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Commercial Law and Human Rights is a collection of essays drawn from conference papers presented at the Commercial Law and Human Rights conference held at Australian National University in the fall of 1999. This collection addresses such diverse issues as labor laws, sexual harassment, biological resources and Native title (a unique interest in land flowing prior use and occupation by indigenous peoples) from various perspectives, including human rights lawyers, commercial law specialists, and academics.

A multi-disciplinary collection of essays, the book presents a broad overview of issues involving the intersection of human rights and commercial law. As outlined in the opening comment by Sir Anthony Mason Ackbe, the book will assist the reader in understanding those issues from both a public and private international law perspective. However, while international in scope its focus tends to be on Australia, where its editors and the majority of its contributors are based.

In his contribution, David Kinley, a director of the Castan Centre for Human Rights Law, asks whether human rights are legally binding or simply relevant. He argues that multinational corporations (MNC) should be placed into legal and quasi-legal frameworks in which they are required to uphold human rights standards in order to ensure that compliance is achieved. By contrast, his co-editor, Stephen Bottomley, a commercial law professor, considers the role of MNCs as violators, protectors and beneficiaries of human rights as well as institutions in which members' rights are important. He suggests that the latter is an important step in improving the first three, and argues that changes must begin within MNCs, rather than through external pressures.

An essay by two executive members of Amnesty International, Rory Sullivan and Des Hogan, makes a case for human rights in the sphere of business. While pointing out that companies do not have a well-developed understanding of human rights, they set out Amnesty International's expectations that companies will accept their responsibilities in this area. Sullivan and Hogan argue that a good human rights record makes good business sense and that a regulatory framework requiring corporations to live up to their human rights obligations is only a matter of time.

Robert McCorquodale is a professor of international law and human rights. He notes that global businesses are slowly recognizing the need to take human rights issues into account when making decisions, due in part to public pressure but also because of financial factors. Since these pressures will continue to grow, McCorquodale suggests it would be reckless for a company to ignore human rights issues in its decision-making.

Andrew Bell takes a different approach. A barrister in New South Wales, he writes about human rights and commercial law in terms of transnational litigation. He suggests that basic human rights, such as the right to a fair hearing, should be extended to MNCs, since they may be just as exposed to human rights violations as individuals when facing actions in foreign jurisdictions. As Bell points out, the desire to pay due respect to foreign legal systems can at times conflict with other fundamental values.

The remaining essays in the volume review more specific issues in human rights and commercial law. Christine Parker and Leon Wolff, lecturers in law at the University of New South Wales, compare sexual harassment laws in Australia and Japan. They observe that Australian companies have devoted significant attention to preventing sexual harassment and developing appropriate policies to prevent it. In contrast, Japanese companies have been far less successful. They conclude that successful corporate governance of sexual harassment requires that there be public support, a threat of outside regulatory action, and some form of external accountability.

James Strachan, an English barrister, canvasses the United Kingdom's 1998 Human Rights Act (HRA) and warns of its effect on commercial law in the UK. He points out that the HRA requires that public bodies give effect to rights guaranteed under the European Convention on the Protection of Human Rights and Fundamental Freedoms. He suggests that the right of freedom of expression, the right to a fair trial, the right to property and the right to privacy will all have an effect on commercial entities. For example, corporate policies involving the monitoring of employee emails, phone calls and internet use may well be breaches of such rights. Strachan cautions that these changes, and the requirement that public bodies defer to the jurisprudence of Strasbourg institutions rather than English common law, will catch most lawyers by surprise.

Two essays deal with issues surrounding intellectual property. Sam Ricketson, a law professor at the University of Melbourne and practicing lawyer, discusses intellectual property from a human rights perspective. He argues that intellectual property rights are a species of human rights and that the right to enjoy the benefits of scientific progress and the right to health may provide rights of access to databases such as the Human Genome Project, as well as copyrighted materials. He questions how far patent claims, or copyrights, can be advanced when there are human rights to life, liberty and security of the person guaranteed under international conventions.

Peter Drahos is a Senior Research Fellow at the University of London. His essay also examines rights to food, health and intellectual property. Like Ricketson, he questions whether rules of intellectual property affecting the ownership of biological resources are consistent with the fundamental rights to food and health. He argues that a market system—that issues patents to multinationals to generate investment—is not likely to meet the interests of poor people in third world countries, and will do little to stimulate research and development, resulting in MNC domination of the food and health sectors in a manner which is inconsistent with human rights.

Claire Young, a Canadian tax law professor, examines the effect of the equality provisions of the Canadian Charter of Rights and Freedoms on tax laws by examining three cases. *Symes v. Canada* involved an unsuccessful claim of discrimination on the basis of sex by a female lawyer who claimed childcare expenses were a legitimate business expense. In *Thibideau v. Canada*, the Supreme Court of Canada held that the requirement that child support payments be included in the income of recipients also did not discriminate against divorced custodial parents, but nonetheless resulted in changes to government policy. In the final case, *Rosenberg v. Canada*, two lesbian employees successfully claimed discrimination in a situation where the payment of spousal benefits did not recognize their relationship. While Young's article does not examine the implications of these cases on commercial law, her essay suggests that the application of human rights law to tax liabilities and tax subsidies, and their impact on government policy, may well have implications for commercial entities as well.

In his essay, John McMillan, a professor of law at the Australian National University, considers how administrative law affects commerce and human rights. He observes that a large number of administrative law cases involve MNCs seeking commercial advantage, and that a human rights dimension is now permeating all aspects of public law. As he points out, this has resulted in commercial entities being subject to human rights standards in the way they conduct their business, but also permits them to draw support from human rights jurisprudence when challenging government decisions. McMillan argues, however, that human rights claims have been permitted to trump other community rights, and have already hampered attempts by regulators to protect the community at large by focusing on individual rights.

Phillipa Weeks, another law professor at the Australian National University, writes about labor law and human rights in Australia. She indicates that Australia labor law, which was influenced by compulsory conciliation and arbitration, has always recognized work-related human rights, but has not always adequately addressed issues of discrimination, especially against women. She expresses the hope that Australian judges will begin to apply the human rights values promoted by the International Labour Organization (ILO) and its conventions.

The final essay is by Bryan Horrigan and discusses the issue of native title. Horrigan, a law professor, points out that native title raises important corporate issues, such as potential problems of liability, invalidity and compensation, that should not be ignored. While he predicts the likelihood of more litigation involving native title in the future, such as constitutional challenges, claims for compensation and cases around the content of native title generally, he suggests that a more cooperative approach by governments, business and indigenous communities is underway. This is likely to result in negotiated agreements which will reduce some of the current legal uncertainties around native title and result in more cooperative stewardship systems as well.

This book will be of interest to academics, researchers, general practitioners, as well as those with a more specialized interest in commerce and human rights. Corporate counsel will find it of particular benefit, as the increasing globalization of business continues to raise important human rights issues. Indeed, the depth of the discussion in its essays suggests that “due diligence” may, in the very near future, require that MNCs and their lawyers have a detailed knowledge of the human rights landscape as well as business and commercial law. This book will assist them in understanding and navigating the terrain.

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