

State Immunity and Sovereign Debt Developments

There is a short note by Katherine Reece Thomas in *Butterworths Journal of International Banking & Financial Law* (B.J.I.B. & F.L. 2006, 21(10), 432-434) on "**State immunity and sovereign debt developments**". Here's the abstract:

Reviews case law on state immunity for sovereign debts, including: (1) Grovit v De Nederlandsche Bank on whether a state bank was immune from the jurisdiction of the court in a libel action; (2) AIG Capital Partners Inc v Kazakhstan on whether assets held by a third party bank in an account belonging to a central bank were immune from attachment; and (3) Svenska Petroleum Exploration AB v Lithuania (No.2) on whether the State Immunity Act 1978 s.3 permitted the registration or enforcement of a foreign arbitration award. Comments on public policy concerns.

Some Case Comments And Practitioner Articles in November

There are a few case comments and articles on private international law in various practitioner updates this month in the UK. These include:

1. "**Court authority over internet sites based abroad**" *E-Commerce Law and Policy* (E.C.L. & P. 2006, 8(10), 6-7) by Hubert Best and Martin Soames. Abstract:

Examines courts' jurisdiction, and which laws should apply, where wrongdoing is committed by web based companies or individuals based in other countries. Provides examples from the US and other countries of the differing criteria used to determine courts' jurisdiction. Highlights the refusal of UK based software company, Spamhaus, who have a website but no physical presence in the US, to comply with a US District Court injunction and order for damages for

listing a US bulk emailing company as a spammer. Suggests that international harmonisation of internet laws is unlikely to keep pace with internet development.

2. **"Marriage and non-marital registered partnerships: gold, silver and bronze in private international law"** *Private Client Business* (P.C.B. 2006, 6, 352-362) by Richard Frimston. Abstract:

Examines the extent to which private international law grants cross border recognition to civil and other non marital registered partnerships involving same sex couples. Reviews the definitions of "marriage", the countries in which same sex marriage is now lawful and the human rights implications of non recognition in EC Member States, highlighting the discrimination issues raised by the Family Division ruling in Wilkinson v Kitzinger. Considers the position regarding quasi marriages such as non marital registered relationships (NMRRs) or civil partnerships, including the registration requirements, the position where one party is a non national and the scope for mixed sex NMRRs.

3. **"Stays of Proceedings: Foreign Arbitrations"** *Arbitration Law Monthly* (Arb. L.M. 2006, Nov, 1-3). Abstract:

Examines the Commercial Court judgment in Abu Dhabi Investment Co v H Clarkson & Co Ltd on the jurisdiction of the court under the Arbitration Act 1996 s.9 to stay UK proceedings brought contrary to an arbitration clause which was subject to foreign law. Considers the terms of a joint venture to run an express liner service, focusing on whether the arbitration agreement in the memorandum of association and the shareholders' agreement applied to allegations that the contract was induced by misrepresentation. Examines the interpretation of arbitration clauses under United Arab Emirates law.

Party Autonomy and Private Law-Making in Private International Law: The Lex Mercatoria that Isn't

Symeon C. Symeonides (Williamette University, College of Law, USA) has just posted an article on SSRN entitled, "**Party Autonomy and Private-Law Making in Private International Law: The Lex Mercatoria that Isn't**". Here's the abstract:

This essay discusses “non-state norms” from the perspective of American conflicts law. Commonly referred to as the “new lex mercatoria,” these norms are drafted by various international or intra-national non-governmental organizations and are proposed for incorporation by contracting parties or for application by arbitrators, with or without the parties' prior consent.

Understandably, these norms are popular among many arbitrators who tend to place them on the same footing as law. Current U.S. arbitration law uncritically permits this treatment to the extent it does not allow judicial review of an arbitrator's choice of law (or non-law). The fact that, unlike the law of most countries, American law generally enforces pre-dispute arbitration clauses in consumer contracts and most employment contracts can further exacerbate the situation. In contrast, in contracts that are not subject to arbitration, American courts apply non-state norms only to the extent they have been expressly incorporated into the contract and only if their application would not displace non-waivable rules of the law that would otherwise govern the contract.

This essay applauds the latter position of American conflicts law but suggests that U.S. arbitration law should be reformed so as to provide needed protection to consumers, employees, and other presumptively weak parties.

You can download the article from [here](#). *Highly recommended.*

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.

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.

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 Commercial 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.

Maccaba v Lichtenstein, and an article

- *Maccaba v Lichtenstein* [2006] EWHC 1901 (QB)

The court held that, for there to be an arbitration agreement, there had to be an agreement evidenced in writing between the two prospective parties to the arbitration. In the instant case, no such enforceable agreement as argued for by the applicant had been proved on the evidence placed before the court.

- D. Stringer, "Choice of Law and Choice of Forum in Brazilian International Commercial Contracts: Party Autonomy, International Jurisdiction, and the Emerging Third Way" (2006) 44 *Columbia Journal of Transnational Law* 951-999.