Annual Report
2005-6
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The academic year 2005-6 was a good one for the Oxford Institute of European and Comparative Law. The Institute hosted a wide range of events. Only a few days separated a small and highly focussed two-day workshop preparing a Commentary on an international instrument in the cloistered silence of Brasenose College from the buzzing noise of almost one hundred members of the Italian Bar Council enjoying a buffet lunch and celebrating their successful completion of a two week summer course in English law in the Institute’s foyer in the St Cross Building. Less than a week elapsed between a conference on ‘Forum Shopping in the European Judicial Area’ which brought together academics and practitioners from France and England and a four-day course for the training of national judges in EC Competition Law with judges from 10 Member States and beyond, from countries as diverse as Albania, Estonia, Malta and Norway.

These and other events will be reported on in more detail below, but it may be appropriate to single out our major annual event, a joint two-day conference with global law firm Clifford Chance in March. Last year’s conference on ‘Regulating the European Market’ was skilfully convened by Professor Stephen Weatherill, Jacques Delors Chair in European Community Law. It presented cutting edge research, used a strongly interdisciplinary approach, and combined academic depths with practitioners’ experience. We are extremely grateful that the conference was, yet again, fully funded by Clifford Chance. And it cannot be emphasised too strongly how much the success of this conference, as that of all our other events, owed to the phenomenal organisational skills of Jenny Dix, the Institute’s administrator.

Bringing together speakers and participants for engaging and stimulating discussions is one thing, but making the results of these meetings available to a wider audience is another. We were thus keen to provide an easily recognisable forum for the publication of our conferences and of other research projects conducted at the Institute. We are therefore delighted to announce that a new book series, the ‘Studies of the Oxford Institute of European and Comparative Law’ was established with Hart Publishing Ltd earlier in 2006. The first two volumes are already in print, and four others are to be published shortly. We very much appreciate Richard Hart’s commitment to our co-operation and the wonderful job he and his staff have done so far.

The Institute continues to administer the Faculty’s student exchange programmes and to prepare students for the prestigious four-year BA in ‘Law with Law Studies in Europe’. It is proud to host academic visitors from all over the world. As I am writing,
the offices next door are used by Visiting Fellows from Austria, China and South Africa. The coming weeks will see the arrival of guests from Canada, Germany and Poland.

In today’s academic environment there is a price to pay for all this: form filling and reporting. All Higher Education Institutions are endlessly assessed and benchmarked so that none of the few pennies of taxpayers’ money allocated to them is wasted and ‘good practice’ is adhered to. The academic year 2005-6 saw a particularly thorough and time-consuming review of the Centres of the Oxford Law Faculty, the outcome of which, however, proved to be a strong encouragement for the Institute to stay on course.

The Institute’s successes would not be possible without the generous support of its benefactors. A full list of supporters is provided in an Appendix to this Report. However, I would like to emphasise our gratitude to some of them at this an early stage: Clifford Chance has been our single largest donor since the establishment of the Institute in 1995, and continues to fund a substantial part of our work; the French Ministry of Education and the German Academic Exchange Service (DAAD) contribute to the teaching of Oxford students reading for the ‘Law with Law Studies in Europe’ degree; the Wallenberg Foundation funds the Oxford/Stockholm Collaboration; and law firm Shearman & Sterling supports our work in the area of Competition law. The Association Sorbonne-Oxford, also principally funded by Clifford Chance, for the first time made a generous contribution to enhance the teaching and the library resources at Oxford.

By far the most generous donation received by the Institute during the past academic year was made by Dr Erich Schumann, Managing Partner of the WAZ Media Group, Essen. It will be used to increase the endowment for the Erich Brost University Lectureship in German and European Community Law. The post will be advertised shortly with a view to filling it during in the course of 2007. It will strengthen the teaching of European law, and particularly of German law, at Oxford enormously. The Lectureship will be a lasting tribute to Dr Schumann’s adoptive father, Erich Brost, a Social Democrat who emigrated to the UK under the National Socialist regime, and who was granted a newspaper licence for the Rhein and Ruhr areas by the British Occupying Forces in 1948 which formed the nucleus of today’s WAZ Media Group. Needless to say, we are enormously grateful to Dr Schumann for making it possible to re-establish this important post. There is reason to hope that we will be able to introduce the new Erich Brost University Lecturer in German and European Community Law to the readers of the Institute’s next Annual Report.

Stefan Vogenauer
Professor of Comparative Law and Director of the Institute
The Staff of the Institute (2005-6)

Director of the Institute and Professor of Comparative Law:
Professor Stefan Vogenauer (SV)
Fellow of Brasenose College, Academic Director of the Exchange Programmes
Special interests: comparative law, European legal history, private law and legal method

Deputy Director and Jacques Delors Chair in European Community Law:
Professor Stephen Weatherill (SW)
Fellow of Somerville College
Special interests: European law and policy

Deputy Director (French):
Professor Pascal de Vareilles-Sommières
Visiting Fellow of University College
Special interests: (comparative) private international law, international trade law

Deputy Director (German) and DAAD Fellow:
Dr Katja Ziegler (KSZ)
Special interests: EC law, commercial law, competition law, public international law, (comparative) public law

Director of the Wallenberg Foundation Oxford/Stockholm Association in European Law:
Professor Ulf Bernitz (UB)
Special interests: EC law

Director of the Centre for Competition Law and Policy:
Dr Ariel Ezrachi (AE)
University Lecturer in Competition Law, Fellow of Pembroke College
Special interests: competition law

Research Fellows:
Professor Anthony Bradley
Special interests: the United Kingdom Constitution, comparative constitutional law, European human rights law
Professor Gerhard Dannemann  
Centre for British Studies, Humboldt University, Berlin  
Special interests: comparative law and Anglo-German studies

Professor Mark Freedland  
Fellow of St John’s College  
Special interests: employment law

Dr Simon Whittaker  
Reader in European Comparative Law, Fellow of St John’s College  
Special interests: comparative law

Teaching Fellow in European Community Law:

Professor Mads Andenas,  
Fellow of Harris Manchester College, Professor of Law, University of Leicester  
Special interests: EC, comparative law, public law

Linklaters Teaching Fellow for Italian Law:

Nello Pasquini (NP)  
Member of the Senior Common Room, Brasenose College  
Special interests: Italian law, commercial law, civil law

French Law Associate:

Eric Descheemaeker  
Fellow of St Catherine’s College  
Special interests: Roman law, tort, EC law

Tutor for German Language:

Dr Claudia Nitschke  
DAAD/Montgomery Stipendiary Lecturer in German, Lincoln College

Administrator:

Jenny Dix

Honorary Fellows of the Institute

Professor Sir Roy Goode CBE, QC, FBA

Lord Kerr of Kinlochard, GCMG, Secretary-General of the Convention on the European Constitution, formerly Permanent Secretary at the Foreign and Commonwealth Office
Departures and Arrivals

Last year’s changes in the staff of the Institute were related to the provision of teaching to the Oxford students reading for the ‘Law with Law Studies in Europe’ degree (‘Course 2’) (see below, p. 45). The German language teaching for our students due to be sent to one of our four German partner faculties during their third year of studies was taken over by Dr Claudia Nitschke. Claudia grew up in Northern Germany and studied Modern German Literature and Medieval and Modern History at the University of Tübingen. She specialised in Thomas Mann and graduated with a Masters degree, before going on to write a doctorate on one of the leading exponents of German romanticism, Achim von Arnim. In addition Claudia holds a degree in German as a foreign language.

Mr Eric Descheemaeker kindly agreed to teach the ‘Introduction to French Private Law’ for a year. This had previously been taught to our students on the French option of the ‘Course 2’ degree by Mrs Marina Milmo. Eric is a Tutor and Fellow by Special Election in Law at St Catherine’s College where he teaches Roman law, tort, and EC law. Before coming to Oxford, Eric read for the Maîtrises in economics and private law at one of our partner Universities in Paris, the University of Paris I (Panthéon-Sorbonne). He then completed an LLM at the London School of Economics and a Diplôme d’études approfondies in private law at the University of Paris I before embarking on his doctorate on ‘The Division of Wrongs: a Historical Comparative Study’, originally under the supervision of the late Professor Peter Birks.

The end of the academic year 2005-6 marked the termination of the two year secondment of Professor Pascal de Vareilles-Sommières to the Institute. Pascal had been the French Deputy Director for two years during which he taught the ‘Introduction to French Public Law’ to our students on the French option of the ‘Law with Law Studies in Europe’ degree. Pascal was actively involved with the Institute’s activities and organised a successful conference on ‘Forum Shopping in the European Judicial Area’ towards the
end of his stint at Oxford (see below, p. 23). He has now returned to his post as Professor of law at the University of Paris I (Panthéon-Sorbonne).

Pascal will be replaced by Professor Philippe Théry from the beginning of the academic year 2006-7. Philippe is Professor of Private law and Director of the Institut d’études judiciaires at the University of Paris II (Panthéon-Assas). He graduated with a licence in legal studies from the University of Paris X (Nanterre) and holds higher degrees in private and criminal law from the University of Paris II where he also completed his doctorate on a topic of private international law, ‘Pouvoir juridictionnel et compétence’. In 1982, he became agrégé de droit privé et de sciences criminelles. He then held Professorships at the University of Orléans from 1983 to 1988 and at the University of Paris V (Malakoff) from 1988 to 1991, before being appointed to his present position at the University of Paris II. Philippe has taught and published extensively in the areas of private law and civil procedure, particularly on sureties, property, and the consequences of insolvency. He has also served on a number of important governmental commissions in France. Philippe will be seconded to the Institute by the French Ministry of Education for two years. He will become the Institute’s French Deputy Director, and will provide the French law teaching to those of our undergraduates who will spend the third year of their legal education in Paris. Like our previous French Deputies, Philippe will be a Visiting Fellow at University College during his stay at Oxford.
Academic Activities of Institute Members

Professor Ulf Bernitz is Director of the Wallenberg Foundation Oxford/Stockholm Association in European Law. Most of Professor Bernitz’s activities are related to the Oxford/Stockholm Collaboration which is discussed in detail on p. 57, below.

Professor Anthony Bradley is a Research Fellow at the Institute. His publications during the academic year 2005-6 include the following:

Constitutional and Administrative Law (with KD Ewing, 14th edn, Pearson Education, 2006)


During the year he presented the following lectures, conference and seminar papers:

Lectures in constitutional law at the Koc University, Istanbul, October 2005


Written and oral evidence to the Joint Committee on Constitutional Conventions (18 July 2006 (HC 1212-v, 2005-06).

Professor Bradley’s other activities during the year include:

• Legal Adviser to the House of Lords Select Committee on the Constitution (until 31 December 2005)

• Convenor of the Constitutional Law Group (the United Kingdom section of the International Association of Constitutional Law) (until 30 June 2006)

• A Vice-President of the International Association of Constitutional Law
• As the alternate UK member, attended meetings of the Council of Europe’s Commission for Democracy through Law (the Venice Commission) in December 2005 and June 2006; and, acting with Professor C Closa Montero, Madrid, and Professor K Tuori, Helsinki, advised the Commission in December 2005 on the compatibility of legislation in Montenegro on the organisation of referendums with international standards (Venice Commission, Opinion no 343/2005)

• Appointed by the Parliamentary Assembly of the Council of Europe in July 2006 (with Professor K Tuori, Helsinki) to advise the Assembly on Montenegro’s application for membership of the Council, following that country’s declaration of independence in June 2006.

Professor Mark Freedland, Professor of Employment Law and Fellow of St John’s College, is a Research Fellow at the Institute. The academic year 2005–6 has been the first of three years during which Professor Freedland has held a Leverhulme Major Research Fellowship, for the purpose of carrying out a research project on the European comparative law of personal work contracts. Under the terms of that Research Fellowship, he devotes at least four-fifths of his time to his research project, but is allowed to spend up to one-fifth of his time on other activities.

Leverhulme Research Project Activities

In October 2005 Professor Freedland was invited to participate and present a paper at the Comparative Labour Law Conference at UCLA. The colloquium gave him the opportunity to assess the lessons for comparative labour law scholarship in general, and his project in particular, from the work of the Comparative Labour Law Group which had functioned in the late 1960s and 1970s. His paper has now been prepared for publication in a symposium issue of the Comparative Labor Law and Policy Journal.

In the same month, Professor Freedland was invited to participate in the Private Law, Regulation and New Governance Project Meeting in Paris by Professors Horatia Muir-Watt and Fabrizio Cafaggi. He contributed a paper on the Labour Law aspects of the Private Law, Regulation and New Governance project themes which has since been prepared and submitted for publication. This proved a useful way of locating his research project within an important European discussion of Contract Law as Regulation.

In order to develop an important theoretical aspect of his project, Professor Freedland devoted a good deal of time to turning a lecture delivered to the Industrial Law Society on the Personal Work Nexus into an article to be published
in the *Industrial Law Journal*. This was published in March 2006 as ‘From the Contract of Employment to the Personal Work Nexus’ (2006) 35 ILJ 1.

A seminar on ‘Re-structuring Employment Contracts’ took place at the London School of Economics in January 2006 which took, as its starting point, Professor Freedland’s work on ‘The Personal Employment Contract’ and sought to stimulate discussion about the lines of thought and study which might be pursued in further development of this genre of work. Professor Freedland’s concluding remarks on the proceedings of this seminar are currently being prepared for publication in a special symposium issue of the *Industrial Law Journal*. 

In March 2006, at the invitation of Professor Alain Supiot, among the most eminent of the French employment law specialists, Professor Freedland was able to spend a fortnight working on his project in the Maison des Sciences Humaines of the University of Nantes. This proved an invaluable opportunity to gain some French comparative insights, not least because the visit coincided with a national crisis about the ‘contrat première embauche’, the public and private discussion of which was extremely germane to his research project.

Professor Freedland presented and discussed his ‘Personal Work Nexus’ set of ideas to invited groups of colleagues and research students firstly at the University of Florence in February 2006, secondly at the Pompeu Fabra University of Barcelona in May 2006, and thirdly to a European group of labour court judges at the Spanish Judicial Training Institute in Barcelona in July 2006. On each occasion the discussion provided valuable comparative insights and contacts for subsequent work.

In September 2006 Professor Freedland attended the International Labour Law Congress in Paris and took part in an associated meeting of the Association of Labour Law Journals, to which he presented a paper about his research project which was the subject of extremely useful written and spoken comments.

Apart from the specific events listed above, Professor Freedland has also taken every opportunity to improve and develop his research contacts with colleagues in France, Italy, Germany, Spain, the Netherlands, and Sweden, and has consulted with officials and colleagues at the ILO, which has in the course of the year produced a Recommendation on the Employment Relationship.

**Other Activities**

Professor Freedland has continued to be involved in the governance of St John’s College, in particular as the Equality Officer of the College. Within the Law Faculty, he has continued to act as one of the Convenors of the Course in Legal Research Method, and to supervise two doctoral students. In July 2006
Professor Freedland contributed a lecture as part of the Summer Course organised by the Consiglio Nazionale Forense of Italy (see below p. 29) that provided a further valuable opportunity to canvass some ideas and themes from his Leverhulme research project. Professor Freedland has continued to be a member of the Network of Experts on European Discrimination Law providing expert analysis for the European Commission on the evolution of European discrimination law; he is particularly concerned with age discrimination. The main task has been the co-ordinating and scrutinising of national reports on the implementation of relevant Directives in Member States of the EU. Finally, Professor Freedland has continued to maintain a steering role during the final full year of the St John’s College Research Centre European Law research project, concerning himself especially with the production, primarily by the two Research Centre Fellows attached to this project, of a work on Public Employment Services in European Law.

Professor Pascal de Vareilles-Sommières was French Deputy Director at the Institute before finishing his two year secondment to Oxford at the end of the academic year 2005-6. He taught ‘Introduction to French Public Law’, a course that is taught in French to students planning to go to France during the following academic year. The course struck a balance between French constitutional law and French administrative law. In March 2006, Professor de Vareilles-Sommières organised, on behalf of the Institute and the Association Oxford-Sorbonne pour le droit comparé, a bilingual French-English conference on ‘Forum Shopping in the European Judicial Area’ (see below, p. 23).

Most recent articles by Professor de Vareilles-Sommières include:


‘Le sort de la théorie des clauses spéciales d’application des lois de police en droit des contrats internationaux de consommation (nature de l’article 5 de la Convention de Rome du 19 juin 1980)’ (Recueil Dalloz, 2006 forthcoming)
**Professor Stefan Vogenauer**, Professor of Comparative Law and Fellow of Brasenose College, is Director of the Institute. During the academic year 2005-6 he convened and participated in the teaching of the graduate course in ‘European Private Law: Contract’. He also taught Roman law of contract for undergraduates, comparative law for both graduate and undergraduate students, supervised a number of graduate theses and acted as ‘tutore relativamente al progetto di ricerca’ for post-doctoral research at the Florence-based Istituto Italiano di Scienze Umane. He acted as an external advisor to the Cambridge-based AHRB project on ‘European Legal Development’ which is led by Professors John Bell and David Ibbetson. Professor Vogenauer was elected to the Selection Committee of the Rhodes Trust for German Rhodes Scholarships, appointed to the Academic Board of German Law Publishers and invited to join the Advisory Board for the European and Comparative Law Programme of the British Institute of International and Comparative Law. Most of his administrative duties are related to the Institute and are reported elsewhere in this report.

As far as research is concerned, Professor Vogenauer focussed on the history of contract law. He finished a long piece on the historical and comparative aspects of privity of contract and another article on the history of the contra proferentem rule in continental legal systems. He continued his work on the comparative and international aspects of contract law, mostly by preparing the second edition of the Contract Law volume in the *Ius Commune Casebook* series and by assembling an international team of contributors for preparing a Commentary on the UNIDROIT Principles of International Commercial Contracts. Professor Vogenauer keeps a keen interest in the topic of sources of law and legal method, and he worked on statutory interpretation, the role of legal scholarship in different legal systems and the history of law journals.

Publications during the academic year include:


Professor Vogenauer was invited to give a keynote speech on the ‘Prospects of a Common European Legal Method’ to the Annual Ius Commune Congres of the Ius Commune Research School (a collaboration of four BENELUX Universities, the University of Edinburgh and the University of Stellenbosch) held in Edinburgh in December 2005. During a trip to the United States in January 2006 he was invited to give lectures on the harmonisation of European contract law at Louisiana State University (Baton Rouge), on comparative aspects of the interpretation of contracts at Cornell Law School and on a European legal method at the European Law Research Center of Harvard Law School. In May he gave lectures on statutory interpretation from an historical and comparative perspective at the University of Fribourg (Switzerland). He also gave papers on the ‘Avant-projet d’un Code européen des contrats et le droit comparé’ at a conference on ‘Le droit européen des contrats’ at the Académie des sciences morales et politiques, Institut de France, in October 2005; on the harmonisation of European Private Law at a conference on ‘European Integration and the Law’ on the occasion of 25 years of Maastricht University’s Faculty of Law in June 2006; on the history of the interpretation of tax legislation at the 36th biannual meeting of German legal historians in Halle/Saale in September 2006; and, in the same month, on the interpretation of contracts in a comparative perspective at the 7th Oxford-Norton Rose Colloquium at St Hugh’s College, Oxford. The most interesting experience, however, was being interviewed on David Cameron’s plans for a ‘British Bill of Rights’ on BBC Radio 4’s World at One in June!
**Professor Stephen Weatherill**, Jacques Delors Chair in EC Law and Fellow of Somerville College, is a Deputy Director of the Institute. Professor Weatherill has continued to be heavily involved in planning the European Union law dimensions of the Institute’s activities. The conference on the Unfair Commercial Practices Directive, described more fully elsewhere in this Report (see below, p. 25), will generate a book, edited by Professors Weatherill and Bernitz, to be published in 2007 under the auspices of the Institute’s series with Hart Publishing. Similarly, the papers presented at the Institute’s March conference, jointly organised with Clifford Chance on the topic of ‘Regulating the European Market’, also the subject of separate treatment elsewhere herein (see below, p. 18), will be published as a book edited by Professor Weatherill in that same Institute series in collaboration with Hart Publishing.

Professor Weatherill has continued to teach EC trade law to both undergraduate and postgraduate students, while also supervising several postgraduate research students. As Convenor of the Faculty’s EC law teaching team, he has helped the development of a new series of lectures designed to offer a package of teaching closely integrated with tutorials. Since EC law is now a compulsory subject for all Finalists, this provision is vital to ensure maximum benefit is enjoyed by our undergraduate students. Moreover Professor Weatherill has visited the Netherlands, Germany, France, Croatia and the USA to teach and to deliver papers in the course of the academic year.

His published work during the academic year comprises:

*The Harmonisation of European Contract Law: Implications for European Private Laws, Business and Legal Practice* (jointly edited with Stefan Vogenauer, Hart Publishing, Oxford 2006), xxv + 259 pp, to which he also contributed one sole-authored chapter; ‘How Much is Best Left Unsaid?’, Ch. 6, pp. 89–104


‘Diversity Between National Laws in the Internal Market’ in U Drobnig, Hj Snijders and E-J Zippro (eds) *Divergences of Property Law, an Obstacle to the Internal Market?* (Sellier European Law Publishers, Munich 2006), Ch. 10, pp. 131–150
‘Recent Developments in the Law Governing the Free Movement of Goods in the EC’s Internal Market’ (2006) 2 European Review of Contract Law 90–111


Papers presented include:

‘The Links between Competition Policy and Consumer Protection’, delivered at a conference on Future Directions in European Consumer and Contract Law, organised by the Consumer Law Academic Network and the Europäische Rechtsakademie, Lancaster, October 2005

‘Putting an End to European Integration’, delivered in the University of Hull, February 2006

‘After Bosman: the Application of Competition Rules to Sport’, delivered at the Modern Law Review Seminar on The Regulation of Sport, organised by the Centre for European Law and Integration in the University of Leicester, May 2006

**Dr Simon Whittaker** is a Research Fellow at the Institute.

**Teaching**

As well as his teaching in English contract and tort law (as tutorial fellow at St John’s College), Dr Whittaker has continued to give seminars and lectures for the Oxford FHS/MJur Comparative Law of Contract course and to participate in seminars (with Mr John Cartwright and Professor Stefan Vogenauer) in the BCL/MJur course European Private Law: Contract. He has given guest lectures at the Universities of Barcelona (February 2006) and Tarragona (April 2006).

**Conference Papers**

Dr Whittaker has given papers at conferences as follows:

‘English Approaches to the Implementation of EC Consumer Directives in Private Law’, paper presented at a conference on European Integration and Consumer Law, University of Santiago de Compostela, October 2005

‘The Directive’s Relationship to European and National Contract Laws’, paper presented at the conference on The Regulation of Unfair Commercial

‘La notion de défaut: perspectives anglaises’, paper at conference on the Comparative Law of Product Liability, Faculty of Law, University of Santiago de Compostela, April 2006


‘L’avant-projet Catala de réforme du droit des obligations dans son volet responsabilité’, contribution to table ronde at colloquium organised at the French Sénat by Professor P Jourdain of the University of Paris I (Panthéon-Sorbonne), Paris, May 2006


Publications


Other Research

Dr Whittaker has acted as a convenor of the ‘product liability’ group for the AHRB research project on ‘European Legal Development’ led by Professors John Bell and David Ibbetson and based at the Faculty of Law, University of Cambridge (see http://eld.law.cam.ac.uk/). This is a historical and comparative project using the evolution of tort liability for fault as a context for wider reflections on the processes of legal evolution more generally.
Dr Katja Ziegler is DAAD Fellow and the German Deputy Director of the Institute.

**Teaching**

Throughout the academic year, Dr Ziegler continued to teach undergraduate classes on German Constitutional and Private Law to students on the Law with Law Studies in Europe course, preparing them for their year abroad. She taught undergraduate and MJur students in public international law and European Community law, and tutored US law students visiting from Boston University in European Community Law, as well as acting as a supervisor and examiner for postgraduate theses.

**Administration**

Dr Ziegler continued to be in charge of the ‘Course 2’ exchanges with our German partner universities (Bonn, Konstanz, Munich and Regensburg) and is involved in the day-to-day administration of the Institute as well as being a member of its Management Committee.

**Conferences, Invited Seminars and Advisory Activities**


Fellowship for participation on the training course ‘International Humanitarian Law for University Professors of Public International Law’ of the International Committee of the Red Cross and University Centre of International Humanitarian Law, University of Geneva, 28 August-2 September 2006

‘Leading Cases of the European Court of Human Rights: Migration and Human Rights’, invited seminar, University of Bielefeld, Germany, 9-11 June 2006

Participation in a faculty exchange with the University of Texas (Austin) Law School; paper at the joint seminar on ‘The Constitutionalisation of the British Constitution – Towards a Judicial Review of Statutes?’, 8-12 April 2006


Publications and Research


‘Integrating Integration?’ Editorial (also Special Editor of the issue) in (2005) 7(2) European Journal of Migration and Law 119–122


Dr Ziegler’s current research projects include the comparative analysis of executive prerogatives in the UK, Germany and the USA; the effect and impact of human rights from a comparative perspective of legal systems with and without codification of human rights; problems of legitimation and accountability at the supra- and international level; and the relationship between economic regulation and human rights and social justice in EU law.
Regulating the European Market: Joint Conference of the Institute and Clifford Chance

The annual joint conference of the Institute of European and Comparative Law and Clifford Chance, held at St Anne’s College on 17 and 18 March 2006, became, as in the previous year, a success in delivering a fascinating mix of law, politics and economics as well as interesting contributors. The combination of subjects and speakers highlighted how valuable interdisciplinary thinking is in understanding the complex structure of market regulation at the European level. In fact, the conference demonstrated that such a discussion actually presumes convergence across the above mentioned disciplines. Accordingly the far from new (but often underestimated) conclusion was once again proved to be true – there is (still) a lot to learn from each other. This conference offered such a possibility.

In short, the key theme throughout the conference was clearer EU policy, effective regulations and confidence in the market: good laws are effective and they breed trust. But is the notion of trust simply a political issue? And do we need ‘good’ laws in every area as opposed to ‘no laws’? Thus, what is the exact
meaning of ‘better regulation’ and for whom should/could it be ‘better’? These questions were discussed and generated lively and fruitful debates, in which most speakers agreed on the importance of a risk based approach as a sine qua non for an efficient regulation in Europe.

The first day was introduced by Professor Stefan Vogenauer and chaired jointly with Professor Stephen Weatherill. It included four engaging sessions, which began by analysing legal and political issues of market regulation and, thereafter, looked more specifically at case studies in the field of financial services. In order to provide a brief example of the many highlights, one could single out Mr Stuart Popham, of Clifford Chance, who delivered a much awaited business survey concerning attitudes to EU regulation. This survey showed that the companies interviewed in the Member States at stake, generally speaking, were very positive about regulation at the European level. Moreover, the survey made clear that a majority of the companies consider the EC as being a much better playing field than the national arena. Nevertheless, the survey also pointed at the fact that there is a widespread dissatisfaction when it comes to EC law making, because of the many compromises in the implementation process which the companies described as ‘horse trading’. Finally, and perhaps somewhat surprisingly, the survey concluded that only 25% of the companies in question currently employ EU specialists. Indeed, there is much to be improved for the future!

The second day was chaired by Sir David Edward and dealt with very interesting and illuminating case studies concerning the EU’s regulation of working time, corporate governance and regulatory impact assessment.

Contributors (apart from the above mentioned) included
Professor Andenas (Leicester and Oxford), Professor McCahery (Tilburg), Professor Chittenden (Manchester), Mr Haythornthwaite (Chair, Better Regulation Commission), Dr Kelemen (Oxford), Professor Kenner (Nottingham), Rt Hon Denis MacShane (MP), Professor Menon (Birmingham), Professor Moloney (Nottingham), Professor Schulte-Nölke (Bielefeld), Dr Payne (Oxford), Ms Weber-Rey (Partner, Clifford Chance), Dr Welch (British Institute of International and Comparative Law) and Professor Wood (Oxford).

All in all, the conference offered a friendly yet intellectually challenging atmosphere. Its interdisciplinary focus especially helped to pave the way for a wider insight into the EU. And last but not least, the conference hosted a much appreciated dinner – meaning not only a nice evening, but also further possibilities for exchanging views, reflections and opinions on various aspects of regulation on the European stage.

Ester Herlin-Karnell,
Probationary Research Student in European Law, Somerville College
In April, the Centre for Competition Law and Policy hosted its first training programme for national judges. The programme, endorsed and subsidised by the European Commission, took place over five days and consisted of lectures and workshops. The programme included: Antitrust Economics, Article 82 EC, Abuse of Dominant Position, Article 81 EC, Agreements and Concerted Practices, Regulation 1/2003 and Public and Private Enforcement. Close attention was paid to the enforcement of competition laws by national courts and the co-operation between the European Commission and national courts. As part of this programme, participating judges took part in an elaborate case study which involved both practical and theoretical aspects and simulated the application of competition law in national courts.

The programme enabled judges from different member states to meet and learn about each other’s jurisdiction. It proved very successful in knowledge sharing and providing judges with a solid understanding of competition law. This success was reflected in the evaluation forms completed by the delegates. In their feedback, 100% of participants indicated that they will recommend to others to attend this programme in the future.
The UNIDROIT Principles of International Commercial Contracts

From 7 to 9 July 2006, the Institute organised a workshop for eleven lawyers from eight different jurisdictions who contribute to a commentary on the ‘UNIDROIT Principles of International Commercial Contracts’. The commentary is co-edited by Professors Stefan Vogenauer, Oxford, and Jan Kleinheisterkamp (of the Paris based HEC Grande école de commerce). It is due to be published by Oxford University Press in 2008.

The UNIDROIT Principles were devised by the International Institute for the Unification of Private Law (UNIDROIT), and they establish an almost comprehensive, albeit non-binding, set of rules of the general law of contract, especially tailored to the needs of international commercial transactions. Since 1994, the UNIDROIT Principles have enjoyed an impressive success, both as rules applicable in international arbitration and as a model for national and supra-national law reform. The aim of the commentary is to fill a huge gap in legal literature and to provide a first article-by-article analysis of the UNIDROIT Principles’ provisions which will facilitate their application in international legal practice.
The 2006 workshop, a follow up to an initial meeting of the contributors at the French Bourse de Commerce in Paris in September 2005, was held in the Old Library of Brasenose College, Oxford. Contributors spent two days intensively discussing their respective drafts in an attempt to devise an approach which provides a necessary degree of uniformity of style and outlook for the various different chapters. The next meeting of the group will be held in March 2007.
Forum-Shopping in the European Judicial Area

The widespread dissatisfaction of English lawyers with certain recent decisions of the European Court of Justice under the Jurisdiction and Judgments Regulation is well-known. Within its scope, the use of jurisdiction agreements (Gasser, 2003), anti-suit injunctions (Turner, 2004), and the forum non-conveniens doctrine (Owusu, 2005) have all been very significantly reduced by this recent jurisprudence. It might have been expected that such developments would be objected to only by those with a common law background, the Regulation implementing a civilian preference for a clear if rigid legal framework, at the expense of their more incremental, pragmatic approach. When a wide range of French and English academics, practitioners and students came together at University College one blustery day in March 2006, however, it very soon became clear that this was not the case.

This was a bilingual conference organised by the Association Sorbonne-Oxford (see below, p. 56) and the Institute, thus largely funded by Clifford Chance, the main benefactor of both the Association and the Institute. The conference was chaired jointly by Lord Mance, a Lord of Appeal in Ordinary, and M. Ancel, Président de la Première Chambre Civile de la Cour de cassation. After an introductory report by Mr Ed Peel (Keble College), each of the three decisions was examined in turn through an introduction by one of the chairmen, the presentation of two papers, and a general discussion. Contributors spoke in whichever of the two languages they preferred, which engendered a relaxed atmosphere, and numerous free exchanges.
As intimated above, this was not a day dominated by polarisation of the common law and civil law perspectives, but those looking for differences might have found them in the approaches taken to the issues raised. Civilians often provided an exposition of abstract concepts used by the court; Professor Pierre Mayer (University of Paris I) on ‘l’uniformité’, for example, and Professor Pascal de Vareilles-Sommières (University of Paris I and Institute of European and Comparative Law) on the ‘unitaire’ or ‘dualiste’ operation of Article 2; Mr Andrew Dickinson (Clifford Chance) meanwhile, examined the development of the notion of legal certainty through the judgments of the European Court, and Mr Richard Fentiman (Queens’ College, Cambridge) provided an assessment of the practical ramifications of Gasser as exemplified in recent English case-law. The discussion was further enriched by contributions from Professors Horatia Muir Watt (University of Paris I) and Arnaud Nuyts (Free University of Brussels), and from Mr Alexander Layton QC (20 Essex Street). Speakers were unanimous in expressing at least a degree of unease at the invasive nature of the decisions in question, whether they regarded the autonomy of the parties, or that of the national court, as the primary casualty.

Participants from both jurisdictions were anxious, however; that proceedings did not degenerate into unproductive ‘whingeing’. Possible future approaches varied from ‘la coopération judiciaire trans-frontière’ (Professor Marie-Laure Niboyet, University of Paris X), or the harmonisation of the procedures of Member State courts adjudicating on matters of jurisdiction, to various conceptual methods of limiting the scope of the Regulation itself. A more realistic prospect, however, appeared to be reform of the Regulation, an option facilitated by the five year review currently being performed on behalf of the Commission by the University of Heidelberg. As the debates of this conference made clear, those charged with reform will need to address directly the level of intervention in private international law envisaged by the Regulation. Of course, the relationship between Member States and the Union is an issue not limited to the sphere of private international law. In an area already rich with controversy, such questions could provide merely a background for this entertaining and good-natured discussion.

The proceedings of the conference will be edited by Pascal de Vareilles-Sommières and published by Hart Publishing in the ‘Studies of the Oxford Institute of European and Comparative Law’ series.

Eleanor Campbell,
formerly BCL Student, Brasenose College,
1 Essex Court
On 3 March 2006 the Institute staged a conference under the title ‘The Regulation of Unfair Commercial Practices under EC Directive 2005/29: New Rules and New Techniques’. The conference was organised by Professors Stephen Weatherill and Ulf Bernitz with the support of the Wallenberg Foundation. So popular was the event that it had to be moved from its originally intended home, the Margaret Thatcher Centre in Somerville College, to the College’s less evocatively named but larger Flora Anderson Hall. Over 60 people registered for the one-day event.

Directive 2005/29 is an important new measure in the construction of a legal framework apt to promote an integrated economic space in the European Union. It establishes a harmonised regime governing the control of unfair commercial practices. The Directive is notable for its broad, horizontal scope. It does not follow the rather narrow, sector-specific approach of the majority of
the EC’s measures harmonising laws of consumer protection (contrast existing Directives on, for example, Doorstep Selling, Timeshare and Consumer Credit). This asks awkward questions of regimes, including the UK’s, that are not accustomed to the widespread use of general – flexible, but potentially unpredictable – clauses as a basis for market regulation. What does it really mean to speak of ‘unfairness’ in this context? Is this a reliable basis for common European market regulation? The European Court doubtless has a role to play, but important too is the practical day-to-day management of the regime by enforcement agencies in the Member States who are faced by the daunting prospect of attempting to achieve cross-border co-operation in pursuit of control of cross-border commercial activities. Here we observe the genius and the greatest conundrum of the process of European integration – the presence of a European Market and the absence of a European State.

We accordingly had many interesting issues on the table in March 2006. Nine papers were given at the conference. They were without exception extremely interesting and well-informed. Giuseppe Abbamonte began the day’s proceedings with a paper under the title ‘The Unfair Commercial Practices Directive, an Example of the New European Approach to Consumer Protection’. Mr Abbamonte, an official at the European Commission who – entirely accurately – described himself as the ‘spiritual father’ of the Directive, explained the nature and purpose of the new measure, and we could not have had a more illuminating way to set the scene. Ida Otken Eriksson and Ulf Oberg (both of the University of Stockholm) spoke on ‘Wider Perspectives: Relation to the Treaty, Other Legal Instruments and Case-Law of the Court’, and they placed the Directive within its proper constitutional context. Jules Stuyck (University of Leuven, Belgium) took as his title ‘The Unfair Commercial Practices Directive and its Consequences for the Regulation of Sales Promotions and the Law of Unfair Competition’. He questioned whether the Directive took adequate account of existing law on unfair competition and of competition law and policy more generally. This analysis was followed by Ulf Bernitz, who spoke on ‘The Directive and the Scope of the Law of Unfair Competition’, inter alia congratulating the Commission for its wisdom in selecting a new model for the regulation of unfair commercial practices at EU level, rather than taking the convenient but politically sensitive route of championing an existing national model.

After lunch, Simon Whittaker (St John’s College) examined ‘The Directive’s Relationship to Contract Law’, revealing how the Directive, though expressly stated to apply without prejudice to contract law, is likely to influence patterns of development in national contract law. Vanessa Marsland (Partner, Clifford Chance), who spoke on ‘The Directive and Copycat Products’, demonstrated
the potential relevance of the EC measure to such activities and insisted on the value in extending enforcement powers beyond public authorities to interested private parties. Christian Twigg-Flesner (University of Hull) spoke on ‘The Challenges Posed by the Implementation of the Directive into Domestic Law – a UK Perspective’, a most timely intervention given that the deadline for responding to the Department of Trade and Industry’s consultation document on UK implementation fell just five days after our conference. Responsible officials from the Department of Trade and Industry attended the event and participated in illuminating discussion. Antonina Bakardjeva Engelbrekt (European University Institute and the University of Stockholm) spoke on ‘An End to Fragmentation? The Directive from the Perspective of the New Member States from Central and Eastern Europe’. She examined the Directive against the background of spectacular recent legal, economic and political change in the new member States. Last but not least Hans Micklitz (University of Bamberg, Germany) addressed the question ‘Transborder Law Enforcement – Does It Exist?’. His conclusion could perhaps best be captured as ‘Yes – but there is not much of it, and there needs to be more’.

The day provided a rich and lively debate, and the Institute can be proud of its role in hosting such an event. All participants have agreed to supply a written version of their papers for inclusion in a book. This will provide a thorough and critical exploration of one of the more significant measures of market regulation adopted by the EC in recent years and the intention is to secure publication in advance of June 2007, the date by which the Member States are required to adopt rules designed to transpose the Directive into national law.

(SW)
A competition law symposium was organised on 6 June 2006 by the Institute in cooperation with the Wallenberg Venture on the subject of ‘Trends in Retail Competition: Private Labels, Brands and Competition Policy’. The symposium was a continuation of a similar symposium held in 2005. It focused primarily on the role of private labels in competition between retailers and between suppliers and the issue of strong buying power. The symposium took place in St. Catherine’s College, and attracted a partly international audience of about 60 people. The programme included the following speakers, representing a mixture of lawyers and economists: Andres Font Galarza (DG Competition, European Commission), ‘Article 82 and its application in the retail sector’; Phil Evans and Philip Marsden (British Institute of International and Comparative Law), ‘Defining consumer detriment’; Alan Riley (City University, London), ‘An approach to remedies in retail competition’; Paul Walsh (Bristows), ‘Copycat packaging and the Unfair Commercial Practices Directive’; Matthias Queck (Planet Retail), ‘Private label trends’; and Gabriel McGann, (Coca-Cola), ‘The assessment of private labels in merger cases’. The conference was chaired by Professor Ulf Bernitz. Most of the papers presented at the symposium are published on the website of the Oxford Centre for Competition Law and Policy (http://www.competition-law.ox.ac.uk/).
In co-operation with the Institute, the Consiglio Nazionale Forense, which is the representative body of the Italian Bars, for the first time organised a summer course for Italian lawyers in London and Oxford from 17 to 28 July 2006. This was sponsored by the Law Society, the Bar Council, the Institute of Advanced Legal Studies, the British Institute of International and Comparative Law, the British Italian Law Association and the Centre for Comparative Legal Studies.

Interestingly, this was the first summer course organised by a foreign Bar in England. It was the realisation of an idea of the President of the Italian Bar Council, Professor Guido Alpa FBA, who is also a member of the Institute’s Advisory Council, conceived with Mr Nello Pasquini, the Linklaters Teaching Fellow for Italian Law, and Professor Mads Andenas, Senior Teaching Fellow at the Institute. Their aim was to bring to England Italian lawyers who had not yet found the opportunity to have a direct contact with the ‘English Lawyers’ World’ and the common law, and offer them an experience from the inside of this world.

More than 100 lawyers enthusiastically attended this course. It was devised taking into account the importance of judges, lawyers and academics working together in order to promote the convergence of different legal systems in a
European perspective and with a pragmatic approach.

The lecturers included senior judges, such as Lord Hoffmann, Lord Justice Carnwarth and the President of the Finance and Tax Tribunals, Steven Oliver QC, and also prestigious academics, barristers and solicitors.

Everyone was aware that it is necessary in our globalised world to overcome the barriers of domestic legal cultures, and to come across different models, different ways of reasoning, and solving problems. It was also an opportunity to learn how English legal culture has infiltrated EC Law through its terminology, concepts, principles, and institutes. It was enriching for the Italian lawyers to study the professional approach of practitioners in analysing and using case law, in drafting legal documents, and bringing an action in an English Court.

The subjects covered during the course were various and in particular included contract and company law, trusts, tort, corporate and financial law, securities, international law and private international law, civil procedure, access to justice, the UK legal profession and EC Law.

The last day of the course took place at the Institute, where the Director, Professor Stefan Vogenauer, gave a lecture on ‘The Legal Method in Europe’, and also the two former Directors, Professors Mark Freedland and Stephen Weatherill, gave lectures on ‘Employment Law in a Comparative Perspective’ and on ‘The European Communities and Contract Law’ respectively. Professor Ewan McKendrick, who is now a Pro-Vice Chancellor of the University of Oxford, spoke on ‘The Role of National Contract Laws in Contemporary Europe’.

The end of the course was celebrated with a buffet lunch at the Institute which was very lively, and Professor Alpa presented certificates of attendance to all the lawyers. The day was concluded with a visit to Brasenose College which was most appreciated.
This year the Centre for Competition Law and Policy (CCLP) continued to provide a venue for the discussion and teaching of competition law and policy.

In April the CCLP hosted its first training programme for national judges. The programme, endorsed and subsidised by the European Commission, took place over five days and consisted of lecture sessions, workshops, and case studies. In particular, close attention was paid to the enforcement of competition laws by national courts and the co-operation between the European Commission and national courts. The success of this programme in disseminating knowledge and providing judges with a solid understanding of competition law was well illustrated in the evaluation form completed by the delegates. In their feedback, 100% of participants indicated that they will recommend others to attend this programme in the future. Following this year’s success, the CCLP has been awarded additional funding from the European Commission to train national judges in the forthcoming year (see below, p. 71).

In March 2006, the CCLP in conjunction with the Intellectual Property Institute and Oxford Intellectual Property Research Centre hosted a conference on Intellectual Property and Competition Law. This successful event was held at the Said Business School and drew practitioners and academics from around the world to Oxford. The wide range of speakers included; Dr John Temple Lang (Cleary Gottlieb, Brussels), Sir Jeremy Lever QC (All Souls College), Professor Bruno van Pottelsberghhe (Chief Economist, European Patent Office), Mr Alden F Abbott (US Federal Trade Commission), Professor Josef Drexl (Director, Competition and Tax Law, Max Planck Institute, Munich), Mr Nuno Pires de Carvalho (World Intellectual Property Organisation), Professor David Begg (Principal, Business School, Imperial College, London), Dr Wolfram Förster (Controller, European Patent Office), Professor Steven Anderman (Essex University), Professor Stefan Szymanski (Imperial College, London), Dr Christine Greenhalgh (St Peter’s College), and Dr Mark Rogers (Harris Manchester College).

In June 2006, the CCLP in conjunction with the Oxford Institute of European and Comparative Law hosted the Second Symposium on Trends in Retail Competition: Private Labels, Brands and Competition Policy (see above p. 28).
In addition to the training programme and conferences, the CCLP continued this year to host its Guest Lecture Programme on competition law and policy. The programme provided an impressive forum for discussion and debate by leading practitioners and academics on recent developments in competition law and policy. Distinguished guests who joined this year’s programme included: Mark Williams (NERA Economic Consulting), Iestyn Williams (RBB Economics), Simon Priddis (Office of Fair Trading), Philippe Chappatte (Slaughter and May), Terry Calvani (Freshfields Bruckhaus Deringer), Don Baker (Baker & Miller), Edward Flippen (McGuireWoods LLP) and Peter Willis (Taylor Wessing). The seminars were very popular with graduate and undergraduate students, members of the University and other external guests (see below, p. 43).

This year has also seen the development of the CCLP online database (http://www.competition-law.ox.ac.uk/). An increasing number of papers and materials were made available on the database which is devoted to scholarly works-in-progress and to the distribution of other materials on competition law and policy. Recent additions include papers presented at the Symposium on Trends in Retail Competition, and various other papers.

(AE)
Studies of the Oxford Institute of European and Comparative Law

During the academic year 2005-6 the Institute established a new book series, the ‘Studies of the Oxford Institute of European and Comparative Law’, which is to become the main forum for publication of the research pursued at the Institute. In accordance with the general aims of the Institute, both European and comparative law are perceived in their broadest sense, and a special focus lies on the intersection of the two disciplines.

The series is published by Hart Publishing Ltd, Oxford. The Series Editor is the Director of the Institute, Professor Stefan Vogenauer. The Board of Advisory Editors is composed of Professors Mark Freedland, former Director and now a Research Fellow at the Institute, Stephen Weatherill, former Director and now Deputy Director of the Institute, and Derrick Wyatt, Chairman of the Institute’s Management Committee.

The following titles were published during the academic year:

Volume 1:

Stefan Vogenauer and Stephen Weatherill (eds)

The Harmonisation of European Contract Law: Implications for European Private Laws, Business and Legal Practice

Many areas of law, from competition and consumer law to gender equality law, are now the subject of determined efforts at harmonisation, though they are perhaps often seen as peripheral to mainstream commercial contract law. Despite continuing doubts about the constitutional competence of the Commission to embark on further harmonisation in this area, European contract law is now taking shape with the Commission prompting a debate about what it might attempt. A central aspect of this book is the report of a remarkable survey
carried out by the Oxford Institute of European and Comparative Law in collaboration with Clifford Chance, which sought the views of European businesses about the advantages and disadvantages of further harmonisation. The final report of this survey brings much needed empirical data to a debate that has so far lacked clear evidence of this sort. The survey is embedded in a range of original and up-to-date essays by leading European contract scholars reviewing recent developments, questioning progress so far and suggesting areas where further analysis and research will be required.

Volume 2:

Mark Freedland and Jean-Bernard Auby (eds)

The Public Law/Private Law Divide: Une entente assez cordiale?

The contributions brought together in this book derive from joint seminars held between colleagues from the University of Oxford and the University of Paris II. Their starting point is the original divergence between the two jurisdictions, with the initial rejection of the public-private divide in English Law, but on the other hand its total acceptance as natural in French Law. Then, they go on to demonstrate how the two systems have converged, the British one towards a certain degree of acceptance of the division, the French one towards a growing questioning of it. However this is not the only part of the story; since both visions are now commonly coloured and affected by European Law and by globalisation, which introduces new tensions into our legal understanding of what is ‘public’ and what is ‘private’.

European Legal Studies

‘European Legal Studies’ (‘Schriften zur Rechtswissenschaft’/‘Etudes juridiques européennes’) is a scholarly series of legal monographs devoted to European private law and European public law. The works in the series are studies in comparative law. Some of them draw conclusions relevant to issues of unification, harmonisation or approximation of laws. Others illustrate trends towards convergence or the endurance of legal differences within and across various areas of law. All of them aim to contribute to a deeper understanding of European Community law and the legal systems of the Member States.

The series is published by Sellier European Law Publishers, Munich, and is the product of the co-operation of four leading European Institutes in this field of research: it is multi-lingual and jointly edited by Professors Christian von Bar for the European Legal Studies Institute (Osnabrück), Ewoud Hondius for the Molengraaf Institute for Private Law (Utrecht), Martijn W. Hesselink for the Amsterdam Institute for Private Law, and Stefan Vogenauer for the Oxford Institute.

The following title was published in the academic year 2005-6:


Is there a place for examination and notification duties in consumer sales law? According to Dutch law, there is; other countries, such as England or Germany, oppose this view. It is therefore only fair to ask why the consumer should actually lose his rights in the event of lack of conformity of the goods, if he has failed to lodge his complaint within a reasonable time. According to the research undertaken in this book, functional arguments relating to such cut-off duties are not convincing. What is more, when introducing such duties into consumer sales law – and ever since – one failed to look critically at their rationale that originated in the realm of commercial sales law. It therefore can be concluded that the answer to the above question is necessarily a political one. As long as certain (minimum) requirements of consumer protection are not left out of consideration, there is, however, nothing wrong with such a political choice that may well be different in different countries.

The Oxford University Comparative Law Forum

The Oxford University Comparative Law Forum is a freely accessible web-based journal (ISSN 1743-8713), accessible via www.ouclfiuscomp.org. Sponsored by CMS Hasche Sigle it seeks to promote the study and discussion of legal issues from a comparative perspective by publishing academic writing and by providing discussion groups. Authors represented in the Forum include the late Peter Birks, Albrecht Cordes, Otto Pfersmann, Peter Schlechtriem, and Iain Stewart.

During the academic year 2005-6 the following articles were published:

Karen Eltis, ‘Society’s Most Vulnerable under Surveillance: the Ethics of Tagging and Tracking Dementia Patients with GPS Technology: a Comparative View’ (2005) 5 OUCLF 3


Reinhard Zimmermann, ‘The German Civil Code and the Development of Private Law in Germany’ (2006) 6 OUCLF 1

Hwa-Jin Kim, ‘Directors’ Duties and Liabilities in Corporate Control and Restructuring Transactions: Recent Developments in Korea’ (2006) 6 OUCLF 2

The Institute's teaching activities consist first and foremost in the College and Faculty teaching of its individual members. However, the Institute also provides the foreign law teaching for Oxford undergraduates going to France, Germany or Italy in their third year of studies (see below, p. 45). Furthermore, the Institute has been closely involved with a number of particular teaching activities over the last year:

**Comparative Law Discussion Group**

The Comparative Law Discussion Group is convened by John Cartwright, Stefan Vogenauer and Simon Whittaker under the auspices of the Institute of European and Comparative Law. It is open to all members of Faculty and graduate students and meets two or three times a term, over a sandwich lunch, to hear a paper or a presentation of work in progress from a speaker, either from within the Faculty or from outside. While 'comparative law' for this purpose is quite broadly interpreted, the topics relate mostly to private law (including its procedural and institutional aspects) and to the laws of Western Europe. Over the course of the last academic year, there were the following meetings of the group:

**Professor Barbara Pozzo** (Professor of Comparative Private Law, University of Milan) ‘Problems of Terminology and Translation in European Private Law’, 20 October 2005

Two of the greatest challenges of European private law are its multilingual character and its relationship with the structural and conceptual backgrounds of the domestic private laws in Europe. Professor Pozzo, who is a member of the EU Network ‘Uniform Terminology for European Private Law’ (see below, p. 63), presented the work of the Network. Drawing on examples from various EC Directives in the area of consumer protection and on the implementation measures in English, French, German and particularly Italian law, she showed how transposing the Directives had caused confusion in domestic legal systems.
Matthias Mahlmann (Associate Professor of Law, Free University of Berlin and Visiting Professor at the Central European University, Budapest) ‘A New War of Religions? Problems and Prospects of Religious Tolerance’, 27 October 2005

Reviewing an area of human rights law that has assumed great importance because of recent events, Professor Mahlmann analysed the philosophical and historical underpinning for the protection given in European law to freedom of religion. While some religions found it difficult to accommodate tolerance for other religions within their own culture, the existence of competing religions called for a secular and universalist view of tolerance. Among the arguments for tolerance, Professor Mahlmann mentioned the specific epistemological insecurity of religious beliefs, the argument from human dignity and awareness of the common ground of different religions. He concluded that to take a secular conception of human dignity as the normative cornerstone of religious tolerance was the best approach to preserve a civilised humanism under the threat of new religious wars.

Professor Javier Lete Achirica (Professor of Private Law, University of Santiago de Compostela) ‘The Regulation of Unfair Contract Terms in Spanish Law’, 3 November 2005

Although the system for the control of unfair contract terms in Spanish law started with the Act on Insurance Contract of 1980 and the Act on Consumer Protection of 1984, the truth is that both Acts did not comply with the requirements of the Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts. The Act on Standard Contract Terms of 13 April 1998 implemented the Directive into Spanish law, reforming the provisions of the Act on consumer protection. The idea was that the Act on consumer protection was applicable only to consumer contracts which contained standard contract terms, and the new Act to contracts concluded between entrepreneurs. However, the notion of ‘consumer’ used in the Act on Consumer Protection includes in it both natural and legal persons. On the other hand, the control of incorporation of standard contract terms exists in similar terms in consumer protection legislation and in the new Act on Standard Contract Terms as well.
Which principles, if any, ought to be used in choosing the individual members of groups preparing projects for harmonisation of law? How important is it to leave the civil servants working with national legislation and politicians outside the group work? Is it important to have at least one member from each of the 15 member states? Being forced to choose between the national expert in the field in question and the comparative lawyer – who is to be preferred? One simple way of working is through questionnaires where the answers become the basis of a final comparative report. More complicated is the one where every member of the group gives a more comprehensive view of the law of his country from which an overall picture is given by the group. Which alternative is the best? Is it important to take up the several issues of the group in a special order?


Section 339 of the Hungarian Civil Code states: ‘A person who causes damage to another person in violation of the law shall be liable for such damage. He shall be relieved of liability if he is able to prove that he has acted in a manner that can generally be expected in the given situation.’ This is a uniform rule applicable to both contractual and non-contractual liability and was considered a great achievement of the current code. However, on considering these
matters for the new code, the view was taken that the conditions of liability should be different in the case of contract and of non-contractual liability and so the new code will differentiate between these situations. Dr Gárdos explained the current rule, its problems and the new solution which will be proposed.

Ruth Sefton-Green (Maître de Conferences, Université Paris I (Panthéon-Sorbonne)) ‘French and English Legal Scholarship: Swings and Roundabouts’, 4 May 2006

La doctrine, the name given to French legal scholars and English legal scholarship, does not denote the same in reality. A comparative enquiry enables us to compare and contrast their respective roles in the law-making process. Is the dividing-line between France, characterised as a legal system of scholars, and England, as one of judges, still true today? This paper first examined the path of French and English legal scholars with recent concrete examples from the law of obligations, highlighting the gap between French scholars’ discourse about their activity and the reality. It argued that French scholars tend to fulfil a highly normative role under the cover of descriptive positivism. English legal scholarship is more heterogeneous than the French doctrine: the relationship of scholars and judges is undergoing a transformation, as the relatively recent phenomenon of frequent citations of scholars’ writings by judges illustrates. A comparative external angle enables us to focus on the growing interest of English scholars in their role as teachers and scholars, thus raising questions about their institutional legitimacy.

Secondly, the relationship between legal scholars’ doctrinal input and legal reasoning was addressed. There are both institutional explanations and also epistemological reasons why scholars behave as they do in France and England. Although it is easy to point to the opposition between French deductive and English inductive reasoning as a contributing factor, it is also significant to examine each brand of scholar’s desire and need for classification and systematisation. Can scholars’ writings be reduced to an analytical opposition between promoting principles or policy questions? The style and raison d’être of case notes and commentaries is very much a product of our legal reasoning and, of course, education.

In conclusion, a circular movement could be identified: certain English scholars have made an imprint on areas of the law such as restitution, in a comparable fashion to the doctrinal mark of French scholars. Conversely, if French scholars were to recognise more explicitly the policy implications of legal scholarship, their role and work could become more similar to English jurists in the future. Have we arrived at a post-doctrinal phase of (European) legal scholarship?

Innkeepers’ liability seems to be a marginal area of private law today, but it used to be of great practical relevance for centuries. In a wide ranging paper, Professor Zimmermann charted the development from the Roman receptum liability through the Middle Ages, early modern law, and the nineteenth century up to recent harmonising measures by a 1962 Convention of the European Council. He focussed on some recurrent themes of continental legal history, namely whether liability should be strict, whether it could be excluded, or at least limited, and on the standard of proof with respect to the goods brought in.

**Professor Jean-Sebastien Borghetti** (University of Nantes) ‘The Reformulation of the Doctrine of Force Majeure’, 1 June 2006

Professor Borghetti gave a paper on the difficulties for French civil law in relation to the definition of *force majeure*. He explained the origins of this notion (and its synonym, *cas fortuit*) in the Civil Code’s provisions on contractual liability and explained how it had later been used as a defence to extra-contractual liability for the ‘deed of a thing’ pinned to article 1384 al. 1 of the Code. His conclusion was that the concept of *force majeure* should be treated differently in these two different contexts rather than considered to form part of a unified concept.

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**EU Law Discussion Group**

The EU Law Discussion Group is a forum for discussing, in an informal environment, current issues of European Union law. Staff members and students are encouraged to present a paper that will constitute the starting point for discussion within the group, and occasionally speakers from other universities or institutions are invited. The group meets once or twice a term and is open to all Faculty members and graduate law students. During the academic year 2005-6 the group was convened by Dr Paolisa Nebbia of St. Hilda’s College. The following papers were given:

**Professor Stephen Weatherill** (Jacques Delors Chair in European Community and Deputy Director of the Institute) ‘EC Law and Sport – Will the Oulmers Case Destroy International Football?’, 25 October 2005

In its 1995 judgment in *Bosman* the European Court of Justice found that football’s transfer system was incompatible with EC law, and thereby induced
radical change in the sport. Much the same fate may await FIFA’s requirement that clubs release players for international representative matches on an uncompensated basis. On this occasion the player destined for fame is Abdelmajid Oulmers, injured playing for Morocco and now the basis of a claim for damages against FIFA initiated before the Belgian courts by his club, Charleroi. A reference is now pending before the ECJ asking whether the system is compatible with Article 82 EC. Professor Weatherill thinks it is not – mandatory release is necessary for the survival of the World Cup, but it goes too far to deny the clubs a cut of the vast profits made from international football when one considers that it is their employees, the players, who are the crucial resource. Gaining access to FIFA’s pot of gold explains why the G-14 group of rich football clubs has intervened in support of Charleroi. And so is further diminished the autonomy of sport from law – an inevitable consequence of increasing commercialisation.


The uniqueness and fluidity of the European Union’s institutions makes any generalisations about its law and constitution very difficult. A common theoretical approach to EU law (one that is often relied upon by the Court of Justice, the Parliament and the Commission) is to borrow directly from the theory of domestic constitutional law. The most recent manifestation of this tendency is the draft Treaty on the European Constitution, which includes many of the symbolic features of a domestic constitutional order. But the European Union is not a state and the constitutional analogy fails. In this talk, Dr Eleftheriadis defended the view that a more complex theory is more appropriate to the unique combination of ordinary politics with diplomatic conferences that constitutes the European Union. The key to these institutions is, in his view, a Kantian international ideal of liberal peace.


National sale of goods laws in Europe show widely divergent approaches to the scope and availability of performance remedies in case of default by the seller. Specific performance is probably the most famous example – it is of general availability to buyers in most civil law systems, but it is far less present in English law. In light of the process of convergence of European contract laws, it is necessary to address these differences in approach to see whether they are fundamental or whether there is scope for future harmonisation. An area that so far has had little attention in scholarly writings is the seller’s right to cure (i.e. where it is the seller who insists on a second chance to perform, rather than
the buyer requesting performance from the seller). Vanessa used this as a problem case against which to test the possibility of future harmonisation of European sale of goods laws.

**Dr Liz Fisher** (Corpus Christi College, Oxford) ‘Opening Pandora’s Box: Contextualizing the Precautionary Principle in the EU’, 7 February 2006

In the last decade the precautionary principle has been one of the most contentious principles in European consumer protection and environmental regulation. This paper explores the different contexts that the principle applies to in the EU context and how the principle’s operation raises some difficult questions about the operation and integration of administrative power in that multi-level polity. The European Commission’s Communication on the Precautionary Principle as well as recent case law is considered.

**Professor Ulf Bernitz** (University of Stockholm and IECL) ‘The Duty of Supreme Courts to Refer Cases to the ECJ: Towards a Stricter Standard?’, 30 May 2006

The starting point of Professor Bernitz’s seminar was the EU Commission’s recent action against Sweden targeting the practice of Swedish supreme courts to refer only few cases to the European Court of Justice for preliminary ruling. The seminar discussed different available mechanisms for control of the application of EU law by Member States’ courts.

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**Guest Lecture Series of the Centre for Competition Law and Policy**

The Centre of Competition Law and Policy (CCLP) hosts the Competition Law and Policy Guest Lecture Programme. This brings together leading practitioners and academics to discuss recent developments in competition law and policy. Lectures cover both the law and economics of competition law. The majority of lectures take place in Hilary Term at the St Cross Building. Lectures are open to Oxford students and university members.

During the academic year 2005-6 the following lectures were given:

- **Mark Williams** (NERA Economic Consulting) ‘Introduction to Antitrust Economics’, 17 October 2005
- **Simon Priddis** (Director of Mergers, OFT) ‘The Law and Economics of Conglomerate Mergers’, 20 January 2006

Chris Bright (Shearman & Sterling) ‘Mergers and Acquisitions – Case Study’, 3 February 2006

Simon Bishop (RBB) ‘The Cellophane Fallacy and its Implications for the Role of Market Definition in Article 82 Cases’, 17 February 2006


Law with Law Studies in Europe (Course 2): Report of the Academic Director of the Exchange Programmes

The Institute continues to be responsible for the Faculty’s four-year BA in ‘Law with Law Studies in Europe’. This essentially is a variant on the regular Oxford law degree that includes an extra year spent at one of Oxford’s partner universities abroad. It is thus also frequently called ‘Law Course 2’. Options are Law and French Law with 15 students per year going to the University of Paris II; Law and German Law with three students going to Bonn, four to Konstanz, two to Munich and three to Regensburg; Law and Italian Law with two students going to Siena; and Law and European Law with four students going to Leiden in the Netherlands. The Institute administers the programme, including the provision of preparatory teaching in foreign law and languages and keeping constant contact with the academic directors and the administrators of the exchange programmes in our partner universities.

Within this framework, the Institute also provides a focus and support network for the students coming to Oxford from our partner universities under the exchange agreements. These students are registered for a one-year programme suitable to their level of study, normally the Diploma in Legal Studies and in some cases the Magister Juris.

Course 2 is administered by a team of academics which greatly helps to facilitate dialogue between our Faculty and both our partner universities and the students on the course. The Academic Director of the exchange programmes is Professor Stefan Vogenauer who assumes overall responsibility for the programme. He is supported by various ‘country co-ordinators’: the Paris exchange is overseen by Mr John Cartwright, Dr Katja Ziegler co-ordinates the German exchange arrangements, Professor Stephen Weatherill takes the oversight of the Leiden exchange and Professor Vogenauer looks after the arrangements for Italy. Mr Cartwright is also in charge of all issues related to admissions to Course 2. The most important role, however, is played by Mrs Jenny Dix, the Institute’s Administrator, who runs the day-to-day administration of the degree.
We gratefully acknowledge the support of Clifford Chance which goes a long way towards covering the costs of administering Course 2. Over the past twelve years, generations of Course 2 students have directly benefited from this funding. We are also grateful to Linklaters for providing a grant to our students participating in the Siena exchange.

In the academic year 2005-6 applications to join Law Course 2 remained as strong as ever. There were 263 applications for the 33 places available, thus making competition for the programme one of the fiercest for any university degree in this country. Our partner universities also report a continued strength in the number of their own students who wish to come to Oxford for a year under the terms of our bilateral exchange programmes.

The teaching arrangements for the Oxford undergraduates on Law Course 2 remained virtually unchanged this year. Classes in French, German and Italian law are given within the Institute to the second year students who are preparing to spend their third year abroad; and classes in French, German, Italian and Dutch language are arranged in or (with the University’s Language Centre) through the Institute.

As in previous years, Dr Katja Ziegler taught the preparatory classes in German law and Mr Nello Pasquini, the Linklaters Teaching Fellow, provided the teaching in Italian law. For a couple of years now, part of the French law teaching has been provided by a Professor on a two-year secondment to the Institute as Deputy Director from either Paris I (Panthéon-Sorbonne) or Paris II (Panthéon-Assas). This year Professor Pascal de Vareilles-Sommières (Paris I) taught the public law elements of the French law preparatory classes for the second time. Mr Eric Descheemaeker of St Catherine’s College complemented this with lectures and seminars on private law, thereby replacing Mrs Marina Milmo whose longstanding teaching arrangement with the Institute had come to an end in the summer of 2005.

The intensity of the language tuition provided is constantly under review, particularly in the light from feedback of students on the course. Conversational classes in Dutch were introduced a couple of years ago for the students who will go to Leiden (where they will be taught in English). In the academic year 2002-3 the intensity of the German language classes was increased by providing teaching in both the first and the second year. The year 2003-4 saw a similar move for the French language training, meeting students’ concerns that their A-level French might ‘get lost’ during their first year at University. These arrangements have proved to be satisfactory, and no further expansion of the language teaching is envisaged for the near future.
The academic year saw the expansion of a successful innovation of the previous year: the student run ‘mentoring’ or ‘buddying scheme’ which had originally been confined to the Paris exchange. In order to provide the second-year students at Oxford who are about to leave for any of the partner universities with a maximum of information, each of them is teamed up with an Oxford student who had just returned from his or her year at that university and with an exchange student from that university who currently spends a year in Oxford. It is then up to the students to meet and to exchange information. Once the second-years return, they will act as ‘buddies’ to the then second-years. The feedback we receive from students reveals that second-years benefit from the advice of their predecessors, whilst fourth-years enjoy sharing their experiences.

Overall, Course 2 remains one of the success stories of the Institute. Its graduates are highly sought after by the big law firms. Students appreciate their experience abroad and the teaching they receive in Oxford: the University’s student course experience questionnaire for the year 2005 displays a stunning 100% percent ‘overall satisfaction’ by its graduates.

A couple of changes are to be expected for the academic year 2006-7. The private law and the public law elements of the teaching of French law will be re-united in the hands of one teacher; thus returning to the original position. Professor Philippe Théry, the Institute’s new French Deputy Director (see above, p. 6), will provide the teaching.

Even more importantly, the Faculty and the Institute aim to establish a new student exchange programme with a Spanish partner faculty. As a reaction to the increasing pool of outstanding candidates with Spanish language skills who wish to follow a course in Spanish law, Course 2 will be extended to include a further option in Law with Spanish Law. In a rigorous selection procedure, the Course 2 team examined 18 potential partner faculties in Spain. Of these, six were shortlisted and visited by the Academic Director of the Exchange Programmes in the early summer of 2006. Negotiations with one of them are close to completion, and we hope to send the first group of Course 2 students to Spain during the academic year 2008-9.
A Year in Regensburg

A year in Regensburg is a world away from a year in Oxford and it was the totally different cultural experience that defined the year for us all.

The arrival in Germany was more or less what we expected, though in parts tricky. There were lots of bureaucratic hoops to jump through, from subscribing to courses to enlisting in the healthcare system. This can be a bit much, giving you the feeling of having been thrown in at the deep end. However, all of us learned to swim quickly.

Beginning with the nuts and bolts: between the three of us we studied a whole raft of subjects, ranging from German Civil Law (Modules I-III), German Constitutional Law, Jurisprudence, Comparative Law, German Private International Law, German Criminal Law, EC Law, German history and German language. The obligatory Hausarbeit in BGB I was successfully negotiated during the Easter vacation and the Klausur in BGB III was completed just in time for the World Cup. Although we were not officially required to take any further formal examination, we also sat language exams, EU law exams and a Probeklausur in BGB I. Theo sat an additional Klausur in Jurisprudence and took weekly Spanish lessons; Raymond gave a Referat on the English Law of mistake and misrepresentation as part of the Comparative Law course; and Matthew started learning Polish.
Trying to pick out highlights from the year is difficult, but we can try. 2005 was a big year for Germany as it was hosting the World Cup. Following a run of mediocre results in the build-up, the Germans powered their way through to the semi-finals, roared on by a nation which finally decided to get behind Jurgen Klinsmann and his Keegan-esque brand of attacking football. Beyond the customary football fever, the World Cup saw the first real show of German patriotism for a number of years, with flags flying absolutely everywhere. It was interesting to be in the country to experience something many Germans were themselves seeing for the first time.

Unfortunately, of course, we missed out on graduating with some of our closest friends in Oxford. On the other hand, we found ourselves with plenty of free time and opportunities. Such a year used wisely can be a resourceful investment towards career plans, finals, or other areas of life one wants to improve. We managed to get involved in a lot of extra-curricular activities due to the extra free time offered by the Erasmus programme. One or other of us went to kickboxing, fencing, dance, martial arts, swimming or conditioning training classes. Again, these were opportunities that we may not have had time for in Oxford and something else that added value to our year here.

Mention should also be made of the sheer diversity of students we encountered. We met people from other universities in the UK, Poland, Italy, Spain, France, Czech Republic, Republic of Ireland, America, Turkey, Montenegro and, of course, Germany. While Oxford does have this diversity too, it is not so pronounced and is often tempered by a pre-Oxford education in England. Talking culture and politics often left us wide-eyed, but was nonetheless fascinating.

The location of Regensburg within Bavaria, Germany and even Europe, coupled with the superb transport system available in Germany means that it is also a great base for trips in the surrounding area. We and many people we know have journeyed to Augsburg, Munich, Salzburg, Nürnberg, Frankfurt, Berlin, Prague and some even ventured as far as Italy, Austria, Poland and France.

One peculiarity stemming from the location is the use of Bayerisch, the local dialect. This can sometimes make things a little tricky, although everything academic is conducted in hochdeutsch (i.e. proper German). One should probably not underestimate the achievement and the value of being able to contribute to and understand classes in German. Although talking to Germans is an essential way to learn the language, an additional method which can help fantastically is television. Every five minutes at least one new phrase or expression is heard. Many phrases are immediately understandable...
on being heard but would be a mystery to formulate from English into German on your own.

Finally, from having an insight into a different legal system to meeting a range of people from all over Europe, and indeed the world, we have found the Erasmus programme at Regensburg to be a very worthwhile experience.

Matthew Bell (Pembroke College)
Theo Brünig (St Catherine’s College)
Raymond Duddy (St Edmund Hall)
The Diploma in Legal Studies is much more than an academic course: it is a continuously surprising experience within a world that every day happens to be different from the one in which we were used to living. The progressive knowledge of what common law is, especially its most representative subjects – contract and tort – is parallel to a university life which has no comparison with continental universities and campuses.

From a technical point of view, the Diploma is a course based on three of the common law subjects studied by regular BA students, with whom diploma students share the teaching system, with the possibility of adding to the compulsory subjects, tort and contract, a third one from the options provided.

The Oxford teaching system represents both the most interesting and the most difficult part of the academic experience: interesting because the tutorial system is added to the lectures in the Law Faculty and leads the student towards the targets he is required to reach by means of a weekly meeting with a personal tutor who helps with comprehension, develops the discussion, assesses the level of the work done, points out the most important topics; difficult because while lectures are not compulsory, even though extremely useful, tutorials are compulsory and this means that there is a constant pressure on the student, who has to read all the material in the reading list provided, understand, elaborate and finally write an essay about a particular topic or solve a problem indicated by the tutor.

Moreover the structure of the subjects studied represents another new element to deal with: reading cases, i.e. court decisions or judgements, is the basis of the study of common law, often supported by several articles which
are helpful in shaping an opinion about what the law is and should be and in pointing out the most significant problems in the application of the law. The general comprehension of the law is provided by textbooks, which give an overall idea of each topic, linking the several cases analysed. In the first term I had some difficulties in finding the right balance between the parts of the reading lists, in realising which were the most important and which could have a secondary importance. Once again, experience teaches better than advice, but of course experience can be achieved only by constant application and concentration upon the work. I found myself very often in the legendary Bodleian Law Library (known amongst students as ‘the Bod’) until closing time, and not only because at that time it is easier to concentrate, but also because it was necessary to keep up with that week’s work. For many law students the ‘Bod’ is a second home and in some periods, especially at the very beginning of the academic year and just before examinations, more important than their own room in college.

Despite what I said above, Oxford allows students to have a fantastic university life, with so many opportunities. Personally I had the chance to take part in several conferences which gave me the unique opportunity to go beyond the Oxford perspective and to hear directly what judges or politicians thought about a particular topic. Moreover life in College represented an indispensable basis for a good life in Oxford, especially because it allows you to meet many people, have many friends and therefore never feel alone and gives you the chance to relax. My College, Worcester, was perfect from this point of view, since it is not too big a community and in a short time I came to know everyone, especially in the Middle Common Room, definitely a great institution. Worcester College was the true centre of my non-working life, where I used to meet all my friends, maybe just for a beer or a game of pool, and sometimes it was exactly what I needed to get ready for another day. Of course, most of the things that I did in college happened at night, after a whole day spent working or attending lectures. But, again, this is something I quickly got used to, so that when I had a free afternoon it used to feel a bit strange. Fortunately, weekends were less busy, so I could play football with my College team on Saturdays and train on Sundays as well as attend church.

One of the best moments in College, and in Oxford generally, is the formal hall dinner, a special moment. Food, tradition and smart clothes are united in great meetings for dinner, usually followed by port and cheese or club nights. For most of us, that night was the best of the week and far better than the weekend when Oxford seems to be more for the locals than for the students.
I was also fortunate to be invited by my College supervisor, who was also my tort tutor, to College High Table, where the Fellows and the Provost sit to have dinner, followed by drinks in the Senior Common Room, a marvellous place with a particular Agatha Christie atmosphere.

There is nothing that I would not do again in Oxford. Paradoxically, the hardest moments coincided with the moments in which I felt I grew the most, both intellectually and as a person. One of the nicest images I have of my Oxford experience is a dark library at night, lit only by the personal lamps on the desks, listening to jazz music while writing my essay: sometimes I looked around me and saw people doing exactly what I was doing and I realised that work always pays off and this was something really special.

My year in Oxford was not only hard work, but also good fun, enjoyed much more because I felt I deserved it, and had the huge satisfaction of seeing improvements every day in what I was doing and of achieving results that in the beginning I could not dare to aim at.

Francesco Iodice

Erasmus Exchange Student from the University of Siena
(Worcester College)
Exchange Students’ Visit to the House of Lords

Thanks to the kind support of Lord Rodger of Earlsferry, a Lord of Appeal in Ordinary and Chairman of the Institute’s Advisory Council, the Institute, for a couple of years now, has been able to offer a special treat to the exchange students coming to Oxford from our partner universities. Lord Rodger invites them to attend a hearing of the Appellate Committee of the House of Lords, and he personally introduces them to the legal issues thrown up by the respective appeal before the hearing. This provides a unique opportunity for our exchange students and is seen by many as the highlight of their stay in this country, as is evidenced by the following report of one of last year’s exchange students from France:

“We were a group of 13 law students from France and Germany. We had a dream, that one day, we would be able to see, hear and touch what is going on in the so famous and so honourable House of Lords. Our dream has come true, because of the generous move of Lord Rodger of Earlsferry towards the Institute of European and Comparative Law of the University of Oxford.

On 6 March 2006, we were welcomed in the Houses of Parliament. There, we met Lord Rodger of Earlsferry who introduced us to the case in which he was sitting that morning: Secretary of State for Trade and Industry v Rutherford. The case tackled the issue of discrimination. Two men over the age of 65 had been
dismissed by their employer and had brought an action for unfair dismissal and failure to make redundancy payments. They argued that according to the statistics – which are mostly the result of social reasons – more men than women continue to work after they have reached the age of 65. The question at stake was whether the age limit for bringing complaints of unfair dismissal and failure to make redundancy payments are indirectly discriminatory against men. If so, is this discrimination justified?

Lord Rodger also told us about the different ways English judges draft their judgments. The opinions of some can be compared to Paris’ Pompidou Centre, with plenty of visible ‘pipe-work’, trying to link every element of an argument from its birth to its achievement, others hide the pipe-work and give a very short decision, which may seem simple, but which has required lots of work, hiding the pipe-work …

We then moved on to the hearing room to attend the beginning of the three-day-trial. It was quite impressive to face the Lords and to hear the pleading and the way the judges discuss issues with barristers. We were particularly impressed by the way Lord Nicholls managed to force counsel to present the argument more concisely.

We were then taken on a tour of the Houses of Parliament. This was very interesting, and really gripping to walk through all the lobbies and rooms where such important people have been before us.

After a quick lunch, we walked past ‘10 Downing Street’ and into the Privy Council. After the security staff had collected each and every mobile phone, we attended the hearing of a case. Although some of the judges seemed to be concentrating deeply, thinking about the case with closed eyes, the facts of the case will remain a mystery for us. Nevertheless, this trip to London was a wonderful experience. We have discovered the judicial, political and economic heart of the English system, and we felt it.

For this reason we would like to thank warmly Lord Rodger of Earlsferry for welcoming us in the House of Lords, for introducing us to this incredible organ of the English legal system whose decisions we read in our textbooks. Thanks also to Professor Stefan Vogenauer, who came with us and shared our enthusiasm, during the visit. This adventure will remain a great memory for all of us.’

Christelle Cerf,
Erasmus Exchange student from the University of Paris II (Panthéon-Assas)
(Queen’s College)
Institutional Links

**University of Bonn**

The University of Bonn is one of the Institute’s partner universities for its German student exchange programme (see above, p. 45).

**University of Konstanz**

The University of Konstanz is one of the Institute’s partner universities for its German student exchange programme (see above, p. 45).

**University of Leiden**

The University of Leiden is the Institute’s partner university for its student exchange programme in ‘Law and European Law’ (see above, p. 45).

**University of Munich**

The University of Munich is one of the Institute’s partner universities for its German student exchange programme (see above, p. 45).

**University of Paris I (Panthéon-Sorbonne) and the Association Sorbonne-Oxford**

Our connection with the Law Faculty of the University of Paris I was strengthened by the two year secondment to the Institute of Pascal de Vareilles-Sommières, a Professor at Paris I. Pascal served as the French Deputy Director of the Institute and taught the Oxford students due to spend a year in Paris (see above, p. 5).

Our main institutional link with the Law Faculty of Paris I is the Association Sorbonne-Oxford pour le droit comparé (http://www.sorbonoxford.org/). The Association was founded in 1999 with the aim of developing and promoting exchanges, teaching and research in the area of Anglo-French comparative law between the two universities. Its members are the University of Paris I, the Oxford Institute of European and Comparative Law and law firm Clifford Chance. The Association is principally funded by Clifford Chance. To date, most of the Association’s funds have been used to fund Oxford academics to teach in Paris, to build up a considerable body of English and American legal material in the comparative law library of Paris I, located at rue Malher; and to fund
colloquia and seminars on issues of comparative law. The Association also awards a biannual prize for an outstanding thesis, in English or French, involving a comparison of laws of the Romano-Germanic and Common law traditions.

In March 2006 the Association funded a conference on ‘Forum Shopping in the European Judicial Area’, held at University College, Oxford, and organised by Professor Pascal de Vareilles-Sommières (see above, p. 23). Next year’s conference will be on ‘Democracy and Social Justice: What Future for European Private Law?’. It will be held jointly with the Cour de cassation in Paris in January 2007 (see below, p. 71).

At the Annual General Meeting of the Association in June 2006 the Institute was represented by Mr Martin Matthews, a member of the Institute’s Advisory Council, and by Professor Stefan Vogenauer. There, the Association decided to make a generous contribution to upgrading the French law collection of the Bodleian Law Library in Oxford. It further agreed to contribute to funding the teaching of French law at Oxford. Finally, the Association decided to invite applications for the 2006 thesis prize (see below, p. 80), and it was delighted to be able to announce that Monsieur Guy Canivet, Premier président de la Cour de cassation, agreed to chair the jury.

**University of Paris II (Panthéon-Assas)**

The University of Paris II is the Institute’s partner university for its French student exchange programme (see above, p. 45).

**University of Regensburg**

The University of Regensburg is one of the Institute’s partner universities for its German student exchange programme (see above, p. 45).

**University of Siena**

The University of Siena is the Institute’s partner university for its Italian student exchange programme (see above, p. 45).

**University of Stockholm and the Wallenberg Venture**

This collaboration has been running for five years. The original arrangement was for the three year period 2001-2004. However, the collaboration has been extended for three further years on unchanged terms. Its basis is a donation by the Wallenberg Foundation in Sweden to set up a venture named the Wallenberg Foundation Oxford/Stockholm Association in European Law. Professor Ulf Bernitz is the Director of this venture which enables him to
contribute to the work of the Institute of European and Comparative Law in a consultancy capacity.

The objective of the association is to deepen collaboration and mutually beneficial intellectual improvement. The activities include attracting Scandinavian doctoral and post-doctoral researchers and active academics to pursue study and research in Oxford, to make conference arrangements, particularly within European law, to participate in funded legal research projects; and in general, to act as a catalyst for more intensive collaboration between Scandinavian and British jurists. The activities take part within the ambit of the Institute where Professor Bernitz is provided with an office.

During the academic year, three major conferences have been organised. Ulf Bernitz and the Venture organised, in collaboration with the staff of the Wallenberg Foundation, an international conference outside Stockholm from 18-19 October 2005 on ‘Modern Company Law for a European Economy – Ways and Means’. A book in English based on the conference papers and edited by Bernitz is being published by Norstedts Law Publishers, Stockholm and will be available in November 2006. The basic themes of the conference were company law and European economic integration – how do they interrelate; European company law and practice – quo vadis; corporate governance codes; take-overs under the new Directive and related issues; and regulation and deregulation – what course to follow? Participation was based on personal invitation. British speakers included Mads Andenas, Jennifer Payne and Jonathan Rickford. The EU Commission was represented by Pierre Delsaux. Ulf Bernitz presented the paper ‘The Attack on the Nordic Multiple Rights Model: Is There a Future under EU Law?’, which will be published in the forthcoming book.


A competition law symposium was organised on 6 June 2006 by the Institute in collaboration with the Wallenberg Venture on the subject of ‘Trends in Retail Competition: Private Labels, Brands and Competition Policy’ (see above, p. 28).

Bernitz has started planning an international conference, ‘What is Scandinavian Law?’, to be held in Stockholm in April 2007 (see below, p. 72).
The Venture organised a visit to Oxford for the members of the Swedish Network for European Legal Research. It took place in Balliol College on 28 and 29 September 2005 and 12 Swedish law professors and academic teachers took part. Lectures on European legal research were offered by, among others, Professor Stephen Weatherill. A rewarding result of the meeting was the decision of the Network to start publishing a yearbook in English, *Swedish Studies in European Law*. The first volume of this new publication will be published by Hart Publishing in October 2006.

Professor Bill Dufwa, chair of insurance law at Stockholm University, gave a seminar at the Institute within the framework of the Comparative Law Discussion Group on 29 November 2005 on ‘Bringing the Pieces Together: Problems and Satisfaction in Group Work Harmonizing European Private Law’ (see above, p. 39) and Professor Bernitz gave a seminar within the framework of the EC Law Discussion Group on 30 May 2006 on ‘The Duty of Supreme Courts to refer cases to the ECJ: Towards a Stricter Standard’ (see above, p. 43). An article based on this seminar will be published in Volume 1 of the Yearbook *Swedish Studies in European Law*, mentioned above.

Dr Dan Eklöf of Stockholm University visited the Institute as a guest researcher during most of Trinity Term 2006, sponsored by the Venture. Dr Eklöf specialises in intellectual property and competition law (see below, p. 60). Several other Scandinavian young researchers have also visited the Institute during the academic year for shorter periods.

Professor Bernitz acted as editor of the Festschrift, *A European for All Weathers. Liber Amicorum Sven Norberg* to be published by Bruylant, Bruxelles in the autumn of 2006 and has authored the article ‘European and Nordic Competition Law: How Well do they Correspond?’.

Based on a conference organised by the Institute during the previous academic year, Professor Bernitz has published an article ‘The Commission’s Communications and Standard Contracts Terms’, included in the book *The Harmonisation of European Contract Law* (see above, p. 33).
Professor Lu Bao is Professor in the School of Law at the University of International Business and Economics, Beijing, China. He is also a Fellow of the Research Center at the China Institute for Policy Studies. His main fields of teaching and research are jurisprudence, comparative law and European Union law. He spent the full year of 2006 as a Visiting Fellow at the Institute. In this period, he worked on several research projects including the history and recent development of European Union Law, the legal structure of the European Union, the theory of comparative law and, especially, comparative studies between European law and modern Chinese law. As a result of his research, by the middle of 2006, he had completed seven chapters focusing on European law and comparative law in two books to be published in China.

Dr Dan Eklöf from Stockholm University specialises in competition law and intellectual property law. He holds an LLM degree from the Law Faculty of Uppsala. Having completed a Masters programme at Essex University, he worked as law clerk in the Stockholm City Court. Returning to the academic field, his doctoral thesis was submitted in 2004 to Stockholm University’s Law Faculty, where he now holds a research position. Eklöf spent the fall term 2005 at Yale Law School as a visiting scholar. His current research deals with the ban on anti-competitive contracts under Article 81 EC following the antitrust ‘modernisation’ of 2004. Eklöf spent Trinity term 2006 at the Institute, pursuing research on transaction cost aspects of alleged anti-competitive contractual provisions, particularly with regard to the ‘ancillary restraints’ doctrine.

Francesca Fiorentini graduated in Law from Trento University in 1999. She defended her PhD thesis in private comparative law on ‘Security Rights over Immovable Assets in European Law’ in 2004. From 2001 to 2005 she worked as a research assistant to Professor Mauro Bussani at the University of Trieste. Since September 2004 she has been a Research Fellow at the Max Planck Institute for Foreign Private Law and Private International Law in Hamburg where she is responsible for the research on Italian Law within the Working-Team on Security Rights of the ‘Study Group on a European Civil Code’, directed by Professor Ulrich Drobnig. Together with Professor Cornelius van der Merwe (Aberdeen) and Gary Watt (Warwick), Francesca is an editor of a research project on Security Rights over Immovable Assets in European Private Law within the ‘Common Core of European Private Law’ project.
directed by Professors Ugo Mattei and Mauro Bussani. She spent October and November 2005 at the Institute as a ‘young researcher’, writing an essay on secured transactions in European Law and pursuing her current research on the role of equity in the European civil law tradition. Her stay was funded by the European Uniform Terminology Network (see below, p. 63).

**Dr Ulrich M Gassner** is Professor of Public Law at the University of Augsburg. His current main areas of research are competition law, pharmaceutical law and environmental law. He wrote several books including *Principles of Competition Law* (1999) and published many articles in various legal journals, e.g. ‘Procedural Rights in EC Anti-Dumping Proceedings’, (1996) *World Competition* 19–44; ‘How Recent Developments in EU Competition and Pharmaceutical Law will Affect Parallel Trade’, [2004] *The Regulatory Affairs Journal (Pharma)* 655–662. During his stay at the Institute, Professor Gassner prepared a speech entitled ‘Towards Greater Transparency within the EU legislation’ given in Brussels at a conference of the Academy of European Law. Furthermore, he did research work in EC competition law relating to problems of market definition in the health care sector and the impact of state aid law on local and regional business development.

**Dr Tjakie Naudé** is Associate Professor of Private Law and Roman Law at the University of Stellenbosch, South Africa. She visited the Institute during 2006 to do comparative research on the control of unfair contract terms. Shortly after her arrival, the South African government published draft consumer protection legislation for comment which contains provisions on unfair contract terms. She therefore focused her comparative research on mechanisms which were not utilised in the draft legislation, such as an indicative or ‘grey’ list of suspect terms, and on other aspects of the legislation that could be improved in the light of comparative research. She is also interested in comparative experience with unfair terms control in business-to-business contracts, on which she hopes to make proposals for South Africa on completion of her research. In addition, she conducted comparative research on incorporation of standard terms into contracts, including the treatment of surprising terms and the battle of the forms. In this regard, she focused particularly on case law and literature on the UNIDROIT Principles of International Commercial Contracts, the Principles of European Contract Law and the United Nations Convention on Contracts for the International Sale of Goods, but also considered some domestic laws.
**Professor Marco Olivetti**, Professor of Constitutional Law at the University of Foggia, Italy, spent a week in the Institute at the beginning of June 2006, working on a research project concerning some aspects of Indian Constitutional Law (and in particular the parliamentary system and the judicial review of legislation). The time in Oxford were spent mainly working in the Bodleian Law Library and in the India Institute Library and is part of a wider project concerning the parliamentary system of government in former Commonwealth countries.

**Professor Jacques du Plessis** of the Department of Private Law and Roman Law at the University of Stellenbosch in South Africa, was a visiting researcher at the Institute from 27 August to 14 September 2006, during which time he carried out comparative research on common law and civil law approaches to the law of unjustified enrichment.

**Benjamin Schirmer** is a doctoral student at the European Legal Studies Institute at the University of Osnabrück, Germany. He spent five weeks at the Institute in November and December 2005, working on his thesis which concentrates on the constitutionalisation of English administrative law, especially the procedure of judicial review established by the Human Rights Act 1998. The visit to Oxford was supposed to fulfil two main purposes: firstly verifying and researching case law and literature, especially journal articles and recent publications, and secondly talking to experts in English administrative law and discussing the thesis’ main conclusions. His thesis which will also look at the discussion about how a common European administrative law depends to a large part on the personal contact between scholars of the different legal cultures and systems.
Visitors under the Uniform Terminology Network

The Project ‘Uniform Terminology for European Private Law’ began in September 2002 for a period of four years. Its aim was to facilitate the national reception of Community policy within the field of private law through both the realisation of a common terminology of European private law and a better understanding of the impact of historical divergences. To achieve these goals a network of specialists of several countries and from different research areas (such as comparative law, international law, civil procedure, legal theory and civil law) was created. The teams involved in the project were:

- the Lyon team led by Professor Moréteau, Professor of Comparative Law and Director of the Institut de Droit Comparé;
- the Warsaw team led by Professor Jerzy Rajsky, Head of the Comparative Civil Law Chair at the Institute of Civil Law of the Warsaw University;
- the Turin team led by Professor Gianmaria Ajani, Director of the Department of the Law Faculty of Turin University;
- the Münster team led by Professor Dr Dr h.c. Reiner Schulze, Director of the Institute of International Business Law and the Centre of European Private Law;
- the Oxford team was initially led by the late Professor Peter Birks, Regius Professor of Civil Law at the University of Oxford. In the third year, Dr Arianna Pretto took over from Professor Birks and during the last year, the project was led by Professor Stefan Vogenauer, Professor of Comparative Law and Director of the Institute;
- the Barcelona team directed by Professor Alegría Borrás, Professor in Private International Law at the University of Barcelona;
- the Nijmegen team coordinated by Professor Dr SCJJ Kortmann, Professor of Civil Law and Chairman of the Board of the Business and Law Research Centre and Professor Dr HLE Verhagen, Professor of Civil Law and International Private Law.

The teams were coordinated by Professor Ajani and worked on the production of an electronic legal syllabus, at the same time carrying out comparative research in certain fields of private law where transnational communication is essential. The branches investigated included: ‘Law and Obligation’, ‘Brussels II Convention’, ‘European Trade Law’, ‘Security Rights Banking and in particular
International Credit Transfers’, ‘Unjust Enrichment’, ‘Unfair Competition’ and ‘Legal Terminology on Civil Procedure and Enforcement of Judgments’. Each team worked in groups on different research areas regularly exchanging its knowledge with the other teams in an integrated and comparative approach.

All teams in the project shared the belief that training a group of young European jurists would represent an important step in overcoming existing conflicts between member States’ orders and policy-making at the Community level. Each University thus offered its training skills to young visiting researchers affiliated with the participating teams. Oxford hosted six young researchers from other teams who came for periods of ten months in order to complete a Master of Studies degree: Amedeo Rosboch (University of Turin), Constantin Aurel Iscră (University of Lyon), Olaf Meyer (University of Münster), Niels Vermunt and Stijn Damminga (both from the University of Nijmegen) and Elisabet Rojano Vendrell (University of Barcelona).

Furthermore, the network hosted other young researchers (Dr Fernanda Nicola, Dr Francesca Fiorentini and Geneviève Helleringer) as well as senior researchers (Professor Alegría Borràs of the University of Barcelona, Professor Dr Julio Gonzáles Campos, Autonomous University of Madrid and Professor Michele Graziadei of the University del Piemonte Orientale, who was invited to deliver the Clarendon Lectures in Oxford) who came for a shorter period to do research on projects related to the network.

The amount of the EU grant given to the project was €1,390,000 of which Oxford received €260,000. On the following pages, the researchers and students who came to Oxford as part of the network during the academic year 2005-6 report on their activities.

My Research Stay as a ‘Young Researcher’ under the Uniform Terminology Network

Educated in the civil law tradition (Paris I, Panthéon Sorbonne University) and as a common lawyer (JD, Columbia University, New York), and having practised corporate law in New York and Paris for six years, I am currently a doctoral student and a lecturer at the Sorbonne University. My research interests concentrate on transnational and comparative contract and business law, European private law and legal theory.

I was delighted to be awarded funding by the Uniform Terminology Network to enable me to pursue research for two months at the Institute of European and Comparative Law during the summer of 2006. I could make extensive use of the rich Bodlelian Library resources in English and European private law.
I could also enjoy excellent intellectual and material working conditions at the Institute, where I met lawyers from different countries and domains of expertise. And, last but not least, I experienced – and enjoyed very much - the Oxford way of life.

My research topic for my time in Oxford was ‘Non Core Terms in European Contract Law’. This study is grounded in a realistic approach to contracts. Contractual promises are often presented as creating a legal boundary between the parties enabling the promisee to require from the promisor a determined performance or its equivalent. Such an abstract approach may be criticised as ignoring the purpose of the contract. Why are parties willing to be bound by the contract to do, not to do or to give something? Answering this question requires a reference to a more realistic approach to contract.

Considering specific contracts, and specific expectations of the parties to such specific contracts, turns out to be quite helpful in this attempt to define the general purpose of contracting. Parties enter contracts in order to obtain an economic result that they could not obtain without a contractual exchange. For example, entering into a sale enables the buyer to obtain the exclusive use of the thing for a certain price – which translates in legal terms as property transfer; delivery, warranty and price. Entering into a lease enables the tenant to obtain the temporary use of a thing for a price – which again translates in legal terms as use and payment of a rent. This realistic approach leads to the idea that entering a contract consists of transforming an economic problem into a legal equation.

Under this realistic conception, contractual legal techniques endorse a quite modest role: enabling the economic operation foreseen by the parties to happen and, as the case may be, determining whether performance is defective and providing for remedies. The purpose of contract law is to achieve the foreseen operation and to secure criteria of correct performance. In other words, contractual legal techniques would be ancillary to the performance of the contemplated economic operation provided for in the instrumentum.

It may be observed that the economic utility of a contract is concentrated in the performance of ‘core’ terms or obligations. First conceived in the minds of the parties, they are essential and necessary in achieving their goal. This idea of core terms is central to the 1993 Unfair Terms in Consumer Contracts Directive which only applies to terms other than those ‘describing the main subject matter of the contract (or) the quality/price ratio of the goods or services supplied’. Though the meaning of this provision was interpreted by English courts in Director General of Fair Trading v First National Bank [2000], no harmonised definition is currently in force in Member States.
A uniform definition of non-core terms in European private law may, however, be suggested on the basis of a realistic analysis of contractual structure. Contractual agreements often incorporate terms that, without being central to the contemplated exchange, participate in the definition of the exchange, e.g. non competition clauses in share sales purchase agreements; arbitration clauses in leasing agreement; liquidation clauses in agreements for the sale of goods. Such terms do not describe the main subject matter of the contract and if not stipulated could not be implied. Distinct from the core terms, they may be termed ‘non core terms’.

There is a growing use of non core-terms in European cross-border transactions and a need for a unified terminology. The practice of commercial and consumer contracts in continental Europe jurisdictions has undergone changes at an accelerating rate since the 1970s under the influence of common law practices, and UK practices in particular. One of the most visible signs of this evolution is the drafting style and the intensive use of non-core terms with the replacement of virtually all statutory provisions governing such contracts or relationships between the parties in civil law jurisdiction by fully drafted clauses. In the securing of trans-border transactions in Europe between jurisdictions of common law tradition and civil law tradition, the proposal for a principled uniform terminology for non-core terms clauses would be key. It would in particular enable a more predictable and uniformised enforcement of the 1993 Directive.

More specifically, my research on a uniform terminology and interpretation for non core terms in European private law has prompted the following research steps – initiated by my research stay at the Institute of European and Comparative Law in Oxford.

Firstly, I have identified criteria for a uniform definition of non-core terms that would be applicable in European jurisdictions of common law or civil law tradition: non-core terms are functional terms ancillary to the relationship between the parties created by core terms in long term contracts. Non-core terms set forth the prévisions of the parties as to the outcome of these core terms (enforcement or breach) and, as the case may be, replace corresponding implied terms. Depending on the content of a given contract, similar terms may be core or non-core. For example, information clauses are core terms in advice and consulting agreements but non-core terms in sale agreements.

Secondly, I have mapped a uniform typology for non-core terms transcending differences in legal outcomes as to validity and interpretation of these terms in the various European jurisdictions. Two broad and non-overlapping categories may be distinguished: on the one hand, terms stipulated in contemplation with
contract enforcement (terms designed to maximise efficiency of enforcement such as notification clauses, or to protect the result of enforcement such as confidentiality clauses); and, on the other hand, terms stipulated in contemplation breach such as exemption clauses, or risk of breach such as termination clauses.

Geneviève Helleringer,
Doctoral Student, University of Paris I (Panthéon-Sorbonne)

My Year as an Exchange Student under the Uniform Terminology Network (I)

I spent the academic year 2005-6 as an MSt student at Oxford. Previously I had done research in the field of private law at the Radboud University Nijmegen. Both the University of Oxford and the Radboud University Nijmegen are partners in the IHP project, a project funded by the European Union, which aims to improve cross-border research within the EU. It has been a wonderful and extremely enriching year for me – both in the academic and personal sense. It is difficult to express my experiences in a few paragraphs, but in this report I would like to describe some of the aspects that have been the most precious for me.

The exchange programme exists between seven European universities. When I applied for it I saw this as a unique opportunity to spend one year as a research student at the renowned University of Oxford with all the advantages that this exchange programme offers: a simplified application procedure, no University or College fees, and a great and stimulating intellectual environment. Dr Ariano Pretto and Dr Alexandra Braun kindly helped me with all the administrative problems.

As an MSt student I wrote a thesis on a topic in the field of the law of unjust enrichment, the field of research which I had been working in for three years. I concentrated on the unjust factor of failure of consideration. In my thesis I addressed the question whether a defendant should have been aware of the claimant’s expectations, a proposition that is very often mentioned, but usually not explained. I also attended the seminars and lectures of the BCL course on the Law of Restitution, which were given by Professor Andrew Burrows, Dr James Edelman and my supervisor, Mr William Swadling. This too was very rewarding. Not only did studying the English law of Restitution give me insight in the common law solutions, but it also gave me a better understanding of the Dutch and German legal systems. No doubt I will benefit from this year throughout my entire academic career in the Netherlands.
Another very interesting series of seminars that I attended was the BCL course on ‘European Private Law: Contract’. This course was taught by Professor Vogenauer, Mr Cartwright and Dr Whittaker. Once again, contrasting three European legal systems proved very helpful in understanding several fundamental ideas and rules in the law of contract.

On a personal and social level the Oxford experience proved very valuable as well. I joined the Christ Church Boat Club and rowed for The House as a novice in Michaelmas term and in Men’s Second VIII in Trinity term. In the Graduate Common Room of Christ Church I met some very interesting people, with whom I hope to keep in touch for the rest of my life. The GCR offered some very interesting opportunities: the weekly video night event, where mainly arthouse films were shown and discussed, the drinks and dinners and especially the conversations about culture, academic topics, philosophy and politics.

Stijn Damminga,
Doctoral Student, University of Nijmegen

My Year as an Exchange Student under the Uniform Terminology Network (II)

I would like to use this occasion to thank the European Commission and the partner universities of the network for supporting me and granting me this unique opportunity to study at one of the best universities in the world. It has been a very fruitful year and I have learned a lot about many important topics.

My main research project was directed at a highly disputed legal problem in the field of litigation, namely the parties’ duty to disclose documents in legal proceedings. As is well known, there is a deep divide between civil law and common law jurisdictions with regard to the so-called ‘discovery’. Whereas common law countries grant a party to litigation far-reaching rights to inspect his opponent’s documents prior to the trial, no such general obligation is known in civil law countries. This is not merely a technical difference, but a real clash of conflicting values, deeply rooted in the legal culture of the respective countries. In the past, this has given rise to a severe conflict of justice administrations, which manifested itself in the disputed interpretation of the scope of the Hague Evidence Convention, the blocking legislature of many countries, and the threat not to enforce foreign judgments that were entered after pre-trial discovery.

For a long time, the contrast in attitudes towards discovery of documents has been seen as an unbridgeable difference between the procedural systems of
civil law and common law countries. In the light of the developments of the last two decades, however, this view can no longer be sustained. The United States, England and Germany have undertaken important reforms of their domestic procedural systems, thereby slightly converging on this issue. Of much greater importance, however, has been the development on the international level. Procedural rules have been issued by both practitioners in the field of international arbitration and by academic working groups, attempting to overcome the clash of legal cultures and to find a workable compromise. My thesis analysed the emerging international consensus regarding discovery mainly from the perspective of the international sets of rules. The results might be useful for future attempts to harmonise the law of discovery. I am planning to publish the findings in international law journals.

The thesis would not have been possible without the support and the extraordinary research facilities of the Law Faculty in Oxford. My supervisor, Mr Ed Peel (Keble College) and my tutor, Mr John Cartwright (Christ Church), always had an open ear for me. The Faculty provided excellent research opportunities, including access to all important international databases. What is more, the Faculty supported me in founding a discussion group on international arbitration, which was a great help not only for my project, but for all other students here working in the area of arbitration. Last but not least, I have to thank the people administering my scholarship. Everybody was very helpful and there were no problems at all.

Olaf Meyer,
Research Fellow, Centre of European Law and Politics, Bremen
Looking Ahead to the Academic Year 2006-7

Re-Establishment of the Erich Brost University Lectureship in German and European Community Law

As mentioned in the Introduction to this report, the Erich Brost University Lectureship in German and European Community Law will be advertised and filled during the coming academic year. The position is tailor made for the career development of an expert in German law, possibly of postdoctoral status, who wishes to pursue his or her teaching and research in an international English-speaking environment. The post will be advertised in the English and German legal press.

( SV )

Establishment of a Student Exchange with a Spanish Law Faculty

The academic year 2006-7 will see the conclusion of a student exchange agreement between the Institute and a Spanish law faculty. This will lead to an expansion of our prestigious four year ‘Law with Law Studies in Europe’ degree to yet another European jurisdiction (see above, p. 45). It is hoped that the first group of Oxford undergraduates can read law in Spain during the academic year 2008-9.

( SV )
Training of Judges in Competition Law

The Institute and its Centre for Competition Law and Policy have received funding from the European Commission to run a second training programme for national judges in EC Competition Law (see above, p. 20). The programme will take place in St Anne’s College, Oxford from 25 to 29 June 2007 and will once again focus on European competition law and policy and its application at Community and national levels with special attention being given to the enforcement of competition laws by national courts and the co-operation between the European Commission and national courts. The programme will consist of lecture sessions, workshops and case studies.

(SV)

Social Justice in European Private Law: Joint Seminar with the Cour de cassation and the Association Sorbonne-Oxford

On 26 January 2007, a seminar on ‘Democracy and Social Justice: What Future for European Private Law?’ will be held at the Cour de cassation in Paris, in collaboration with the Association Sorbonne-Oxford pour le droit comparé (see above, p. 57). Concerns over the social and democratic aspects of the elaboration of European private law led to the publication of ‘Social Justice in European Contract Law: a Manifesto’ in the European Law Journal of 2004 and in the Revue trimestrielle de droit civil in 2005. The seminar will follow up on this debate. It will bring together judges, academics, members of European institutions, members of the French Parliament and practitioners. The working languages will be French and English, without simultaneous translation. A general report and the contributions to the seminar will be published.

(AE)
What is Scandinavian Law?

Professor Ulf Bernitz has started planning for an international comparative law conference on the theme ‘What is Scandinavian Law?’ to be held in Stockholm in April 2007, to be documented as a forthcoming volume of the publication *Scandinavian Studies in Law*. The conference will consider whether or not Scandinavian law merits a position as a particular legal family and will discuss what contributions Scandinavian law can make to the ongoing development of the law, in particular within Europe.

(UB)

Reforming the French Law of Obligations: Joint Conference of the Institute and the Association Sorbonne-Oxford

The Institute will organise a two day colloquium with the Association Sorbonne-Oxford pour le droit comparé in March 2007. It will be convened by John Cartwright, Stefan Vogenauer and Simon Whittaker at St John’s College, Oxford. The aim of the colloquium is to analyse and assess some particularly interesting aspects of the most wide-ranging reform project of the *Code civil* in recent history, the *Avant-projet de réforme du droit des obligations et de la préscription* (the ‘avant-projet Catala’). This will be done from an internal French perspective and from wider perspectives of comparative law: each topic will be covered by a French speaker and by a comparative lawyer from another jurisdiction.

(SV)
UNIDROIT Principles of International Commercial Contracts

A further workshop of the contributors to the Commentary on the UNIDROIT Principles of International Commercial Contracts (see above, p. 21) will be held at Brasenose College, Oxford on 10 and 11 March 2007. The aim is to discuss the final drafts with a view to turning them into manuscripts shortly thereafter.

Meeting of the Acquis Group

The Redaction Committee of the European Research Group on Existing EC Private Law, the so-called ‘Acquis Group’, will meet in Oxford on 13 and 14 October 2006. The meeting will be organised by Gerhard Dannemann, Professor at the Centre for British Studies at the Berlin Humboldt University and Research Fellow at the Institute. The Acquis Group, founded in 2002, currently consists of more than 40 legal scholars from nearly all EC Member States. Responding to activities of EU institutions in the field of European contract law, it aims at a systematic arrangement of existing Community law which will help to elucidate the common structures of the emerging Community private law. For this purpose, the Acquis Group primarily concentrates upon the existing EC private law which can be discovered within the acquis communautaire. The research of the Acquis Group will be published as a set of ‘Principles of the Existing EC Contract Law’.

(SV)
Appendix A: Members of the Advisory Council

The Governance Arrangements for the Institute, as agreed by the Law Board, provide that in ‘determining the strategic direction of the Institute the Director will be guided by an Advisory Council’. Its members shall be ‘prominent persons in public life and the legal world, well placed to advise upon and support the work of the Institute’. The Advisory Council meets once annually, usually in connection with our major annual event, the joint conference with Clifford Chance in March. We are grateful to members of the Council for the time spent and for their helpful suggestions on all sorts of issues. The Advisory Council’s composition during the academic year 2005-6 was as follows:

Chairman: The Rt. Hon. the Lord Rodger of Earlsferry PC, DCL, FBA, House of Lords

Professor Avv. Guido Alpa, University of Rome – ‘La Sapienza’, President of the Council of the Bar of the Republic of Italy

Professor Dr Christian von Bar, Managing Director of the European Legal Studies Institute, Osnabrück

Sir Franklin Berman KCMG, QC, Faculty of Law, University of Oxford

The Rt. Hon. the Lord Bingham of Cornhill PC, Hon.DCL (Oxon), House of Lords

Mr Christopher Bright BCL, Shearman & Sterling, London

The Conseiller Culturel, French Embassy, London

Professor Paul Craig FBA, Fellow of St John’s College, Oxford

Mr Ross Cranston QC, 3 Verulam Buildings, London

Mr Eamon Doran, Linklaters, London

Professor Jacqueline Dutheil de la Rochère, Le Président, Université Panthéon-Assas (Paris II)

Professor Sir David Edward CMG, QC, LLD, FRSE, former Judge of the Court of Justice of the European Communities
Mr Michael Elland Goldsmith, Clifford Chance, Paris  
Professor Dr Francesco Francioni, Professor at the European University Institute, Florence and the University of Siena  
Professor Dr Hans Franken, Dean of the Law Faculty, University of Leiden  
Professor Mark Freedland FBA, Research Fellow of the Institute and Fellow of St John’s College, Oxford  
Professor Sir Roy Goode CBE, QC, FBA, Emeritus Professor of English Law, Oxford  
The Rt. Hon. the Lord Hoffmann, House of Lords  
Professor Francis Jacobs QC, formerly Advocate-General at the Court of Justice of the European Communities  
Dr Nina Lemmens, Director, German Academic Exchange (DAAD)  
The Rt. Hon. the Lord Mance, House of Lords  
Mr Martin Matthews, Fellow of University College, Oxford  
The Rt. Hon. the Lord Phillips of Worth Matravers, House of Lords  
Mr Stuart Popham, Clifford Chance, London  
The Rt. Hon. the Lord Saville of Newdigate, House of Lords  
The Hon. Mr Justice Silber, Royal Courts of Justice  
Professor Henk Snijders, University of Leiden  
The Vice-Chancellor, University of Oxford  
Professor Stefan Vogenauer; Director, Institute of European and Comparative Law, Oxford  
Professor Derrick Wyatt, Chair of the Management Committee of the Institute and Fellow of St Edmund Hall, Oxford
Appendix B: Members of the Management Committee

The Governance Arrangements for the Institute, as agreed by the Law Board, provide that the Director, in carrying out his duties will be responsible to the Management Committee, which will be a Committee of the Law Faculty Board. The Committee’s terms of reference include having general oversight of the Institute including its administration of the degree in ‘Law with Law Studies in Europe’, receiving reports on academic activity and programmes, monitoring financial outcomes and approving strategies for income generation. The Management Committee’s Council’s composition during the academic year 2005-6 was as follows:

Chair: Derrick Wyatt (Law Board)
Mr John Cartwright (Law Board)
Dr Ariel Ezrachi (Centre for Competition Law and Policy)
Dr Daniel Kelemen (Social Sciences Division)
Professor Ewan McKendrick (Chair of the Law Board)
Professor Stefan Vogenauer (Director of the Institute and Course 2 Co-ordinator)
Professor Stephen Weatherill (Jacques Delors Professor of European Law)
Dr Katja Ziegler (Institute of European and Comparative Law)
Appendix C: Financial Supporters of the Institute

Since its establishment in 1995 the Institute has been fortunate to rely on the continuous support of global law firm Clifford Chance LLP. Clifford Chance provides a major part of the Institute’s budget which goes towards funding the administration of our prestigious four year BA in ‘Law with Law Studies in Europe’ (see above, p. 45). It also helps with financing some of our events, particularly our joint annual conference (see above, p. 18). Stuart Popham, Senior Partner of Clifford Chance, has been strongly involved with preparing this conference and actively supports the Institute as a member of its Advisory Council. We are immensely grateful to Clifford Chance and congratulate them on winning the prestigious title ‘Law Firm of the Year’ at The Lawyer Awards, during a ceremony at The Grosvenor House Hotel, London, in June 2006!

The Institute also gratefully acknowledges financial support received over the years from the following governments, organisations, institutions, and individuals, listed here in alphabetical order:

Andbel AS, Norway
Anderson Foundation, Houston, Texas
Ian Arstall, formerly Linklaters
Pauline Ashall, Linklaters
Association Sorbonne-Oxford pour le droit comparé, Paris
Banca Monte dei Paschi, Siena
Banca di Roma
Christopher Bright, Shearman & Sterling
Anneliese Brost
Casa di Risparmio di Genova e Imperia
Ferrier Charlton (now retired), Linklaters
CMS Hasche Sigle Eschenlohr Peltzer Schäfer Attorneys, Stuttgart, Germany
Commerzbank AG
Christopher Coombe, Linklaters
Deminex (UK) Ltd.
Deutscher Akademischer Austauschdienst (DAAD), Bonn and London
Martin Elliott, Linklaters
The Europaeum, University of Oxford
Appendices

The European Parliament
Frankfurter Allgemeine Zeitung GmbH
The French Embassy, London
The French Government
The Gildesgame Trust
Diana Good, Linklaters
Sir Ronald Grierson
Tony Grundy, Linklaters
Michael Hardwick, Linklaters
The Italian Government
Raymond Jeffers, Linklaters
The Leiden Institute of Anglo-American Law, The Netherlands
The Leverhulme Trust
Guy Lewin Smith, Linklaters
Linklaters, London
Alexandra Marks, Linklaters
Jane Murphy, formerly Linklaters
Harold Paisner, Berwin Leighton Paisner
Martin Paisner, Berwin Leighton Paisner
Nick Rees, Linklaters
James Rice, Linklaters
Dr Erich Schumann, Rechtsanwalt, Geschäftsführer der Zeitungsgruppe WAZ, Essen
Nick Tarling, formerly Freshfields
Steven Turnbull, Linklaters
Vivendi plc
Von Caemmerer Stiftung
The VSB Bank, The Netherlands
The Wallenberg Foundation, Sweden
Wertpapier-Mitteilungen (the publishers, for kindly donating the journal)
Tom Wethered, formerly Linklaters
Philip Wood, former partner, Allen & Overy
Dr and Mrs Hans Günter Zempelin
The Association Sorbonne-Oxford
Thesis prize 2006

The Association was founded in 1999 by l’Université de Paris I, the Institute of European and Comparative Law of the University of Oxford and Clifford Chance. The objects of the Association are to develop exchanges, teaching and research in the field of Anglo-French comparative law between the two universities. The Association is funded principally by Clifford Chance. Since its creation, the Association has:

- contributed to the cost of bringing professors from Oxford to teach at Paris I;
- financed the acquisition of English and American law books, and subscriptions to English and American law journals, for Paris I’s comparative law library, located at rue Malher in Paris;

The Association has also founded a biannual prize for an outstanding thesis, in English or French, involving a comparison of laws of the Romano-Germanic and Common Law traditions. The first such prize was awarded in 2004 to Yves-Marie Laithier for his thesis: ‘Etude comparative des sanctions de l’inexécution du contrat’.

Applications for the 2006 prize are now invited. The closing date for the submission of these is 31 December 2006. The Regulations for the prize may be obtained from Michael Elland-Goldsmith, Secretary General of the Association, c/o Clifford Chance, 9 Place Vendôme, CS 50018, 75038 Paris Cedex 01, (e-mail: michael.elland-goldsmith@cliffordchance.com).
For further information about the Institute please contact in the first instance:

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