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BOOK REVIEW, LAW PRACTICE AND PROCEDURE OF ARBITRATION; SUNDRA RAJOO

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'Writing a book is an adventure. To begin with, it is a toy, and an amusement; then it becomes a mistress, and then it becomes a master, and then a tyrant and just as you are about be reconciled to your servitude, you kill the monster, and fling him about to the public.' Sir Winston Churchill, 2 November 1949, as quoted in 'Never Despair', p. 494, by Martin Gilbert (1988).

Sundra Rajoo's travails to produce this monumental masterpiece lasted a full three and a half years. The agony of its creation and the ecstasy of is accomplishment makes Churchill's words especially poignant.

Our Arbitration Act 1952 was almost a facsimile copy of the English Arbitration Act 1950. In the decades which followed, it had become quite apparent that that the familiarity of both practitioners and the judiciary with the nuances of arbitration law was not all it could be. Nor was this surprising since the English standard text-books by Russell Halsbury's Laws of England, and Mustill and Boyd were beyond the reach of the ordinary practitioner.

The exponential increase in international trade and off-shore corporate financing since Merdeka brought with it other esoteric concepts which compelled a shift in our focus to institutional dispute resolution procedures adhered to by our trading partners.

To keep pace with these developments and to reinforce local knowledge of the subject the Malayan Law Journal entrusted Mr. Sundra Rajoo with the task of authoring the volume on Arbitration in Halsbury's Laws of Malaysia which ran parallel with its English counter-part. It came out in 2002. No injustice would be done in describing that work as an exposition of the principles of the law of arbitration.

A Chartered Arbitrator, Architect and Town Planner Sundra Rajoo was even then already a household name in the practice of Arbitration especially in construction disputes for more than two decades. He was also equally well known for his learned articles and presentations in various Journals and seminars and well qualified for the task he had been set.

This work entitled Law, Practice and Procedure of Arbitration is a worthy successor to his earlier achievement. If its gestation of three and a half years was elephantine there were very good reasons for this.

By the turn of the century the inadequacy of the old jurisprudence had already begun to make itself painfully felt. It was most acutely manifested by the increasing resort to foreign venues for the resolution of commercial disputes in which one or sometimes even both the disputants were local residents and even where Malaysian law applied to the contract. The survival of the old regime had come under strain. A new order was clearly necessary.

In the search for a viable alternative the form and structure of a new law to replace the existing Act has become the subject of an on-going debate for at least three years. Should Malaysia follow the Uncitral Model Law or the English Arbitration Act 1996. Should Malaysia harmonise its approach with the large majority of trading nations which have adopted the Model Law or should it continue to be tied to the English apron strings? Should we have one or two separate Acts for domestic disputes and international arbitrations.?

By 2001 at least three separate drafts have been put forward by interested parties for consideration by the legislators. Alas the new Arbitration Act is yet to make its appearance. Against a back-drop of seemingly irreconciliable differences between North and South in the World Trade Organisation it is open to speculation whether the perceived failure to achieve an equitable resolution of trade practices has delayed the formulation of the new Act.

Arbitration after all, is a diminution of the power of the State since it removes from the jurisdiction of the Courts the resolution of certain commercial disputes. Since arbitration awards can only be enforced by the machinery of the State, the State itself may consider itself entitled to intervene, if its own objectives in permitting a dilution of its sovereignty is not met.

In this state of flux, and with the passing of the new Arbitration Act nowhere in sight, it would be quite legitimate to ask why LexisNexis felt compelled to publish this book now rather than wait until the new Act finally made its appearance?

The answer to this question must largely be found in the character of Mr. Sundra Rajoo himself. Working full time on other assignments during the day and burning the midnight oil to research and write this work must have called for exceptional courage and persistence. Talent, after all is only what a man has, but genius is that by which he is possessed!! There is a time-honoured military adage that whilst the weapons of war may change, the art of war has always been the same.

Sundra Rajoo's genius lies in his recognition of three realities. The first is that the process of arbitration is here to stay. No country in the world today can survive in isolation. The second reality is that if we are to survive we have to trade, and to trade successfully calls for a high level of national expertise in solving the disputes which will inevitably arise. The third is that however long the passing of the new Act going to take, the art of arbitration, like the art of war, will remain the same.

Sundra Rajoo's passion which fuelled his energies in this act of creation was his noble aspiration to share his expertise with all of us now so that the legal profession which is most intimately concerned with maintaining orderly trade relations is properly equipped to meet the challenges head-on.

Quite unlike his earlier work, the inestimable value of this book to beginners and seasoned veterans alike is its emphasis on the way the legal principles interact with the factual matrix in the process of arbitration.

Sundra Rajoo is not only a profound thinker but also a person with an encyclopaedic knowledge of all aspects of the arbitral process and the gift of being able to hold this vast storehouse in his head and deploy it in constructive directions. Bringing all his scholarship and experience to bear on this work, Sundra Rajoo's analysis has penetrated this area like no other Malaysian has done.

The textual part of the book runs from page 1 to 684 is divided into Divisions each one headed as follows :i. General Framework of Arbitration - (60);ii. Arbitration Agreements - (67);iii. Breach of Arbitration Agreements and Stay of Court Proceedings - (28);iv. Ouster of Court's jurisdiction - (13);v. Commencement of Arbitration and Establishment of the Arbitral Tribunal - (114);vi. Conduct of the Arbitration - (75);vii. Arbitrators and the Court -(52);viii.The Award - (90);ix. Costs of the Arbitration - (35);x. Challenging the Award - (49);xi. Enforcement of Awards - (48);xii. Arbitrations excluded by the Arbitration Act 1952 - (24).

The number of pages in each Division and given in brackets tell their own story. The most numerous pitfalls for the inexperienced or the unwary are in Divisions 2, 5, and 6. It is no co-incidence that the author has literally gone into the bowels of these critical areas. After he has spelt out the practical implications of each legal requirement he immediately provides a check-list to make sure that the practitioner does not unwittingly leave out some essential point which could otherwise get him unstuck.

I found this approach reminiscent of Ratanlal's Law of Crimes where to the eternal salvation of every criminal lawyer the essential ingredients to be proved in order to establish the commission of an offence was spelt out with a clarity which defied misunderstanding.

The twelve Divisions aforesaid are in turn sub-divided into Chapters and the way they are structured is a reflection of the passion of this Architect and Town Planner to ensure that there is an orderly progression of each chapter from the firm foundations of its predecessor.

Added to this is the author's lucid style which makes even the complex look simple -- a virtue which belongs only to a person who is a master of both the theoretical and the practical aspects of his subject.

One other feature of this monumental work is its breadth of vision. The inclusion of the very latest cases both from the common law and the civil law jurisdictions and relevant articles by experts in the field should satisfy the most demanding practitioner.The one criticism of this book I have is its bulk on account of the 30 Appendices which run from page 687 to page 1379 which could easily have been compiled into a second volume. That said this book succeeds in putting all the relevant statutes, and institutional rules at the buyer's finger-tips without having to chase for them elsewhere.

Each one of the Appendices is relevant not just on any problem a Malaysian practitioner might face in the choice of law, procedure, or venue when drafting the arbitration clause but also on how arbitral proceedings should be organized should that become necessary up to the enforcement of the award.

This book has been priced at RM450.00. If all the reasons aforesaid are not enough for its acquisition there is another. It is a steal at the price because any Malaysian concerned in the practice of arbitration who invests in this book will not need any others.

Finally I think it proper to state that it has been a great privilege and honour for me to have been asked to review this monumental masterpiece. I salute Mr. Sundra Rajoo on behalf of everyone concerned in the practice of Arbitration. He has ennobled himself by sharing his wisdom with us. We shall forever be in his debt.

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