The Impact of Recent Judgments of the European Court

Adrian Briggs' recent article in the **University of Oxford Faculty of Law Legal Studies Research Paper Series**, entitled *The Impact of Recent Judgments of the European Court on English Procedural Law and Practice*, is now available for download from here.

The abstract reads as follows:

"Writing in 1991 in the Revue critique de droit internationale prive, and analysing three decisions of the English courts on the relationship between jurisdiction under the Brussels Convention and the common law doctrine of forum non conveniens, Professor Gaudemet-Tallon entitled her paper "Forum non conveniens: une menace pour la convention de Bruxelles (a propos de trois arrets anglais recents)". Such a title left the reader in little doubt of the gist of the views which were to follow. But it marked the beginning of a period of intellectual debate, which required English lawyers to consider the extent to which the rules of the common law on the jurisdiction of courts would relate to the new arrangements contained in the rules of the Brussels and Lugano Conventions. By and large it is fair to say that the views of English lawyers were not uniform though, as is the way in England, the most influential view tends to be that of the Civil Division of the Court of Appeal; and it generally adhered to the view that a court could still find that the forum conveniens was in a non-Contracting State and so stay the proceedings, which had caused Professor Gaudemet-Tallon such alarm. In preparing this paper for the seminar, I had seriously considered giving it the sub-title "La Cour de Justice: une menace pour la moralite du litige commercial (a propos de trois arrets europeens recents)". But it seemed to me that it was a strategic mistake to tell people what they were going to hear for fear that they would stop listening. So let me introduce this paper by observing that, when seen from London, the European Court has just completed fifteen months of infamy. Or, to put it another way, its three recent judgments on matters of acute relevant to commercial litigation in London have left a sense of real disappointment, and more than a little indignation. In part this is attributable to the lamentable quality of the reasoning displayed on the face of the judgments. But in further part, as it seems to me, it proceeds from a realisation that the

European Court brings a public lawyers' approach to an issue which ought to be seen as being one of intensely private law, and appears to be unaware or unconcerned that this is itself an issue which is controversial. The structure of this paper is therefore as follows A. The fundamental nature of English law on the jurisdiction of courts (i) Rules of Jurisdiction (ii) Control of forum shopping (iii) The role of consent B. The material judgments of the Court of Justice (i) Failure to enforce jurisdiction agreements: Erich Gasser GmbH v MISAT srl (ii) Failure to prevent wrongdoing in the assertion of jurisdiction: Turner v Grovit (iii) Rejection of the right to apply forum non conveniens: Owusu v Jackson (iv) Summary view C. An explanation for differences in approach of English courts and the European Court D. The limits of the decisions: how far do they go ? (i) Jurisdiction under Article 2 (ii) Jurisdiction under Article 4 (iii) Proceedings between parties who have agreed to arbitrate (iv) Enforcement of jurisdiction agreements by other means (v) Future legislation on choice of law E. Conclusions."