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Essays on International Commercial
Law in Honour of Francis Reynolds

Edited by **Francis Rose**

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Professor Francis Reynolds QC, DCL, FBA



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INTERNATIONAL COMMERCIAL LAW
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FRANCIS REYNOLDS



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Forewords

Some years ago I chanced to mention the Eldon Law Scholarship to Lord Denning, the doyen of Eldon scholars, and he asked me who was now the chairman of the committee awarding the scholarship. “Francis Reynolds”, I replied. “Oh yes”, he said approvingly. “He’s the best they’ve got there now”. He meant of course that Francis was the outstanding Oxford law tutor of his time. Coming from a man who had profound respect for the tutorial giants of his own generation, this was no mean tribute.

It was a tribute richly earned. For a number of years I had the privilege of serving with, and under, Francis as a member of the Eldon committee, and such was the reputation of the Worcester Law Faculty under his leadership that a constant stream of Worcester candidates presented themselves for election, some successfully, some not. Francis was, as one would expect, the soul of propriety, never allowing a trace of favouritism to cloud his judgement of the candidates’ respective merits. But one could not fail to be struck by the extraordinary interest Francis took in his pupils, his gift for engaging them in serious (but not solemn) discussion, his acute assessment of their strengths and weaknesses, his pleasure in their achievements, above all, his affection and respect for them as people. In an age when academic merit tends to be judged by the weight of scholarly publications and research output, the old-fashioned tutorial virtues tend to be undervalued; Francis embodied the Oxford tutorial system at its best and strongest. It is one of the happy perversities of life that an inspired tutor can do so much more good than an uninspired tutor can do harm.

Francis Reynolds’ reputation would not, however, stand where it does, and this volume would never have seen the light of day, had his exceptional gifts been bestowed only on the small circle of those fortunate enough to be his pupils. Through his scholarly writings, pre-eminently his editing of successive editions of *Bowstead* and of the L.Q.R., he was able to educate, guide and stimulate a much wider audience, judicial, governmental, professional and academic. In his work could be seen all the scholarly values traditionally associated with his Wykehamist *alma mater*: a scholarship exact, thorough,

open-minded and highly intelligent, not pedantic or arid; probing, questioning and critical, not vituperative or wantonly iconoclastic; thoughtful and wise.

This book is a monument to a brilliant career, now reaching the end of what one hopes is only its first phase. It is good to see some of Francis' pupils among the distinguished contributors. It is, in truth, not only a *Festschrift* but a *Liber Amicorum*.

Tom Bingham

I am greatly honoured to be invited to contribute a Foreword to this book of essays written in honour of Francis Reynolds, in recognition of his great service to the law during his distinguished career.

I first came across Francis when, as an undergraduate at Worcester College, Oxford, he entered for an essay prize (I believe that it was the Winter Williams Prize). The two examiners appointed to judge the entries were Hazel Fox and myself, both of us young law tutors at Oxford, only marginally older than Francis himself. We of course awarded one of the prizes to Francis. His promise was manifest even then, but little did I guess how often our paths would cross in our subsequent careers.

Francis was elected as Fellow and Tutor in Law at Worcester, which became for him a much-loved institution to which he has belonged for the whole of his legal career, he and his charming and talented wife Susan setting up home in a beautiful house belonging to the college and adjacent to it. Such was his devotion to Worcester that his many friends became concerned that, under the prevailing rules which required that a person appointed to a professorship should move to the college to which the chair was attached, he might not obtain the promotion which his talents obviously deserved because of his reluctance to leave Worcester. Fortunately, however, the rules were relaxed and he was duly appointed to a professorship in law which permitted him to remain at Worcester. This arrangement was for the mutual benefit of Francis and his college, because Francis was, and indeed still is, an excellent law teacher, as his numerous and very loyal pupils will gladly testify. It was through distinguished former pupils at Worcester (notably Brian Davenport and Stephen Tomlinson) that he forged a connection with my old Chambers at 7 King's Bench Walk in the Temple, of which he later became a member.

Francis is a common lawyer in the classical mould, his principal interest lying in the law of obligations, and especially in the law of contract and commercial law. He has made a notable contribution in his role as one of the editors of *Chitty on Contracts*, providing the chapter on agency, and as one of the editors of the splendid modern edition of *Benjamin's Sale of Goods*. But his magnum opus is undoubtedly the fruit of his collaboration with Brian Davenport in the transformation of *Bowstead on Agency* from a long outdated practitioner's manual in the old style into a first class treatise, based on profound scholarship. This was, in truth, the creation of an important new book on a difficult subject of great practical relevance, which has been of immense benefit not only to innumerable practitioners but also to academic lawyers. It was followed by other editions prepared by Francis alone.

Francis' interest in commercial law led to his appointment as Editor of *Lloyd's Maritime and Commercial Law Quarterly*. He transformed the *Quarterly* into a journal which became highly regarded both by practical men in the City of London and by commercial lawyers—judges, barristers and solicitors—who quickly appreciated its value and came to consult it as a matter

of course. Such was his success with this journal that he was a natural candidate for the editorship of the *Law Quarterly Review* when the position became vacant. All his many admirers rejoiced when he was appointed, and he has not failed to live up to their high expectations. I have had the honour of serving him as a member of the Editorial Board. The *Review*, which can still claim to be the premier law review of the common law world, has flourished under his dedicated and highly competent leadership, with contributions not only from this country but also from abroad, perhaps especially from Australia, New Zealand and Singapore, where his connections have been very strong. We open each new issue in the confident expectation that we will find inside case notes and articles of great interest.

Outside his central work of teaching, writing and editing, he has devoted much of his time to public service. May I mention in particular two of these activities, with which I am familiar. First, he was elected a Bencher of my own Inn, the Inner Temple. He has taken a great interest in the work of the Inn, paying particular regard to the Inn's students. He frequently travels up to London from Oxford especially to attend meetings and functions at the Inn, and his advice is regarded as most valuable by his fellow Benchers. He has taken an active part in promoting the Pegasus Scholarship Scheme, looking after the highly talented Israeli Scholars who have read for the B.C.L. degree at Oxford, with conspicuous success. Secondly, he was elected a Fellow of the British Academy, and in due course he succeeded Gareth Jones as Chairman of the Section concerned with Law. He has discharged the duties of that office with his customary diligence and skill.

Francis is a distinguished scholar, but he is also a great public servant who, with modesty and untiring energy, has devoted his considerable talents to the benefit of not only his pupils and his college but also the law itself. The legal profession, and indeed lawyers and scholars all over the common law world, are deeply in his debt. This book of essays is a tribute of gratitude to him for what he has done for us all.

Robert Goff

A view from the Antipodes

This is written in January 2000 at Te Rangiitā, Lake Taupo, in the middle of the North Island of New Zealand. As it is doubtful whether the *Law Quarterly Review* or *Bowstead and Reynolds on Agency* enjoys any considerable readership in Patagonia or Antarctica, I can claim to be *prima facie* Francis Reynolds' most distant admirer and friend—risking a quibbling refutation from some lawyer resident in the South Island (I treat the mainland and the rest of New Zealand as an entity), the Falklands or Tierra del Fuego. It is my good fortune that distance has disappeared quite often over the years, especially more recently when we have fraternised at the Inner Temple, Oxford and Singapore, as well as during his visits to New Zealand. Although quintessentially an Oxford scholar and teacher (I avoid “don” after reading in Lord Annan's recent book that the expression is properly more restrictive than would be appropriate for Francis Reynolds), he has provided much highly valued service as visiting professor or conference contributor in other parts of the world, particularly Singapore and Australasia.

The Commonwealth connection is also strongly reflected in the *Law Quarterly Review* under his editorship. Any editor of that journal is necessarily distinguished, but it is in no way disrespectful of the others to say that the previous legendary names have been Pollock and Goodhart, with Megarry commonly linked with the era of the latter. But no periodical can survive on legends (*cf. Punch*); and, when Reynolds took over, the L.Q.R. was beginning to acquire something of a dated look, symbolised by its then familiar buff cover. His selection as editor, after experience as general editor of *Lloyd's Maritime and Commercial Law Quarterly*, was not only logical but an inspired choice. While the quality of his own legal writing—and, no doubt, teaching, though I cannot speak of his teaching from personal experience—well merited a chair at Oxford, it is as a transforming editor of the L.Q.R. that I believe he will go down in legal history.

The transformation was contemporaneously marked by the now even more familiar and distinctive maroon, port or tan glossy cover—my advisers differ as to how the colour should be described. It would be an exaggeration to say that the contents answer the second description of maroon in *Chambers Dictionary*, “a detonating firework”. But they have become more diverse, and because of their very diversity more lively. In no degree is the journal a vehicle for one person's ideas, or even one person's influence. Rather it has become a forum in which a wide range of contributions, many of them from the Commonwealth, jostle for space. Once the prevailing tone of the L.Q.R. was magisterial. Now, perhaps, its character is better described as challengingly controversial. The times seem to require this change of emphasis.

Francis Reynolds, himself the most modest of men, might be less than

enthusiastic about the current publisher's blurb, "... the leading scholarly journal in its field in the English language" etc. It used to be said that good wine needs no bush, but the L.Q.R. has gone the way of many wine labels. Fortunately, though, this is not a false trade description. Nowadays there is a plethora of academic legal writing, swollen by law school appointments criteria. A first-class piece may appear anywhere. It is probably fair to say, however, that for consistency of quality the *Law Quarterly Review* still reigns supreme in the English-speaking world. Most of the credit belongs to Francis Reynolds.

So many of my friends are now achieving the recognition of Festschrifts that I am beginning to fear suggestions of lion-hunting rather than true amity. But the honorand of this Festschrift will need no reassurance on the point. Nor, having regard to the variety and standard of the contributions, can readers fail to recognise that this volume is a timely and apt tribute to the work of a major figure in the development of academic law in the English language.

Robin Cooke

Francis Reynolds' links with Worcester College, Oxford stretch over 47 years, as scholar/student (1953–57), assistant law tutor under the redoubtable Alan Brown (1958–71), and, since 1971, as senior law fellow.

Of the four undersigned, only one (Simon Brown) had the great good fortune to be taught by Francis; two (Peter Gibson and Anthony May) read Greats; Iain Glidewell had left Worcester before Francis arrived. All of us, however, were equally intent upon subscribing our names to this Foreword and thus paying tribute to Francis as the presiding genius of the Worcester law faculty for so many years. That the faculty stands today in such universally high esteem, that Worcester lawyers are so welcomed in the best City firms, barristers' chambers and Academe, are in large measure the result of Francis' assiduous cultivation of excellence down the years. It is his reputation which has attracted such a dazzling array of law fellows. It is the rigour and enthusiasm of his teaching, and his fastidious good sense and humour, which have produced so many generations of successful law graduates. The college has indeed been fortunate that he never succumbed to the temptation to move elsewhere.

For many years now there has been an annual dinner in college for past and present Worcester lawyers. It is invariably well-attended. Although organised by the undergraduates, it is Francis who secures the guest speaker (generally a senior Law Lord) and Francis whom most old members have come to see. The admiration and affection felt for him by all is palpable.

It is not only as a great teacher of students that Francis excels. All practitioners turn to and rely on his writings in the leading text books which he edits, which are quoted as the authoritative statements they are recognised to be. Under his distinguished editorship, the *Law Quarterly Review* has not merely maintained but enhanced its high standard. As judges we fear the L.Q.R.'s criticism of our judgments every bit as keenly as any disapproval from their Lordships' House. And we know that it is Francis' views on any commercial law topic which the Law Commission is most concerned to ascertain before it dares to go public with its recommendations for law reform.

Each one of us counts and values him as a friend. Each of us delights in the renown he has brought to Worcester. We seize this opportunity to do him honour.

Iain Glidewell
Simon Brown
Peter Gibson
Anthony May



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Preface

This year marks the retirement of Francis Reynolds as Fellow and Tutor in Law at Worcester College and as Professor of Law in the University of Oxford. A particular feature of his career is his almost unbroken location at Worcester for nearly half a century. The Forewords to this book reveal his unceasing efforts there to build one of the leading schools for the study of law at Oxford. However, he has not confined his energies to Worcester but has also played a leading role in university administration and teaching. In this he has combined both the traditional and the new. So, not only has he helped keep the flag of Roman Law flying in the face of increasing demands imposed by the expansion of contemporary law but in particular was responsible, with Guenter Treitel, for introducing the course on the law of international trade which, though few may realise now, has been the blueprint for countless imitators and has altered not only the study but, in consequence, the practical development of the subject.

Francis' academic activities are many, significant and international. In addition to his teaching at Oxford, he has taught at Chicago, U.C.L. and Malta; and, in particular, his summers have often been occupied by stints in Singapore, Australia and New Zealand. Throughout all this he has maintained a steady stream of influential articles and notes as well as being a significant contributor to three leading commercial law practitioner books, namely *Chitty*, *Benjamin* and of course *Bowstead*. It is in the nature of writing for such works that contributors' names are often hidden behind the title by which the book is known and therefore especially welcome that the latest, retitled, edition of *Bowstead and Reynolds on Agency* should at last formally recognise Francis' established pre-eminence in the field.

The best of the practitioner books tend to be written by leading academics. But they would not be successful if they did not relate to the demands of busy practitioners. It is a distinctive feature of Francis' career that he has been assiduous in recognising and making the connection between academe and practice, and in cultivating judges and leading practitioners. Thus, as editor of *Lloyd's Maritime and Commercial Law Quarterly* and the *Law Quarterly*

Review, he has not only been careful to encourage writing on matters of practical interest but has consistently attracted contributions from judges and practitioners so that their comments reach a wider audience.

Similarly, Francis has played an active part in the deliberations of the Law Commission, in particular when his former pupil and co-editor of *Bowstead*, Brian Davenport, was a Law Commissioner. Change in the law needs to be informed by consciousness of practical consequences against a clear and precise understanding of its theoretical background.

For someone with Francis' reputation for precision, the title of this collection of essays may suggest that this Festschrift begins with a misnomer. For it is not concerned with the ancient body of law known as the *lex mercatoria*. Nor is it directed to current aspirations to develop a uniform, internationally harmonised world commercial law. Its main focus is, in a broad sense, the area in which Francis has been most active, English commercial law in an international context. It would be impossible to cover the whole area in a comprehensive way. But each essay relates to areas in which Francis has been interested.

Brian Davenport bases his essay, on the classification of contract terms, on Francis' first article on the English law of contract, much of which is derived from international trade cases. Brian Coote continues by examining how the ordinary law of contract has had to be reconciled with the doctrine of deviation, developed within the law of carriage of goods by sea. There follow two essays, by Lord Hobhouse and Hugo Tiberg, on the law of agency, with which Francis' name has become so closely linked. Nicholas Gaskell, Malcolm Clarke, Lindsey East and Stephen Tomlinson return to the maritime theme, which has influenced so much of Francis' work, from his pioneering course of lectures on carriage of goods by sea to many of his published articles and notes. The other elements of his international trade teaching and writing are reflected in Jan Hellner's and Peter Ellinger's essays on the international sale of goods and bankers' commercial credits respectively.

When John Morris, *the* authority on the conflict of laws, retired from teaching, Francis succeeded to the readership vacancy created and embraced the teaching of that subject. It is therefore appropriate that there should be several essays in that area, contributed by Gerhard Dannemann, Adrian Briggs, Roy Goode and Tony Guest. In recent years a particular dimension of international influence on English law has been the assimilation of European developments, a theme explored by Richard Whish and Paul Craig. Finally, Guenter Treitel returns to the law of carriage of goods by sea and the general law of contract, and considers the impact of recent statutory intervention.

A common theme of these essays is that, no matter how far domestic law is concerned with and influenced by international matters, it develops within its own environment. This is not something peculiar to English law. It is the underlying environment of the modern *lex mercatoria*.

Francis Reynolds has inevitably collected the principal honours of the

leading academic lawyer. He is a Queen's Counsel (*honoris causa*), a Doctor of Civil Law, a Fellow of the British Academy and an Honorary Bencher of the Inner Temple. His is a distinguished career, to which this collection of essays endeavours to pay tribute.

Francis Rose



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