

The Digest

A round up of cases and news from Brick Court Chambers

BRICK COURT
CHAMBERS
BARRISTERS

Brick Court celebrates three new Silks

All at Brick Court Chambers were thrilled to hear that Helen Davies, Tim Lord and Tom Adam were successful in this year's QC Competition.

Helen Davies QC was called to the bar in 1991 and joined Brick Court as a pupil. She specialises in commercial and EU law and has acted in a broad range of high profile commercial and EU and competition cases over the years.

Tom Adam QC (middle right) was called to the Bar in 1991, after first qualifying as a solicitor. He transferred to the Bar when he realised that what he enjoyed about litigation was advocacy. His practice is in commercial litigation, with specialities in professional negligence and reinsurance. Tom writes the chapter on insurance brokers in LLP's 'Professional Negligence and Liability' encyclopedia.

Tim Lord QC was called to the Bar in 1992, also after qualifying and working as a solicitor (at Slaughter and May within a commercial/banking group). His practice extends to general commercial litigation, banking and finance, insurance, professional negligence, civil fraud, arbitration, group litigation and jurisdictional disputes.

For further information please see their full CVs on our website at www.brickcourt.co.uk



Mark Howard QC - Barrister of the Year

On 24th June Mark Howard QC was named 'Barrister of the Year' at The Lawyer Awards. His recent work includes successfully defending Royal Sun Alliance against an insurance case brought by General Motors and acting for Freshfields partner Barry O'Brien on his disciplinary tribunal following Philip Green's failed takeover of Marks & Spencer. Mark has also acted in cases such as British Energy against Ampere and Credit Suisse in the High Court in a dispute over the financing of the Eggborough power plant, and defended Goldman Sachs in the Court of Appeal against IFE Fund in a battle over a loan.



Mark Howard QC (left) named Barrister of the Year with Lord Falconer

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'They have acted like the Baobab colossus given to us by the natural world, which has served the people through the millennia.'

South Africa honours Sir Sydney with the Order of the Baobab

On 22nd April 2008 Sir Sydney received the Order of the Baobab in gold, from President Thabo Mbeki in a ceremony held in the Union Buildings in South Africa - 'For his exceptional contribution to the fight against unjust apartheid laws and embracing the vision of a non-racial, non-sexist, free and democratic society.'

In his speech President Thabo Mbeki (pictured right) said: "This is the eleventh time that our free people have had occasion to salute in humble gratitude such distinguished men and women who are, indeed, the stars on our national firmament.



Sir Sydney receiving the Order of the Baobab from President Thabo Mbeki

... We have convened today at the seat of government, the Union Buildings to admit some among us into the order of the Baobab. These are compatriots who, without discrimination and at great cost to themselves, have rendered exceptional service to the people of South Africa, far beyond the call of duty.

They have acted like the Baobab colossus given to us by the natural world, which has served the people through the millennia."

Forthcoming appeals

Wasa Insurance and AGF Insurance v Lexington Insurance

On 22 May 2008, the HoL granted leave to appeal in the joined cases of **Wasa Insurance and AGF Insurance v Lexington Insurance**. Both cases involve reinsurance claims for US environmental clean-up costs in which the damage falls within the period of cover in the original insurance according to its proper law (under Pennsylvania law, which governs the original insurance, insurers are held liable for all damage whenever it occurs provided only that some damage occurred within the period of cover) but outside the same period of cover in the reinsurance according to its proper law (under English law, which governs the reinsurance, reinsurers are only liable for damage that occurs within the period of cover). The CA held (reversing Simon J) that the parties should be taken to have intended the reinsurance to pay whenever the original insurance paid and that the period provisions of the reinsurance should therefore be construed as though they were governed by Pennsylvania law. The result was that reinsurers were held liable. The CA's decision has caused a great deal of interest in the London reinsurance market and raises important questions about the limits of HoL's earlier decision in *Vesta v Butcher*.

Neil Calver QC is leading **Stephen Midwinter** for **AGF City Index v Gawler and others**

The HoL has given permission to appeal in a case concerning the interaction of the Civil Liability (Contribution) Act 1978 and knowing receipt liability. 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 and the auditors were represented by Simon Salzedo. 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. The Chancellor's judgment in favour of the directors and auditors, which was reported at [2007] 1 WLR 26, was overturned by the Court of Appeal in December in a judgment which has been reported at [2008] 2 WLR 950. In the Court of Appeal, Alan Maclean continued as junior counsel for City Index, and Simon Salzedo continued to represent the auditors. The HoL has granted leave to appeal to the directors and auditors, who are now represented jointly by Jonathan Sumption QC and Simon Salzedo.

Alan Maclean appears for City Index and **Simon Salzedo** is instructed by Gawler.

Recent judgment round up

This section brings together brief summaries of recent judgments in which members of Brick Court Chambers have been involved. The most recent are listed first.

2008

25/6/2008 - Claim to force a referendum for the Lisbon Treaty fails

Wheeler, R (on the application of) v Office of the Prime Minister & Anor [2008] EWHC 1409 (Admin)

The Divisional Court dismissed a claim brought by millionaire Stuart Wheeler, that the Government needs to hold a referendum in relation to the 'Lisbon Treaty'.

The claim was based on the question of whether statements made in Parliament, to the media and in the labour party's election manifesto are legally enforceable, and whether the public have a "legitimate expectation" to see measures pledged during an election campaign enacted. The case had forced the Prime Minister to delay the formal ratification of the treaty until the court's ruling.

When looking at this claim the court asked a number of questions:

- Was there an implied promise of a referendum in respect of the Lisbon Treaty? The court found: "we are of the clear view that the claimant has failed to establish the existence of the promise upon which his case depends, namely a promise to hold a referendum on the Lisbon Treaty."
- Can a promise of this kind give rise to an enforceable legitimate expectation? "In our view a promise to hold a referendum lies so deep in the macro-political field that the court should not enter the relevant area at all."
- The implications of the privileges and role of Parliament: "In our judgment, it is clear that the introduction of a Bill into Parliament forms part of the proceedings within Parliament. ...The fact that the claim would involve an interference by the court with the proceedings of Parliament is a further decisive reason why the claim must fail."

The Court continued to examine a number of subsidiary issues and concluded that:

"For the reasons we have given, we are satisfied that the claim lacks substantive merit and should be dismissed. ...We have found nothing in the claimant's case to cast doubt on the lawfulness of ratifying the Lisbon Treaty without a referendum."

Jonathan Sumption QC led a team of three instructed on behalf of The Office of the Prime Minister.

18/6/2008 - Fraudulent company cannot sue its own auditors for failing to detect the fraud

Moore Stephens v Stone & Rolls Ltd [2008] EWCA Civ 644

In an important case for auditors, the Court of Appeal has allowed the appeal in Moore Stephens v Stone & Rolls Ltd [2008] EWCA

Civ 644, over-turning the judgment of Langley J ([2007] EWHC 1826 (Comm)) and striking out the claim.

The claimant was a "one man" company which had been used by its controller as the vehicle for an enormous letter of credit fraud on a Czech bank. The bank had obtained judgment for fraud against both the company and its controller in 2002 (see [2003] 1 Lloyd's Rep. 383), but it went unsatisfied. Liquidators caused the company to bring an action against its auditors on the basis that they should have detected the fact that the company was being used by its controller to carry out the fraud, and reported the fraud to the police or some other competent external agency, thus bringing it to an end.

The auditors applied to strike out the claim, on the basis that the cause of action was founded upon the company's own illegal actions and in effect sought to indemnify the company against the consequences of having acted fraudulently. At first instance, Langley J held that the company had carried out the fraud itself because the controller's dishonest actions were to be attributed to the company, but that in the circumstances the illegality defence did not apply since the auditors had owed a duty to guard the company against fraud by its management and thus could not rely upon the occurrence of such fraud as a defence. The auditors appealed on the application of the illegality principle, and the company cross-appealed on the question of attribution of the dishonest controller's actions to the company.

The Court of Appeal allowed the auditors' appeal on illegality; dismissed the cross-appeal on attribution; and struck out the claim.

On attribution, they held that the actions of the fraudster were to be attributed to the company and that this conclusion was not altered by the principle in Hampshire Land that an agent's acts will not be attributed to his principal if they are in fraud of his principal. The Court held that this principle was ordinarily engaged only where the principal was the intended victim or target of the agent's fraud. In this case the only sense in which the company could be described as a "secondary victim" of the fraud was because if its frauds were discovered, then it would owe personal liabilities to the victims: this was not sufficient to engage the principle. On illegality, they held that once it was established that the claim was necessarily based upon the claimant's own illegal acts, then the claim was barred as a matter of public policy and there was no judicial discretion to hold otherwise. This public policy was not over-ridden by the argument that detection of dishonesty was the "very thing" that the auditors had been engaged to do. Permission to appeal was refused.

Jonathan Sumption QC and **Tom Adam** appeared for the auditors.

'The judgment considers the extent to which lawyers who obtain confidential information of the opposing party in the course of litigation can also act against that opposing party in separate litigation to which the confidential information might be relevant – a hitherto undeveloped area of English law.'

Recent judgment round up 2008 cont.

10/6/2008 - Police pay challenge dismissed

The Staff Side of the Police Negotiating Board & Anor v Secretary of State for the Home Department [2008] EWHC 1173 (Admin)

The Divisional Court dismissed a claim for judicial review of the Home Secretary's decision not to backdate this year's pay award for police officers. The Staff Side of the Police Negotiating Board had argued that promises given in 1979 when the current negotiating machinery was established founded a legitimate expectation that the Government would accept awards of the Police Arbitration Tribunal save where reasons of grave national importance justified departing from them. They also submitted that, because police officers are denied the right to strike, the Police Negotiating Act 1996 should be read compatibly with Article 11 ECHR so as to require the Government to accept Tribunal awards save in exceptional circumstances; and that the Government had given insufficient reasons for departing from the award.

The Court held that the promise given in 1979 could not survive clear statements in 1989 and 1990 that the Government reserved the right to depart from awards including for economic reasons; that even if a compensatory principle could be discerned in the Article 11 case law, a non-binding review mechanism satisfied that principle; and that the Government had explained its reasons for departing from the award with sufficient clarity. The claim was dismissed.

Jonathan Sumption QC and **Martin Chamberlain** appeared for the Home Secretary.

6/6/2008 - Freedom to instruct lawyer of one's choice

British Sky Broadcasting Group Plc & Anor v Virgin Media Communications Ltd & Ors [2008] EWCA Civ 612

The Court of Appeal has dismissed BSKyB's appeal against an interlocutory order in the litigation between BSKyB and Virgin Media arising from the events which led to the removal of various BSKyB channels from cable viewers' screens last year. The judgment considers the extent to which lawyers who obtain confidential information of the opposing party in the course of litigation can also act against that opposing party in separate litigation to which the confidential information might be relevant – a hitherto undeveloped area of English law.

BSkyB and Virgin Media are currently involved in three sets of proceedings, all relating to competition and regulatory matters – a claim in the High Court, a judicial review in the Competition Appeal Tribunal, and a market investigation by Ofcom. BSKyB argued that its disclosure in the High Court proceedings was highly confidential and should not be seen by lawyers for Virgin Media in those proceedings who were also acting for Virgin Media in the

CAT and/or the Ofcom proceedings.

Virgin Media submitted (and the Court accepted) that the relief BSKyB sought would interfere with Virgin Media's right in principle to instruct the lawyers of their choice and that in this case the provisions in the Civil Procedure Rules were sufficient to protect against the risk of misuse of disclosed documents by those lawyers in other proceedings. The Court of Appeal also held that there was a public interest in all the relevant tribunals being able to have regard to material in the disclosed documents. It did however accept that in exceptional cases a lawyer might be precluded from acting for another party in separate proceedings due to the confidential information it had received in the first litigation.

Sir Sydney Kentridge QC and **Gerard Rothschild** represented Virgin Media. **Kelyn Bacon** was on the team representing BSKyB. **Nicholas Green QC** and **Helen Davies QC** appeared at first instance.

6/6/2008 - Anti-suit injunction not a cause of action

Masri v Consolidated Contractors International Company Sal & Anor [2008] EWCA Civ 625

The CA has held that a claim for an anti-suit injunction does not amount to suing or asserting a cause of action so as to require the establishment of jurisdiction under the Brussels Regulation or CPR Part 6.

The judgment is the latest in the long-running Masri v Consolidated Contractors litigation. In 2006 the Commercial Court gave judgment in the Claimant's favour in the main proceedings. The judgment debtors are seeking to evade the judgment.

Simon Salzedo and **Colin West** (instructed by Simmons and Simmons) appeared for the judgment creditor.

28/5/2008 - Landmark ruling in favour of investment banks - See page 15.

JP Morgan Chase Bank & Ors v Springwell Navigation Corporation [2008] EWHC 1186 (Comm)

22/5/08 - Pilot union forced to withdraw threatened strike plans due to EU law incompatibility

The British Air Line Pilots Association (BALPA) was forced to discontinue its action against British Airways plc (BA) seeking a declaration that its February 2008 ballot in favour of strike action would not be contrary to EU law on freedom of establishment. The case centred on whether BALPA's proposed strike restricted BA's freedom to set up a new subsidiary (called OpenSkies) to fly from continental Europe to the United States, taking advantage of the EU Open Skies liberalisation process. The ECJ ruled in the 2007 Viking case that strike action that did not pursue a legitimate aim or did so in a disproportionate manner could infringe the establishing firm's EU law rights.

'The CA has held that a claim for an anti-suit injunction does not amount to suing or asserting a cause of action so as to require the establishment of jurisdiction under the Brussels Regulation or CPR Part 6.'

In discontinuing its claim, BALPA accepted that it would be contrary to freedom of establishment under EU law for it to prevent, restrict, or make less attractive the ability of BA to establish its new subsidiary airline services in continental Europe, whether by strike or action short of a strike. BALPA also conceded that its ballot in favour of strike was no longer valid under the Trade Union and Labour Relations (Consolidation) Act. BALPA was ordered to pay BA's costs.

Robert O'Donoghue was counsel to BA. **Charles Hollander QC** advised throughout the case but was unavailable for the hearing.

7/5/08 - Iranian opposition group not concerned in terrorism

Secretary of State for the Home Department v Lord Alton of Liverpool & Ors [2008] EWCA Civ 443

The CA dismissed the Home Secretary's application for permission to appeal against the decision of the Proscribed Organisations Appeal Commission, which had upheld an appeal by a group of parliamentarians against the decision to proscribe the Iranian opposition group, the People's Mojahedin Organisation of Iran (PMOI).

Lord Phillips CJ, giving the Judgment of the Court, held that an organisation that has no capacity to carry on terrorist activities and is taking no steps to acquire such capacity or otherwise to promote or encourage terrorist activities cannot be said to be 'concerned in terrorism' within the meaning of the Terrorism Act 2000.

Martin Chamberlain appeared as junior Special Advocate for the parliamentarians. **David Vaughan QC** represented the PMOI in its challenges before the CFI to the decisions of the Council of the EU to maintain proscription at the European level.

24/4/08 Bank charges can be assessed for fairness under the Unfair Terms in Consumer Contracts Regulations 1999

Office of Fair Trading v Abbey National Plc & 7 Ors [2008] EWHC 875 (Comm)

It was held that the terms relating to the unarranged overdraft charges levied by eight of the UK's largest personal current account providers – Abbey National, Barclays Bank, Clydesdale Bank, HBOS, HSBC Bank, Lloyds TSB Bank, Nationwide Building Society and The Royal Bank of Scotland Group – are not exempt from an assessment as to fairness under Regulation 6(2) of the Unfair Terms in Consumer Contracts Regulations 1999.

Jemima Stratford and **Sarah Love** appeared for the OFT. **Mark Hoskins** appeared for HSBC Bank.

15/4/2008 - Citation of select committee reports can breach Parliamentary privilege

Office of Government Commerce v Information Commissioner (Rev 1) [2008] EWHC 774 (Admin)

In *OGC v Information Commissioner*, Stanley Burnton J quashed and remitted for further consideration the decision of the Information

Tribunal, which had ordered the disclosure of gateway reviews of the Government's identity card scheme. The judge accepted the submissions of the Attorney General, on behalf of the speaker of the House of Commons, that the Tribunal had based its decision in part upon the conclusions of two select Committees and in doing so had infringed the principle of the separation of powers and risked a breach of Article IX of the Bill of Rights 1689.

Martin Chamberlain appeared for the Attorney General on behalf of the Speaker of the House of Commons.

9/4/08 HoL dismisses Iraq Enquiry Appeal Gentle, R (on the application of) & Anor v The Prime Minister & Anor [2008] UKHL 20

A Committee of 9 members of the HoL unanimously dismissed an appeal which sought an order that there should be an enquiry into the legality of the war in Iraq. The Appellants were the mothers of two servicemen who were killed in Iraq. They sought to argue that Article 2 of the European Convention on Human Rights (the right to life) gave them an enforceable legal right to require the Government to establish an independent public enquiry into all the circumstances surrounding the invasion of Iraq by British forces in 2003, including in particular the steps taken by the Government to obtain legal advice on the legality of the invasion. The HoL held that the Appellants had failed to establish an arguable substantive right under Article 2, and that nothing in the Strasbourg case law contemplated a right to the sort of wide-ranging enquiry sought. Furthermore, as Lord Hope put it in his Opinion, "The problem lies in the nature of the issue which [the Appellants] wish to raise. It simply is not possible to link it to the only legal base on which the application is founded."

Jonathan Sumption QC and **Jemima Stratford** appeared for the Respondents.

4/4/2008 - CA upholds jurisdiction to appoint receiver over foreign assets

Masri v Consolidated Contractors International Company SAL & Anor [2008] EWCA Civ 303

The CA has ruled that the English Court has jurisdiction to appoint a receiver over assets abroad for the purposes of enforcement of an English judgment.

In 2003 the HoL held that the power to enforce a judgment by a third party debt order was limited to debts in England (*Société Eram Shipping v Cie Internationale de Navigation* [2004] 1 AC 160). The CA has now held that this principle does not apply to receivership orders, on the ground that whereas a third party debt order is a form of *in rem* attachment of assets, a receivership order is not.

Simon Salzedo and **Colin West** appeared for Mr. Masri.

'The CA has ruled that the English Court has jurisdiction to appoint a receiver over assets abroad for the purposes of enforcement of an English judgment.'

Recent judgment round up 2008 cont.

18/3/2008 - UNESCO immunity upheld **Entico Corporation Ltd v United Nations Educational Scientific and Cultural Association (UNESCO) [2008] EWHC 531 (Comm)**

Mr Justice Tomlinson has rejected a claim that UK legislation conferring privileges and immunities on an international organisation (UNESCO) is incompatible with Article 6 of the European Convention on Human Rights (the right of access to a court). Entico was granted permission to appeal to the CA.

Jemima Stratford appeared for the Secretary of State.

13/3/2008 - British Medical Association wins judicial review on GPs' pensions

British Medical Association, & Anor R (on the application of) v Secretary of State for Health [2008] EWHC 599 (Admin)

The High Court has held that the Government acted unlawfully in 2006 when it reneged on a decision it had already taken on the manner in which the pensions of General Practitioners are calculated. The British Medical Association won its judicial review proceedings, arguing that the Government had backtracked unlawfully on a decision it had already made for calculating pensions for GPs for the years 2004 to 2006.

Richard Gordon QC and **Maya Lester** acted for the British Medical Association.

12/3/2008 - HoL rules price-fixing not a crime at common law - See page 16

Norris v United States of America & Ors [2008] UKHL 16

12/3/2008 - Ban on political advertising on TV and radio is compatible with freedom of expression

Animal Defenders International, R (On The Application of) v Secretary of State For Culture, Media and Sport [2008] UKHL 15

The HoL dismissed the appeal of Animal Defenders International (ADI), an animal rights group which wished to advertise on TV in support of its aims. ADI had challenged the ban on political advertising in the Communications Act 2003 as a disproportionate restriction on the right to freedom of expression, contrary to Article 10 of the European Convention on Human Rights. The Divisional Court dismissed the challenge in 2006, holding that the ban was necessary to prevent the democratic process from becoming skewed by those with the most money. The HoL agreed, holding that Parliament was entitled to regard a complete ban on political advertising on TV and radio as necessary in a democratic society.

Martin Chamberlain acted as junior counsel for the Secretary of State for Culture, Media and Sport, the successful Respondent.

29/2/2008 - Kosmar Villa Holidays v Trustees of Syndicate 1243 [2008] EWCA Civ 147, Times Law Report 11.03.08.

The CA held that the doctrine of election did not apply to an alleged waiver of a procedural condition precedent in an insurance policy. The dispute concerned a liability insurance policy which provided as a condition precedent that the insured shall give immediate notification to the insurer of the occurrence of any injury or damage. The insured was over a year late in notifying the insurer of a serious occurrence of injury. The CA, after a review of the authorities following *The Good Luck* [1992] 1 AC 233 and *J Kirkaldy v Walker* [1999] Lloyd's Rep IR 410, held that: (i) the doctrine of election was ill-fitting and unneeded in the context of a procedural condition precedent, and that the doctrine of estoppel alone gave insureds sufficient protection; (ii) there was no waiver by estoppel in this case; (iii) the insurer's letters had not been sufficiently unequivocal to found any form of waiver.

Richard Slade appeared for the appellant insurer.

19/2/2008 - British Energy resists banks' appeal over power station option rights

British Energy Power & Trading Ltd & Ors v Credit Suisse & Ors [2008] EWCA Civ 53

British Energy has successfully resisted an appeal by Credit Suisse and others in a dispute arising out of British Energy's financial restructuring in 2004. At first instance in June 2007, Langley J had held ([2007] EWHC 1428, [2007] 2 Lloyd's Rep 427) that various lending banks were parties to option agreements granted by British Energy over a power station, and thus were all bound by various contractual restrictions on dealing in the option rights. On appeal, Credit Suisse and various sub-participants in the debt argued that the only bank which was party to the option agreements (and thus bound by the restrictions) was the bank which had signed them as security trustee, and that this left the others free to deal with the options as they wished. The CA (Clarke MR; May and Hallett LJ) rejected this argument, holding that the commercial purpose of the option agreements had plainly been to restrict *all* the banks, and that this purpose would have been frustrated by concluding that only the security trustee was bound.

Andrew Popplewell QC and **Tom Adam** appeared for British Energy; **Jonathan Sumption QC** and **Sarah Love** appeared for Credit Suisse and others.

13/2/2008 - Standard Life v Oak Dedicated Ltd and other insurers, and Aon Ltd - Commercial Court

Standard Life Assurance Ltd v Oak Dedicated Ltd & Ors [2008] EWHC 222 (Comm)

The Commercial Court handed down judgment in Stage 1 of Standard Life's claims against its professional indemnity insurers, in respect of

'The CA held that the doctrine of election did not apply to an alleged waiver of a procedural condition precedent in an insurance policy.'

its liabilities arising out of mis-selling of mortgage endowment policies, and also against its broker, Aon, in respect of the placing of the relevant policy. They dismissed the claim against the insurers, on a point of construction, and upheld the claim against Aon in negligence (which will go forward to Stage 2 to determine the issue of loss).

The primary issue at the Stage 1 trial was an issue of construction of the policy, which provided cover of £75 million excess of £25 million. Standard Life and Aon contended that the policy allowed aggregation of related claims (within the meaning of a clause permitting aggregation of claims made by different claimants within the policy wording) made against Standard Life by different individuals for the purposes of the excess. If such aggregation was not permitted, the excess point would not be reached (each individual claim being under £10,000, but the total claims paid by Standard Life exceeding £100 million so as to amount to a total loss under the policy if aggregation were permitted). The insurers relied on the wording of the excess provision in the policy schedule, and in the slip, which stated: "Excess: £25 million each and every claim and/or claimant including costs and expenses". The insurers contended, and the court held, that this imposed an excess on a "per claimant", rather than a "per claim", basis so that it would be reached only in the event of a single claimant with a claim over £25 million. Accordingly, insurers will have no liability under the policy in respect of the claims made against Standard Life for endowment mis-selling.

The second issue concerned Aon's negligence in placing the policy which contained the words "and/or claimant" in the excess provision of the schedule to the policy in circumstances when it understood that Standard Life required cover which allowed aggregation of claims made against it by different individual claimants. The Judge held that Aon had a duty to obtain cover, and on each renewal to ensure that it had arranged cover, which clearly met Standard Life's requirements, and to ensure that the policy language clearly encompassed Standard Life's needs. He concluded that Aon was negligent as no reasonably competent broker could have concluded that Standard Life's needs were clearly met by the policy. Aon's causation defence failed because it was held that, absent that negligence, Aon could have procured appropriate cover for Standard Life, and the Judge made no reduction for any contributory negligence.

George Leggatt QC and **Simon Birt** represented **Standard Life**. **Tim Lord** was junior counsel for the insurers.

30/1/2008 - Largest ever damages award in personal injury litigation

In December, what is thought to be the largest ever damages award in a personal injury case following trial - a lump sum totalling some £10.7 million was granted to a girl (living in Ireland) who had been injured at birth due to

clinical negligence. One central issue for the determination of damages was the amount to be paid in respect of full time care. The defendant hospital initially offered damages on the basis of one full time live-in carer. **Conor Quigley QC**, who is also a member of the Irish Bar, gave expert evidence on the meaning and effect of the maximum working week of 48 hours laid down by the European Working Time Directive and on its implementation in Ireland through Irish legislation. His evidence identified the defendant's scheme would have been unlawful in Ireland which was accepted by all parties and opened the way to the large damages award.

18/1/2008 - No pre-action disclosure for Hutchison 3G

Hutchinson 3G UK Ltd v O2 (UK) Ltd & ors [2008] EWHC 55 (Comm)

Judgment was given rejecting H3G's application for pre-action disclosure against all four of its rival mobile network operators: O2, Orange, T-Mobile and Vodafone.

H3G had claimed that the four operators had sought to delay changes to the UK's system for porting numbers, in breach of Articles 81 and 82 EC and the corresponding provisions of the Competition Act. As a precursor to bringing claims for damages, H3G sought extensive pre-action disclosure from all four operators.

The four operators denied there had been any anti-competitive conduct, and resisted the applications for pre-action disclosure. David Steel J found in their favour as a matter of both jurisdiction and discretion under CPR 31.16, having regard in particular to the fact that H3G could plead its case on the material presently available, the speculative nature of its claim, the scale and cost of the disclosure sought, and the difficulty of disclosing confidential material between competitors.

Jonathan Sumption QC represented H3G, **Nicholas Green QC** and **Kelyn Bacon** represented O2, **James Flynn QC** and **Marie Demetriou** represented Orange, and **Charles Hollander QC** represented T-Mobile.

2007

21/12/2007 - Government of the Islamic Republic of Iran v The Barakat Gallery Limited

Islamic Republic of Iran v The Barakat Galleries Ltd [2007] EWCA Civ 1374

The CA handed down a landmark judgment on the trial of two preliminary issues in an action brought by the Islamic Republic of Iran to recover antiquities presently in London and alleged to form part of Iran's national heritage.

The antiquities are said to date from the period 3000 BC to 2000BC. For the purposes of the preliminary issues, it was assumed that they originated from recent excavations in the Jiroft region of Iran which were unlicensed and unlawful under the law of Iran.

The CA considered the following matters: (1) whether, under Iranian law, Iran enjoyed a proprietary right to the antiquities that entitled

'The CA handed down a landmark judgment on the trial of two preliminary issues in an action brought by the Islamic Republic of Iran to recover antiquities presently in London and alleged to form part of Iran's national heritage.'

Recent judgment round up 2007

'In an important judgment the ECJ ruled that the free movement provisions of the EC Treaty can be relied upon directly against trade unions, but that the right to take collective action for the protection of workers is a legitimate interest which, in principle, may justify a restriction on free movement.'

Iran to recover them in proceedings in England; (2) alternatively, whether Iran enjoyed an immediate right to possess the antiquities that founded a claim in England for conversion or wrongful interference with goods; (3) whether the law conferring any such rights on Iran was a penal or public law and, if so, whether or not that law was enforceable in this jurisdiction.

Unanimously, the CA found in favour of Iran on all points. In particular, it held on the assumed facts that Iran was the owner of the antiquities under Iranian law and that, even if it were not, its immediate right to possess the antiquities was sufficient to found a claim in conversion in this jurisdiction. The third issue, above, required an assessment of correctness of the oft-cited legal principle that English courts have no jurisdiction to entertain an action for the enforcement, either directly or indirectly, of a penal, revenue or other public law of a foreign state. The Court qualified the oft-cited principle, approving the test enunciated in the *Spycatcher* case (*AG (UK) v Heinemann Publishers Australia Pty Ltd* (1988) 165 CLR 30). Iran's claim was found to be a patrimonial claim in any event. Importantly, however, the Court further held that, even if it were wrong in finding that Iran's claim was a patrimonial one, there was no general principle that England will not entertain an action whose object is to enforce the public law of another state.

Sir Sydney Kentridge QC and **David Scannell** of Brick Court Chambers and Professor Norman Palmer of 3 Stone Buildings appeared for the Islamic Republic of Iran.

18/12/2007 - R (Telefónica O2 Europe plc & Others) v S/S BERR

Telefonica O2 Europe Plc & Ors, R (on the application of) v Secretary of State for Business and Regulatory Reform [2007] EWHC 3018 (Admin)

The High Court (Mitling J) has referred the "Roaming Regulation" to the ECJ, which will now determine whether the Regulation is valid.

The Roaming Regulation operates to cap the prices which domestic mobile phone operators can charge their customers for making or receiving calls on their mobile phones when abroad (known as 'retail roaming charges'). It also caps the prices which foreign mobile operators can charge domestic operators for the use of their networks by the domestic operators' customers (known as 'wholesale roaming charges').

The reference was sought in the context of judicial review proceedings brought by Telefónica/O2, T-Mobile, Orange and Vodafone (supported by the GSM Association, intervening) in which the Claimants formally challenged the UK statutory instrument which purports to implement the Roaming Regulation. The Claimants contended that the Regulation is invalid on the grounds that it is *ultra vires* and that it infringes the principles of

proportionality and subsidiarity. The Secretary of State for Business, Enterprise and Regulatory Reform resisted the reference, supported by Hutchison 3G (intervening).

The case now joins the important and growing line of precedent (including *ex parte Omega Air* [2000] EuLR 254, *ex parte British American Tobacco* [2000] EuLR 70, *R (ABNA & Ors) v S/S Health* [2003] EWHC 2420, [2004] EuLR 88 and *R (SPCM) v S/S EFRA* ('REACH') [2007] EWHC 2610, [2007] All ER (D) 139) on the jurisdiction of the Courts of England and Wales to refer questions relating to the interpretation and validity of Community legislation to the ECJ.

David Anderson QC and **David Scannell** appeared for Telefónica/O2, T-Mobile and Orange. **Martin Chamberlain** appeared for the GSM Association.

11/12/2007 - The right to strike and free movement

Judgment C-438/05 International Transport Workers' Federation and Finnish Seamen's Union

In an important judgment the ECJ ruled that the free movement provisions of the EC Treaty can be relied upon directly against trade unions, but that the right to take collective action for the protection of workers is a legitimate interest which, in principle, may justify a restriction on free movement.

The proceedings, in which 14 Member States, the Commission and Norway (a non-Member State) made observations, raised the question whether Viking Line, a Finnish ferry company, wishing to re-flag the Rosella in Estonia, could rely on the free movement provisions to counter collective action threatened by the Finnish Seamen's Union (FSU) and the International Transport Worker's Federation (ITF).

The FSU and the ITF contended that the right to take collective action to protect workers fell outside the Treaty altogether or alternatively Article 43 (on freedom of establishment) was not horizontally directly effective and could not therefore be invoked directly against them. The ECJ rejected these arguments ruling that collective action was capable of constituting a restriction on free movement.

However, the ECJ recognised that the right to take collective action for the protection of workers in principle justified a restriction on the freedom of establishment. The Community has not only an economic purpose but also a social purpose and the rights under the free movement provisions must be balanced against the objectives pursued by social policy which includes improved working conditions pursuant to Article 136.

In the present case the ECJ remitted the issue of justification back to the CA. The national court will have to examine whether the threatened collective action by the FSU and ITF constituted a proportionate response in

order to protect jobs or conditions of employment.

Charles Hollander QC, Mark Hoskins and **Colin West** were instructed in the CA on behalf of Viking (Mark Hoskins only appearing in Luxembourg). **Mark Brealey QC** and **Marie Demetriou** were instructed on behalf of FSU and ITF both in the CA and in Luxembourg. **David Anderson QC** and **Sarah Lee** appeared for the UK Government in Luxembourg.

5/12/2007 - Bermuda Form Arbitration Form considered by the CA for the first time

C v D [2007] EWCA Civ 1282

This is an important CA judgment for international arbitration. The parties, both American, had agreed to a Bermuda Form Arbitration, with a choice of the internal laws of the State of New York as the governing law of the contract and London Arbitration. The main issue in the appeal was whether the unsuccessful party in the arbitration should be prevented from seeking to vacate the Award in New York for manifest disregard of New York law. The CA upheld the first instance decision that an anti-suit injunction should be granted preventing application to the New York Court. Following a developing line of authority, it held that the choice of London as the seat and curial law of the arbitration was analogous to an exclusive jurisdiction clause and necessarily meant that the only challenges to the award were those permitted by the 1996 Act. Furthermore, although it was part of a contract governed by New York law, the arbitration clause was governed by English Law.

This case is also of interest for two subsidiary points:

(1) The Court set aside the Judge's award of indemnity costs on the grounds that the Defendants had behaved perfectly properly and the issues raised were novel issues on which up to now conflicting views could legitimately be held.

(2) The case had been heard in private and the names of the parties kept confidential. The Court held there was no good reason to hold the hearing in private, contrary to the normal practice, and indicated that it was unconvinced that the parties names should have been anonymised. So their names may yet be published.

Jonathan Hirst QC led for the insurers.

28/11/2007 - R(Countryside Alliance) v HM Attorney General; R(Derwin and others) v HM Attorney General

Countryside Alliance & Ors, R (on the application of) v Attorney General & Anor Rev 2 [2006] EWCA Civ 817

The HoL dismissed two appeals challenging the hunting ban. One sought to challenge the Hunting Act under the Human Rights Act 1998 as contravening Articles 8, 11 and Article 1 of the First Protocol to the ECHR. The other was a challenge under the EC free movement provisions. Both the HR and the EC Appellants

argued that the ban restricted their rights and therefore had to be justified as proportionate to a legitimate aim.

There were interesting and varied judgments from their Lordships on the applicability of the ECHR and the EC Treaty and on the proper approach to proportionality. As to the applicability of the various rights, the HoL unanimously concluded that Article 1 of the 1st Protocol was engaged but that Articles 8 and 11 were not. They also accepted the submissions of the EC Appellants that Article 28 (free movement of goods) and Article 49 (freedom to provide and receive services) of the EC Treaty were arguably applicable and rejected the Government's submission that it the position was *acte clair* to the contrary. The issue of proportionality gave rise to differences in approach, the majority holding that the Act was proportionate but Lord Brown (with whom Lord Rodger agreed) concluding that, had the Appellants' Article 8 ECHR rights been engaged he "would have declined to find the hunting ban justifiable".

Richard Gordon QC represented the Human Rights Appellants; **David Anderson QC** and **Marie Demetriou** represented the EC Appellants.

22/11/2007 - Prison telephone charges do not breach the European Convention on Human Rights

Davison v. The Secretary of State for Justice

Mr. Davison, a prisoner serving a sentence of imprisonment at HMP Elmley, made a claim for judicial review against the Secretary of State for Justice seeking an order that the Prison Service adopt the Prison Ombudsman's recommendation that it open negotiations with BT to seek to lower the level of telephone charges charged to prisoners. Mr. Justice Mitting refused Mr. Davison's renewed application for permission to claim Judicial Review. The Court of Appeal rejected an appeal by Mr. Davison in a judgment dated 2nd May 2008.

Jasbir Dhillon acted on behalf of the Secretary of State for Justice.

13/11/2007 - High Court refers validity of provisions of the 'REACH' Regulation to the ECJ

R (SPCM SA and Others) v Secretary of State for Environment, Food and Rural Affairs [2007] EWHC 2610 (Admin)

The High Court has referred the provisions of the 'REACH' Regulation which relate to polymers and monomers to the ECJ, which will now determine the validity of those provisions.

David Vaughan QC and **David Scannell** appeared for the Claimants.

7/11/2007 - Court of First Instance Rules on Legal Privilege in Competition Proceedings - See page 14

Akzo Nobel Chemicals Ltd and Akros Chemicals Ltd v Commission (Joined Cases T-125/03 and T-253/03)

'This is an important CA judgment for international arbitration.'

Recent judgment round up 2007 cont.

5/11/2007 - Lloyd's Names Fail in CA

Pooler & Ors v Her Majesty's Treasury [2006] EWHC 2731 (Comm)

A large group of Lloyd's Names have failed again in their attempt to pursue a claim against the Government for losses arising out of an alleged failure to implement a European Directive relating to insurance.

In *Frederick Pooler and ors v HM Treasury* the CA rejected the Names' appeal, and held that there was no need to refer questions to the ECJ for preliminary ruling.

The claim had been brought for damages (said to be in excess of £1 billion). It raised two preliminary issues: (1) whether the Directive in question granted rights to the Names; and (2) whether the claim was in any event time-barred by reason of the rules of limitation.

HM Treasury succeeded on both issues which were before the CA, but at the close of argument on the grant of rights issue the Court concluded that it would dismiss the appeal and therefore did not need to hear argument on the limitation issue. The Names' application to the CA for leave to appeal to the HoL was refused.

Jemima Stratford and **Andrew Henshaw** were part of the counsel team for HM Treasury.

5/11/2007 - CA rules on EU citizenship provisions

Liu Ors v Secretary of State for the Home Department [2007] EWCA Civ 1275

In a judgment on 25.10.01 in *Mouloungui, Liu, Wang and Ahmed v SSHD*, the CA held that the citizenship provisions of the EC Treaty (Article 18 EC) did not require the United Kingdom to grant a right of residence to the Appellants who were parents of children who had citizenship of another EU Member State but who were themselves third country nationals.

Marie Demetriou appeared as junior for the Secretary of State for the Home Department.

2/11/2007 - HoL clarify scope of Section 75 of the Consumer Credit Act for overseas purchases

Office of Fair Trading v Lloyds TSB Bank plc & Ors [2007] UKHL 48

In a landmark ruling on the Consumer Credit Act 1974, the HoL has held that 'connected lender liability' attaches to card transactions abroad even though the statutory indemnity in favour of a card issuer against a supplier does not extend to overseas suppliers.

The ruling brings to an end a dispute between UK card issuers and the OFT (formerly the Director General of Fair Trading) which first arose in the early 1990s.

Jonathan Sumption QC appeared for the OFT, and **Mark Hapgood QC** appeared for Lloyds TSB Bank Plc and Tesco Personal Finance Ltd (sued as

representatives of all UK card issuers) **Mark Howard QC** for the intervenors American Express.

31/10/2007 - No appealable decision in BBC case

The Competition Appeal Tribunal held that Ofcom had not taken an appealable decision when it decided to close its investigation into a contract between the BBC and Red Bee Media Ltd.

Independent Media Support Ltd (IMS), one of Red Bee's competitors, complained to Ofcom about two contracts that were won by Red Bee – the first with Channel 4 and the second with the BBC. IMS's appeal against the Channel 4 decision will now go forward to a full hearing next year.

Nicholas Green QC and **Jemima Stratford** act for Red Bee. The judgment can be found at: <http://www.catribunal.org.uk/documents/Jdgg1087Media311007.pdf>

23/10/2007 - ECJ bold on students, more cautious on crime

The Grand Chamber of the ECJ gave two judgments in the fast-moving areas of European Citizenship and criminal law harmonisation. They illustrate that whatever the fate of the new Reform Treaty, "ever-closer union" remains a fact of life at judicial level.

In Joined Cases C-11 and 12/06 *Morgan and Bucher* the Grand Chamber held that the German Federal Law on education and training grants unduly restricted the right of citizens of the Union to move freely around the Community (guaranteed by the citizenship provisions, Articles 17 and 18 EC) by making it a condition of the payment of maintenance grants for foreign study that a student should already have studied for a year in Germany. In principle, home state governments are now obliged to make grants available to their residents for study elsewhere in the EU on the same basis as for study at home, particularly where a student is seeking training different from that available in the home state.

In Case C-440/05 *Commission v Council* ("Ship-source Pollution") the Grand Chamber ruled that the Council was competent to oblige the Member States, by qualified majority, to provide for criminal penalties in order to combat serious environmental crimes. This was contrary to the submissions of no fewer than 19 Member States, including the United Kingdom, which had contended (notwithstanding the unpromising precedent of Case C-176/03 *Commission v Council* ("Environmental Crimes")) that the harmonisation of criminal law in this area fell outside the scope of the EC Treaty, could be brought about only by the unanimous consent of the Member States and was not justiciable before the ECJ.

'In a landmark ruling on the Consumer Credit Act 1974, the HoL has held that 'connected lender liability' attaches to card transactions abroad even though the statutory indemnity in favour of a card issuer against a supplier does not extend to overseas suppliers.'

In a significant concession to the Member States, the Court did however find that the determination of the type and level of the criminal penalties to be applied did not fall within the Community's sphere of competence. The judgment thus applies a brake to the ambitions of the European Commission in this area, which included provision for minimum and maximum penalties for "Community crimes" and even a harmonisation of the criteria for prosecutorial discretion.

David Anderson QC appeared for the UK Government in both cases.

24/10/2007 - No restitutionary or exemplary damages for breach of Article 81 of the EC Treaty

Devenish Nutrition Ltd & Ors v Sanofi-Aventis SA (France) & Ors [2007] EWHC 2394 (Ch)

The judgment of Lewison J in *Devenish Nutrition Limited & others v Sanofi-Aventis SA (France) & others* is extremely significant in the context of the developing law of private enforcement of competition law.

This was the trial of certain preliminary issues in proceedings brought in relation to the well-known "vitamins cartels". In 2001 the EC Commission levied record fines on the defendant vitamin manufacturers for their participation in worldwide cartels in breach of Article 81 of the EC Treaty. Following the Commission's decision, the victims are now claiming compensation in the High Court for the damage suffered by them as a result of the unlawful cartels. Lewison J held that the claimants were confined to compensatory damages.

Mark Brealey QC was instructed on behalf of the BASF defendants. **Mark Hoskins** was instructed on behalf of the Roche defendants.

22/10/2007 - The Court of First Instance, wholly exceptionally, orders expedition

People's Mojahedin Organization of Iran v Council - Case T-256/07

Following the judgment of the Court of First Instance (CFI) (12 December 2006) in Case T-228/02 *Organisation des Modjahedines du peuple d'Iran (OMPI) / People's Mujahidin of Iran (PMOI) v Council*, which annulled an earlier decision of the Council freezing the funds of OMP/PMOI, the PMOI has brought a further action (Case T-256/07) seeking the annulment of a new decision made on 29 June 2007 by the Council which sought to maintain the PMOI in the list of organisations whose funds were to be frozen. Following an application by the PMOI seeking expedition of the hearing pursuant to CFI Rule 76a, the CFI has, wholly exceptionally, ordered such expedition. The United Kingdom has intervened in the case again.

David Vaughan QC (together with JP Spitzer of the Paris Bar) appears for the PMOI. **Sarah Lee** is

instructed on behalf of the United Kingdom. The Decision can be found on www.curia.europa.eu.

3/10/2007 - High Court says Gore film can be shown in schools, subject to guidance

Dimmock v Secretary of State for Education & Skills [2007] EWHC 2288 (Admin)

Mr Justice Burton indicated that Al Gore's film on climate change, 'An Inconvenient Truth', could be shown in schools, subject to amended guidance. In a judicial review claim brought by a school governor, who had claimed that showing the film would amount to the promotion of "partisan political views" contrary to s. 406 of the Education Act 1996, Mr Justice Burton indicated that, while the film itself contained partisan political views, the showing of it would not amount to the promotion of those views by teachers, provided that they took care to point out where the film's presentation of the science went beyond the established scientific consensus.

Martin Chamberlain acted for the Secretary of State for the Department of Education.

1/10/2007 - London Cab Drivers' Club refused judicial review

The London Cab Drivers' Club sought judicial review of Transport for London's decision to require older London taxis to be retro-fitted with emissions reductions equipment. The Club contended that it was irrational to approve particular types of system on the basis of tests which they said were inadequate. HHJ Mole QC, sitting as a deputy High Court judge, refused the Club permission to apply for judicial review.

Martin Chamberlain appeared for Transport for London.

1/10/2007 - The CA in Hong Kong rejects allegation of bias by Telecommunications Authority

PCCW-HKT Ltd v. The Telecommunications Authority—CACV 60/2007

This case concerned an allegation that the Telecommunications Authority in Hong Kong (an individual) exhibited apparent bias in the manner in which he conducted a consultation exercise about possible changes to regulation in the context of the growing convergence of fixed and mobile telephony.

The CA in Hong Kong rejected an appeal against the Decision at first Instance (Mr. Justice Reyes) who had rejected the allegation. The Court clarified the test for apparent bias and emphasised that regulators needed to be able to form robust provisional views on the merits of issues and to articulate them in order to stimulate debate and encourage focused consultation responses and that the forming of such views did not constitute predetermination of the issue being consulted about.

'The judgment of Lewison J in *Devenish Nutrition Limited & others v Sanofi-Aventis SA (France) & others* is extremely significant in the context of the developing law of private enforcement of competition law.'

Recent judgment round up 2007 cont.

Nicholas Green QC led **Johnny Mok SC** instructed by Slaughter & May Hong Kong for the Hong Kong Telecommunications Authority

17/9/2007 - CFI Grand Chamber dismisses Microsoft's appeal

Microsoft v Commission—Case T-201/04

The Court of First Instance (CFI) (sitting for only the second time as a Grand Chamber of 13 judges) issued its long-awaited judgment in the *Microsoft* proceedings. In 2004, the EU Commission fined Microsoft €497 million for two practices that were found to amount to an abuse of a dominant position, contrary to Article 82 of the EC Treaty. The abuses found included: (1) an unlawful refusal by Microsoft to supply third party providers of work group servers with information that was considered essential to interoperate with Microsoft's near-monopoly PC operating system software (the various Windows products); and (2) unlawful bundling of Microsoft's Windows Media Player (WMP) with its ubiquitous Windows PC operating system software. Microsoft was ordered to make the necessary interoperability information available to rivals and to put on the market a version of Windows that did not have WMP bundled with it. Microsoft's interim application to have those obligations suspended was dismissed in December 2004. There are ongoing disputes between Microsoft and the Commission about compliance with the disclosure requirements concerning interoperability information.

In their judgment the CFI upheld the Commission decision's findings in respect of abuse of dominance, as well as the level of fines. Regarding the refusal to supply abuse, the CFI essentially applied the traditional criteria set out in earlier cases such as *Magill* and *IMS Health*, finding that the interoperability information in question was essential for third parties and that the refusal to share it would eliminate effective competition in workgroup servers, as well as limit technical development to the prejudice of consumers. On the bundling issue, the essence of the case was that Microsoft's practice of bundling its streaming media player product with its PC operating system would, because of Microsoft's overwhelming power in respect of PC operating systems (its market share exceeded 90% at the relevant time), also lead to foreclosure in the separate market for media players.

The only criticism made by the CFI of the contested decision was that the Commission exceeded its powers in delegating certain aspects of the enforcement of the remedies for the abuses found to a third party IT expert.

Whether Microsoft will seek to appeal it to the ECJ remains to be seen.

James Flynn QC represented the Software & Information Industry Association (SIIA) and the European Committee for Interoperable Systems (ECIS) which intervened in support of the Commission. **Kelyn Bacon** represented Association for Competitive Technology (ACT) which intervened in support of Microsoft.

12/9/2007 - Recent increase to Air Passenger Duty upheld by the Administrative Court

Federation of Tour Operators & Ors, R (on the application of) v HM Revenue & Customs & Ors [2007] EWHC 2062 (Admin)

Her Majesty's Treasury successfully defended the recent increase to the amounts of Air Passenger Duty ('APD') collected for the revenue on flights departing from UK airports, introduced with effect from 1 February 2007, in a judicial review application brought against it by the Federation of Tour Operators and certain individual tour operators.

David Anderson QC and **Sarah Lee** represented Her Majesty's Treasury.

07/08/07 Brick Court assists in first ever claim for forfeiture of political donations

The Electoral Commission v. The United Kingdom Independence Party

On the application of the Electoral Commission, Senior District Judge Workman, sitting at the City of Westminster Magistrates Court, ordered the United Kingdom Independence Party ("UKIP") to forfeit to the Consolidated Fund the sum of £18,481 equal to donations made by Mr. Alan Bown at a time when he was not on the electoral roll and made by Nigtech Limited, an Isle of Man registered company. Although the District Judge found that Mr. Brown gave UKIP further donations amounting to £349,216 which were also impermissible, no order for forfeiture was made in respect of these donations. This was the first case involving forfeiture of donations received by a political party under the Political Parties, Elections and Referendums Act 2000.

This decision will be subject to a Judicial Review to be heard in September 2008.

Jasbir Dhillon acted for the Electoral Commission.

'The Court of First Instance (CFI) (sitting for only the second time as a Grand Chamber of 13 judges) issued its long-awaited judgment in the Microsoft proceedings.'

Brick Court's Pro Bono Practice

A lesser known side of Brick Court Chambers is that it has a proud history of pro bono work. Sir Sydney Kentridge QC has undertaken a number of cases on behalf of death row prisoners before the Privy Council. He recently led a team of English counsel who have filed amicus curiae briefs in the United States Supreme Court on behalf of the Commonwealth Lawyers Association on the right to habeas corpus of persons detained at Guantanamo Bay.

A number of barristers undertake work from the Bar Pro Bono Unit including Andrew Lydiard QC who is a reviewer and looks at 4-5 cases a month to assess whether the Unit should take them on and Maya Lester who undertook a 5 day pro bono case for breach of contract and wrongful interference with goods (referred by the Bar Pro Bono Unit and instructed by Freshfields) in the Mayors and City Court. Maya has also undertaken other pro bono work from organisations such as Liberty, concerning issues such as freedom of expression and freedom of assembly. She and David Anderson QC are acting without payment for the Chagos Islanders in their application to the European Court of Human Rights. Outlined below are two examples of recent pro bono work undertaken by barristers from Brick Court Chambers.

Tanzanian street children

Victoria Wakefield (pictured second from the right below) appeared in the High Court of Tanzania in May this year, instructed by a local NGO which works with street children (called "Mkombozi").



Tanzania has a sizeable population of street children. The local government authorities in Arusha (in Northern Tanzania) have addressed this problem by ordering a series of crack downs or round ups, in which the children are arrested and detained. Victoria explained: "The children are not charged with any offence and it seems that they are simply released from the (adult) prisons after an arbitrary length of time." When pressed by local NGOs on the legal basis for the round ups, the relevant officials relied on the Townships (Removal of Undesirable Persons) Ordinance, a piece of colonial legislation which allows for internal deportation orders to be made and for the potential deportee to be

detained for a month pending enquiries.

Tanzania is a common law jurisdiction, albeit with elements of Islamic law and of customary law, and has a written Constitution. Mkombozi initially instructed Victoria (via the charity A4ID) to advise on the merits of a Constitutional challenge against the Townships Ordinance, together with other similar legislation. Following that initial advice and drafting of the pleadings, she was instructed to appear at the substantive hearing together with two local lawyers. Mkombozi's case is, in outline, that the relevant legislation is contrary to the articles of the Constitution that protect freedom of movement, liberty of the person and the principle of non-discrimination (through failure to treat children differently to adults).

Victoria spent five days in Arusha. Two days were spent preparing the case, with the hearing listed for the following two days in front of a three judge bench. However, after various arguments on preliminary matters, the judges made a series of directions ordering that legal submissions should be written and that examination in chief of the witnesses (including a street child who had been detained) should be by way of affidavit. This meant an intense period of continuous hard work to draft and file the various documents to meet the extremely tight deadline for the Petitioners' evidence and submissions. Victoria will be returning to Tanzania for the judgment in the Autumn.

Tearfund advice

Jemima Stratford, Maya Lester and Sarah Love advised Tearfund (a Christian relief and development charity that works with churches and local communities around the world to alleviate poverty and suffering) on the data protection implications of a proposal by the US government's Agency for International Development ("USAID") to introduce a Partner Vetting System. They undertook this advice for A4ID, in conjunction with Clifford Chance.

The Partner Vetting System will require all nongovernmental organisations which apply for money from USAID to declare personal information of key staff members to the US government. This information will be checked to ensure that those individuals are not known to be associated with terrorism. This will be a significant change from the existing system of self-certification and will require Tearfund to transfer personal data outside the European Economic Area.

Jemima, Maya and Sarah advised Tearfund on the implications of UK and European law on data protection, human rights and breach of confidence for the Partner Vetting System.

'A lesser known side of Brick Court Chambers is that it has a proud history of pro bono work.'

Case focus

Akzo Nobel Chemicals Ltd and Akcros Chemicals Ltd v Commission (Joined Cases T-125/03 and T-253/03)

'In its final judgment, the CFI did not take the opportunity to extend the class of lawyer communications with whom are eligible for protection. ...the judgment clarified and extended the law in at least two ways.'

In its long-awaited judgment in *Akzo Nobel Chemicals and Akcros Chemicals v Commission*, the Court of First Instance laid down limitations on the Commission's ability to require disclosure of documents to it in the course of competition investigations where the company being investigated claims the benefit of legal professional privilege (LPP), but declined to reconsider the restrictive position in relation to privilege for in-house counsel laid down by the Court of Justice in the *AM&S* case 25 years ago.

During the course of an investigation by the Commission at Akzo Nobel's premises, a dispute arose as to whether certain documents were covered by LPP. Akzo claimed privilege for two copies of a memorandum from one executive to another, said to be prepared for the purpose of seeking legal advice on the matters it described. The Commission placed those documents in a sealed envelope (Set A). Akzo also claimed privilege for the so-called Set B documents, (i) a manuscript document said to be preparatory for the Set A memorandum and (ii) an exchange of e-mails between an executive and the Dutch in-house counsel in charge of the Akzo group's competition law compliance policy. The Commission took the view on the spot that Set B were definitely not privileged documents, read them, took copies and placed them on the file. After further representations in writing from Akzo, the Commission took a decision rejecting all the privilege claims and saying it would open the envelope containing the Set A documents, but only after time had elapsed for Akzo to bring the matter before the CFI seeking interim relief. Ultimately, Akzo's interim measures application was unsuccessful so that the Commission was able to take the Set A documents on to its file.

In its final judgment, the CFI did not take the opportunity to extend the class of lawyer communications with whom are eligible for protection. Thus, the position remains that communications are only protected under EU competition law if they are with EU qualified "independent" lawyers, that is, lawyers not bound to the client by a relationship of employment. Therefore the e-mail exchange with the in-house lawyer was not privileged. However, the judgment clarified and extended the law in at least two ways. First, it laid down guidelines for the procedure to be followed when disputes as to the LPP status of documents arise between the Commission's investigating officers and the undertaking under investigation. It sanctions the "envelope" procedure but rejects the Commission's theory that it is entitled to a so-called "cursory glance" at all documents for which privilege is claimed. The company under investigation may refuse to allow Commission officials to take even a

cursory look at the documents for which privilege is claimed, provided that the undertaking considers that such a cursory look is impossible without revealing the content of the documents and that appropriate reasons are given to the Commission for that view (for example, it is a very short e-mail). Where the Commission is not persuaded that the documents are privileged, its officials may place a copy of the documents in a sealed envelope and then remove it with a view to a subsequent resolution of the dispute. This protects the fundamental aim of ensuring that the Commission will not read privileged material in the event of a dispute until the CFI has ruled on the substance of the claim, whilst also ensuring that the documents themselves are not "lost". In practice, disputes can be expected to be resolved at the interim measures stage as the company will be ordered to produce the documents and will have to persuade the President of the CFI that it has a prima facie case that the documents are privileged.

Secondly, the judgment has widened the scope of the type of documents potentially protected to include internal company documents which, even if they have not been, and were not intended to be, exchanged with a lawyer and do not report the text or content of communications with an external lawyer, may nonetheless be covered by protection of confidentiality of communications between lawyers and their clients, provided that they were drawn up exclusively for the purpose of seeking legal advice from an external lawyer in the exercise of the rights of defence.

On the facts, the CFI found that the Set A memorandum was not prepared for the purpose of seeking legal advice, although it was subsequently discussed with Akzo's external independent counsel. Thus the CFI concluded that, although the Commission had committed infringements during the procedure for examination of the documents, those infringements did not unlawfully deprive Akzo Nobel of protection since the Commission had not erred in deciding that none of the documents fell within the scope of the privilege. Akzo is appealing the judgment to the ECJ but only as regards the question of LPP for in-house lawyers. There have been several further applications to intervene by a large number of lawyers' bodies (including the Law Society and American Bar Association) and three member states (UK, Netherlands and Ireland).

James Flynn QC represented The Council of the Bars and Law Societies of the European Union (CCBE) (Brussels, Belgium), Interveners in support of the applicants in the CFI proceedings and as respondents in the appeal

Landmark ruling in favour of investment banks

Following a 68 day Commercial Court trial in 2007 (*Springwell Navigation Corp v JP Morgan Chase Bank*), Gloster J yesterday delivered a judgment running to 473 pages dismissing claims for damages in excess of US\$700 million brought by investors who made heavy losses following the Russian sovereign default in August 1998. At the date of the default, the claimants held a leveraged portfolio of emerging market instruments with a face value of several hundred millions dollars, of which more than 50% represented investments in Russian instruments. Several aspects of the judgment are relevant to investment banks generally. The most important ruling relates to the effect of allowing clients direct access to an institutional salesman, leading to the salesman giving advice and making recommendations in relation to purchases and sales. Gloster J held that the use by the salesman of words such as 'advise' and 'recommend' did not give rise to a general advisory duty of care in either contract or tort.

Gloster J also dismissed claims of alleged breach of fiduciary duty and misrepresentation. An important aspect of the ruling on the misrepresentation claim, which was based on

149 statements recorded in transcripts of telephone conversations, is that the effect of the contractual documentation was that no actionable representations had been made at all. This provides great comfort for banks because it means that, where an investment agreement or trade confirmation provides that the seller makes no representations about the investments being sold and/or that the customer has not relied on any representations, the customer is generally bound by that agreement, even if a salesman does express his personal opinions about the merits of individual investments.

Gloster J also rejected numerous arguments advanced by the Claimants for giving the contractual documentation a narrow construction.

Gloster J has yet to deliver judgment in relation to post-default claims made in the same action. This will require a ruling on whether pass-through instruments achieve their purpose. Judgment on this and the other post-default claims is to be delivered on 18 July 2008.

Mark Hapgood QC represented JP Morgan Chase Bank

'Several aspects of the judgment are relevant to investment banks generally.'

Landmark arbitration ruling

Mobil Cerro Negro. Ltd. v. Petroleos de Venezuela S.A [2008] EWHC 532 (Comm), [2008] All ER (D) 310 (Mar), (approved judgment), 20 March 2008

In a recent landmark ruling, the High Court has held that it does, indeed, have the power to grant a worldwide freezing order in aid of a foreign arbitration, whose seat is not in England. That power is derived from ss. 2(3), 44(1), 44(2) and 44(3) of the Arbitration Act 1996. S. 44(1) provides that "unless otherwise agreed by the parties, the court has for the purposes of and in relation to arbitral proceedings the same power of making orders about the matters listed below as it has for the purposes of and in relation to legal proceedings". S. 44(2)(e) includes "the granting of an interim injunction", and disclosure of the defendant's assets as well as preservation of its assets both fall within s. 44(3). An applicant may easily fulfil the requirements of s. 44(5), because an arbitral tribunal has no power to make a worldwide freezing order or an order for disclosure of assets worldwide, coupled with a power to punish any breach of any such order for contempt of court.

However, that power is narrowly circumscribed by the Arbitration Act. If the case is not one of urgency, the court has no power to act unless either the tribunal has

given permission on an application by one party, on notice to other parties, or the other parties have agreed to the application in writing (s. 44(4)). Moreover, "the court may refuse to exercise any such power if, in the opinion of the court, the fact that the seat of the arbitration is outside England and Wales or Northern Ireland...makes it inappropriate to do so" (s. 2(3)).

The court will only be prepared to exercise discretion to grant an application in aid of foreign arbitration for a freezing order affecting assets not located in England and Wales if the respondent or the dispute has a sufficiently strong link to the jurisdiction, or if there is some other factor of sufficient strength to justify proceeding in the absence of such a link. In the absence of any exceptional feature such as fraud, a claimant will at least have to demonstrate a link with the jurisdiction in the form of substantial assets of the defendant located here.

Catharine Otton-Goulder QC, Richard Slade and **Michael Bools** appeared on behalf of Mobil Cerro Negro Ltd.

Case focus

Simple price-fixing not criminal at common law - Norris v United States of America & Ors [2008] UKHL 16 (12 March)

In *Norris v Government of the United States*, the House of Lords had to consider for the first time the question whether cartel conduct could amount to the crime of conspiracy to defraud at common law. The issue arose in the context of an attempt by the US Government to extradite Mr Norris, the ex-CEO of a large manufacturing multinational, on charges of price-fixing contrary to the Sherman Act and obstruction of justice. Extradition is permitted only where the conduct constituting the offence charged in the requesting state would also, if done in the UK, constitute an offence here.

The question over the criminality of price-fixing was an important one in the extradition context, given the number of recent attempts by the US Department of Justice to extradite businessmen operating from other countries but whose conduct has had an effect in the US. But the issue had a wider significance outside the extradition context. In the Enterprise Act 2002, Parliament acted to create a specific statutory cartel offence, but that offence applies to individuals only, not companies. Could cartel conduct be charged as conspiracy to defraud at common law as well? And could there be prosecutions in respect of conduct occurring

before 2003, when the cartel offence came into force?

The House of Lords answered those questions emphatically, unanimously allowing Mr Norris's appeal against the Divisional Court's decision. Some cartel conduct might involve the making of fraudulent statements (which could attract criminal liability), but simple price-fixing was not necessarily dishonest in itself and could not, therefore, be charged as conspiracy to defraud. The price-fixing conduct charged against Mr Norris could be regarded as constituting an "extradition offence" and he was discharged in respect of that charge. The case was remitted to the Magistrates' Court for consideration whether extradition in respect of the remaining charges alone would be proportionate.

The case will be of considerable interest to competition lawyers generally. It confirms that there can be no concurrent liability under the statute and at common law and removes the possibility of criminal liability for companies (which cannot be subject to the cartel offence).

Jonathan Sumption QC, Richard Gordon QC and Martin Chamberlain acted for Ian Norris, the successful appellant.

'the House of Lords had to consider for the first time the question whether cartel conduct could amount to the crime of conspiracy to defraud at common law.'

Case focus

Internet v Ansol Ltd

The court recently granted a form of relief which successfully exerted pressure on a foreign defendant, Ansol, against whom arbitrators had delivered an award for US\$50.96m plus interest and costs. The arbitration had been in Zurich and the defendant launched an appeal to the Swiss courts. At the same time, the claimant was pursuing Ansol in an action in the High Court in England, in which it sought (inter alia) recovery of the same debt, plus interest and costs by a different route. The claimant therefore wished to rely upon the findings of the arbitrators as binding Ansol, and also to obtain security for the claim.

The claimant therefore sought leave, pursuant to s. 103 of the Arbitration Act 1996, to have the Award recognised and to enforce the Award, and at the same time to have the application for enforcement adjourned on condition that Ansol give security for the whole of the sum claimed. It was necessary to have the Award recognised in order to found the estoppel necessary for the English action. The court held that the correct approach was to consider whether the Award was final and binding in the law of the seat of

the arbitration. If it was, then that would found the estoppel (see *Svenska Petroleum Exploration A.B. v Government of the Republic of Lithuania and Another* [2005] EWHC 9 (Comm) at 22 and 24, per Teare J). The court held that the Award was binding according to Swiss law.

It was necessary to apply for an adjournment of the application to enforce the Award, since the court had no power to order Ansol to pay such security, and Ansol would not otherwise have paid the money if the claimant had immediately sought enforcement. *Svenska* shows that recognition of an arbitration Award may thus be distinct from enforcement. The court accordingly adjourned the application to enforce the Award and ordered Ansol to pay the claim into court (insofar as not already paid).

This procedure therefore successfully forced Ansol to provide security to the claimant for its claim as the price for continuing with its hopeless appeal, thereby ultimately enabling the claimant to recover the full amount of its claim with interest and costs.

Catharine Otton-Goulder QC and Andrew Henshaw appeared for Internet.

New publications

A Practical Guide to International Arbitration in London

by **Hilary Heilbron Q.C.**

was published in March 2008. A Practical Guide to International Arbitration in London takes a pragmatic look at how to run an international arbitration where the seat of the arbitration is

London. It explores on a stage-by-stage basis the tactical, procedural and legal issues that need considering in an international arbitration in London, from the perspective of the arbitral process. The book also examines the role of the English courts in assisting foreign arbitrations and there is a chapter on bilateral investment treaty arbitration in London.

The book is directed principally at lawyers not familiar with London arbitration, including foreign as well as English dispute resolution and transactional lawyers and corporate counsel. It can also act as a concise reference book for those experienced in international arbitration.

To order a copy go to www.informalaw.com/internationalarbitration



The Oxford Encyclopaedia of European Community Law

Published on 20th March 2008, this is one of three self-contained volumes, making up the Oxford Encyclopaedia of EC Law, a major reference work on the law of the European Community/ Union. Written by a team of experts made up of academics, solicitors, barristers and officials at the EC DG, this encyclopaedia is now in its second edition and provides an authoritative guide to the interpretation of Community law focussing on competition law and policy, with separate entries devoted to competition law in specific business sectors, and other significant areas of competition law, such as exclusive agreements, merger control, state aid, and vertical agreements.

Conor Quigley QC, of Brick Court Chambers, is the author of the State Aid section of the Encyclopaedia.

To order a copy go to www.oup.co.uk/law/practitioner/



'Charles Hollander QC and Simon Salzedo will be happy to give a talk called 'What's new in Conflicts.'

Forthcoming publications

Conflicts of Interest Publication: Sept 2008

Now in its 3rd edition, 'Conflicts of Interest' published by Sweet & Maxwell, by Charles Hollander QC and Simon Salzedo, is the authoritative guide to the law relating to conflicts of interest evidenced by its being cited with approval in leading cases.

This is an area of English law continuously developing and evolving and ever more relevant with the growing internationalisation of law firms so they may be acting for opposing clients in different countries -making conflicts of interest more likely.

This book offers practical guidance on how the problems of conflicts of interest may be prevented or resolved and includes strategies for assessing and managing conflict situations. It contains detailed analysis of the current legal position in various professional sectors, including the SRA Code of conduct, and follows the trail blazing tradition set by the first and second editions in exploring difficult and controversial issues of law.



(Charles Hollander QC and Simon Salzedo will be happy to give a talk called 'What's new in Conflicts'. Please contact lucy.adam@brickcourt.co.uk if you would like them to come to your firm to present).

Judicial Review in Hong Kong Publication: Dec 2008

Co-authored by Richard Gordon QC and Johnny Mok of Des Voeux Chambers in Hong Kong and a Brick Court door tenant, this new book will be published by Lexis-Nexis early in 2009. This is the only contemporary in-depth study of public law in Hong Kong since the 1997 hand-over and it contains a detailed exposition of judicial review law and procedure including key areas of practice such as telecoms, planning and fundamental rights. Uniquely, it also addresses important constitutional issues including references to the Peoples' Republic under Article 158 of the Basic Law. Public law approaches in comparative jurisdictions such as Australia, Canada and New Zealand (often cited in Hong Kong cases) are covered. This book is indispensable for all practitioners bringing cases in Hong Kong and will also be of interest to comparative public lawyers in all jurisdictions.

BCC barristers in brief

A quick look at who's doing what and where in Brick Court Chambers

Stop press ... Stop press ... Stop press ...

We are pleased to announce that Richard Blakeley and Tony Singla are joining Brick Court Chambers as tenants following their pupillage in chambers.

Gerald Barling QC

In November it was with mixed feelings that members of Brick Court Chambers said goodbye to **Gerald Barling QC** on his appointment as a Judge of the Chancery Division and as the President of the Competition Appeal Tribunal. He took up his appointments on the 5th November 2007.



Mixed feelings due to being thrilled for him for achieving such highly influential positions (indeed he was listed as one of the top 100 most powerful lawyers in a league table published in The Times Law section on 22nd April 2008) and sadness on losing such a universally liked, respected and valued member of chambers.

To mark Sir Sydney Kentridge's 85th birthday

members of Brick Court Chambers commissioned Howard J Morgan, the renowned portrait artist, to create a portrait of him.



The Lord Chief Justice, Lord Phillips of Worth Maltravers presented the portrait to Sir Sydney and in his speech described him as a 'legend' and reminded the 70 guests that by the time he joined Brick Court Chambers in 1977: 'He had appeared in many high profile cases in South Africa, including the inquest into the death of Steve Biko and had established himself as a formidable thorn in the flesh of the Apartheid Regime. He had been appointed Senior Counsel in 1965, before most of you were born, and elected Chairman of the Johannesburg Bar in 1972.'

Responding, Sir Sydney said: "I will say that it is a very kindly portrait although it does show me that I can no longer deny that I have now entered late middle age. Mr. Morgan asked me when I was there whether this portrait had been commissioned by Chambers to make my retirement. I said I didn't think so. Perhaps it was a delicate hint.'

Brick Court Chambers confirms that it was

definitely a birthday gift and not a hint or otherwise regarding any retirement.

Richard Gordon QC has been awarded an Honorary Professorship at the Chinese University of Hong Kong. See page 19 for further information.

The Times Law section names three Brick Court Chambers barristers as among the top 100 most powerful lawyers in the UK. They are former member of Chambers **Gerald Barling QC** (see top left item), **Sir Sydney Kentridge QC** and **Jonathan Sumption QC**. Frances Gibb, the legal editor clearly expects contention, finishing the article with and invitation for comments and signing off: 'Stand by for the brickbats'. She can be assured that there will be no brickbats from Brick Court Chambers on the three from here already listed.

Movers and joiners on the Attorney General's Panels include

Victoria Wakefield (top right) who has this year joined the other 14 members of Brick Court Chambers who are members of the Attorney General's Panels, **Martin Chamberlain** who has moved from the B to the A Panel and **Maya Lester** who has moved from the C to the B Panel.



Other A panellists include **Jemima Stratford, Sarah Lee, Mark Hoskins** and **Alan Maclean**. B panellists include **Kelyn Bacon, Andrew Henshaw, Daniel Jowell, Marie Demetriou, Jasbir Dhillon** and **Aidan Robertson**. C panellists also include **Margaret Gray** and **Sarah Ford**.



Professor Richard Macrory CBE, a door tenant at Brick Court Chambers, has been appointed honorary Queen's Counsel, Honoris Causa, for his work on the development of environmental law.

This honorary rank recognises lawyers who have made a major contribution to the law of England & Wales outside practice in the courts.

Commenting, Richard Macrory said: "When I began specialising in environmental law, it was a subject scarcely recognised as a distinct field of law in this country. This honour represents

Cont.../

Attorney General A panellists include **Jemima Stratford, Sarah Lee, Mark Hoskins, Alan Maclean and Martin Chamberlain**. B panellists include **Kelyn Bacon, Andrew Henshaw, Daniel Jowell, Marie Demetriou, Jasbir Dhillon, Aidan Robertson** and **Maya Lester**. C panellists are **Margaret Gray and Sarah Ford and Victoria Wakefield**.

The Hong Kong connection

With the emergence of China as a post-millennium Super-Power, the importance of Hong Kong as a bridge between East and West has grown. Hong Kong retains its Common Law legal system and is showing signs of expanding its interpretation of its Competition and Public Administrative Law. Brick Court has for many years had strong ties with Hong Kong and 2008 sees that connection grow ever-stronger.

In February 08, **Richard Gordon QC** (pictured centre) fought a high profile judicial review challenge on behalf of Mike Rowse (Director-General of Invest HK) who had been disciplined for his alleged misconduct over the handling of the budget for the Harbour Fest celebrations. The outcome was that the Court of First Instance in Hong Kong granted an application for judicial review by Michael Rowse and quashed the three disputed disciplinary rulings on various natural justice grounds.

Richard has also been honoured with a 3 year Honorary Visiting Professorship at the Chinese University of Hong Kong ('CUHK'). He has co-authored a book 'Judicial Review in Hong Kong' with Johnny Mok of Des Voeux Chambers (see 'Forthcoming Publications' on Page 13).



He is also a Speaker at the Joint Judicial Review Conference organised between CUHK and the Cambridge Centre for Public Law to be held in Hong Kong December 10-12 2008.

Brick Court's ties with Hong Kong extend to other members of chambers:

Nicholas Green QC acts regularly for OFTA (The Hong Kong Telecoms regulators) in disputes against the major Telecoms providers in Hong Kong.

Mark Hapgood QC is set to appear for the auditors in one of the largest commercial disputes in 2008 / 2009, which concerns the collapse of AKAI .

Although Hong Kong has in recent years reviewed, very carefully, admissions to the local bar, there is a sense that for the most challenging cases a fair and rigorous process is undertaken so that only the leading advocates are admitted.

'Brick Court has for many years had strong ties with Hong Kong and 2008 sees that connection grow ever-stronger.'

Cont.../ from previous page

something of a coming of age of environmental law, and I am delighted to be associated with it." Professor Richard Macrory (pictured right) has been a door tenant at Brick Court Chambers since 1991 and is a professor at the Faculty of Laws, University College London.



The Right Honourable the Lord Phillips of Worth Matravers,

Lord Chief Justice of England and Wales, has been appointed Senior Lord of Appeal in Ordinary, in succession to the Right Honourable The Lord Bingham of Cornhill KG, who retires on 30 September 2008.

Lord Phillips of Worth Matravers will become President of the Supreme Court of the United Kingdom when the Court is launched in October 2009. Lord Phillips of Worth Matravers (70) was called to the bar in 1962 and was a tenant at Brick Court Chambers.

A 23 strong team from BCC

gathered outside the RCJ for the 4th London Legal Sponsored Walk on the 19th May. This is the first time Brick Court has entered a team and the walkers were foot sore but thrilled to have raised close to £4,000.

Congratulations to Paul Dennison,

clerk, for surviving the London Marathon. "I completed the course in a time of 4 hours 15 minutes crossing the line thankfully without a Womble, a Rhino or a Super Hero in sight.

Thank you to all of you who sponsored me.

Through family, friends and Chambers I have managed to raise a total of £2543.00 for Phabkids."



BCC are having their very own baby boom

with 5 new additions in the last couple of months.

Congratulations to:

- Colin West on the birth of Lara
- Jonathan Dawid on the birth of Eleanor
- Roger Masefield on the birth of Melissa
- Stephen Midwinter on the birth of Luke
- Paul Dennison on the birth of Louie

And the next couple of months promise to continue to be booming!

Summer 2008

7-8 Essex Street
LONDON
WC2R 3LDPhone: 020 7379 3550
Fax: 020 7379 3558

'The topics in this directory are regularly revised (new topics in red) ... we are happy to present bespoke seminars on topics/cases that you identify'

The Digest contacts

If you have any comments or would like to discuss this or any other issue of The Digest please email Lucy Adam at lucy.adam@brickcourt.co.uk

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Brick Court Seminar Directory



This directory brings together seminars and talks that we think are topical, informative and interesting, which we can present in chambers, in your offices for your teams, or perhaps over dinner with groups from BCC and your firm.

The topics in this directory are regularly revised (topics in **red** are new) and in addition to those shown, we are happy to present bespoke seminars on topics/cases that you identify. For more information about any of the seminars listed and to discuss your seminar requirements please do not hesitate to contact Lucy Adam - lucy.adam@brickcourt.co.uk.

Seminar topics

Commercial Law—Insurance/reinsurance

- Non-Disclosure and Fair Presentation of Risk - what does it mean in 2008?
- Non-Disclosure and Breach of Warranty: A case for reform?
- Claims Co-operation Clauses
- Wasa and AGF v Lexington - US Pollution damage claims - who will pay in the Lords?

Commercial Law—Contract law

- Recent developments in contract law
- Repudiatory, anticipatory and material breaches

Commercial Law—Other

- Important recent developments in Private International Law
- Recent developments in sports disciplinary proceedings and competition
- The modern law of tort in a commercial context
- Limitation of Auditors Liability: review of the recently introduced law under the Companies Act 2006 permitting auditors to limit their liability.
- Witness evidence – practicalities and pitfalls
- Commercial Human Rights: a review of human rights issues relevant to commercial clients
- Commercial Agents
- Credit Crunch
- What's new in Conflicts - see 'Forthcoming Publications' on page 17 for further information.

EU / Competition Law Seminars

- Legal professional (and other types of) privilege
- Litigating competition law in the English courts
- Dawn Raids
- Pleading Competition Law
- The Early Disposal of Competition cases

- Judicial Review in the Competition Appeal Tribunal
- Recent Developments in Competition Law
- Competition law in the OFT, CAT, High Court and Court of Appeal compared
- Competition Law and Parallel Imports
- Corporate liability for competition law infringements.
- Legal basis for damages in competition law - rights and remedies
- Issues of jurisdiction in relation to international cartels
- Inter-relationship with criminal investigations/proceedings
- European jurisdiction, evidence and service issues, including recent developments
- EC Legal Professional Privilege after the Akzo Nobel case
- Overview of relevant rules in Maritime Competition Law to include: new Commission Guidelines and remedies
- Prosecuting cartels for conspiracy to defraud - Norris & GG

Public & Administrative Law topics

- The Chagos Islands Litigation: Is the Royal Prerogative Unlimited?
- Security and Human Rights
- EC Law in Judicial Review
- Public Law and Competition Law
- "Making Judicial Review Proof Decisions"
- Bringing and Defending a Public Law Challenge
- Interim Relief – Injunctions and Disclosure
- Consultation
- Legitimate expectation
- Understanding the role of public International law, the Human Rights Act and EU in domestic public law
- The Right to Property - Art. 1 Protocol 1
- The Right to a Fair Hearing
- Fair speech and privacy - two competing rights

Contact lucy.adam@brickcourt.co.uk for further information