old or that some readers today might struggle with the language of Dickens' time". While those factors may indeed be insufficient in themselves to justify change, the Commission did not provisionally propose such reform simply because of them. It proposed that the *Banks* test be "recast in simple, modern terms, and in terms more in line with current psychiatric thinking". It argued that a reformulation could accommodate the full range of factors that can affect capacity; four limbs should be expressly used (escaping confusion over whether the *Banks* test has three or four limbs); and the new formulation should clarify that the test is whether the testator was *able* to understand the will rather than whether he *did*, and that a reformulation makes the law more accessible. It would make the law more acceptable to modern ears by removing potentially offensive and value-laden language such as "insane delusion", "pervert", "poison" and "sense of right", which demonstrates that the modern "struggle" with *Banks* is one of proprietary and of understanding. The Commission's alternative suggestion is to replace the *Banks* test: it says that the Mental Capacity Act 2005 should extent to testamentary capacity, because it is anomalous that different tests apply when capacity is assessed retrospectively (as in *Banks*) or prospectively (in the context of a statutory will). This is not commented upon in the book.

Its next two chapters contain biographies of the claimant and the defendant. John Banks the younger had emigrated to the US and Canada, returning to England when he learned of Margaret's death; he may have returned to America following the litigation. He died back in Keswick, apparently having experienced prosperity as a painter. Frost focuses on the tale of Edward Barron, Goodfellow's void marriage to his late wife's sister, his unaccompanied voyage to New Zealand, and his untimely demise there. "The victor in the litigation ended his life with no property and no money, separated from the mother of his children, she and the children having already abandoned his name".

The final chapter is devoted to "The Questions that still Remain", including "Where did John Banks the Elder's Money Go?" The author considers why the testator held no surplus cash at his death, and suggests that the litigation might mask advantage that others took of him while alive. In appendices, the author provides notes on the cast of characters, chronology and geography, brief biographies of the legal figures involved, and a full reproduction of the Queen's Bench judgment.

This well-researched book provides fascinating insights into the history of a very significant decision, setting it successfully in its context. The text at times verges on being clunky, repetitive and even trite. One is occasionally left with the sense that some historical digressions (interesting in themselves) were included to compensate for the scarcity of more relevant evidence. But the work has real value for the succession expert and the general reader, not least in painting a grim picture of the reality of Victorian life, death and illness.

Brian Sloan
Robinson College

Petroleum Contracts and International Law. By Rudolf Dolzer. [Oxford University Press, 2018. xxiv + 299 pp. Hardback £95. ISBN 978-01-98715-97-9.]

As recognised by the UN General Assembly in 1962, states have permanent sovereignty over their natural resources, yet the oil and gas industry, in many ways,

remains international. Given the financial and technical challenges characterising oil and gas production, foreign capital and technology continue to play a key role in the development of investments in this sector. Foreign energy companies are well equipped to manage the operational and commercial risks that can affect their investments, but they are also exposed to significant regulatory and political risk. The strategic nature of energy supply exacerbates the risk of tensions between foreign investors and host states, as illustrated by the high number of oil and gas-related disputes brought to international arbitration. Petroleum contracts provide the legal foundation of investments in the exploration, exploitation and transportation of hydrocarbons, and are thus at the centre of the many arbitration disputes concerning investments in the upstream energy sector. Studying petroleum contracts is not only important to understand the regulation of the upstream energy industry. It is also of great relevance to understand the key principles of international (investment) law that oil and gas arbitrations have helped shape over the years.

Petroleum Contracts and International Law makes a most valuable contribution to both energy law and international law by analysing oil and gas agreements from an international perspective. The book – written by one of the leading authorities in the field of international investment and natural resources law – focuses on the key contractual and regulatory aspects of the upstream energy business, as well as the main international public law and investment law principles applicable to the industry. Logically, given the regulatory and political risks associated with upstream energy investments, the analysis pays great attention to the relation between the host state, national oil companies and foreign investors. The study of international arbitration disputes in the oil and gas sector helps one understand the challenges that face the enforcement of petroleum agreements under international law and, even more interestingly, the influence that oil and gas disputes have had on the development of international investment and commercial law. The study is succinct, but this does not come at the expense of the rigour of the analysis. Although limited reference to specific upstream agreements in the analysis can to some extent be regretted, this is largely compensated by the book's impressive discussion of arbitration practice in the sector.

Professor Dolzer starts by introducing the academic debate on the existence of a *lex petrolea*, namely a set of specific rules to the international petroleum industry. Dolzer assumes that *lex petrolea* exists, at least within the broad meaning of "the sum of all rules of law as they apply to the petroleum business, covering contracts of the industry and rules of domestic law and international law as understood and applied specifically to the petroleum industry". The book explores *lex petrolea* by focusing on its embodiment in petroleum contracts and in arbitral practice on petroleum contracts.

Petroleum contracts are closely related to the permanent sovereignty over natural resources – a principle which is generally considered the foundation of the international energy regime. The principle was developed in the context of decolonisation and the recognition of the right to self-determination. However, permanent sovereignty does not give states a right to ignore the investment agreements concluded with foreign companies. By entering into petroleum agreements, host states "sacrifice territorial rights" in return for foreign capital and technology. According to *pacta sunt servanda,* states' sovereign rights over energy do not justify terminating these agreements or nationalising investments without compensation, in particular when these agreements contain stabilisation clauses (i.e. commitments by the state to keep the legal framework unchanged).

Based on a review of the large number of arbitration decisions dealing with the sovereignty of the host state, Dolzer comes to the important conclusion that the legal

relevance of permanent sovereignty over natural resources is in fact limited, contrary to what is often assumed in the international energy law literature. "With the exception of the *Aminoil* Tribunal, no single tribunal attaches any legal significance to the principle in the sense that specific conclusions would flow from its existence and recognition." Indeed, according to Dolzer, "the principle has, so far, not acquired a legal meaning which goes significantly beyond the traditional accepted rules on territorial sovereignty, territorial jurisdiction, and self-determination". However, the principle proved to be of great political significance for the post-colonial transformation of the oil industry. In particular, the movement for permanent sovereignty fostered changes to the cooperation between host states and foreign oil companies, such as the establishment of national oil companies and the abandonment of traditional concessions.

A central topic in Dolzer's analysis is the characterisation of petroleum contracts as "state contracts". These are contracts with foreign companies that states conclude in the exercise of their sovereign rights and that are, at least to a certain extent, internationalised, namely governed by international law and subject to international arbitration. Building on the views of leading legal scholars and seminal decisions in energy disputes (e.g. *Aminoil v Kuwait* (1982) 21 I.L.M. 976, *BP v Libya* (1973–74) 53 I.L.R. 297, 375, and the *Anglo-Iranian Oil Co.* case [1952] I.C.J. 2), the book explains how investor-state contracts came to be seen as detached from a state's domestic legal order. This analysis highlights the influence of oil disputes (in particular disputes concerning the nationalisation of energy reserves in the 1960s) on the development of international investment law, within its broad meaning. Dolzer's study of state contracts in legal doctrine impresses by its rigour, though it is affected by some editorial errors (such as spelling mistakes in French quotations, and inconsistencies in the referencing of cases).

Petroleum Contracts and International Law introduces the different types of petroleum contracts and their evolution. The starting point of Dolzer's analysis is that the political, economic, financial and geological circumstances of the host state influence the design of petroleum contracts. Importantly, in the context of current developments regarding Russian, Chinese, EU and US energy relations, the book highlights the impact of the geopolitics of energy on petroleum contracts. According to Dolzer, "the symbolism of sovereignty, the manifestations of resource nationalism, the phases of the petrocycles, and the domestic politics of the host State have been the main driver of the evolution of the PCs [petroleum contracts], and their changing designs". An obvious example of this phenomenon is the replacement of concessions (providing exclusive rights over a certain territory) with production sharing contracts (limiting an investor's right to a share of the output), in order to safeguard the state's title to – and thus sovereignty over – oil. Although the discussion of the contents and design of PCs at times remains general, the book offers a good introduction to the main concepts used to structure and regulate the realisation of upstream energy projects.

Given the regulatory risks that characterise upstream energy investments, it is also logical that Dolzer examines stabilisation clauses in PCs, by comparing the different types of clauses, examining their drafting and critically reflecting on their application in arbitral practice. This discussion helps to explain both the relevance of stabilisation clauses for the upstream energy industry and limits to the application of these clauses, given the sovereign rights of states to regulate their energy industry.

Dolzer complements his legal analysis with a most useful non-legal perspective on the petroleum industry. The book's discussion of the main actors and driving forces in the petroleum business greatly helps one to understand the complex legal

arrangements governing PCs, although it is a little surprising to find this overview towards the end of the book, after the discussion of the technical provisions of PCs.

Some might question the timing of a book on the petroleum industry, given the ongoing transition to renewable energy sources. With increasing urgency on the need to address climate change, the most pressing task for lawyers is to help design regulatory solutions that facilitate the low-carbon energy transition. However, even in ambitious decarbonisation scenarios, investments in oil and gas production will continue to be needed in the next decades to replace depleting reservoirs and compensate for the variability of wind and solar energy. More importantly, the decarbonisation of energy supply raises new challenges for the upstream energy industry – in the form of price shocks, demand shifts and geopolitical changes – that can have significant legal and contractual consequences. *Petroleum Contracts and International Law* does not directly engage with these challenges, but provides a relevant theoretical basis for the study of future changes to the design of PCs in a new geopolitical environment.

In sum, *Petroleum Contracts and International Law* offers an excellent introduction to the main legal principles governing the realisation of upstream energy investments that will prove useful to both students of oil and gas law and practitioners. From an academic perspective, the main added value of the book is the critical analysis it provides of oil and gas agreements as state contracts. Dolzer's study of the internationalisation of PCs in arbitration disputes is essential to understand how international law influenced energy law and vice versa.

Anatole Boute
The Chinese University of Hong Kong

A Comparative History of Insurance in Europe: A Research Agenda. Edited by Phillip Hellwege. [Berlin: Duncker & Humblot, 2018. 253 pp. Paperback €99.90. ISBN 978-34-28154-99-9.]

For all the popularity that comparative legal history is enjoying today among legal historians, scholars have kept at a safe distance from the history of insurance law. Not only there is no comparative history of insurance law in Europe, but even attempts to sketch out modest comparisons between two jurisdictions are few and not always successful. Sometimes those parallels focus on a few years only, thus providing admirable pages of micro-history that shine in splendid isolation. Other times, they span across the centuries in a few pages, providing stimulating accounts of modest utility. Besides, and especially on insurance, the dialogue between legal historians and economic historians is relatively recent. This limited dialogue has often been a problem perhaps more for the lawyers, given the reluctance of some scholars to look at archival material, coupled with a rather optimistic attitude towards the interest of learned jurists for the commercial practice of their time. Further, the usual division between common and civil lawyers has done little to encourage a comparative approach. As with most other branches of commercial law, insurance law presents another difficulty: its history is often heavily influenced by court decisions, many of which are little known and little studied. This is not just the case of England, but – one might even say, even more than England – also of many civil law countries.

These are some of the reasons why a comparative history of insurance law is yet to be written, and so an important reason to congratulate the editor of this book, Phillip