within the EU.

The book under review seems to acknowledge that commercial law is not harmonised, and it is right to argue that the globalisation of financial markets requires knowledge of—at least—the principles of commercial law that apply in an international financial context. The chapters of the book, however, show that its author understands “principles of international financial law” as to mean “the English law principles of commercial law relevant in an international finance context”. The book, and this is my main criticism of this otherwise excellent work, takes a very English, rather than an international perspective. The chapters on security interests, for instance, deal for tens of pages with the differences between “choses in action” and “choses in possession”, and “charges” and “pledges”, differences that are of limited relevance for lawyers in other jurisdictions.

This English law perspective is also evidenced by two other observations: first, the book to my regret pays attention only occasionally to issues of private international law, i.e. conflict of laws. This is unfortunate, as in the financial markets—inherently international in nature—private international law issues play a prominent role. In my experience, both transaction and litigation advice in financial law matters virtually always contains an analysis of jurisdiction and applicable law. Also from a theoretical perspective, this conflict of laws lacuna is unfortunate, as I believe that through the choices made in a given conflict of laws regime, the underlying principles of that legal system emerge. A given private international law regime, for instance, reveals how that legal system treats claims (as opposed to physical assets), netting and securities custody. Secondly, the final chapter contains an argument for common/English law as a better law than civil law as regards contract interpretation. For

many lawyers (among whom, in as far as I have been able to determine, not only continental but also several English ones), this argument will come across as rather unconvincing.

The book's approach to the law relating to financial markets from the perspective of commercial law principles is both its strength and its weakness. Its strength, because it is a unique approach that explains how financial law is built on the foundations laid by the law known and taught in the law schools for ages. But also its weakness, because it does not bring to the fore that this book is also a great introduction to the most important financial transactions. It deals with, among others, repurchase agreements, syndicated lending, suretyships, and derivatives. Moreover, the approach is not always rigidly applied; the first chapters, for instance, have “money” as a topic, which to me seems an economic phenomenon rather than a commercial law principle, while other chapters do have commercial law principles as topics, such as fiduciary duties (Chs 7 and 8), and security interests (Chs 9 and 10).

To be applauded, too, are the contemporary additions this second edition has brought. Impressive is the way in which financial law and its underlying principles have been put into a historical perspective. Virtually all relevant recent developments have been taken into account, and that this is no mean feat is stating the obvious for anyone who is but superficially familiar with the financial markets for the last decade. I need only to refer to the way in which, for instance, the Lehman Brothers insolvency and the rise of virtual currencies have been integrated into the text.

Finally, the book delivers what its first chapter advertised: the excellent theoretical analyses of commercial law principles and their application by the courts (which unfortunately usually means: the courts of England and Wales) in many instances are coupled with and result in practical advice to the drafters of financial transaction documentation. In all, the book makes essential reading for both practicing lawyers and academics working in financial markets.

**Matthias Haentjens**

*Professor of Financial Law at Leiden University*