

The Digest

BRICK COURT
CHAMBERS
BARRISTERS

A quarterly round up of cases and news from Brick Court Chambers

Legal Week's Chambers of the Year 2006

Brick Court Chambers has been awarded 'Chambers of the Year' 2006 by Legal Week Magazine. Jonathan Hirst QC received the award at a Gala Dinner held at the Old Billingsgate Fish Market in the City of London on the 29th November 2006.

This is the second award that Chambers has received in 2006. Chambers & Partners selected Brick Court Chambers as the 'Competition Set of the Year' 2006. It is also the second time that Brick Court Chambers has been given a Legal Week award, the last time being in 2004.



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Recent judgment round up

In this section we have collected together brief summaries of recent judgments in which members of Brick Court Chambers have been involved. The most recent are listed first.

2007

21/2/2007- Tradigrain v. Intertek - CA upholds judgment - The Court of Appeal upheld a judgment of Langley J (including indemnity costs) to the effect that cargo insurers were not entitled to recover against Intertek Testing Services (ITS) for the loss of vegetable oil in storage tanks in India. The case turned on issues of German law concerning the scope of "gross negligence" and the range of individuals for whom the ITS local subsidiary was responsible.

Michael Swainston QC was instructed by Barlow Lyde & Gilbert on behalf of the respondents. **The Judgment is on www.bailii.org:** Tradigrain SA & Ors v Intertek Testing Services & Anor [2007] EWCA Civ 154

21/2/2007- Anti-suit injunction upheld - Langley J gave judgment in which the court confirmed, at an inter partes hearing, an anti-suit injunction in favour of Aon (one of two defendants) (originally granted without notice) to restrain Benfield (the Claimants) from seeking to depose, as part of parallel US proceedings, certain key witnesses from Aon due to give evidence at the imminent English trial.

The context is a claim by the Benfield Group against the Aon Group concerning the recruitment by Aon of a facultative

reinsurance team from Benfield in 2006. The trial of liability is due to take place shortly in the High Court.

Tim Lord was instructed by Simmons & Simmons on behalf of Aon. **The Judgment is on www.bailii.org:** Benfield Holdings Ltd & Ors v Richardson & Ors [2007] EWHC 171 (QB)

6/2/2007 - Norris v. Government of the USA - see 'Case Focus' on Page 6.

2/2/2007 - British Horseracing Board v Attheraces. In an important competition law judgment on Article 82 of the EC Treaty, the CA overturned what had been the first ever final judgment by the High Court finding an abuse of a dominant position and giving declaratory relief.

Attheraces supplies overseas bookmakers with a broadcast and data service covering horseracing from British racecourses. This case was about the price at which the British Horseracing Board (BHB) supplies it with horseracing data. The CA overturned the High Court's findings that the BHB had abused its dominant position by charging excessive and discriminatory prices and refusing to supply. The CA found that the prices charged were not excessive in relation to the economic value of the data, nor were they discriminatory, and BHB's conduct had

...cont/

Recent judgment round up 2007 cont.

not amounted to abuse of its dominant position. This is an important judgment, in particular on the law relating to excessive and discriminatory pricing under Article 82 / Chapter II, and on “essential facilities”.

Charles Hollander QC and **Daniel Jowell** were counsel for Attheraces (instructed by Olswang). **Maya Lester** was junior counsel for the BHB (instructed by Denton Wilde Sapte). **The Judgment is on www.bailii.org:** Attheraces Ltd & Anor v The British Horseracing Board Ltd & Anor Rev 2 [2007] EWCA Civ 38

26/1/2007 - SKY successfully defends claim under the Commercial Agents Regulations. The High Court gave judgment in favour of SKY dismissing a claim for compensation brought under the Commercial Agents Regulations. Mr. Justice Briggs rejected the claimant's contention that the Schedule to the Commercial Agents Regulations was *ultra vires*. The raising of this point had led to the intervention of Secretary of State for Trade and Industry. The High Court also provided guidance as to the proper construction of the Schedule to the Regulations and the meaning of a “secondary” commercial agent.

Jasbir Dhillon represented SKY, instructed by Joel Smith of Herbert Smith LLP. **The Judgment is on www.bailii.org:** Crane v Sky In-Home Service Ltd & Anor [2007] EWHC 66 (Ch)

25/1/2007 - Honours even in pensions battle. In **Robins v Secretary of State for Work and Pensions**, the ECJ gave Judgment on a reference from the Chancery Division. The case, supported by Trade Unions Amicus and Community, was brought by members of the insolvent Allied Steel and Wire pension schemes who, because of past underfunding, stand to receive between 20% and 50% of their contractual entitlement at retirement age. The claimants argued that Directive 80/987/EEC requires EU Governments to ensure the full protection of employees' interests with regard to their acquired rights to benefits under insolvent occupational pension schemes.

The Court ruled that Article 8 of the Directive did not mean that Member States had an obligation to ensure that accrued pension rights be funded in full. It did hold that the various protections offered to members of insolvent pension schemes in the United Kingdom are insufficient to comply with the Directive, noting the inadequacy of the existing Financial Assistance Scheme. The issue of damages was held over for the national court to determine.

David Anderson QC represented the Claimants. The UK Government was represented before the European Court by **Derrick Wyatt QC**. **The Judgment is on www.curia.europa.eu** case number C 278/05.

24/1/2007 - Court of Appeal provides guidance on trustee powers and duties under securitisation of Eurotunnel Debt . Citibank NA & Anor v QVT Financial LP [2007] EWCA Civ 11 (22 January 2007) – see ‘Case Focus’ on page 5.

2006 - November/December

12/12/2006 - The Court of First Instance (CFI) annulled the Council of the European Union's (CEU) decision to freeze the People's Mujahidin of Iran's (the Organisation des Modjahedines du Peuple d'Iran) ('OMPI') funds. The decision was taken pursuant to a resolution of the United Nations Security Council of 28 September 2001, which called on all UN Member States to freeze the funds of persons who commit, or attempt to commit, terrorist acts. The CFI found, *inter alia* that in carrying out the NSC's resolution, the CEU was obliged to ensure that fundamental rights and safeguards were observed. In particular, parties in the position of the OMPI were entitled to be informed of the specific information or material which had led to their funds being frozen and be given the right to make its views on the decision heard. The OMPI had not been given any of those rights.

David Vaughan QC (together with P. Spitzer and É. de Boissieu) appeared for the OMPI. **The Judgment is on www.curia.europa.eu** case number T 228/02.

12/12/06 - ECJ upholds UK's exemption from corporation tax of domestic-sourced dividends. An ECJ Judgment in a reference for preliminary ruling made by the Chancery Division in the Franked Investment Income (FI) Group Litigation.

The case arose out of proceedings between companies resident in the United Kingdom and the Commissioners of Inland Revenue concerning the tax treatment of dividends received from non-resident companies.

In the course of answering the total of nine questions referred, the ECJ confirmed *inter alia* that the UK tax treatment of dividends, whereby nationally-sourced dividends are exempt from corporation tax whereas foreign-sourced dividends are not but are instead subject to an imputation system, does not contravene the EC Treaty, provided that the tax rate applied to foreign-sourced dividends is not higher than the rate applied to nationally-sourced dividends and that a tax credit is given for foreign corporation tax paid.

The ECJ further held that the tax legislation did not infringe the Directive in any respect.

Gerald Barling QC and **Sarah Ford** (nee Stevens) (with David Ewart QC) appeared for the United Kingdom. **The Judgment is on www.curia.europa.eu** case number C 446/04.

Recent judgment round up 2006 cont.

12/12/2006 - UK successfully defends tax credit legislation before ECJ. This case arose out of the ECJ's earlier Judgment in Joined Cases C-397/98 and C-410/98

Metallgesellschaft and others [2001] ECR I-1727. Proceedings were brought by groups of companies against the Commissioners of the Inland Revenue relating to the Revenue's refusal to grant a tax credit to non-resident companies in those groups for dividends paid to them by resident companies.

The ECJ rejected the companies' arguments under both Article 43 EC (the right to freedom of establishment) and Article 56 EC (the right to free movement of capital). The Court held that the UK's rules were not contrary to the Treaty because although they treated resident and non-resident companies differently, those companies were not in a comparable position in the relevant respects. Consequently, there was no unlawful difference of treatment.

Gerald Barling QC and **Jemima Stratford** appeared for the UK. **The Judgment is on www.curia.europa.eu case number C 374/04.**

29/11/2006 - Important State Immunity point considered by Court of Appeal? Svenska v. The Government of Lithuania and others – see 'Case Focus' on Page 4.

13/12/2006 - CA reject Iraq inquiry claim.

The CA rejected an application for judicial review of the Government's refusal to hold an independent inquiry into the circumstances which led to the decision to take military action in Iraq.

The claims, brought by relatives of servicemen who lost their lives serving in Iraq, sought to rely on Article 2 of the European Convention on Human Rights to obtain a declaration that there must be an independent inquiry into the question whether the Government took reasonable steps to be satisfied that the decision to take military action in Iraq was lawful under the principles of international law.

The CA held that the UK was not obliged under Article 2 of the Convention to set up an inquiry on this question because this would inevitably involve not only questions of international law, but also questions of policy, which are essentially matters for the executive and not the courts.

Jonathan Sumption QC and **Jemima Stratford** appeared for the Prime Minister, the Secretary of State for Defence and the Attorney General. **The Judgment is on www.bailii.org: Gentle & Clarke, R (on the application of) v Prime Minister & Ors [2006] EWCA Civ 1690**

4/12/06- In R (Animal Defenders International) v Secretary of State for Culture Media and Sport, the Divisional Court held that the ban on political advertising in the Communications Act 2003 was compatible with the right to freedom of expression under Article 10 ECHR. This was the first case in which the courts have

considered legislation in respect of which the Government has been unable to make a statement of compatibility under s. 19 HRA. The Divisional court granted a certificate for a leap-frog appeal to the House of Lords.

Martin Chamberlain was junior counsel for the Secretary of State together with **Jemima Stratford** who was unavailable for the hearing. **The Judgment is on www.bailii.org: Animal Defenders International, R (on the application of) v Secretary of State for Culture Media & Sport [2006] EWHC 3069 (Admin)**

21/11/2006 - Bankers duties in relation to syndicated loans clarified by Commercial Court.

The case concerned a claim by the IFE for damages in the sum of 103 million euros for alleged misrepresentation and negligence by Goldman Sachs in relation to IFE's participation in a syndicated credit facility in respect of which Goldman Sachs acted as the arranger. The facility was granted to a French company, Autodis S.A. to enable it to take over an English company, Finelist Group Plc.

The case failed because the Judge held that Goldman Sachs did not make any implied representations, other than that it was acting in good faith, or owe any duty of care to potential participants, and because the IFE were held to have waived any right to sue Goldman Sachs.

Mark Howard QC represented Goldman Sachs, instructed by **Damien Byrne Hill** of **Herbert Smith**. **The Judgment is on www.bailii.org: IFE Fund SA v Goldman Sachs International [2006] EWHC 2887 (Comm)**

8/11/2006 - ECJ rejects Spain's complaint over elections in Gibraltar.

A Grand Chamber of the ECJ rejected a complaint by Spain that the statutory provisions extending the franchise for European Parliament elections to Gibraltar were contrary to Community law.

David Anderson QC, Derrick Wyatt QC and Martin Chamberlain were instructed for the UK Government, though the argument was presented in Court by the Attorney General. **The Judgment can be found on www.curia.europa.eu case number C145/04.**

8/11/2006 - Treasury win in Francovich Claim.

The Commercial Court delivered an important judgment in respect of the attempt by a large group of Lloyd's Names to pursue a claim against the Government for losses arising out of an alleged failure to implement a European Directive relating to insurance.

There were two issues: 1. whether the Directive granted rights to Names - the Court decided the Directive granted them no rights.

2. whether the Names' claims were time-barred - the Court found that the Names had, or should be taken to have had, sufficient information to enable them to bring this action years before they did. The claims failed but an appeal is now pending before the CA.

Jemima Stratford and **Andrew Henshaw** were in the counsel team for HM Treasury. **The Judgment is on www.hmcourts-service.gov.uk: Frederick Poole v. Secretary of State for Trade and Industry and HM Treasury.**

Case focus

Important State Immunity point considered by CA.

'The central issues in the case were whether the Government was a party to a joint venture agreement (JVA) with Svenska and whether it had agreed in writing to arbitrate disputes arising out of that JVA before an ICC arbitral panel in Denmark.'

In **Svenska v. The Government of Lithuania and others** the Court of Appeal (Clarke MR, Moore-Bick and Scott Baker LJ) dismissed the Government of Lithuania's appeal from the decision of Gloster J. holding that it was subject to the jurisdiction of the Court in proceedings to enforce an ICC arbitration award against it.

The central issues in the case were whether the Government was a party to a joint venture agreement (JVA) with Svenska and whether it had agreed in writing to arbitrate disputes arising out of that JVA before an ICC arbitral panel in Denmark. The ICC arbitrators had themselves ruled on their own jurisdiction, finding that the Government were party to both the JVA generally and to the arbitration clause (clause 9) of the JVA.

The Court of Appeal also found that the Government were a party to the JVA and, as a matter of Lithuanian law, had agreed to arbitration. The Court of Appeal, however, differed from the arbitrators' (and Gloster J.'s) reasoning: the Court held that the Government were not, as matter of construction, to be taken to be parties to the arbitration agreement in clause 9 of the JVA, but that, rather, the Government and Svenska had reached a mutual subjective understanding that disputes between them would be arbitrated. In English law that

might have grounded a claim for rectification. As a matter of Lithuanian law, it was a valid agreement to arbitrate.

The Court therefore went on to consider whether the Government had agreed in writing to submit disputes arising out of the JVA to arbitration such that, under s.9 State Immunity Act 1978, it was no longer entitled to State immunity in proceedings relating to the arbitration. It held that, although the arbitrators and the Judge had been wrong to approach the question as one of construction, the arbitrators' interim decision as to their own jurisdiction (which the court had recognised in previous proceedings) gave rise to an issue estoppel and, therefore, the Court could not look behind that decision. As the arbitrators had decided that the Government had entered an agreement in writing to arbitrate disputes arising under the JVA, that decision was binding on the Court, and there was, accordingly, an agreement in writing to arbitrate. As the present proceedings to enforce an arbitration award were proceedings "relating to" the arbitration within s.9 of the Act, the Government was not entitled to claim State immunity.

Michael Bools (instructed by Norton Rose) on behalf of the Repondents, Svenska Petroleum.

Kelyn Bacon - A Hot 100!

"Kelyn Bacon
Brick Court Chambers
Sector: Competition

Since being called in 1998, Brick Court Chambers junior Kelyn Bacon has acted on some of Europe's juiciest competition matters.

The football shirt price-fixing inquiry, the Competition Appeals Tribunal hearing on credit cards and the Office of Fair Trading's (OFT) investigation into independent schools' fees... Kelyn has been on them all.

In the past 12 months Kelyn has had a typically high-profile showing, successfully representing Adidas in the High Court against the International Tennis Federation over the rights of players wearing Adidas's three-stripe logo in championships. There was also the *ne plus ultra* of competition cases in the form of Microsoft's ongoing battles with the

European Commission. Kelyn represented the Association for Competitive

Technology as an intervener for Microsoft in the Court of First Instance (CFI) in Luxembourg, her first appearance at the CFI. The outcome at press time was still pending.

This would be a blue-chip performance in anybody's book, but is all the more impressive given that Kelyn was only actually practising for six months in 2006 before taking time off to have her second child."

**From 'The Lawyer Hot 100'.
Piece taken from The Lawyer.com -
published in January 2007.**



Distinguished International Arbitrator joins Brick Court

We are delighted to announce that on 1st December 2006 Klaus Reichert joined Brick Court Chambers as a door tenant.

Klaus Reichert is a member of both the Irish and English Bars and practises extensively in the field of international arbitration. He practises mainly from Dublin but is looking forward to a successful association with Brick Court. He adds "London is one of the most important places in the world for international arbitration and I am delighted to be associated with one of its foremost barristers' chambers".

Klaus's work principally involves commercial dispute resolution in the international field, both as Counsel and Arbitrator. His arbitration work covers a wide range of commercial disputes including bilateral investment treaty work, energy, intellectual property, insurance, investments, joint ventures, competition, and construction sectors.

Commanding a very high reputation in international arbitration circles, he was voted

by his peers onto the 2006 *Global Arbitration Review* "45 under 45" leading lights of international arbitration. He has been consistently recommended in the *Guide to Experts in Commercial Arbitration* and *The International Who's Who of Commercial Arbitration*. Both the *UK Chambers and Partners* and *Chambers Global* rate him in the top tier of international arbitrators.



Currently Klaus is involved in a number of LCIA arbitrations in London, litigation in Ireland to related to an US\$18 billion New York case, and has recently sat on an arbitral tribunal under The Netherlands/ Czech Republic Bilateral Investment Treaty. He is the chairman of the host committee for the 2008 ICCA Conference to be held in Dublin from 8-10 June of that year to mark the 50th anniversary of the New York Convention.

'He has been consistently recommended in the *Guide to Experts in Commercial Arbitration* and *The International Who's Who of Commercial Arbitration*.'

Case focus

Eurotunnel debt restructuring dispute

In **Citibank NA & Anor v QVT Financial LP [2007] EWCA Civ 11**, the Court of Appeal has considered for the first time the duties of a trustee holding debt as security for notes issued as part of a securitisation and the scope of a negative pledge provided as part of the securitisation structure.

Citibank N.A. (Citibank) was appointed trustee of a trust comprising predominantly Eurotunnel tier 3 debt held as security for, amongst others, holders of notes issued by FLF B.V. (FLF), a special purpose vehicle created for the purpose of the securitisation. QVT Financial L.P. (QVT), a New York hedge fund, was a holder of C2 notes issued by FLF. MBI Assurance S.A. (MBIA) was the guarantor of certain of the notes issued by FLF.

The Commercial Court of Paris approved a proposed restructuring of the Eurotunnel debt which, when implemented, would have the effect of assigning the Eurotunnel tier 3 debt to a Eurotunnel company in consideration for the issue of notes redeemable in shares in Eurotunnel and

cash, with an option to receive cash instead of the notes. MBIA directed Citibank to exercise the tier 3 cash option. QVT contended that, on the true construction of the trust deed and deed of charge constituting the trust, Citibank had no power to exercise the Tier 3 cash option prior to an event of default under the mortgage, and that MBIA had no right to direct Citibank to exercise the tier 3 cash option itself or to direct Citibank to consent to the exercise of the tier 3 cash option by FLF pursuant to the negative pledge provided to Citibank as part of the security for the notes.

The Court of Appeal dismissed QVT's appeal and found that Citibank had the power to cause the exercise of the tier 3 cash option, MBIA had the power to direct Citibank to exercise the option and that the exercise of the tier cash option was not within the scope of the negative pledge.

QVT was represented by **Andrew Popplewell QC** and **Jasbir Dhillon** instructed by Fiona Walkinshaw of Reynold Porter Chamberlain LLP.

Case focus

Norris v. Government of the United States

'Price-fixing is now subject to criminal penalties in the Enterprise Act 2002'

In this case, Ian Norris, formerly CEO of Morgan Crucible, a leading manufacturer of carbon products, sought to challenge his extradition to the United States to face a federal indictment including a count under the "Sherman Act" alleging that he operated a price-fixing cartel. Extradition law in the UK requires that the conduct which constitutes the foreign offence must also constitute an offence in the UK. Price-fixing is now subject to criminal penalties in the Enterprise Act 2002 (EA02), but the conduct at issue here dated from before that Act came into force. So the US sought to argue that, even before the statutory prohibition, price-fixing was indictable at common law as conspiracy to defraud.

Two of the arguments advanced on behalf of Mr Norris, supported by Goldshield (which was granted permission to intervene because of the likely impact of the case on a prosecution being brought by the Serious Fraud Office against it in the UK) are likely to be of particular relevance to competition lawyers. First, it was argued that the court could not, consistently with common law and European Convention principles of legal certainty, recognise as criminal at common law conduct which (a) had never been so recognised before, (b) had never been suggested by any commentator to be criminal and (c) Ministers and the principal regulatory authorities had said, when introducing the EA02, was not criminal.

That argument was rejected by the Divisional Court, which upheld the arguments advanced by the Government of the US and supported by the Serious Fraud Office (which intervened because of its interest in the Goldshield case). The Court held that the common law offence of conspiracy to defraud was a broad offence capable of applying to cartel activity if it was done dishonestly. Despite criticism of the offence by the Law Commission and leading commentators as unacceptably

vague, the offence was defined with sufficient clarity to satisfy Convention standards of foreseeability.

The second argument advanced on behalf of Mr Norris was that, under the Extradition Act 2003, there could be no extradition to the US for an offence of strict liability in circumstances where the equivalent offence in the UK required proof of dishonesty, especially where, as here, the US indictment did not allege dishonesty in relation to the price-fixing count.

The Divisional Court rejected this second argument as well. It held that the Extradition Act requirements were satisfied if the US authorities alleged dishonesty, even if dishonesty was not alleged in the indictment and even if the US chose to adduce no evidence to support their allegation. Other arguments of general interest in extradition law were also rejected.

The significance of the case for competition law lies in the Court's recognition, for the first time, that offering a fixed price even without making express misrepresentations could be regarded as fraud for the purposes of the criminal law if done dishonestly. That finding is likely to be relevant to criminal prosecutions brought in the UK against individuals alleged to have been involved in cartels prior to 2003. It will also enable prosecutions to be brought against companies (which are not possible under the EA02).

The Divisional Court has certified five questions of general public importance, but refused leave to appeal. The Appellant is currently petitioning the House of Lords.

Richard Gordon QC and **Martin Chamberlain** appeared for Ian Norris instructed by White & Case. **David Vaughan QC** led the team, which included **Sarah Ford**, for Goldshield instructed by Jones Day. **James Flynn QC** appeared for the Serious Fraud Office.



Aidan Robertson has joined such well known names as Martyn Day, Helen Ward and Claire Canning as a member of The Times Law Panel.

The Panel has 100 members whose role is to boost *The Times's* legal coverage, serve as a sounding board for issues and as a centrepiece of their online law section which they are planning to expand this year.

Commenting, Aidan said of his becoming a member: "I think this is an exciting initiative. It's a great opportunity to join debates and to have open and easily accessible discussions about how the law and society are evolving."

Commercial Court working party formed

Following the Commercial Court Symposium on the "Supercase" organised by Mr Justice David Steel in October 2006, the Commercial Court Long Trials Working Party has been formed.

Led by Mr Justice Richard Aikens, the Working Party will consider all aspects of the management of heavy and complex cases in the Commercial Court and report and make recommendations to the Commercial Court Users' Committee including, if necessary, recommendations for changes in practice and/or to the Admiralty and Commercial

Courts Guide (7th edition, 2006).

Members of the working group include Mrs Justice Gloster, Robin Knowles QC, Chairman of the Commercial Bar Association, Alec Haydon - barrister at Brick Court Chambers pictured above, Alison Padfield, Simon Davis, Graham Huntley and Stephen Pearson.



For further information please go to www.judiciary.gov.uk

'to make proposals for the improvement of the procedures and practices of the Commercial Court'

Guidance note

Expert evidence in commercial cases

In a judgment handed down on 3rd November 2006 ([2006] EWHC 2755 (Comm)), Mr Justice Aikens gave the following important guidance on the use of expert evidence in commercial cases:

"It is inevitable when there is a dispute between commercial entities that covers a long period of time (as this case does) and concerns a very large sum of money, that a huge amount of documents will have to be considered. There is a natural tendency of parties and their advisors to consider employing experts to assist in digesting this material, particularly if it relates to any area that might be recondite, such as trading in Russian debt in the 1990s. There is a tendency to think that a judge will be assisted by expert evidence in any area of fact that appears to be outside the "normal" experience of a Commercial Court judge. The result is that, all too often, the judge is

submerged in expert reports which are long, complicated and which stray far outside the particular issue that may be relevant to the case. Production of such expert reports is expensive, time-consuming and may ultimately be counter-productive. That is precisely why CPR Pt 35.1 exists. In my view it is the duty of parties, particularly those involved in large scale commercial litigation, to ensure that they adhere to both the letter and spirit of that Rule. And it is the duty of the court, even if only for its own protection, to reject firmly all expert evidence that is not reasonably required to resolve the proceedings."

Applying this approach, he refused permission for the entirety of two expert reports and also for various sections of two other expert reports. **Mark Hapgood QC** acted for the party applying to exclude the expert evidence.

AG Panel success for Brick Court barristers!

Membership of the three Attorney General's Panels for 2007 includes 15 Brick Court Barristers, some of whom have made significant moves up the Panel alphabet. **Jemima Stratford** and **Sarah Lee** have moved from Panel B to A, while **Kelyn Bacon** and **Andrew Henshaw** have moved from Panel C to B. **Daniel Jowell** has now become a panel member, going straight onto the B Panel and **Margaret Gray** and **Sarah Ford** have been appointed to Panel C, also for the first time.

The other eight returning Brick Court Panellists are: A panel: **Mark Hoskins** and **Alan Maclean**, B panel: **Martin Chamberlain**, **Helen Davies**, **Marie Demetriou**, **Jasbir Dhillon**, **Aidan Robertson**, C panel: **Maya Lester**.

The AG's panels of Junior Counsel undertake public, civil and European Community work for all government departments. There are three London Panels - A for senior juniors, B for middle juniors and C for junior juniors, and a fourth provincial panel.

Brick Court Seminar Directory

Enhancing the service we offer clients



'The directory will be revised on an on-going basis with topics being added or removed as appropriate'

Barristers at Brick Court Chambers have for many years been presenting seminars and conferences, whether in Chambers, by invitation at client's premises or in one of the many conference venues around the country. We have now assembled topics that we think are relevant and interesting into a seminar directory. These topics may be presented in the following ways:

- we hold a seminar in chambers, inviting those to whom the seminar is appropriate
- by arrangement/invitation, barristers take a seminar to client's premises
- the topic is discussed in an informal manner, including a short presentation, to a smaller audience pre- and during dinner.

The directory will be revised on an on-going basis with topics being added or removed as appropriate. In addition, we are happy to present seminars on topics that you might identify that are not on the list.

To discuss your seminar requirements please do not hesitate to contact Lucy Adam, Marketing Manager at lucy.adam@brickcourt.co.uk.

Topics available for seminars/discussion:

- **Non-Disclosure and Fair Presentation of Risk - what does it mean in 2006?**
✓ Insurance/reinsurance law.
- **Important recent developments in Private International Law**
✓ Private International law.
- **The modern law of tort in a commercial context.**
✓ Commercial law.
- **Legal professional (and other types of) privilege.**
✓ Competition/Euro law.
- **Litigating competition law in the English courts.**
✓ Competition law.
- **Recent developments in contract law**
✓ Commercial law.
- **European jurisdiction, evidence and service issues, including recent developments.**
✓ European law.
- **Recent developments in sports disciplinary proceedings and competition**
✓ Commercial law.

New topics added to the Brick Court Seminar Directory:

- **Witness evidence – practicalities and pitfalls.**
Content includes: Contacting witnesses, pitfalls, confidentiality / Payment and other embarrassments / Compulsion in court proceedings / Compulsion in arbitration / Contents of witness statements, drafting and who does it, Hearsay-opinion and argument / Use of documents in witness statements, commenting on documents, refreshing the memory / Hearsay notices, signed statements, other statements out of court / Witness training / Evidence in court, supplementary questions in chief, scope of cross-examination, re-examination, attacking your own witness / Managing without witnesses - or trying to, inferences that may be drawn.
- **Dawn Raids:** Dawn Raids for suspected infringements of the competition rules can be high profile events (as evidenced by the recent publicity over British Airways), and at the very least traumatic for those on the receiving end. The stakes are high but there is no time for "learning on the job" once a dawn raid is under way. Being prepared in advance is therefore a key responsibility for the in-house lawyer.
This talk will cover the regulatory and legal background underpinning dawn raids and then move on to the practical aspects of how to handle a raid and making preparations in advance.
- **Chagos Islands:** This is a talk about the ongoing litigation to try to get a remedy for the Chagos Islanders who were removed from the Chagos Archipelago by the British Government in the 1970s to establish a US naval base. It focuses on the judicial review proceedings *R(Bancoult) v Secretary of State for the Home Department*. The principal legal issues concern the reviewability of the royal prerogative and the application of human rights and international law standards extra-territorially.
- **Competition Appeal Tribunal's case law on judicial review of merger decisions.**
This talk is about the Competition Appeal Tribunal's case law on judicial review of merger decisions, focusing on the IBA Health, UniChem and Celesio cases.

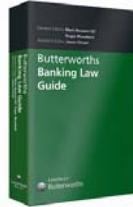
Email lucy.adam@brickcourt.co.uk.

Book case?

Over the years members of Brick Court Chambers have written and edited a wide variety of legal books. Four of the most recently published ones include:

Banking Law Guide

Published by Butterworths LexisNexis in October 2006, the general editors are **Mark Howard QC** and **Roger Masefield**; with significant contributions from **Alec Haydon**, **Stephen Midwinter** and **Fionn Pilbrow**.



The *Banking Law Guide* is aimed at students, in-house practitioners, and those in banking practice looking for a straightforward but comprehensive coverage of banking law. The book covers all the main areas of retail banking including banking regulation; the relationship between the bank, its customers and third parties; payment and payment systems; the bank as lender; the Consumer Credit Act; trade finance; and internet banking.

Bills of Lading

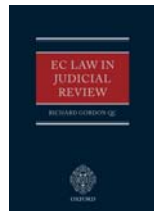
Published in December 2006 by Informa as part of its Shipping Law Library. The authors are Sir Richard Aikens, Richard Lord QC and Michael Bools. The book was started when all three were members of Brick Court



Chambers, although Richard Aikens has since been elevated to the Bench as a judge of the Commercial Court. The book seeks to give a practical guide to the problems encountered in relation to bills of lading as well as an analysis of the underlying legal principles.

EC Law in Judicial Review

Published by the Oxford University Press in January 2007, *EC Law in Judicial Review* was written by **Richard Gordon QC**.



This book focuses on the relationship between EC law and domestic public law in its different forms. The relationship between the ECJ in Luxembourg and the European Court of Human Rights in Strasbourg is stressed from the perspective of the jurisdiction of the Administrative Court. Of equal significance is the rapid expansion of EC general principles of law and their effect on judicial review. The last section covers key EC practice areas that play a large part in judicial review.

In his foreword, Lord Justice Schiemann, judge at the ECJ begins: "This is an outstanding book unlike any other that I have

read. I would have welcomed it in earlier incarnations as a practitioner and as a judge in the Administrative Court and the Court of Appeal. I shall certainly have use for it at the ECJ."

ADR in Business - Practice and Issues across Countries and Cultures

Published by Kluwer Law, the purpose of this book is to look at ADR on its own terms as a way of resolving business disputes, particularly at the international level.

ADR experts from a variety of countries explore the situations to which ADR lends itself and the different permutations it offers to allow each dispute to be handled in the manner most fitting to the circumstances.

Stephen Ruttle QC co wrote Chapter 9 - 'Better Dispute Resolution – The Development and Practice of Mediation in the United Kingdom Between 1995 and 2005' with Michel Kallipetis. The book is an ICC Publication.

Coming to a legal bookshop near you

At the end of March 2007, **Paget's Law of Banking – 13th Edition** will be published by Butterworths LexisNexis. This 13th edition was edited by **Mark Hapgood QC** with assistance from **Richard Slade**, **Jasbir Dhillon** and **Roger Masefield** all of Brick Court Chambers.



First published in 1904, *Paget's Law of Banking* has established itself as the leading practitioner text on banking law, combining meticulous accuracy and depth with a clear approach to this complex area. The new 13th edition has been substantially rewritten and expanded to provide a thoroughly modern approach to the subject matter, while remaining unique in providing a comprehensive, clear and accurate statement of the law of banking, with a particular emphasis on the principles which underpin the case law.

Developments since the last edition include:

- Enterprise Act 2002 and many changes in the area of insolvency
- New Banking Codes
- Spectrum relating to fixed and floating charges
- Major changes to Accounting Standards
- Changes to FSMA
- Consumer credit reforms
- UCP 600

These books are just one aspect of members of chambers authoring/editing work. In the next issue we will bring together some of the articles they have written recently.

'members of Brick Court Chambers have written and edited a wide variety of legal books.'

Training in EU and Human Rights Law



'Members of Chambers have given lectures and seminars, and led case studies and discussion groups on all aspects of European Community and Human Rights Law'

Barristers at Brick Court Chambers have for many years participated enthusiastically in European and human rights training programmes abroad. These programmes focus on training lawyers and judges in countries that are members (or future members) of the European Community, or of the Council of Europe.

Members of Chambers have given lectures and seminars, and led case studies and discussion groups with local experts, on all aspects of European Community and Human Rights law. These training programmes not only broaden our horizons but also help us forge important relationships with lawyers and judges from other jurisdictions.

Organisations that run these training programmes include the Council of Europe, European Commission and the Anglo-Finnish European Law Trust. Perhaps the most active is the Lord Slynn of Hadley European Law Foundation (of which David Vaughan CBE QC is the Managing Trustee and David Anderson QC is on the Advisory Council), founded in 1998 to provide advice and training in Central and Eastern Europe. The Foundation organises lectures and seminars in European law, judicial exchanges, and awards fellowships to young lawyers from Central and Eastern Europe, who spend time in Brick Court Chambers every year.

The following give a taste of the extent of the training given by Members of Chambers over the last few years:

David Vaughan QC has participated in numerous Slynn Foundation training sessions, including in Cyprus, Hungary, Latvia, Lithuania, Malta, Poland, and the Czech Republic. He is a regular speaker for the Anglo-Finnish Law Trust, most recently in Estonia and Finland.

Conor Quigley QC has given seminars as part of the European Commission's TAIEX programme, most recently training the Polish Treasury Ministry Officials on State Aids. He has participated in Slynn Foundation training in the Czech Republic and Poland.

Richard Gordon QC has trained Russian judges in Moscow, spoken at an international human rights conference in Gibraltar and lectured for the Slynn Foundation in Vilnius.

William Wood QC has lectured on mediation in Croatia, Macedonia and Serbia / Montenegro.

Nicholas Green QC has given lectures to the Hong Kong Bar and solicitors on competition law.

David Anderson QC has participated in training sessions in a variety of European countries, for the Slynn Foundation, the Council of Europe, the AIRE Centre, the New Serbia Forum, the European Commission, the British Association for Central and Eastern Europe, and the Anglo-Finnish European Law Trust. He has taken part in Council of Europe monitoring in Russia, Ukraine, Georgia and Turkey in order to report on the freedom of the media.

James Flynn QC has lectured at the College of Europe in Poland, and for the Slynn Foundation and British Council in Hungary and Estonia, on European and competition law. He participated in the Anglo-Finnish European Law Trust seminar in Finland.

Training in EU and Human Rights Law article cont.

Gerald Barling QC has trained judges and lawyers in Poland, Hungary and Lithuania for the Slynn Foundation.

Maya Lester has trained lawyers and judges in European Community law in Hungary, the Czech Republic and Poland for the Slynn Foundation, and in Estonia and Finland for the Anglo Finnish European Law Trust. Her human rights training includes going to Kosovo for the Council of Europe, and to Serbia for Interrights and the Netherlands Helsinki Committee.

Kelyn Bacon has lectured on State Aids for the Slynn Foundation in Hungary, and trained government lawyers in Zagreb on State Aids for DFID.

Margaret Gray went to Romania to train the National Institute of Magistrates on European law, for TAIEX, a European Commission funded training programme.

Marie Demetriou has participated in five Slynn Foundation training programmes on European and human rights law, in Lithuania, Cyprus, and Hungary. She is a regular speaker on competition law for the Anglo-Finnish European Law Trust, so far in Estonia and Finland.

Aidan Robertson has given master-classes in competition law organised by the British Council in the Czech Republic and Hungary, and has participated in Slynn Foundation training in the Czech Republic. He has lectured on European competition law in Germany and Malta, and in Turkey later this year.

Jemima Stratford: Slynn Foundation training in Lithuania, Hungary and Slovakia, training for the British Association for Central and Eastern Europe and for the Belgrade Centre for Human Rights in Serbia, Council of Europe training in Azerbaijan, and for the Balkan Human Rights Network in Croatia. She has conducted trial observations for the Kurdish Human Rights Project in Turkey, and visited South Africa on behalf of JUSTICE and the Bar Human Rights Committee.

Jasbir Dhillon has recently been training the Czech judiciary in the Judgment Regulation, Taking of Evidence Regulation and Service Regulations for the Foreign and Commonwealth Office.

To find out more about the The Lord Slynn of Hadley European Law Foundation you can visit their website at www.slynn-foundation.org.

‘These training programmes not only broaden our horizons but also help us forge important relationships with lawyers and judges from other jurisdictions.’

Case focus

Scottish & Newcastle Int. Ltd. V. Othon Ghalanos Ltd.

In **Scottish & Newcastle International Ltd v. Othon Ghalanos Ltd [2006] EWCA Civ 1750** the Court of Appeal upheld the decision of Andrew Smith J. that in circumstances where goods were shipped from Liverpool on CFR Limassol terms, the “place of delivery” of the goods in question for the purposes of Article 5(1)(b) of the Judgments Regulations EC 44/2001 was Liverpool and that, accordingly, the English court had jurisdiction over the claim.

In doing so the Court of Appeal considered first the particular terms of the contract and rejected a submission that a provision in the invoices issued by the seller stating that Limassol was the “place of delivery” had the effect of making Limassol the place of delivery for the purposes of the Regulations. The Court held that possession of the goods was prima facie transferred to the buyers on shipment and that there was no question of goods being bought afloat to satisfy the contract. Title and risk also passed on shipment, at the latest. There was therefore no obligation on the seller to “deliver” the goods in Cyprus.

The Court of Appeal went on to consider, obiter, where the place of delivery under a standard CIF or CFR contract might be. The Court ventured the opinion that the “place ... where under the contract the goods were delivered or should have been delivered” ought to reflect a matter of obligatory performance under the contract and as, under a CIF or CFR contract, the seller has no obligation to deliver the goods at destination, the place of delivery for the purpose of Article 5(1) could not be the contractual destination of the goods. This was in accordance with the purpose behind Article 5(1)(b) which was to seek to give jurisdiction to the courts of a State which is likely to be closely connected to the contractual dispute.

Richard Lord QC (instructed by Messrs Thomas Eggar) for the Appellant and **Michael Boob** (instructed by Messrs Kimbells LLP) for the Respondent.

The Judgment can be found at www.bailii.org: Scottish & Newcastle International Ltd v Othon Ghalanos Ltd [2006] EWCA Civ 1750 (20 December 2006).

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Case focus

Charter v City Index v Gawler and others

Three members of Chambers recently appeared on an interesting application before the Chancellor of the High Court.

The Claimants' treasury manager fraudulently used about £9 million of his employer's monies to place spread bets on his own behalf with City Index. The Claimants alleged that City Index knew that the monies could not have belonged to the individual concerned and that City Index was liable to the Claimants in knowing receipt.

Andrew Popplewell QC and **Alan Maclean** represented City Index at the trial, where the claim was compromised before judgment. City Index then alleged that the directors and auditors of the Claimants had been negligent in allowing the fraud to happen and claimed contribution from them to the settlement sum which City Index had paid. The directors and auditors applied for summary judgment dismissing the contribution claim on

the grounds that the Civil Liability (Contribution) Act 1978 did not apply to knowing receipt and that in any event contribution would have to be zero because City Index had received the relevant monies and the directors and auditors had not done so.

At the hearing of the summary judgment application, City Index was represented by **George Leggatt QC** and **Alan Maclean**, instructed by Macfarlanes, and the auditors were represented by **Simon Salzedo**, instructed by Barlow Lyde & Gilbert.

The Chancellor held that the Civil Liability (Contribution) Act did apply to claims in knowing receipt, but he granted judgment to the directors and auditors on the basis that there was no real prospect that they could be ordered to contribute any sum. His judgment, which has been reported at [2007] 1 WLR 26, is the subject of an appeal set down for hearing in June 2007.

The London Olympics 2012 are litigating already!

Jonathan Hirst QC led for the London Development Authority instructed by Eversheds (London) in a trial before Mr Justice Jack in the Queen's Bench Division.

At issue was the level of professional fees charged by Balcombe Group Plc in relation to the compulsory purchase of the land required in Stratford, East London, for the stadium and other facilities. It was argued for Balcombe that (in effect) the LDA was stuck with the fees they had invoiced and that it

had no right to challenge them. In a judgment – [2007] EWHC 106 (QB) – handed down in February, the Judge answered a series of preliminary issues and held that the LDA was not bound by the invoices and that it would be for Balcombe to prove what services they had provided and the reasonableness of the work done.

It remains to be seen whether this is the harbinger of more litigation surrounding the Olympics project.



So it says in the notes for teams taking part in the Oxfam Trailwalker trek across the South Downs over the weekend of 14th/15th July.

Lets hope that the intrepid Brick Court mens team pictured above of (left to right) **Mark Howard QC**, **Ian Moyler**, **Alec Haydon** and **Roger Masefield**, and

the elegant ladies team of **Marie Demetriou**, **Lucy Adam**, **Natalie Lawrence**, **Victoria Wakefield** and **Jemima Stratford**, are well 'socked up' with bananas - as well as having the stamina, endurance, navigation, and self-discipline to complete this 100-kilometre trek over 30 hours in 'tough conditions'.

Organised by Oxfam and the Queen's Gurkha Signals, Trailwalker UK raises money for Oxfam and the Gurkha Welfare Trust.

All support is gratefully received. So, if you would like to help out with socks, bananas or sponsorship, please email trailwalkers@brickcourt.co.uk.