Overseas Workers: Employment without Borders

Robin Jeffcott and Dan Peyton (Richards Butler) have published the second instalment of their summary on "**Overseas Workers: Employment without Borders**" in the *Employment Law Journal*. Here's the abstract:

> *This, the second of a two part article, examines the legal issues which can arise where employees work in other jurisdictions as well as in the UK, considering the use of choice of law provisions in employment contracts, the jurisdiction of UK courts to hear breach of contract claims, jurisdiction governing employers' proceedings against overseas employees, and the protection of employers' business interests through the use of restrictive covenants and garden leave.*

Emp. L.J. (2006) No.73 September Pages 17-19 (available on Lawtel).

German Publication: Expert Opinions on Foreign Family Law and the Law of Succession

Omaia Elwan, *Bruno Menhofer* and *Dirk Otto* published a collection of expert opinions which have been given by *Prof. Dr. Elwan* (Institute for private international law, University of Heidelberg) between 1982 and 2002 on the family law and the law of succession of the Middle East, Africa and Asia: "Gutachten zum ausländischen Familien- und Erbrecht".

More information can be found on the publisher´s website.

Journal of Private International Law Conference 2007

We are pleased to announce the

Journal of Private International Law Conference 2007

to be held at the University of Birmingham

on

26th -27th June 2007

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Call for Papers

The editors, Professor Jonathan Harris (University of Birmingham) and Professor Paul Beaumont (University of Aberdeen), would be delighted to receive applications from scholars to present papers at the conference. There are two presentation categories:

Academic Conference Papers

The greater part of the conference will focus on academic papers in all areas of private international law. An academic paper will be expected to last for approximately 30 minutes at the conference.

To submit an abstract of the proposed paper, contact:

Jonathan Harris
Professor of International Commercial Law
School of Law
University of Birmingham
Edgbaston, Birmingham, B15 2TT, UK
Email: j.m.harris.law@bham.ac.uk

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Postgraduate Research Papers

The morning of 26th June will be devoted to papers given by postgraduates on their current research topic. A postgraduate research paper will be expected to last for approximately 15 – 20 minutes at the conference.

To submit an abstract of the proposed paper, contact:

Martin P. George
School of Law
University of Birmingham
Edgbaston, Birmingham, B15 2TT, UK
Email: mpg514@bham.ac.uk

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More information on booking and prices to follow. To register your interest in attending the conference, and receive more information via email, please contact:

conflicts-conference@contacts.bham.ac.uk

USEFUL LINKS:

The official website of the 2007 conference.

For more information on the Journal of Private International Law, and to subscribe, visit the Journal website.

German Annotation on “Facts of

Multiple Relevance”

Peter Mankowski (Hamburg) takes the occasion of a judgment of the District Court Tübingen (judgment of 30.3.2005 – 5 O 45/03) to reveal weaknesses of the theory of "facts of multiple relevance” (IPRax 2006, 454 et seq.). According to the theory of "facts of multiple relevance” which is rather popular in German – but also Swiss and Swedish – courts, facts which are relevant with regard to jurisdiction as well as the substance of the case do not have to be proved in order to assume jurisdiction. It is sufficient if they are alleged by the claimant – they are examined only in the context of the substance of the case. This theory might be compared with the English approach to allow a lesser burden of proof to assume jurisdiction which is satisfied by a showing of probability ("good arguable case"). *Mankowski* reveals in his comment *inter alia* that the theory of "facts of multiple relevance" leads to difficulties if the term in question becomes relevant for the second time only in the context of the applicable law – and not in the context of conflict of law rules. This is problematic since then the question whether it is examined at all if the conditions of the respective term are met, depends on whether the applicable law knows this term. If a law is declared to be applicable which does not know the respective term, it might happen that the term in question is not examined at all: Neither with regard to jurisdiction – due to the theory of "facts of multiple relevance" which shifts the examination to the substance of the case – nor with regard to substantive law.

In the case in question (District Court Tübingen) the "fact of multiple relevance” was, whether the transaction was a door-to-door-selling. This term was relevant with regard to jurisdiction as well as the substance of the case. Since in this case German substantive law – which knows the term “door-to-door-selling” – was applicable, the problem described above did not occur. However, *Mankowski* points out rightly that this judgment reveals one weakness of the theory of "facts of multiple relevance". This is true because if, in the concrete case, Turkish substantive law – which does not know the term of "door-to-door-selling" – would have been applicable, this term would have been relevant only with regard to jurisdiction, but would not have appeared again with regard to the substance of the case. Therefore the question whether the transaction in question could be classified as a door-to-door-selling would not have been examined at all.

Review: International Commercial Litigation Handbook 2nd edn

The aim of the ***Butterworths International Commercial Litigation Handbook*** is to be a repository of "United Kingdom primary and secondary legislation, with key European Community and international materials" relating to international commercial disputes before the courts in England, Wales and Scotland. Publication details and a table of contents can be found in the earlier news item.

The frenzy of legislative activity, both on a national and European level, in recent years means that Butterworths have had to squeeze a lot of information into a relatively small amount of space. The breadth of material the editorial team has managed to include in the *Handbook*, however, is to be welcomed; private international lawyers will find their needs almost comprehensively satisfied. The materials are grouped into five Parts: ***Statutes***; ***Civil Procedure Rules***; ***Statutory Instruments***; ***EC Materials***, and ***Other International Materials***. Each Part is again sub-divided into several categories, so that *Jurisdiction and Foreign Judgments* are dealt with separately from *Applicable Law*, as well as *Arbitration*, *Carriage by Sea*, *Cross-Border Insolvency*, *Service of Documents*, and so on.

This grouping of legislation can feel somewhat counter-intuitive if one is focusing on a particular area: the Contracts (Applicable Law) Act 1990, for example, can be found at para. [182], whilst the 1980 Rome Convention to which the 1990 Act gives effect doesn't appear until para. [3205]. Fortunately, the publishers have preempted this problem by using coloured "tabs" for each Part, which appear both on the pages themselves and, crucially, when the *Handbook* is shut, thus giving you a good idea where the relevant text is located at any given time.

Another key feature is the inclusion of "Notes" that appear periodically throughout every Act or Instrument. These often simply cite changes to the legislative text, the date on which the relevant legislation came into force, or

helpfully cross-reference to another part of the Handbook. More significantly, they also occasionally provide updates on the possible future of particular legislation – the note appended to the Contracts (Applicable Law) Act 1990, for instance, cites the proposed "Rome I" Regulation, and where on the internet you can find it, along with the UK's current opt-out position. The only limitation to such an excellent service is a by-product of the chapter structure implemented (as noted above): the note appended to the 1980 Rome Convention, at para. [3205] in the *EC Materials* section, makes no mention of the proposed "Rome I" Regulation. This would perhaps be where one would expect to find it, rather than alongside the 1990 Act in the *Statutes* section of the *Handbook*. This is, however, a small point – practitioners and academics familiar with the text of the legislation will find little difficulty in extracting the pertinent information from the *Handbook*.

The *Handbook* also includes a number of *Tables,* in Part V, on *Other International Materials*. These identify, *inter alia*, the date on which the various Brussels and Lugano Conventions came into force, as well as the Brussels I Regulation, in each Member State of the EC, and the complete list (and entry into force dates) of those countries party to the 1958 New York Convention on the Recognition and Enforcement of Arbitral Awards. The same service is also repeated for the Service Regulation, the 1965 Hague Convention on Service Abroad of Judicial Documents, and the 1970 Hague Convention on the Taking of Evidence Abroad. These tables represent an impressive, and useful, collection of statistics that will appeal to practitioners and academics alike.

Overall, the *Handbook* is a well put-together, comprehensive sourcebook of key legislation in the field of international commercial litigation. It is an essential text for practitioners who want all the relevant materials contained within one volume, and a useful addition to any university law library.

Butterworths International Commercial Litigation Handbook can be bought from the CONFLICT OF LAWS .NET secure, Amazon-powered bookshop.

Conference: The Policy of the French Cour de Cassation in Private International Law: Economics of Justice in International Litigation

Professor Muir-Watt is hosting a conference on the "**The Policy of the French Cour de Cassation in Private International Law: Economics of Justice in International Litigation**."

During this conference organized by the French *Cour de Cassation*, Professor Horatia Muir-Watt will discuss the economy of judicial means as a policy factor in the recently decided private international law cases. Traditionally, the analysis of the *Cour de Cassation* includes this policy factor in the field of asserting and proof of foreign law where it seeks to achieve a balance between the proper application of the private international law rules and the risk of long and complex litigation. Presently, as the conditions for a free choice of forum are much more liberal and the circulation of foreign judgments and arbitral awards is simplified, a true world market of judicial services is starting to emerge. Thus the economy of judicial means as an economic criterion permits to evaluate the competitiveness of the judicial services offered by the French court. Beyond this national aspect, Professor Horatia Muir-Watt will examine the need of global regulation of court access in an international context. [*translated*]

The conference will be in French, and will take place on Monday, September 18, 2006, 18.00-20.00, at the Grande Chambre of the *Cour de Cassation*, on place Dauphine, rue de Harlay, Paris ler.

A programme of the conference will be posted on the website (the website is not yet online.)

Draft "Rome I" Report by European Parliament Legal Affairs Committee

The draft report on the "Rome I" Regulation (which proposes to convert the Rome Convention on the law applicable to contractual obligations into a Community Regulation) has been produced by rapporteur Maria Berger, as part of the European Parliament Legal Affairs Committee (JURI), in response to the European Commission's original proposal on 15th December 2005.

The report is publicly available from the JURI website. JURI will meet on 11th September 2006 to consider the report, and potentially map out a timetable for amendments.

There are some key changes to the Commission's proposal in JURI's report. The rapporteur summarises them thus:

> *The amendments contained in this report are designed to improve the text as proposed by the Commission in the light of the various submissions that have been made to the rapporteur and with a view to making it more consistent with the Rome II project as it stands at present. She has concentrated particularly on certain key provisions, such as Article 4 (Applicable law in the absence of choice) and Article 6 (Individual employment contracts), where she advocates an approach closer to that adopted by Parliament in its first reading of Rome II and to the conflict-of-law rules of non-EU jurisdictions. Your rapporteur has also sought to distinguish between internal and international mandatory rules by amending Article 8 on the ground that the various references to "mandatory rules" in Articles 3(5), 6(1), 8 and 10(1) could give rise to confusion.*

The amendment to Article 4 reintroduces the "closest connection" rule (which was conspiciously absent from the Commission's proposal), supplemented with a number of presumptions for particular types of contract (thus bringing it more in

line with the current Rome Convention, and also more closely mirroring the provisions of the "Rome II" Regulation). Significantly, the draft report also deletes Article 8(3), which gives effect to the mandatory (overriding) rules of another country with which the situation has a close connection. It will be remembered that Germany, Ireland, Latvia, Luxembourg, Portugal, Slovenia and the United Kingdom all entered a reservation for the corresponding provision in the Rome Convention (Article 7(1)). It may be this change, as much as any other, that will entice the UK to opt back in.

As always, comments on the draft report are very welcome.

German Publication: Compendium on International Commercial Law

A compendium on international commercial law ("**Handbuch Internationales Wirtschaftsrecht**"), edited by *Herbert Kronke*, *Werner Melis* and *Anton K. Schnyder*, has been published. The information on the publisher´s website reads as follows:

> *The incredible plenitude of different rules on international commercial law can hardly be overviewed by consultants. Therefore consultants need an orientation, which is provided by this new handbook. In consideration of the internationalisation of economy, which includes also medium-sized companies, the number of border-crossing transactions is rising steadily. Transnational commercial and economic law (uniform law), conflict of laws, public international commercial law and the specifics of cross-border cases determine the daily business of in-house counsels as well as legal advisors. This new compendium covers – in a consequently practice oriented manner – the most important situations occurring in business life, respectively from the perspective of international and European law, private international law, national legal systems (Germany, Switzerland, Austria, Liechtenstein) and international uniform law. (…)*

More information can be found on the publisher´s website.

Austrian Publication: European Civil Procedure Law

A new book by *Peter G. Mayr* and *Dietmar Czernich (University of Innsbruck, Austria)* on European civil procedure law has been published: "Europäisches Zivilprozessrecht".

Mayr and *Czernich* attend in the first part to general questions such as the development of European civil procedure law and give a short overview of the different legal acts. Subsequent to this introduction they discuss the single regulations, namely Brussels I, Brussels II bis, the Service Regulation, the Evidence Regulation as well as the European Enforcement Order and the European payment order procedure.

The Legal Position of Employees in Cross-Border Transfers of Undertakings in the EU

Jonas Malmberg (Arbetslivsinstitutets, Sweden) has published an article on **'The Legal Position of Employees' in Cross-Border Transfers of Undertakings in the EU: A Question of Jurisdiction and Choice of Law'** in the *International Journal of Comparative Labour Law and Industrial Relations*. Here's the abstract:

> *This article deals with the rules designed to enforce European Union labour law in the workplace. Directives do not normally provide specific rules on*

procedures and sanctions according to which their substantive provisions are to be enforced. Instead, domestic rules are to be applied. The European Court of Justice, however, has developed some requirements that limit the autonomy of the Member States in this area. The aim of this article is to evaluate the principle of effective enforcement in the field of labour law, in the light of actual enforcement procedures in the Member States.

The abstract (and full article for those with a subscription) can be found on the Kluwer website. 'The Legal Position of Employees' in Cross-Border Transfers of Undertakings in the EU: A Question of Jurisdiction and Choice of Law' (2006) 22 *International Journal of Comparative Labour Law and Industrial Relations* pp. 385-406.