

Another Step Forward: Recognition of Non-Monetary Orders in Ontario

The courts of Ontario have taken another step forward in the recognition and enforcement of foreign non-monetary orders. *In Re Grace Canada Inc.* (available [here](#)) the Superior Court of Justice recognized a Manitoba order which had allowed a law firm to act in a particular matter by finding it was not in a conflict of interest. Grace Canada Inc. had opposed recognition on the basis that the Manitoba order was non-monetary. The Superior Court of Justice relied on two earlier recent Court of Appeal for Ontario decisions supporting the recognition of non-monetary orders: *Re Cavell Insurance Co.* (available [here](#)) and *Pro-Swing v. ELTA Golf Inc.* (available [here](#)). An appeal of the latter decision was heard by the Supreme Court of Canada in December 2005 and a decision is eagerly awaited.

Conference: The Evolving World of International Law

The American Branch's 2006 International Law Weekend 2006 will be held on **Thursday-Saturday, October 26-28, 2006**, at the Association of the Bar of the City of New York (42 West 44th St, New York, NY). The theme this year is "**The Evolving World of International Law.**" The panels on private international law focus on the following topics:

Enforcing Foreign Judgments and Awards: Worlds Apart? Friday October 27, 2006, 9:00 am - 10:30 am

This panel will compare the recognition and enforcement of foreign judgments and international arbitration awards. It will also discuss the proposed Convention on Jurisdiction and Foreign Judgments in Civil and Commercial Matters. In

particular, this panel will explore whether the new Hague Convention, if adopted, would bridge the present gap between the enforcement of foreign judgments and international arbitration awards.

- Chair: Julie Bedard, Esq., *Skadden, Arps, Slate, Meagher & Flom LLP*
- Panelists: Prof. George A. Bermann, *Jean Monnet Professor of EU law & Walter Gellhorn Professor of Law, Columbia University School of Law*
- John Fellas, Esq., *Partner Hughes Hubbard & Reed LLP*
- John L. Gardiner, Esq., *Partner, Arps, Slate, Meagher & Flom LLP*

From *Owusu* to *Parlatino*: European Union and Latin American Challenges to Forum Non Conveniens Friday October 27, 2006, 10:45 am – 12:15 pm

In 2005, the European Court of Justice, in *Jackson v. Owusu*, ruled forum non conveniens to be incompatible with the United Kingdom's obligations under the Brussels regulation. A continent apart, the Ecuadorian legislature in 1998 pronounced that, when an Ecuadorian filed an action abroad, the act of filing terminated the jurisdiction of the Ecuadorian courts. This legislation caused the Parlatino movement to urge the adoption of similar legislation throughout the Latin America. What is the future of the FNC in the light of these actions?

- Chair: Professor Michael Gordon Wallace, *University of Florida Levin College of Law*
- Panelists: Henri Saint Dahl, Esq., *Adjunct Secretary General, Inter-American Bar Association*
- Prof. Alejandro M. Garro, *Columbia University School of Law*
- Prof. Loukas Mistelis, *Queen Mary, University of London*
- Prof. Louise E. Teitz, *Roger Williams University*

Recent Developments and Future Trends in Private International Law Friday October 27, 2006, 4:00 pm – 5h30 pm

Harmonization and codification in the field of private international law has an increasing impact on the work of practitioners and the interests of their clients. This panel will address some of the most important developments and the interest of their clients. This panel will address some of the most important developments and ongoing projects taking place in UNCITRAL, UNIDROIT, the Organization of American States and the Hague Conference of Private International Law, including in such diverse areas as recognition and enforcement of judgments and

choice of court agreements, secure finance, electronic commerce, consumer protection, service of process and taking abroad.

- Chair: David P. Stewart, Esq., Office of the Legal Adviser, *U.S. Department of State & Co-chair, ABILA Extraterritorial Jurisdiction Committee*
- Panelists: David A. Baron, Esq., *McDermott Will & Emery LLP*
- Prof. Amelia H. Boss, *Temple University Beasley School of Law*
- Prof. Ronald A. Brand, *University of Pittsburgh School of Law*
- John M. Wilson, Esq., Legal Adviser, *Department of International Legal Affairs, Organization of American States*

All panels are open to students and all members of the ILA and cosponsoring organizations without charge. For others there is a fee payable at the door.

For more information, please visit the web site of the American Branch of the International Law Association.

U.S. Supreme Court To Hear Case Concerning The Scope and Applicability of The Forum Non Conveniens Doctrine

For the first time since *Piper Aircraft Co. v. Reyno* in 1982, the United States Supreme Court will hear a case concerning the scope and applicability of the forum non conveniens doctrine when parallel proceedings are contemplated in a foreign court. In granting the petition for a writ of certiorari in *Sinochem Int'l Co., Ltd. v. Malaysia International Shipping Corp.*, No. 06-102, the Supreme Court agreed to decide "[w]hether a district court must first conclusively establish jurisdiction before dismissing a suit on the ground of *forum non conveniens*?" This question has divided the United States Courts of Appeals for nearly a decade, with

the D.C. and Second Circuits holding that jurisdiction is not a prerequisite for a forum non conveniens dismissal, and the Ninth, Fifth, Seventh and Third Circuits holding the opposite. The decision, which should be forthcoming in the Spring of 2007, has potential importance to all non-U.S. companies who are sued in the courts of the United States for matters having little or no connection to the U.S. The Justices selected the *Sinochem* matter as one of the nine cases that it granted review to on September 26 (out of 1,900 petitions that had been stacked up on the Court's docket over its Summer recess). The case will be argued before the Justices in January 2007.

The Order granting the Writ of Certiorari is available [here](#); the Petition for Writ of Certiorari is available [here](#); the Brief in Opposition to Certiorari is available [here](#); and the Reply Brief in Support of Certiorari is available [here](#).

Disclaimer: Charles Kotuby is an Associate in the Washington D.C. Office of Jones Day, who represents Petitioner in this matter.

German Publication: International Law of Civil Procedure

The 4th edition of the renowned German textbook "Internationales Zivilverfahrensrecht" by *Haimo Schack* has been published. The textbook attends to the foundations of international civil procedure law and the limits of jurisdiction under international law. In particular it deals with the rules concerning the procedure on the merits as well as the rules on the recognition and enforcement of foreign judgments.

The 4th edition includes alterations which arose as a result of the new Brussels II *bis* Regulation (Regulation 2201/03/EC) and the Regulation on a European Enforcement Order for uncontested claims (Regulation 805/04/EC). Further it encompasses the Council Directive 2002/8/EC of 27 January 2003 to improve access to justice in cross-border disputes by establishing minimum common rules relating to legal aid for such disputes and the proposal for the establishment of a

European payment order procedure and measures to simplify and speed up small claims litigation.


German Publication: European Civil Procedure Law

The 2nd edition of the **German commentary on European civil procedure law** edited by *Thomas Rauscher*, Europäisches Zivilprozeßrecht, has been published. The new edition comprises two volumes and includes commentaries on the following regulations and proposals:

- Regulation 44/2001/EC ("Brussels I")
- Regulation 2201/2003/EC ("Brussels II bis")
- Regulation 1348/2000/EC ("Service Regulation")
- Regulation 1206/2001/EC ("Evidence Regulation")
- Regulation 805/2004/EC ("Regulation on a European Enforcement Order")
- Regulation 1346/2000/EC ("Insolvency Regulation")
- the future regulation on the creation of a European Payment Order
- Proposal for a Regulation of the European Parliament and of the Council establishing a European Small Claims Procedure
- Proposal for a Council Regulation on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations

Further information can be found on the publisher's website.

Vol. 2, No. 2 of the Journal of Private International Law


The new issue of the Journal of Private International Law Volume 2, Number 2 (October 2006), will be published shortly. The contents are (*click on the links below to view the abstract*): 

- **EU Law as Private International Law? Reconceptualising the Country-of-Origin Principle as Vested-Rights Theory** by *Ralf Michaels* (Associate Professor, Duke University School of Law)
- **The Hague Convention of 30 June 2005 on Choice of Courts Agreements including Appendix Hague Conference on PIL 20th Session** by *Andrea Schulz* (First Secretary, Permanent Bureau of the Hague Conference on Private International Law)
- **Federalism and Private International Law: Implementing the Hague Choice of Court Convention in the United States** by *Stephen B. Burbank* (David Berger Professor for the Administration of Justice, University of Pennsylvania Law School)
- **A Major Reform of Japanese Private International Law** by *Koji Takahashi* (Associate Professor, Doshisha University Law School, Kyoto)
- **The Evolution of the Extra-territorial Mareva Injunction in Canada: Three Issues** by *Stephen G.A. Pitel* (Associate Professor, Faculty of Law, University of Western Ontario) & *Andrew Valentine* (LLB student, Faculty of Law, University of Western Ontario)
- **The European Court of Justice, English Courts and the Continued Use of the Anti-Suit Injunction in Support of Agreements to Arbitrate: Through Transport v New India** by *Nicholas Pengelley* (Osgoode Hall Law School, York University)
- **The Scope of the Conflict of Laws: Provisions in the European Insurance Directives** by *Louise Merrett* (Fellow and Barrister, Trinity College, Cambridge and Fountain Court Chambers, London)
- **"Mind the Gap Part II" The South African Supreme Court of Appeal and Characterisation** by *Christopher Forsyth* (Director, Centre for Public Law, University of Cambridge)

Information on subscribing to the Journal can be found [here](#).

Readers may also be interested in the forthcoming **Journal of Private International Law Conference 2007**, to be held at the University of Birmingham on 26 - 27 June 2007. Please see the Call for Papers for more information – you are encouraged to submit your abstract as soon as possible.

Publication: Dicey, Morris & Collins on the Conflict of Laws

With the official launch reception only a couple of weeks away, the latest  edition of the one of the world's foremost authorities on private international law is now available for purchase. First published in 1896, **Dicey, Morris & Collins, *The Conflict of Laws*** is in its 14th edition. The editors of this seminal work are:

- General Editor: **The Hon Mr Justice Lawrence Collins**
- Editor: **Professor C G J Morse**
- Editor: **Professor David McClean**
- Editor: **Professor Adrian Briggs**
- Editor: **Professor Jonathan Harris**
- Editor: **Professor Campbell McLachlan**

Most will, of course, notice the change in authorship; Sir Lawrence Collins has been elevated to co-author status, to reflect the work and scholarship he has invested in the book since he took over as General Editor in 1987. The publishers, Sweet & Maxwell, describe the latest edition thus:

Dicey, Morris & Collins on the Conflict of Laws is renowned worldwide as the foremost authority on private international law. It explains the rules, principles and practice which determine how the law of England and Wales relates to other legal systems. Explanation of each rule is followed by comment, and illustration by detailed reference to case law, ensuring it remains an in-depth but accessible research tool.

It provides definitive reference for all practitioners concerned with issues such

as contracts made or performed in other jurisdictions or with foreign parties, property situated overseas, disputes relating to torts committed abroad or committed by foreign parties, and personal and family matters involving people in other jurisdictions.

- *Completely revised and updated to include analysis of all the key legislation and cases since the last edition*
- *Deals with the impact of the Civil Procedure Rules on private international law*
- *Includes analysis of judicial decisions from common law jurisdictions as well as detailed consideration of international conventions and EU materials*
- *Supplemented annually to stay up to date with developments in legislation and case law*

ISBN: 042188360X / 9780421883604 (Hardback). Price: £349. Available from Amazon, Hammicks Legal, and Sweet & Maxwell.

Enforcing Prenuptial Agreements in English Courts

A comparative article on international prenuptial agreements – focused on the failure of English courts to enforce prenuptial agreements – will be published in the forthcoming issue of *International Family Law*. In the article entitled **"Enforceable Pre-nuptial Agreements: the World View"** international family lawyer Jeremy D. Morley calls the English approach:

an anachronistic peculiarity of English law and an unfortunate example of a stubborn refusal to adapt the law to new conditions.

Morley argues that the recent judgments of the House of Lords in *Miller v Miller*; *McFarlane v McFarlane* [2006] UKHL 24, [2006] 1 FLR 1186 point to the urgent

need for the courts to set aside the preposterous contention that it is 'substantially uncontestable' that substantial harm to the public would arise if prenuptial agreements were enforceable.

He states that the current law results from the ruling in 1929 in *Hyman v Hyman* [1929] AC 601 that binding prenuptial agreements contravened public policy. However, society has changed dramatically since 1929. When *Hyman* was decided, people had little expectation of getting divorced and divorce was generally regarded as sinful. People with assets did not require contractual protection should a divorce occur because the law did not provide for capital transfer upon divorce. The status of marriage itself provided all of the necessary terms of the relationship between spouses. Morley goes on to argue that as,

international affairs proliferate, England's "anomalous view of prenuptial agreements will increasingly and inappropriately create problems for international litigants.

See Issue 4 of 2006 *International Family Law* for the full article.

Jurisdiction over European Patent Disputes, and the European Payment Procedure Order

Richard Taylor (DLA Piper) has written a short summary in the latest issue of the Law Society Gazette, discussing the response by the European Court of Justice, in *Roche Nederland BV v Primus* (C-539/03) and in *Gesellschaft für Antriebstechnik mbH & Co KG (GAT) v Lamellen und Kupplungsbau Beteiligungs KG (LuK)* (C-4/03), **to attempts by European courts to extend their jurisdiction over European patent disputes**, referring to the provisions of the Brussels

Convention on Jurisdiction and Enforcement of Judgments in Civil and Commercial Matters 1968.

Ref: *Law Society's Gazette L.S.G. (2006) Vol.103 No.39 Page 31*

In other news, the **European Parliament's second reading of the proposal for the adoption of a Regulation of the European Parliament and of the Council creating a European order for payment procedure** is scheduled for the 23rd October 2006.

The discussions in the various European organs have gone smoothly for this particular proposed Regulation. The only point of difference between the amended Commission proposal and the common position of the Council concerns the definition of the term "cross-border case". The Commission "regrets" the limitation to cases where both parties are domiciled in a Member State and has made a declaration accordingly.

No surprises are expected on the 23rd October either; the common position of the Council has been negotiated together *with* the European Parliament in view of reaching a first-reading agreement. Therefore the European Parliament should not request any amendments of the common position – at least in theory.

EDPS Opinion on Maintenance Obligations Regulation Proposal

The European Data Protection Supervisor (EDPS) has given his **opinion** on the **Proposal for a Council Regulation on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations** (COM(2005) 649 final).

The matters discussed in the opinion are limited to those concerning personal data protection. The EDPS summarizes the main thrust of the Proposal thus:

the proposal lays down a mechanism of exchange of information about the

debtor and the creditor of maintenance obligations, with a view to facilitating the establishment and the recovery of maintenance claims. For this purpose, central national authorities will be designated in order to handle requests of information lodged by national judicial authorities (of other Member States) and collect personal data from different national administrations and authorities in order to fulfil these requests. The usual procedure will be as follows: a creditor will lodge an application through a court; the national central authority, upon request of the Court, will send an application to the central authorities of the requested Member State (through a specific form contained in Annex V); the latter central authorities will gather the requested information and will reply to the requesting central authority, which will then provide the information to the requesting court (para.4.)

The EDPS notes that the current proposal does not provide for exchanges of personal data with third countries, but international cooperation is explicitly envisaged in the explanatory memorandum. In this context, the EDPS states, it is noteworthy to mention the ongoing negotiations for a new comprehensive Convention of the Hague Conference on Private International Law concerning international recovery of maintenance. He continues:

It goes without saying that this international cooperation is likely to lay down mechanisms for exchanges of personal data with third countries. In this regard, the EDPS would like to stress again that these exchanges should be allowed only if the third country ensures an adequate level of protection of personal data or if the transfer falls within the scope of one of the derogations laid down by Directive 95/46/EC.

Overall, the EDPS welcomes the proposal, subject to alterations and reservations of a technical, rather than substantive, nature. The opinion of the EDPS can be found [here](#).

Many thanks to the EU Law Blog for the tip-off.