New French Books on the Conflict of Laws

For long, scholars interested in the French conflict of laws had to refer to a few traditional books, in particular the treaty of Batiffol and Lagarde (8th edition 1993), but also the manuals of Loussouarn and Bourel (9th edition 2007, with professor Pascal de Vareilles-Sommières), of Pierre Mayer (9th edition 2007, with professor Vincent Heuzé), and of Bernard Audit (3rd edition 2006).

In 2005 and in 2007, three new books covering the whole field of conflicts have enriched French private international law. They all bear the title *Droit International Privé*.

The first was published in 2005 by professor Thierry Vignal, who lectures at Cergy-Pontoise University. The publisher is Armand Colin.

The second was published in 2007 by professor Marie-Laure Niboyet and professor Geraud de Geouffre de la Pradelle, who lecture at Paris X (Nanterre) University. The publisher is LGDJ.

The third was published in 2007 by professor Dominique Bureau, who lectures at Paris II (Pantheon-Assas) University, and professor Horatia Muir Watt, who lectures at Paris I (Pantheon-Sorbonne) University. The publisher is PUF.

Guest Editorial: Dickinson on Trust and Confidence in the European Community Supreme

Court?

Throughout 2008, CONFLICT OF LAWS .NET will play host to twelve guest editors: distinguished scholars and practitioners in private international law, who have been invited to write a short article on a subject of their choosing. It is hoped that these guest editorials will provide a forum for discussion and debate on some of the key issues currently in the conflicts world, and I would very much encourage everyone to post comments.

The first editorial is on "**Trust and Confidence in the European Community Supreme Court?**" by Andrew Dickinson.

Andrew Dickinson is a practising solicitor advocate (England and Wales) and consultant to Clifford Chance LLP. He is also a Visiting Fellow in Private International Law at the British Institute of International and Comparative Law. Andrew is the co-author of *State Immunity: Selected Materials and Commentary* (OUP, 2004) and an editor of the *International Commercial Litigation Handbook* (LexisNexis, 2006). He has written widely in the areas of private and public international law – recently published papers include "Third-Country Mandatory Rules in the Law Applicable to Contractual Obligations: So Long, Farewell, Auf Wiedersehen, Adieu?" (2007) 3 *J Priv Int L* 53 and "Legal Certainty and the Brussels Convention – Too Much of a Good Thing?", ch 6 in P de Vareilles-Sommières (ed), *Forum Shopping in the European Judicial Area* (Hart Publishing, 2007).

Trust and Confidence in the European Community Supreme Court

Under Article 10 of the EC Treaty, the relations between the Member States and the Community institutions are governed by a principle of loyal co-operation (Case C-275/00 *Commission v First NV* [2002] ECR I-10943, para 49). In the area of private international law, now within Title IV of the EC Treaty, that principle has manifested itself in the relationship of mutual trust between Member States' judicial systems in the application of the Brussels I Regulation and its predecessor Convention (Opinion 1/03, *Lugano Convention* [2006] ECR I-1145, para 163; Case C-159/02 *Turner v Grovit* [2004] ECR I-3565, para 72). To a certain degree, that relationship is, of course, a fiction. Some Member State courts are unwilling to trust certain of their continental cousins, whose reputation (deserved or

undeserved) precedes them. Others are wholly undeserving of the fiduciary responsibility (see Case C-7/98, *Krombach v Bamberski* [2000] ECR I-1935).

Importantly, however, the principle of loyal co-operation not only requires the Member States to take all measures necessary to ensure the application and effectiveness of Community law, but also imposes on the Community institutions reciprocal duties of sincere co-operation with the Member States (*Commission v First NV*, above). Accordingly, a relationship of "common trust" supposedly exists between the Member States, on the one hand, and the European Court of Justice, on the other, in the performance of the latter's primary function in ensuring that in the interpretation and application of the treaty the law is observed (EC Treaty, Art 220). In this connection, the question arises: "Is the Court of Justice really deserving of our trust?"

Three reasons, in particular, justify hesitation before giving an affirmative answer to that question. The first concerns the judicial, administrative, financial and procedural resources available to the Court. The current restriction on the number of judges and Advocates-General under the EC Treaty (Arts 221-222) inevitably restricts the number of cases that can be heard, particularly if (as is currently the case) the procedural rules entitle intervention by other interested parties and require a fixed, multi-layered procedure to be followed (ECJ Statute, Arts 20 and 23). Further, as the President of the Court of Justice has noted "the accelerated procedure laid down under Article 104a of the Rules of Procedure of the Court is not suited for dealing adequately with a high number of references for a preliminary ruling in areas such as visas, asylum and immigration, or judicial co-operation in civil and criminal matters" (see Council document 11759/1/07 REV 1 (en), p 3).

The result, inevitably, is delay in the administration of justice, a delay which is all the more important in situations in which the private rights and obligations of natural and legal persons are directly at stake. By way of example, of the four decisions of the ECJ in 2006 concerning the Brussels Convention, two (Case C-4/03, *GAT* and Case C-539/03, *Roche Nederland*) had been referred to the ECJ in 2003. Little wonder, therefore, that a reference to the Court is seen in some quarters as a useful way to gum up proceedings (a "Luxembourg torpedo", perhaps) and focus the claimant's mind on settlement.

Happily, the ECJ has itself on more than one occasion taken the initiative in

proposing amendments to its statute and rules to create a more streamlined and flexible procedure for certain references for a preliminary ruling in the area of freedom, security and justice (see Council documents 13272/06; 17013/06; 11597/1/07 REV 1 (en); 11824/07). Unfortunately, it appears that the Council and the Member States have yet to act on that initiative.

The second reason concerns the expertise of the Court in matters of private law, and private international law in particular. Thus, the potted biographies of the current members of the Court appearing on the curia website suggest that significantly less than half have any experience of private practice. Unsurprisingly, the background of most lies in the areas of public and European law, and only two CVs (those of the judges from Slovenia and Romania) refer to private international law. This suggests a significant imbalance, particularly given the increasing prominence of "private law" instruments in the Community *acquis*.

The third reason, arguably the most troubling, concerns the unfavourable impression given by the Court's reasoning in recent cases in this area, particularly those concerning the European jurisdiction instruments. Thus, the Court has appeared unconcerned by arguments raised concerning encouragement of abusive practices by litigants (*Turner*, above, para 53) and consequential difficulties in the due administration of justice (Case C-281/02, *Owusu v Jackson* [2005] ECR I-1383, paras 44-45). Suffice it to observe, to use one of the ECJ's favoured expressions, it is not so much the fact that these arguments were rejected as the manner in which the Court curtly swept them under the carpet. More recently, in Case C-98/06, *Freeport v Arnoldsson* (10 November 2007), the ECJ refused to acknowledge the doubts which it had generated through a careless (and unnecessary) comment in its judgment in its earlier decision in the *Réunion* case ([1998] ECR I-6511, para 50), seeking instead to explain away the comment on an implausible basis (see here for the discussion on this website). Had the Court said "we went further than both the decision and the terms of the 1968 Convention required" or even "we went further than the decision required and we can see why it has caused confusion and dissatisfaction in some quarters", its decision in *Freeport* would not have raised doubts. By deploying a judicial sleight of hand, however, the Court calls into question, once again, whether it is deserving of our common trust as the arbiter of an increasingly broad civil justice regime under EC law.

Like the principle of mutual trust in other Member State courts which the ECJ has

emphasised, it is a fiduciary relationship from which the "beneficiaries" are not free to withdraw. But the importance of the Court's role in our personal and professional lives is too important to allow the re-writing of history to pass without remark, particularly at a time when the ECJ is likely to exercise an increasingly significant role in the area of private law, as a result both of the recent tide of legislation under Title IV (the legacy of the rush to exercise competences created by the Treaty of Amsterdam and the Commission's scoreboard turning activity in the early years of this century) and the intended removal by the Reform Treaty of the restrictions (currently, EC Treaty, Art 68) on the right of lower Member State courts to refer cases for preliminary ruling on a question of EC law. Improvements in the Court's procedural rules (see above) may address some of the problems, but it is submitted that a more fundamental institutional reform is required. One option, which may merit further thought (and on which comments would be welcomed) would be to create a specialist "civil and commercial court" using the power conferred by Art 225a [256, post-Reform Treaty], with specifically tailored procedures and judges chosen for their expertise in, and sensitivity to, private law issues and the resolution of disputes between private parties. Absent reform of this kind, Europe's supreme court may acquire a reputation as a court of injustice, not of Justice.

(The February Guest Editorial will be by Professor Jonathan Harris; details to follow.)

Choice of Law in the American Courts in 2007: Twenty-First Annual Survey

With the start of a new year, and the concomitant end of an old one, comes the twenty-first instalment of Symeon Symeonides' annual survey of US decisions relating to choice-of-law issues. It is, as always, both a rigorous piece of research and an excellent resource. Here's the abstract:

This is the Twenty-First Annual Survey of American Choice-of-Law Cases. It covers cases decided by American state or federal courts from January 1 to December 31, 2007, and reported during the same period. Of the 3,676 conflicts cases meeting both of these parameters, the Survey focuses on the cases that deal with the choice-of-law part of conflicts law, and then discusses those cases that may add something new to the development or understanding of that part. The Survey is intended as a service to fellow teachers and students of conflicts law, both within and outside the United States. Its purpose is to inform rather than to advocate. The following are among the cases reviewed in the Survey:

A California Supreme Court decision involving recordings of cross border communications and another California case raising issues of cross-border discrimination in managing a web site; a product-liability decision of the New Jersey Supreme Court backtracking from its earlier pro-plaintiff decisions, and several other cases continuing to apply the pro-defendant law of the victim's home state and place of injury; several cases arising out of the events of September 11, 2001, and a few cases involving claims of torture (by them and us); the first guest statute conflict in years, as well as a case eerily similar to Schultz v. Boy Scouts of America, Inc.; two cases in which foreign plaintiffs succeeded, and many more cases in which US plaintiffs failed, to obtain certification of a nationwide class action; a case involving alienation of affections and one involving palimony between non-cohabitants; several cases involving deadly combinations of choice-of-law, choice-of-forum, and arbitration clauses; three cases involving the paternity or maternity of children born after artificial insemination, in three different combinations (known sperm donor, unknown sperm donor, and unknown egg donor); a case involving the child of a Vermont civil union and holding that DOMA does not trump the Parental Kidnapping Prevention Act; a case involving the constitutionality of a Missouri statute affecting out-of-state abortions of Missouri minors; and one US Supreme Court decision allowing federal courts to dismiss on forum non conveniens grounds without first affirming their jurisdiction, and another decision exonerating Microsoft from patent infringement charges arising from partly foreign conduct.

The survey is available to download, free of charge, **from here**. **Highly recommended**.

West Tankers, and Worldwide Freezing Orders

There are two casenotes in the new issue of the *Cambridge Law Journal* worthy of mention. Firstly, Richard Fentiman (*Cambridge*) has written on "Arbitration and the Brussels Regulation" – discussing the recent House of Lords decision (and reference to the ECJ) in *West Tankers Inc v. RAS – Ras Riunione di Sicurata SpA* [2007] UKHL 4. The introduction reads:

> *WHEN, if at all, may English courts restrain claimants from suing in other Member States? The European Court of Justice has declared such relief to be inconsistent with the principle of mutual trust embodied in Regulation 44/2201, governing jurisdiction in national courts: Case C-281/02 Turner v. Grovit [2004] ECR I – 3565. But when does the Regulation engage, so that the ban imposed in Turner applies? Perhaps it does so whenever the foreign proceedings are within the Regulation's material scope. If so, civil proceedings in the courts of Member States can never be restrained. Alternatively, perhaps the Regulation only engages when it governs jurisdiction in both the foreign and the English proceedings. Judicial proceedings in other Member States could thus be restrained, provided relief is sought in English proceedings beyond the Regulation's reach.*

Louise Merrett (*Cambridge*) has written a note on "Worldwide Freezing Orders in Europe" (C.L.J. 2007, 66(3), 495-498). Here's the abstract:

> *Examines the Court of Appeal decision in* Banco Nacional de Comercio Exterior SNC v Empresa de Telecomunicationes de Cuba SA *on whether the court had jurisdiction under Regulation 44/2001 Art.47 (Brussels Regulation) or the Civil Jurisdiction and Judgments Act 1982 s.25 to grant a worldwide freezing order over the defendant's assets where it was not connected to, nor resident in, England and the court had no jurisdiction over the subject matter of the proceedings.*

Available to subscribers (both online and in print).

The Long-Arm of the USPTO: A Significant Decision (and a Significant Dissent) from the Fourth Circuit

When panel issues a 16-page decision, and Judge James Harvie Wilkinson III writes a 20-page dissent, people seem to take notice. In *Rosenruist-Gestao E servicos LDA v. Virgin Enterprises Ltd*., No. 06-1588 (4th Cir., December 27, 2007), Judge Wilkinson sharply derided his colleagues in holding that:

> *"a foreign company that has no United States employees, locations or business activities must produce a designee to testify at a deposition in the Eastern District of Virginia so long as it has applied for a trademark registration with a government office located there. As a result, foreign witnesses can be compelled to travel to the United States and give in-person testimony at the behest of any litigant in a trademark dispute, . . . even though the PTO's own procedures call for obtaining testimony from foreign companies through [the Hague Evidence Convention]."*

This decision is, as Judge Wilkinson recognizes, "a first for any federal court," and "problematic for many reasons." Specifically:

> *It fails to properly apply the statute, 35 U.S.C. § 24, that is directly relevant to its decision, and it reaches a result that is bound to embroil foreign trademark applicants in lengthy, procedurally complex proceedings. It inverts longstanding canons of construction that seek to protect against international discord, and it disregards the views of the PTO whose proceedings 35 U.S.C. § 24 is designed to aid. In view of the statutory text (see Section I), interpretive*

canons, international relationships, and separation of powers concerns (II), and the PTO's own framework (III), I firmly believe this subpoena must be quashed.

The decision can be obtained here. One cannot help but wonder whether the significance and recurrence of the issue doesnt warrant immediate Supreme Court review of the decision, even absent a clear split of circuit authority. Indeed, as Judge Wilkinson implicitly acknowledges, such a split may never occur; "the majority creates a standard that is in fact a national one: the PTO is located in the Eastern District of Virginia; applications for trademark registration are filed there; and subpoena enforcement will frequently be sought in that district. Indeed, for any foreign corporation without a preexisting United States presence, the majority's decision will be controlling."

Happy Christmas / Holidays

On the assumption that no more items will be posted to Conflict of Laws .net before 25th December, and possibly 1st January (although we did, in fact, churn out quite a few posts in the festive period last year), I would like to wish everyone a Happy Christmas / Holiday, and a very Happy New Year. I hope everyone returns in 2008 thoroughly refreshed and recharged, helped along by a diet of turkey, fruit cake, mince pies and *plenty* of wine.

I would like to quickly mention our team of 15 National Editors. If you find this website useful and/or interesting, it is because of their expertise, dedication and generosity. **325** items on new cases, legislation, publications, news, reviews or whatever else have been posted on Conflict of Laws .net during 2007, which represents a considerable amount of time and effort. We have several more scholars joining the team in 2008. If your country is not represented on Conflict of Laws .net, and you would be interested in becoming an Editor, I would be delighted to hear from you.

Best wishes, Martin George.

Some Political Drama in the Conflict of Laws in Canada

The most recent chapter in the long-running and highly public dispute between businessman Karlheinz Schreiber and former Prime Minister of Canada Brian Mulroney involves significant conflict of laws issues. On December 20, 2007, Justice Cullity of the Ontario Superior Court of Justice released his decision holding that Schreiber's claim was dismissed for lack of jurisdiction. The decision is not yet posted but should be soon on the CanLII web site (available here).

In *Schreiber v. Mulroney* the plaintiff sued the former Prime Minister of Canada for $300,000, alleging that Mulroney had breached an agreement to help him with certain business ventures after leaving office. The underlying facts have raised some concerns, in part because of the way Schreiber paid Mulroney, which was in large amounts of cash. Mulroney was served outside Ontario, in Quebec. He moved to challenge the court's jurisdiction or in the alternative for a stay of proceedings in favour of Quebec.

Justice Cullity held that there was no real and substantial connection between the dispute and Ontario, and as a result Ontario did not have jurisdiction. He accordingly dismissed the action. On the facts, it is hard to argue with this decision. So much connected the dispute with Quebec and very little connected it to Ontario. Justice Cullity indicated that had the court had jurisdiction, he would have stayed proceedings in favour of Quebec.

There are several points in the decision worthy of at least brief comment. One relates to the issue of attornment. Mulroney's Ontario lawyer initially indicated a willingness to accept service, but on seeing the statement of claim he refused to do so because of the lack of connection between the dispute and Ontario. Justice Cullity correctly held that this did not raise any issue of Mulroney having attorned – his lawyer did not in the end accept the service. More problematic, though, is his *obiter dictum* that "as it is accepted that valid service is not by itself sufficient to establish jurisdiction, an acceptance of service should not have this effect by

treating it as an attornment and, in effect, a submission to the jurisdiction" (para. 25).

In this statement, Justice Cullity may be confusing issues of service inside the jurisdiction with those of service outside Ontario. Valid service outside Ontario is indeed not enough for jurisdiction: the real and substantial connection must also be shown. But this is not the case for service inside Ontario. If the defendant is served based on presence inside the jurisdiction, either personally or through an accepting Ontario lawyer, that has traditionally been sufficient for jurisdiction and, even in the wake of *Morguard*, there is no further search for a real and substantial connection. This raises no issue of attornment. Had Mulroney's lawyer accepted service in Ontario that should have ended the jurisdictional inquiry. The fact that an Ontario lawyer accepts service for a defendant outside the jurisdiction does not make this any less an instance of service inside the jurisdiction.

Second, Justice Cullity states that "Where a defendant moves to set aside service on the ground that there is no real and substantial connection with Ontario, the question will be whether there is a good arguable case that the connection exists" (para. 18.2). There is room to dispute, or maybe just dislike, this formulation. Put this way, the test may be too easy for a plaintiff to satisfy. The plaintiff does not have to only show a good argument that there is a real and substantial connection – the plaintiff must show such a connection does exist. If facts relevant to the analysis of jurisdiction are in dispute, then it is generally correct to say that only a good arguable case need be shown that those facts can be established before the court can then make use of them in its analysis of the connection. But that analysis then looks for a real and substantial connection, not a good arguable case for such a connection. Whether there is a real and substantial connection is primarily a legal conclusion, not a factual one.

Third, Justice Cullity seems to think that the eight-factor *Muscutt* formulation is focused on tort claims, and that further factors need to be considered in contract claims (para. 37). He goes on to consider the place where the contract was made, performed and breached and where any damage was sustained. These are appropriate things to consider, but it may not be helpful to label them as additional factors to add to the eight in *Muscutt*. Rather, they are relevant considerations under some of those factors (which are reasonably general). One of these factors is the connection between the forum and the plaintiff's claim, and

another is any unfairness to the defendant in taking jurisdiction. Each of these considerations can and should be considered as part of those factors, just as the location of where a tort occurred would be. Adding more factors to the *Muscutt* framework on a case-by-case basis runs the risk of making the analysis of a real and substantial connection even more complex.

Fourth, Justice Cullity's analysis of Rule 17.02, the heads for service out without leave, is not the most conventional. He starts his overall analysis looking for whether there is a real and substantial connection, and only subsequently comes on to look at the heads. While both must be satisfied in a service out case, the typically approach looks first at whether the claim fits within one or more heads, and then if it does looks for the connection. In addition, Justice Cullity, in quite brief reasons, finds that Schreiber's claim does not fit within the heads. This is something of a surprise given the breadth of Rule 17.02(h), damage sustained in Ontario. Justice Cullity finds that Schreiber was in effect seeking restitution of the $300,000, rather than damages for breach of contract (para. 70). But this seems to adopt a very narrow meaning for the head. Even in a claim in unjust enrichment, the plaintiff has suffered a loss and that loss can be located geographically, Schreiber being an Ontario resident. It is hard to see how this loss is not "damage sustained".

In the end, even if there is force to these criticisms, none of them impugn the conclusion that there was not a real and substantial connection to Ontario on the facts of this case. But much is at stake in this litigation, and so an appeal seems a reasonable possibility.

What Do We Really Know About the American Choice of Law Revolution?

There is a substantial book review in the new issue of the *Standard Law Review*

(Oct 2007, Vol. 60, Issue 1): What Do We Really Know About the American Choice-of-Law Revolution? by Hillel Y. Levin (*Stanford*). It provides a detailed critique of Symeon Symeonides' most recent book, *The American Choice-of-Law Revolution: Past, Present and Future* . Here's some of the introduction:

> *Virtually everyone who has engaged in choice-of-law scholarship has had unflattering things said about him or her, and every scholar's favorite methodology has come under attack. Given the reputation of the First Restatement of Conflicts of Laws, it should come as little surprise that Joseph Beale, its drafter, "has been the target of ridicule by practically every conflicts writer in the last four decades," or that the First Restatement itself "has been the favorite punching bag of every conflicts teacher." But the scholars who succeeded Beale and pioneered the modern approaches have fared no better, and neither have their theories. William Prosser memorably referred to conflicts scholars as "learned but eccentric professors who theorize about mysterious matters in a strange and incomprehensible jargon." Prosser's assessment is charitable compared to that of Lea Brillmayer, who has described them as "a wild-eyed community of intellectual zealots." Meanwhile, the modern doctrinal approaches have yielded "gibberish" and "confused and misguided thinking." In short, modern conflicts theory and doctrine is a mess—a "debacle," according to one scholar—and there is no real consensus on how to clean it up.*
>
> *It is time for a new treatment of conflicts, one that does not approach it either through high-minded theory or as a set of convoluted law school exam fact patterns. What the field really needs is empirical inquiry: what has the revolution in choice of law wrought, and what can we learn from that? Intrepid researchers have undertaken this task in fits and starts over the past fifteen years or so, and the conflicts giant Dean Symeon Symeonides has been at the forefront of the project. His highly anticipated and ambitious new book, The American Choice-of-Law Revolution: Past, Present and Future, is the pinnacle of his efforts and aims to be the authoritative word on the impact of the revolution. First delivered as a series of lectures at The Hague Academy of International Law in 2002 and now widely available for the first time, it should be required reading for anyone engaging in conflicts scholarship.*

You can download the full review from here (PDF). Highly recommended.

Fourth issue of 2007's Journal du Droit International

The fourth issue of the French *Journal du Droit International (Clunet)* has been released. It contains three articles dealing with private international law issues (the table of contents in French can be found here).

First, the *Journal* offers the end of the article of Ms Legros (the first part of which was published in the third issue of the Journal) on Conflicts of Norms in the Field of International Contracts for Carriage of Goods ("*Les conflits de normes en matière de contrats de transport internationaux de marchandises*"). The second part of the study focuses on jurisdictional and enforcement issues.

The second article is authored by Professor Emmanuel Gaillard, who teaches at Paris XII university, and who is also a leading practionner of international commercial arbitration. It discusses the Representations of International Arbitration, Between Sovereignty and Autonomy ("*Souveraineté et autonomy: réflexions sur les représentations de l'arbitrage international*"). The English abstract reads:

> *The autonomy of international arbitration vis-à-vis national legal orders raises important question of legal theory. There are several representations of international arbitration: that assimilating the arbitrator to the courts of a single legal system; that perceiving the autonomy of international arbitration as detached of national legal systems; and that considering such autonomy as anchored in the entirety of the legal systems that accept, under certain conditions, to recognize the arbitral award. Significant practical consequences follow from these distinctions.*

The third is authored by Didier Lamethe, who is the *Secrétaire Général* of EDF International, a subsidiary of the French national electricity company. His article discusses the Languages of International Arbitration ("*Les langues de l'arbitrage international : liberté or contraintes raisonnées de choix ou contraintes*

réglementées ?“). The English abstract reads:

> *As far as international contracts are concerned, language plays a key part beyond the negotiation and the signature, in the event of deviations of interpretation ending up in an arbitration. Thus arises the question of the choice an the backgrounds of the choice of the language(s) regarding not only the proceedings, but also some sides of the proceedings. This essays puts up the principles of a sharing-out between the feasible and the forbidden, the content of arbitration rules making up a reference for a comparative analysis of great interest. Such an approach outlines the areas of freedom for the choice to be made and gives a demonstration of the imprecise figure of the constraints.*

Available to suscribers.

Au Revoir to Renvoi?

C.J.S. Knight has written a casenote in the *Conveyancer and Property Lawyer* on the High Court decision in *Iran v Berend* (Conv. (2007) November/December Pages 564-571). Here’s the abstract:

> *Discusses the Queens Bench Division decision in Iran v Berend on whether renvoi has a place in choice of law cases concerning title to moveable property, in particular whether in a case concerning title to a fragment of limestone relief originating in ancient Persia, bought in New York by a resident of France and sent to England to be auctioned the English court was bound to apply French private international law rules or whether the dispute fell to be determined by reference to French domestic law. Considers the purpose of the lex situs rule in conflict of law cases.*

Available to *Conv.* subscribers.