New York Contract Law: A Guide for Non-New York Attorneys

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New York, in its role as a global epicenter of intersecting geopolitical influences, including finance and mercantilism, has suitably evolved, over two centuries, a firmly stable common law, which offers certainty and predictability, complemented by legislative enactments, regarding contract doctrine, thereby making New York a desirable forum for contract dispute resolution. The magnitude of this state's participation in fashioning law and resolving disputes on the world stage of finance and commerce was captured by the First Department, in *Hyundai Corp. v. Republic of Iraq*, 20 A.D.3d 56, 68 (1st Dept.,2005): "New York City serves as a mecca of international commerce in this global economy, with foreign sovereigns frequently acting as direct parties to that commerce. Indeed, our state court system has created commercial courts to knowledgeably handle specialized commercial litigation, including that which involves foreign sovereigns." Also see, *IRB-Brasil Resseguros, S.A. v. Inepar Investments, S.A.,* 20 N.Y.3d 310 (2012), regarding General Obligations Law § 5-1401.

While most commercial actions heard by courts or arbitrators sitting in New York have their geneses in transactions where all the underlying events arose in New York, raising no challenges to personal jurisdiction, other actions are instituted here because of New York's significant nexus to the events and issues, known as the center of gravity. Still others have their origins in choice of law clauses; many international and interstate corporations and enterprises, as well as wealthy sophisticated businessmen, negotiate to include choice of law provisions designating New York law as the backdrop against which any legal contests will be determined, whether in courts sitting in New York (federal courts being required to apply the substantive law of the jurisdiction in which they sit) or in arbitration.

Out-of-state attorneys routinely steeped in contract negotiations, whose breaches or enforcement may ultimately bring them to either of the courthouses on Foley Square or to New York's International Arbitration Center, must, therefore, attain an intimate knowledge of the fundamental and advanced principles of New York contract law. New York Contract Law: A Guide for Non-New York Attorneys, by Glen Banks, Esq., [New York State Bar Association, 2014], addresses this need in exceptional fashion. Preliminarily, it merits noting that the title is an understatement and misnomer because, while ostensibly taking aim at the outside bar, the book's value extends well beyond that of a primer for foreigners; it is simultaneously a quintessential and indispensable resource for all attorneys engaged at all levels of commercial practice in New York. This book is a mandatory companion to Mr. Banks' treatise, New York Contract Law [West's New York Practice Series, 2006, supplemented annually].

In addressing the various aspects of contract law, from a letter of intent to a claim for breach, and an assessment of damages, and everything in between, the underlying focus of the book is upon the basic principle of New York contract law: with exceptions attributable to supervening public policy, sophisticated parties are free to chart their own course and a court will enforce their bargain in accordance with the plain meaning of the words they selected to define

and circumscribe their contractual relationship.

The book's analysis is primarily anchored in decisional authority emanating from the Court of Appeals with references to relevant statutory schemes. The fundamental precept of the book, supported by the hundreds of pages of cautionary law and practice, is that sophisticated parties must allocate risks at the bargaining table. When subsequent events make a party unhappy with the bargain it made, a court will not redefine the relationship by either reading a contract to contain or infusing language that the party could have but neglected to include to protect its interests or may have made a judgment call during negotiations not to include which it regrets in retrospect. Throughout the book, Mr. Banks offers generously abundant tips on contract language to help achieve an optimal product.

The two active ingredients in the book are Mr. Banks' mastery of the law and his art of explication, converting theoretical into instant practical consumption. His methodology is unique in its combination of depth, scope, and immediate comprehensibility right through the very last page. The author shepherds the reader through the various gradations of issues during the course of complex contract negotiations. In fully expounded discussions, crafted in fluid and easy to read question-and-answer format, Mr. Banks' didactic style uses comfortable and lucid phraseology that establishes the basics and untangles the complex. The questions and answers follow a nuanced sequential progression based on the potential pitfalls encountered in the evolutionary stages of negotiations.

Issues are amplified and simplified by an abundance of examples that elucidate every subject of discussion. Mr. Banks' guidance minimizes uncertainty by distilling otherwise seemingly intricate and overwhelming concepts and terminology into clear digestible language ready for immediate consumption which is anything but dry. Where appropriate, bullet-point outlines summarize the issues raised in each category.

Mr. Banks covers nearly every eventuality that can result in a dispute. It is highly improbable that a practitioner will encounter a situation that involves issues not contemplated in the book.

Mr. Banks' extensive experience and scholarship in complex international, interstate, and domestic contract negotiations and litigation uniquely qualify him to instruct us how to navigate the choppy waters from contract formation through litigation. Both of Mr. Banks' tomes are a sine qua non for every law firm, in or out of New York, practicing transactional law or prosecuting contract disputes.