trade; here all attempt to structure separately private and public law is abandoned. The book ends with a description of the process of international commercial arbitration.

Inevitably this rapid *tour d'horizon* involves oversimplification, some blurring of distinctions and neglect of difficulties. A good example of the author's method is to be found in a two-page treatment of State immunity; after noting that restrictive immunity from jurisdiction now generally prevails so as to permit a State to be sued in respect of its commercial transactions (*de jure gestionis*), he observes that general immunity from enforcement continues save for "the few assets that the State does not need for the funding of its public service". He questions whether the attachment of bank accounts of foreign embassies should not be allowed and footnotes refer to Schreuer, P. Bourel and an article by the author himself on this question. The author boldly announces the book as the *law* of international trade; but it takes only one chapter to demonstrate such unity is false. Trade law is stated to be "closely related to international law" and the operation of economic sanctions is instanced as a good example of the relationship between trade and international law (p.12); that example, however, does little to promote trade on its own account and uses it largely as a favour which can be, and is mandatorily by decision of the UN Security Council, withdrawn from States who default, not commercially, but in observance of peaceful relations with other States. As the chapter proceeds the relation of trade law to national law is seen to be even more fraught with difficulty; both public and private law may be applicable to a business transaction, the public law rules of two States, it is noted, may sometimes complement each other but more usually may create difficulties for a private company which cannot possibly observe opposing regulations at the same time. Similarly, the author explains, private law differs from country to country, the selection of the applicable law is the subject of private international law but as every country draws up its own conflict of law rules private international law is not "international" in the same way as international law is international. In somewhat saddened mood, before moving to attempts to harmonise commercial law and a thumbnail sketch of the Rome Convention on Contractual Obligations, van Houtte is reduced to admitting "differences in national and private international law and thus also in the choice of the applicable substantive law are hampering international trade" (p.19).

Yet if the author is early defeated in his attempt to identify a coherent legal order for international trade, the fault lies not with him but in the tergiversations of States and businessmen. Van Houtte very fairly admits the failures to harmonise and the frequent conflict of standards as to compensation for expropriation of property. Although liberal sentiments are expressed about the special needs of developing States the law is throughout presented from the viewpoint of a Western industrialised country which is a member of the European Union. The tables of cases and legislation reveal the EC bias in the approach, with ECJ and Commission decisions separately listed, as are EC treaties, regulations, directives and Council decisions.

It is a considerable feat to cram so much accurate information into 400 pages in readable form. The preface speaks of the book being used in Belgian universities, in faculties of law as well as business schools. One imagines that the users must be second degree students as the text assumes considerable familiarity with business transactions and ability to understand basic legal concepts such as contract, treaty and corporate structure. In many respects it may serve more as a source of reference or revision than of initial instruction, and is warmly recommended for that purpose.

HAZEL FOX

The Sanctity of Contracts Revisited. By NAGLA NASSAR. [Dordrecht: Martinus Nijhoff. 1994. xxxii + 297 pp. ISBN 0-7923-3079-X. No price given]

THIS is an excellent book. It looks at contracts which involve the performance of obligations over a long period of time and questions the extent to which such long-term commercial

relationships can be contained within the confines of the traditional law of contract. There are many different kinds of relationship, ranging from the classical concession agreement, under which a company was given the right to search for and exploit oil or other mineral resources (often for as long as 50 years or more) to the modern joint venture, where one of the parties agrees to construct and operate a motorway, or a plant for bottling mineral water or a hotel and holiday complex or some other long-term venture. Contracts for projects of this kind are intended to have a relatively long life, given the investment of capital and know-how which they demand, to say nothing of labour, equipment and materials.

However, the best-laid plans may go wrong. Exchange control regulations may be introduced, making it difficult to repatriate capital or income; a key currency may be devalued, so that the return on the project is no longer what was expected; a permit system may be introduced, making labour more expensive or more difficult to obtain; or some other event may occur upsetting the initial apportionment of risk upon which the contract was based. There may even be an act of nationalisation or of compulsory acquisition, which puts an end to the project long before its expected date of termination.

Various safeguards may be incorporated into such long-term contracts. A major construction contract usually contains a variation clause, allowing for the scope of the work to be changed and for the price to be adjusted as the work progresses. Commercial contracts often contain clauses setting out specific price formulae, to allow for currency changes and inflation; "hardship clauses" provide for renegotiation to adapt the contract to changed circumstances, as in the UNCITRAL Guide to which the author refers (p.218); other clauses provide for act of God or *force majeure*. In some sense, these clauses all represent an attempt to predict (or at least to guard against) the unpredictable. Yet the longer a contract is intended to last, the more difficult the attempt becomes.

The examples which illustrate the author's text are drawn primarily (as one would expect) from the decisions of institutional and *ad hoc* arbitral tribunals and from the proceedings of the Iran–US Claims Tribunal. These decisions do not go as far as the author would probably like—abandoning "black-letter" law and reassessing the relationship of the parties in terms of concepts such as those of "good faith" and "fair dealing". Nevertheless, the author concludes that often the principle that contracts are sacred "comes second to considerations of justice".

In the preface to this well-researched book, Lord Wilberforce (who interestingly describes himself as a "former 'black letter' lawyer") refers to the *Aminoil* case as the starting point of the arbitral cases on which the author draws. Certainly this arbitration between Aminoil and the government of Kuwait (in which the present reviewer acted as counsel for the government of Kuwait) is an excellent illustration of the problems posed by Miss Nassar in her book. It was in 1948 that the Sheikh of Kuwait granted Aminoil an oil concession in the divided zone between Kuwait and Saudi Arabia which was to run for 60 years and under which the company was to pay a fixed royalty of US$2·50 for every ton of petroleum "won and saved". Among the terms set out in the concession agreement was a so-called "stabilisation clause", which forbade any change in the terms of the concession without the consent of both parties. As time went by the government made changes in the royalty rate, in line with what was happening in the Middle East generally, and these changes were accepted (or at least acquiesced in) by Aminoil. Finally, in the late summer of 1977, when the concession still had more than 30 years to run, the government put an end to it by a decree of nationalisation. Aminoil disputed the government's right to do this and claimed a substantial amount of compensation, in a dispute which went to *ad hoc* arbitration in Paris before a tribunal of three arbitrators.

In their majority award the arbitrators laid great weight on the modifications which had taken place in the terms of the concession, including a revised agreement in 1961 which contained a clause (Article 9) envisaging further changes in the terms of the concession if "an increase in benefits to Governments in the Middle East should come generally to be received by them". In arriving at their decision that the act of nationalisation was legitimate and that

the amount of compensation should be substantially less than claimed, the majority arbitrators appear to have been concerned to reach an "equitable" rather than a strictly legal solution to the dispute. As the author comments (at p.137):

> The Aminoil award represents a balanced holding that promotes not only the relational aspects [of long-term international commercial transactions], but also the interests of both parties. At the same time, it achieves these aims without unduly straining, or destroying, the stability of the contractual relationship. It is relational in character because it accommodates future, unidentified changes, which are to be dealt with as they occur over the course of the contract. Such potential changes are not to be evaluated in the light of the parties' original contractual agreement, but in reference to the relationship as a whole. The interests of the parties are treated not as competing with, but as complementing, the contractual goal.

The search for "fairness" or "reasonableness" in contracts is not new. It may be seen, for example, in the Unfair Contract Terms Act 1977, which Lord Denning said heralded a "revolution" in the courts' approach to exemption clauses, and which finds an echo in the European Directive (93/13/EEC). However, arbitrators are put under a heavy burden if their decisions are to be "fair" or "reasonable", rather than in accordance with the strict terms of the contract. Certainly, arbitrators have greater latitude than judges to do what they think is right, since there is no hierarchy of arbitration awards and usually no appeal. Even so, as the *Aminoil* arbitration shows, arbitrators are likely to look for some peg on which to hang their award, whether it be a provision of the contract, the past conduct of the parties, acquiescence or some other enabling factor. As the author puts it, on the basis of the awards which she has studied (p.237):

> awards neither strictly adhere to the will theory and sanctity principle, nor do they completely embrace relationalism. Rather, they adopt a conciliatory approach aimed at maintaining the contractual equilibrium, which is defined not in reference to contractual terms or the original agreed-upon equilibrium, but in terms of the existing contractual context.

This is a stimulating and at times provocative study of long-term international commercial transactions. It deserves to be widely read both by those who teach and those who practise international trade law.

ALAN REDFERN

An Introduction to German Civil and Commercial Law. By GERHARD DANNEMANN (with a chapter on company law by Thomas Meyding). [London: British Institute of International and Comparative Law. 1993. x + 140 pp. ISBN 0–903067–35–8. £24·50]

IN his obituary of Dr Mann, published in the *Guardian* of 20 September 1991. Sir Leonard Hoffmann (as he then was) argued that the English legal scene had greatly benefited from the craze of the Hitler years, which drove out of Germany some of its best academic talent. He could have added that the whole common law world was the beneficiary of this exodus. The United States in particular became the haven for some of the best comparatists of our times. That was true in the 1930s, 1940s and 1950s but is no longer so today. For Germany has gradually wrested back the crown of comparative law as the work of Stoll, Drobnig, Lorenz, Kötz, Großfeld, Lutter, von Bar and others clearly testifies. The true significance of Dannemann's work thus lies primarily in the fact that it indicates that this pre-eminence will remain in his country (even though my own university has had the foresight to entice him temporarily to its cloisters!).

The book in hand testifies to this assertion. For in a mere 140 pages the author(s) have presented one of the most difficult (and important) parts of German private law with amaz-