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.

Publication: International Commercial Litigation Handbook 2nd edn

Butterworths have just published the new edition of the **International Commercial Litigation Handbook**, edited by Andrew Dickinson; Roger Baggallay; Graham McBain; and Laurence Murphy QC.

Butterworths International Commerical Litigation Handbook brings together in a single volume key UK, EC and international materials which are essential for litigation and arbitration lawyers, as well as criminal and commercial lawyers generally.

This new edition is fully updated and expanded to include ADR and mediation materials. It also includes the text of the Brussels and Lugano Conventions on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters and the Rome Convention on the Law Applicable to Contractual Obligations, together with their interpretative reports. In addition, Tables summarising the

ratification, and entry into force of these Conventions are also included. The handbook contains UK statutes and statutory instruments on arbitration and the texts of the 1927 Geneva and 1958 New York Conventions on Arbitral Awards.

Other legislation included (together with the relevant Conventions) relate to international transport (road, rail, air, sea) and a variety of other areas including International organisations, state immunity, trusts, evidence, mutual legal assistance, limitation periods and currency.

Contents:

- *Part I* – Statutes; A. Jurisdiction and Foreign Judgments; B. Applicable Law; C. International Arbitration; D. International Carriage: Road and Air; E. International Carriage: Rail and Sea; F. State Immunity and International Organisations; G. Insolvency; H. Evidence; I. Other;
- *Part II* – Civil Procedure Rules; Selected parts of the Civil Procedure Rules (SI 1998/3132) and selected Practice Directions;
- *Part III* – Statutory Instruments; A. Jurisdiction and Foreign Judgments; B. Applicable Law; C. International Arbitration; D. International Carriage: Road and Air; E. International Carriage: Rail and Sea; F. State Immunity and International Organisations; G. Insolvency; H. Other;
- *Part IV* – EC Materials; A. EC Treaties; B. Jurisdiction and Foreign Judgments; C. Applicable Law; D. Insolvency; E. Service of documents; F. Evidence; G. Other;
- *Part V* – Other International Materials; A. Jurisdiction and Foreign Judgments; B. Applicable law; C. International Arbitration; D. International Carriage (road and air); E. International Carriage (rail and sea); F. State Immunity; G. Insolvency; H. Service and Evidence

Price: £118.00. ISBN: 9781405718363. Available from Butterworths and Amazon.

CONFLICT OF LAWS .NET will be **reviewing** this text shortly; check back regularly for updates.

Transatlantic Insolvency Jurisdiction

Tony Griffiths and Edward Smith have written an article on "**Transatlantic insolvency jurisdiction – the interplay between Chapter 15 of US Bankruptcy Code and the EU Insolvency Regulation**" in the *Journal of International Banking Law and Regulation*. The abstract reads as follows:

> *Considers the extent to which the US Bankruptcy Code Ch.15 and Council Regulation 1346/2000 have adopted the provisions of the Model Law on Cross Border Insolvency 1997. Examines key features of the US legislation and its advantages over the previous regime for foreign creditors, compares the EC approach to the centre of main interests (COMI) and notes the scope for US courts to refuse to recognise some COMI determinations made under EC law. Reviews the temporary and post recognition remedies available to representatives of foreign proceedings under Ch.15 and the remaining shortcomings of the legislation and of US bankruptcy jurisdiction in general for transatlantic insolvency cases.*

"Transatlantic insolvency jurisdiction – the interplay between Chapter 15 of US Bankruptcy Code and the EU Insolvency Regulation" *J.I.B.L.R.* 2006, 21(8), 435-439 [westlaw link].

Cross-border Insolvency in the UK: an embarrassment of riches

Paul Omar (Sussex University) has written an article in *Insolvency Law & Practice* on cross-border insolvency in the UK. Here's the abstract:

> *This article examines the provisions governing cross border insolvency under the Insolvency Act 1986 s.426, Council Regulation 1346/2000 and the*

> *UNCITRAL Model Law on Cross Border Insolvency 1997, outlining the historical background to the development of the system. It identifies which countries are governed by which legislative provisions and outlines how conflicts are resolved for countries which are governed by two of the different regimes.*

The article includes an analysis of two recent decisions of the Chancery division of the High Court – *Daisytek-ISA Ltd, Re* (2003) BCC 562 (Ch D), and *BRAC Rent-A-Car International Inc, Re* (2003) EWHC 128; (2003) 1 WLR 1421 (Ch D (Companies Ct)).

The full article can be found on Lawtel: "**Cross-border insolvency law in the UK: an embarrassment of riches**" *Insolvency Law & Practice I.L. & P.* (2006) Vol.22 No.4 Pages 132-136.

Latvia and the Rome Convention

Martins Aljens (Lejins Torgans & Partners) has posted a summary on how the entry into force of the Rome Convention in Latvia has altered the Latvian conflict of laws rules. The Rome Convention came into force in Latvia on 1st March 2006. The provisions of the Rome Convention override the conflict of laws provisions relating to contractual obligations embodied in the introductory part of the much less-detailed Latvian Civil Law.

Perhaps the biggest area in which the difference will be felt is the identification of the applicable law *in the absence of choice* (Article 4). Aljens argues:

> *The Rome Convention sets a somewhat differrent mechanism to determine the applicable law in the absence of choice by the parties. While, in such case, the Civil Law always directs to the law of the country where the obligation is to be performed, the Rome Convention is more general in providing that the applicable law is that of the country with which the contract is most closely connected. In help of determination of the applicable law in the absence of*

> *choice, the Rome Convention provides several presumptions as to the country with which the contract is most closely connected. Although the application of such presumptions may lead to the same result as the Civil Law, it is likely that the applicable law under the Rome Convention will be different in most cases.*

Latvia has also, fortunately, lost the doctrine of *renvoi* (which was applicable in contractual matters under their national conflict of laws rules). Interestingly, Latvia entered a reservation on Article 7(1) (as the UK, Germany, Ireland and Luxembourg did originally, through fear of uncertainty [see the Giuliano-Lagarde Report, OJ 1980 C282/28]), which gives effect to the overriding rules of a closely connected country's law (that is not the applicable law).

For the full summary, see Latvia: Rome Convention on the law applicable to contractual obligations comes into force in Latvia.

Land, Security in Land and the Insolvency Regulation 1346/2000

There is an interesting article on "**Land, security in land and the European Regulation on Insolvency Proceedings 2000**" by Paul Omar in the latest issue of the *Conveyancer and Property Lawyer*. The article discusses the interaction between insolvency law and land law in the UK, France and EU. It summarises Council Regulation 1346/2000, noting the provision for the law of the Member State in which property is situated to govern land issues. It also examines the exceptions to the default lex concursus rule introduced by Arts.5-15 of the Regulation, and addresses the types of security interest affected, particularly where no local equivalent exists.

Conveyancer and Property Lawyer Conv. (2006) July/August Pages 353-373. The full text is available on Westlaw.