



Queen Mary
University of London

Centre for Commercial Law Studies



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Alumni Second Edition – Spring 2011 Bulletin

Welcome from the Director

Welcome to the second edition of the CCLS Alumni Bulletin where you will find information from fellow alumni on their areas of work and on the activities going on at our home in Lincoln's Inn Fields. The first CCLS Alumni Drinks reception was held last November at Farrer's & Co LLP and was a great success. It is wonderful for CCLS staff to be able to see former students and hear about their career progression. We hope to welcome you back in November to the next London alumni drinks reception and plan to post the date on our website soon.

We were delighted that the Guardian newspaper voted the Queen Mary's School of Law as the top school of law in London. Another great endorsement of the research we do was Prof George Walker's award of the Leverhulme Fellowship for two years.

We hope that you will enjoy reading this second edition of the CCLS Alumni Bulletin and look forward to receiving any comments or letters on the articles you read here.



Professor Spyros M Maniatis
Director, Centre for Commercial
Law Studies
Queen Mary, University of London

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Regulatory responses to the financial crisis

Professor Rosa Maria Lastra, CCLS Professor of International Financial and Monetary Law

Leading academics at CCLS have been at the forefront of the regulatory responses to the financial crisis at the national, European and international level. Professor Rosa Lastra was Specialist Adviser to the House of Lords regarding its inquiry into EU Financial Regulation and responses to the financial crisis from November 2008 to June 2009, contributing to the writing of the Report of the Lords' European Union Committee on the Future of EU Financial Regulation and Supervision, published in June 2009. Professor Lastra was also advising the International Monetary Fund on the legal and policy issues associated with cross-border bank insolvency from July 2009 to June 2010.

Here Professor Rosa Lastra outlines her view on current regulatory responses to the financial crisis.

Insolvency procedures have traditionally been nationally based, entity-centric and sector specific. The demise of national frontiers in today's global financial markets shows the limitations and inadequacies of these principles to deal with financial

conglomerates, complex financial groups and international holding structures. These inadequacies are particularly evident in the case of cross-border bank insolvency. Institutions may claim to be global when they are alive, they become national when they are dead. The bankruptcy of Lehman Brothers is a clear example of the dichotomy between global markets and national regulation, supervision and resolution. In response to calls from the G-20 leaders who, at their London Summit in April 2009, agreed 'to support continued efforts by the IMF, FSB, World Bank, and BCBS to develop an international framework for cross-border bank resolution arrangements,' the IMF published a document (dated 11 June 2010) proposing a framework for enhanced coordination in the resolution of cross border banks to which I contributed.

The approach favoured by the IMF is the establishment of a framework for enhanced coordination, based upon four elements: First, countries would amend their laws so as to require national authorities to coordinate their resolution efforts with their counterparts in other jurisdictions to the maximum extent consistent with the interests of creditors and domestic financial stability. Importantly, national authorities would continue to retain discretion to act independently if, in their judgment, such action is more consistent with these objectives. Second, recognising that countries will be in a better position to cooperate with countries that have

resolution frameworks that are sufficiently aligned with their own, the enhanced coordination framework would only be applicable to those countries that possess 'core-co-ordination standards' relating to the design and application of resolution systems. So as to align resolution and supervisory incentives, implementation of the Basel Committee's Concordat on supervision would also be a component of the core co-ordination standards. Third, although a key objective underlying the adoption of resolution frameworks is to minimize the need for public funding, there might be cases where such funding is needed, at least on a temporary basis. Accordingly, an element of the enhanced coordination framework would be the specification of the principles that would guide the burden sharing process amongst cooperating authorities. Fourth, countries that subscribe to the enhanced coordination framework would also agree to coordination procedures designed to enable resolution actions in the context of a crisis to be taken as quickly as possible and to have cross border effect (which would entail a significant departure from current practice).

In her recently published book on Cross Border Bank Insolvency (Oxford University Press, 2011), Professor Lastra suggests the need to achieve internationally an agreed definition and understanding of bank insolvency, similar to the international agreement [soft law] on bank capital and argues that though this is likely to be a protracted process, the journey has already started. Bon voyage!



All views represented in these articles are those of the writers and contributors.

Did you know...?

The **Guardian's University 2011 Guide** ranks Queen Mary's School of Law third overall in the UK and first in London for law.

Professor George Walker awarded Leverhulme Fellowship for Financial Law Professor George Walker has been awarded the Leverhulme Fellowship for two years, commencing October 2011. This will be the second consecutive year that the Leverhulme award has been awarded to the Centre for Commercial Law Studies at Queen Mary, University of London. Professor Chris Reed's Leverhulme funded project runs until October 2011.

Dr Rafael Leal-Arcas awarded international fellowship for research at World Trade Institute The Swiss National Science Foundation (SNSF) has awarded Dr Rafael Leal-Arcas an international fellowship to conduct research at the World Trade Institute (University of Bern) on the interface of climate change, international trade, and energy law.

Dr Duncan Matthews appointed to the IPO Trade and Development Expert Advisory Group

Dr Duncan Matthews was appointed to the Intellectual Property Office Trade and Development Expert Advisory Group in January 2011.

The **School for International Arbitration** has been shortlisted for the Sustained Contribution to Best Practice award, at the Global Arbitration Review Awards.

Sons and daughters of alumni of the College paying international fees are entitled to a 10% reduction on their tuition fees, if no other College scholarship has been offered.

Mile End Library is increasingly acquiring electronic books, (in addition to databases and e-journals). The library has also recently undergone refurbishment, which has included the creation of a new Teaching Collection of books, and a dedicated reading room for research postgraduates will be opening soon.

Life at the London office of Shearman & Sterling

'Apostolos Gkoutzinis, Senior Associate at the London office of Shearman & Sterling, LLM Harvard Law School. LLM and PhD Queen Mary, University of London, Class of 2004

'Apostolos Gkoutzinis practice includes international capital markets, mergers & acquisitions, and leveraged finance.

A leading U.S. law firm by lineage, Shearman & Sterling was one of the first Wall Street firms to expand internationally and build a truly global integrated network. By any measure, the firm expanded overseas relatively early, opening its first foreign office in Paris, in 1963, followed by London in 1972. Since then, the firm has advised on many of the largest transactions in the London market, including most of the large privatizations of the 1980s and early 1990s and some of the most complex cross-border corporate transactions (such as the unique cross-border merger of Daimler-Benz and Chrysler or the recent acquisition of Cadburys by Kraft).

After almost 40 years in the London market, the firm is now one of the largest and most reputable law firms with a U.S. heritage operating in London. Naturally, the firm is nowadays very different from its initial establishment as the local "outpost" of a Wall Street firm. These days, the majority of the 120-strong legal staff in the London office, including the majority of the London-based partners, consists of English lawyers practising English law. There are obviously a number of U.S. lawyers (including "yours truly") in the London office, working

alongside the English lawyers in most transactions, which allows the firm to offer integrated English and U.S. legal advice across a broad range of practices and legal matters.

The life of a U.S. lawyer in London is busy, exciting and rewarding. U.S. practice groups tend to be rather small these days, with no more than 10-15 lawyers apiece, even in the largest U.S. law firms in London. This institutional format, which is based on small numbers of highly skilled lawyers, allows an atmosphere of strong individual responsibility, excellent work ethic and, not rarely, entrepreneurship to flourish. The work is invariably complex and, in most cases, unique; there is usually a very particular reason why a client would require the legal services of a U.S. lawyer in London and that reason is rarely associated with mundane, repetitive work.

The working environment is, needless to say, truly cosmopolitan. An American accent is no longer required for a successful career as a U.S. lawyer in London; an excellent legal education in the United States (or Canada) and a commitment to the tradition of legal excellence of the finest U.S. law firms (unexceptionally) is. The demographics of my own practice group are representative of the trend. In a group of 12 lawyers, all

practising federal U.S. and New York law, I count six countries of origin: America, Canada, Greece, Brazil, Japan, Belgium and France. The cultural mix is very pleasant, the atmosphere friendly and our experiences as expatriates in London common and mutually supportive.

How is the work? In short, demanding but rewarding. The workload is not for the workshy or those looking for predictability in their working days. The hours are long and the commitments unpredictable. Our clients are located all over Europe, Africa and the Middle East. We are prepared to serve them on the same basis. It is not uncommon to come to the office early in the morning with an expected "light" schedule ahead, only to find ourselves boarding an overseas flight early in the same afternoon for an urgent client meeting. We travel a lot, meet interesting people, get involved in deals that shape modern business and hardly ever complain of routine or repetition in our working lives.

Demanding though they may be, most of us love our jobs and look forward to a long career in law firm practice (which certainly does not mean that a leisurely weekend or some extra sleep are not warmly appreciated after the closing of another hard deal).

Pushing Legal Knowledge Boundaries Queen Mary PhD Conference 2011



We are pleased to announce the Queen Mary Graduate Conference – Pushing Legal Knowledge Boundaries. The Conference will be held on 7 June 2011 at Queen Mary, University of London's historic Charterhouse Square Campus.

The School of Law invites all law students and legal professionals to attend the conference, which is supported by the Department of Law and the Centre for Commercial Law Studies (CCLS). It is organised and chaired by School of Law PhD students at Queen Mary, University of London. The Conference is a unique opportunity for presenters and participants to exchange ideas and knowledge on contemporary legal issues.

Please go to www.law.qmul.ac.uk/events to register.

Deadline 31st May

Areas of law presented will include:

- Intellectual Property
- Commercial and Corporate Law
- Information Technology Law
- Tax Law
- Public International Law
- Criminal Law
- European Union Law
- Arbitration
- Human Rights
- Banking and Finance Law
- Constitutional Law
- Litigation
- Competition Law



For further information or to update us with your records,
email: ccls-alumni@qmul.ac.uk or tel: +44 (0)20 7882 8481.

Apostolos Gkoutzinis

The first step in winning the future is encouraging innovation

Dr Burcu Kilic, Intellectual Property Law Class of 2006 (LLM) & 2010 (Ph.D)

On January 25 2011, the US President Barack Obama addressed Congress and the nation in the annual State of the Union address. The highlight of his speech was innovation. He told Americans that innovation would be the key factor in America's future global competitiveness. He particularly hit on this theme and brought up excellent examples of American innovation and genius such as Edison, the Wright Brothers and Google. He concluded his speech by saying that "In America, innovation doesn't just change our lives. It is how we make our living".

As the world is moving in the direction of a knowledge-based economy, which is directly based upon the production, distribution, and use of knowledge and information, there is a greater reliance on the areas of knowledge and technology. This places innovation at the core of economic growth and prosperity. Today, innovation is widely accepted as the major driver of economic progress and efficiency, not only in the US but across the globe.

The great emphasis on the impact of innovation on the economic sustainability has ultimately driven a large number of studies in social, economic and political sciences, and law. Innovation gained a high degree of credibility in contemporary legal literature. It has somehow become a new-age buzzword for legal scholarship. The legal discussions usually revolve around innovation incentives- patents, trade

secrets, monopoly, competition, funding of innovation, availability of venture capital etc. Nevertheless, the literature lacks an in-depth systematic analysis of innovation in regulatory governance.

The term 'innovation system' describes the vital economic, social, political, organisational, and institutional factors that have the potential to influence the development and diffusion of innovation. It refers to the level of interplay that takes place between various actors and different institutions that are usually involved in the innovation process.

Over the years, the 'national innovation system' concept was developed in relation to modern innovation research and as a result, the theory enjoyed significant recognition from policymakers in industrialised economies. This theory offers an alternative approach to explaining economic growth and it refers to the collection of organisations, institutions, policies, and linkages that affect creation, development, commercialisation and diffusion of new technology within an economy.

The stakeholders are considered to be an integral part of the system. These stakeholders may be firms, universities and public research institutes; financial institutions, the educational system, government regulatory bodies and others

that directly contribute to the innovation process. The flow of information, resources and regulations occurs between these stakeholders and generates dynamism within the system itself. Legal and institutional rules govern these social interactions between the stakeholders. Thus, they are considered to be an integral part of the system.

Intellectual property rights are widely acknowledged as one of the institutions that are typically involved in the innovation process. They help to generate benefits, either as a direct or complementary asset, in relation to innovation and development. Thus, it becomes clear that a national intellectual property rights strategy, which works within the globally accepted norms, and also matches the nature of country's own innovation strategy and local realities is needed.

Obama is right; the first step in winning the future is encouraging local innovation. This requires, first and foremost, a well-designed national innovation system integrating economic, social and technological as well as legal considerations. Particularly in the field of intellectual property rights, there is a strong call for tailor-made solutions. There is still a long way to go on this road for legal scholarship. Nevertheless, it is time to move from a defensive strategy to an offensive stand.

Transformational Mentoring

Ms Erum Khalid Sattar, Doctor of Juridical Science Degree at Harvard Law School Queen Mary, University of London LL.M. Commercial and Corporate Law, Class of 2008

Ever since I was able to come from Pakistan to Queen Mary in London for an LL.M. in 2007-08 my life has completely changed! When I met the Queen Mary representative that day in Karachi before applying I had no idea how life-changing an event it was. I had planned to be in London for two years, the first doing the LL.M. and the next to qualify to become a Barrister as per my family's wishes and in keeping with long Sub-continental tradition. I could not have predicted at the time that I would be writing this in Cambridge, Massachusetts having just started my doctorate, the S.J.D. or Doctor of Juridical Science degree at Harvard Law School.

As anyone who has been lucky enough to study in a cosmopolitan city like London will tell you, the sheer number of people you are able to study with and the friends you make from around the world would by itself be enough to make the journey (with its attendant hardships and adjustments) more than worthwhile. But in all truthfulness I would not be where I am today were it not for the wonderful mentors whom I was fortunate enough to encounter and who nurtured, enabled and motivated me. Three teachers to whom I owe a lifelong debt are Professor Rosa Lastra who gave me the ability to engage with and to begin to understand the complex and interconnected world of financial regulation and who encouraged me to apply to Harvard (her alma mater) for the LL.M.; Professor Andrew Le Sueur might be expected to intimidate students with his mastery of public, administrative and

constitutional law but who instead with his gentle suggestions of ideas has the most amazing capacity to guide and supervise graduate-length written research work; and finally but by no means last, Professor Loukas Mistelis with his encyclopaedic mastery of Arbitration and Mediation and who with his warmth and humour as a teacher makes even the uninitiated feel that they can begin to understand this whole new world within the law. In short, it is to these exceptional teachers, to whom I owe my academic and intellectual development. I tell you this so you can see that it is the mentors we are fortunate enough to find in life who set it on new paths and who change its course forever.

Before I end, let me share with you a little bit of my life here at Harvard. Last year, I was fortunate during my LL.M. to take exceptional classes with Professors Roberto Unger (Crisis, Globalization and Economics); David Kennedy (Law and Development); Richard Parker (Constitutional Law); and Robert Mnookin (the Negotiation Workshop). The analytic and conceptual frameworks I was able to develop during these have given me tools for life! My main doctoral work focuses on the role of political Islam in the constitutional structure of a nation-state and as such is a study in the domain of comparative constitutional law. I am deeply



Erum Khalid Sattar

interested in broad conceptions of social and political justice and how these can be actualized via the mechanism of a constitution. I am also working on the issue of water both from a development perspective but most keenly after the extreme flooding in Pakistan last summer that displaced 20 million people and caused unprecedented damage to livestock, agriculture and infrastructure. I hope to translate and use my studies to date and going forward here at Harvard into real and tangible benefits for those not fortunate enough to obtain a world-class education.

Ask the Professor: Professor Rosa María Lastra, CCLS Professor of International Financial and Monetary Law

Nusret Cetin (LLM in Banking and Finance Law, class of 2009) current CCLS PhD student.

How would you describe the teaching and academic environment at the Centre for Commercial Law Studies?

In my opinion it is outstanding. From my experience and knowledge of other top law schools in the US, UK and Europe, I think the students at CCLS (School of Law, Queen Mary, University of London), benefit from excellent teaching, research opportunities and a welcoming and fruitful academic environment with very good pastoral care. This together with the opportunity of living in London, a cosmopolitan city at the centre of international relations and international business and finance, makes CCLS a unique place to study commercial and financial law.

Would you explain to us to what extent the recent financial crisis has affected the education in the banking and financial law area?

The recent financial crisis has represented a major change in the understanding of the benefits and drawbacks of financial markets and their regulation. The pendulum has swung in the direction of greater regulation. The challenge is now how to design adequate rules and structures that do not stifle financial innovation but provide a framework for financial institutions to engage in sound risk management, while realising that they need to internalise the costs of their own potential failure, rather than rely on government intervention. The financial crisis has certainly affected the teaching of all our courses – transactional and regulatory – in the field of banking and finance, making them a most attractive choice for students.

The Centre for Commercial Law Studies has achieved great successes in recent years. Would you tell us your predictions and expectations regarding the future of the Centre?

Despite the current fiscal constraints and tougher economic environment, I believe CCLS will continue to excel in research and teaching and that our postgraduate programmes (PhD, LLM and others) will continue to attract the best students from around the world.

Besides your academic studies, we know that you are also involved in policy issues at national, EU as well as international level. More importantly, you are also the mother of four children. Can you explain the secret behind your energy to carry out these relationships and tasks successfully?

A great challenge for women in my generation is the ability to combine family and work in a meaningful way. There is no secret recipe. Each case is individual and actually keeps on changing throughout one's life. In my own case, the ordering of priorities, flexibility, time management, support (that comes through a variety of sources, including employers' understanding) and commitment to one's work (which in academia requires excellence in research and teaching) have helped me to navigate through the years of child rearing. Overall, it has been a most rewarding journey.

How do you feel when you encounter former students who work in financial markets all over the world?

I have very strong relationships with many alumni, in particular former students that wrote an essay or a PhD thesis under my supervision. It is an enormous source of pride to receive news from former students that reach new professional horizons. For me it is one of the greatest benefits of academia, the opportunity to meet wonderful students every year, to inspire them to make a contribution to society and to keep in touch with them over the years.



Professor Rosa María Lastra

Do you have any further suggestions for CCLS alumni?

I think that the alumni newsletter is a very good initiative to develop a sense of community amongst our alumni, to strengthen the ties that link them to their 'alma mater'. It can also serve as a catalyst to develop other alumni relationships and networks, for instance via class reunions, development of national associations of alumni and professional opportunities for current students to meet with successful alumni.

The Delights of Regulation

Nana Esi Atsem, Manager, Risk and Regulation, MSc Law and Finance, Class of 2010

I always had a keen interest in the governance of financial markets especially financial regulation and combating money laundering. Studying at Queen Mary appealed to me not only because of its stellar academic reputation but also because of the diversity of students and its reputation for providing opportunities for outstanding research.

The MSc Law and Finance program has allowed me to gain a thorough understanding of a wide range of issues affecting financial markets today. Specialising in multidisciplinary subjects such as law and financial regulation presented me with a fascinating insight into banking laws and regulations, and how it impacts upon finance and economic decisions. Regulation of financial markets tackled issues such as the "too big to fail doctrine", moral hazard, capital regulation, central banking independence and accountability as well as specialist areas such as the regulation of securities business, hedge funds, financial derivatives, insurance, market abuse and insider dealing amongst others. These are issues being discussed at very high level (amongst various regulators, academics and policy makers around the world) in an attempt to prevent other financial crises from taking place.

As part of the final assessment of the Masters degree, we were presented with five essay questions taken from a competition run by the International Centre for Financial Regulation (ICFR) and the

Financial Times. This was the ICFR's inaugural research contest since their establishment just under two years ago. We were required to write a 5000 word essay on one of five themes. I chose to answer the following question - What works best for banking regulation: market discipline or "hard-wired" rules? The competition aimed to promote research and discussion consistent with the agenda of the G20 on transparency, integrity, appropriate risk management and reform of international financial institutions. I was happy to learn in February 2010 that I was chosen as the outright winner of the competition and received a prize of \$7,500. As if that was not enough, my story was featured in the Financial Times and my paper was also published on the ICFR's website and I graduated with a Distinction.

What other achievements have I had since graduating? I was excited to secure a summer internship with the ICFR, as a Research Analyst. I worked as part of a select team of interns strategising and collating information on various topics in the area of financial regulation for discussion at ICFR's first regulatory summit in November 2010. I documented and disseminated news on regulatory developments whilst summarising consultation papers for the organisational research base and senior management. Some of the topics I

researched included the impact of new regulations on investments and investors, executive compensation and corporate governance of internationally active firms.

2011 is soon to herald some important legislative changes in the area of financial regulation, notably in relation to fraud and bribery, employment law, litigation and planning law and so I show no signs of slowing down. There has also been the radical reshaping of the financial services regulatory spectrum both in the UK and EU. The increasing importance of risk management is mirrored by the growing need to adhere to regulatory requirements. The growing burden of regulation means that firms will be calling on consultants to assist them with the implementation process. To this end, I recently accepted the opportunity to join one of the Big 4 Consultancy firms as a Manager in their Risk and Regulatory Practice in March. This is an exciting challenge that I am looking forward to facing as I believe it will be an invaluable progression to my career.



Events

Conferences, Courses and Events		
4 April 2011	ICC Institute of World Business Law, Paris France	26th Annual Symposium of Arbitrators: Arbitration and Bankruptcy ICC Institute of World Business Law and the School of International Arbitration, CCLS Attendance at this event is by invitation only.
20 April 2011 2.30 – 7.00pm	Lincoln's Inn Field Campus, Holborn, London	Law Postgraduate Open Evening
11 May 2011 6.30pm	Willoughby Lecture Theatre, Charterhouse Square Campus, Queen Mary, University of London, Barbican, London	Professor Johanna Gibson's Inaugural lecture <i>Let me tell you a story – Intellectual Property, Character and Narration</i>
7 June 2011	Charterhouse Square Campus, Queen Mary, University of London, Barbican, London	Pushing Legal Knowledge Boundaries - Queen Mary Graduate Conference 2011
20 June – 21 July 2011	Lincoln's Inn Field Campus, Holborn, London	Summer School: Hamline Law School Certificate Program in Global Arbitration Law and Practice: National and Transborder Perspectives For more information see www.law.hamline.edu
28 October 2011	The Supreme Court, Westminster, London	Supreme Court Conference
November	TBC	Alumni Drinks Reception



Queen Mary and a Career in International Arbitration

Matthew Hodgson, Solicitor England & Wales, Attorney New York, Allen & Overy
Diploma in International Arbitration Class of 2009

I decided to take the Diploma in International Arbitration at Queen Mary for a number of reasons. Although I have practiced international arbitration exclusively at Allen & Overy for several years, I was conscious that I had never studied the subject systematically. As a practitioner, you tend to develop an in depth knowledge on particular issues as they arise on cases but you do not necessarily develop the overview and perspective that comes with studying a subject academically. Having heard very good things about the Queen Mary arbitration program and faculty from my colleagues (several of whom also studied international arbitration at Queen Mary), I registered for the 2009-2010 course.

My practice consists of a mixture of investment treaty and commercial arbitration. I have also advised Governments on the negotiation of bilateral investment treaties. Investment treaty arbitration is a relatively recent phenomenon and the law is still developing rapidly. Indeed, one of the challenges of this area of law is staying up to date with all of the new case law which is emerging often on a weekly basis.

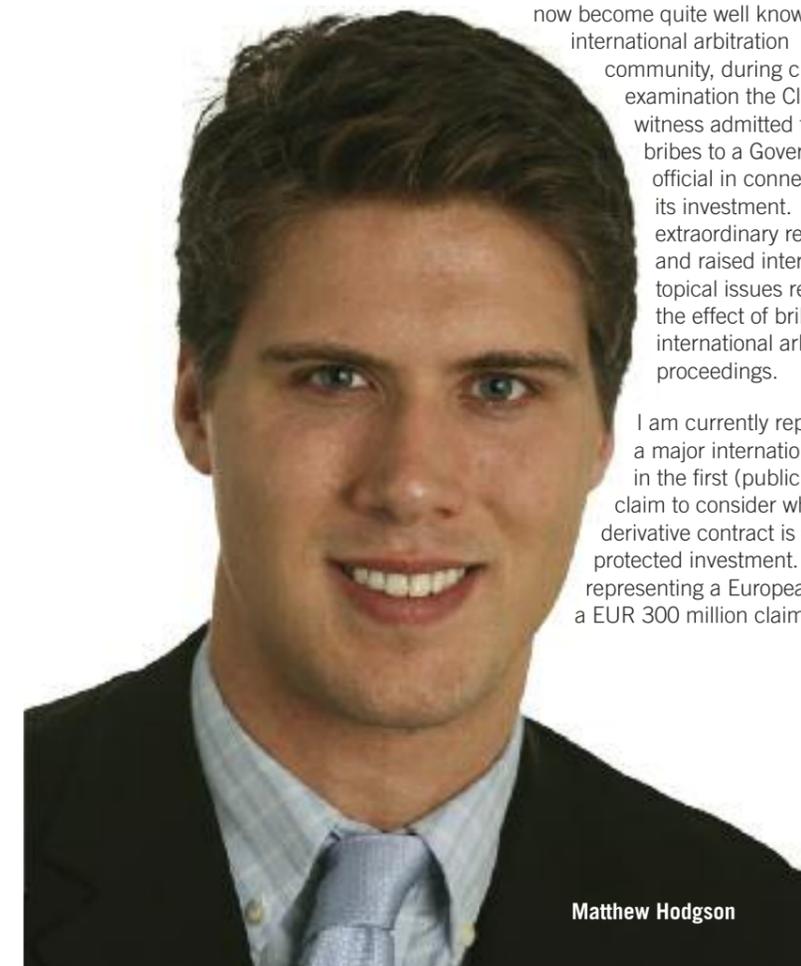
International arbitration is a fascinating area of practice and one I would recommend without hesitation to any current students. There is rarely a dull moment, particularly at hearings. For example, in one case where I represented a State which has now become quite well known in the international arbitration community, during cross-examination the Claimant's witness admitted to paying bribes to a Government official in connection with its investment. It was an extraordinary revelation and raised interesting and topical issues regarding the effect of bribery on international arbitral proceedings.

I am currently representing a major international bank in the first (publicly known) claim to consider whether a derivative contract is a protected investment. I am also representing a European State in a EUR 300 million claim brought

by an investor in the health-care sector. It is an interesting contrast to experience working for States and private investors. Each has its own challenges. Representing a mix of investors and States also helps to form a balanced view of where the line should fall between ensuring sufficient protection of investments whilst respecting the freedom of the State to carry out its regulatory functions.

Balancing the Diploma with the demands of full time practice was challenging at times. On the other hand, as well as broadening my knowledge of international arbitration, I covered many issues of direct relevance to cases which proved useful to my practice. Certainly, I am very glad to have completed the course.

In February 2011, I relocated to Prague where I am responsible for developing A&O's international arbitration practice in Central & Eastern Europe. Interest in arbitration is growing rapidly in the region due to a combination of reasons including a lack of trust in the court system. The most recent ICC statistics show, for example, that 134 claims were commenced by parties in the Central & Eastern European region in 2009, double the number just five years earlier. There is also a substantial number of investment treaty claims as a result of the large amounts of inward investment into the region. The nature of my role has changed somewhat as a result. More of my time is devoted to marketing and coordinating with colleagues in other offices across the Central & Eastern European region. Whilst it is still early days, I am very much enjoying the new challenge.



Matthew Hodgson

Making Sri Lanka e-Enabled – Role of Information and Communication Technology Policy & Regulatory Reform

Jayantha Fernando, Director & Legal Advisor, Information and Communication Technology Agency of Sri Lanka, Class of 2002

When the British Council in Colombo announced the recipients of the Chevening Scholarship in February 2002, the announcement of CCLS as my first choice was immediate and spontaneous.

As the only lawyer in this batch of three Chevening Scholars, awarded by the Foreign & Commonwealth Office, I was asked how I came to the conclusion so fast. In actual fact I had pre-determined my location of study even before my application. As an active contributor to the ICT legal reforms process in Sri Lanka, I had the privilege of getting to know the charming and charismatic Dr Ian Walden, at a Regional ICT Conference held in Colombo a few months earlier, where he was the key-note speaker. The possibility of pursuing LLM studies at CCLS was discussed with Prof Walden. Besides being renowned for its specialized LLM courses CCLS became known in Sri Lanka as “The seat of learning for commercial law”.

In practical terms what this meant was that CCLS created a fraternity of commercial lawyers, who were able to contribute actively and effectively to the development of their respective countries. So my choice was final and conclusive.



Jayantha Fernando

The path for my work on my return was already laid for me even before I commenced my LLM, when I had the good fortune of being appointed to the seven member Information and Communication Technology (ICT)

Steering Committee of the Government, with the mandate to formulate the ICT Development road map for Sri Lanka (known as the e-Sri Lanka Development Project). This also set the stage for the establishment of a new hybrid ICT Agency (ICTA), functioning on a statutory footing with a private sector flavor, to ensure efficiency in its performance. I continue to serve in the leadership team of the ICT Agency, as the only remaining executive member from the original committee.

The multi faceted e-Sri Lanka Program is converting Sri Lanka into a digitally empowered nation, with ICT literacy itself reaching over 25% (in 2010) from a mere 8% (in 2004). Sri Lanka's ranking in the Network Readiness Index as well as the AT Kerney global outsourcing index have improved steadily. Several e-Sri Lanka projects have won international awards and last year Sri Lanka joined the stage with

South Korea as the only other country in Asia to win three “future-gov” awards.

The centre-piece of the e-Sri Lanka story is the ICT policy & regulatory reform component. A multi-pronged strategy resulted in the Electronic Transactions Act No. 19 of 2006, the Payment Devices Frauds Act No. 30 of 2006 and the Computer Crimes Act No. 24 of 2007. These statutes have made Sri Lanka a model for developing countries in terms of legislative best practices.

The broad array of work which I was able to undertake on my return has covered almost all of the subjects read during my LLM in IT & Communications Law. This has further enhanced my career, with opportunities to work with the Council of Europe on Global Cyber Crime enforcement, UNCITRAL on Electronic Contracting Convention Issues and the Internet Corporation for Assigned Names and Numbers (ICANN) on public policy issues concerning the internet and engaging international governments on Internet Governance issues. The highlight of these interactions was my tenure as Vice Chair of ICANN Government Advisory Committee (GAC), for two terms.

Looking back I cherish the fond memories of my CCLS days and the occasional and sometimes interesting challenges associated with my multiple activities ranging from marriage to shifting houses three times to the excitement of my wife conceiving our son, which according to Prof Walden was far too much for an LLM student. But in the end it all proved worthwhile.

The new Italian legislation in mediation: What particularities exist in the legal framework that a foreign lawyer should be aware of?

Grazia Torrente and Alessandra Vignone, founders of Torrente Vignone, an international law firm in Milan Italy. Distance Learning Course in International Commercial Arbitration, Class of 2007

The new Italian law on mediation, Legislative Decree Number 28, was enacted on 4 March 2010. Pursuant to the new law, all civil and commercial disputes, provided that they concern “disposable rights”, may be referred to in mediation proceedings, which may not last longer than four months. This period starts from the date on which the request for mediation was filed, or from the expiry of the date in the case where a judge has prescribed a certain time limit.

The main reason why the Italian legislature enacted this new law was to try and reduce the enormous number of currently pending civil cases in Italy, which totals some 5.4 million cases .

The law came into force after its publication (i.e. 20 March 2010), apart from the provision regarding the mandatory recourse to mediation, which will come into force twelve months later (i.e. 20 March 2011).

It is important to note that at the time of compiling this article discussions are taking place between the official body representing Italian lawyers and the Justice Minister, on the possibility of deferring until a later date the law regarding obligatory mediation coming into force, which is provisionally timetabled for the 20 March 2011.

The most significant new provision was the one regarding mandatory recourse to mediation in certain specific cases: joint ownership/condominiums; right of ownership and other rights in property (such as, for example, usufruct, use, habitation, land use, emphyteusis, equitable servitude); division of property; inheritance, family rights to estate, leasehold, commodate, business rental; claims related to vehicles or boats, claims regarding medical responsibility claims, claims of defamation through libel cases and insurance, banking and financial contracts.

The legislator followed certain criteria in selecting which areas of law obligatory mediation should apply to. For instance, cases which may take a long time to



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process (such as those in which family issues are concerned) or where different rights to the same property are present (e.g. right of ownership and other rights to property), or matters which may be highly litigious, (e.g. small claims related to road accidents) alternatively, widely used contracts such as those used in insurance or banking were included.

The provision for the obligatory nature of the recourse to mediation in the areas mentioned above is one of the most relevant Italian particularity with respect to other European countries.

Some practitioners see this decision of the lawmakers as having the aim of expanding the scope of dispute resolution, and in this way testing out this procedure. Indeed the dominant culture in Italy seems to be one of ‘being accustomed’, and in some cases this can only be overturned where the change is reinforced by legislation from the authorities.

Another particularity of the Italian legislation is that, if requested by both parties, the mediator is bound to make a proposal. In the event the parties do not accept the proposal made, the law sets out certain legal consequences.



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Moreover, settlement agreements are enforceable after they have been declared to be enforceable under a separate process of homologation upon the request of the parties involved. The competent Court is located in the district Court in the area where the mediation centre is based. By doing so, the parties can enforce the obligations set out in the settlement agreement and could use it, for example, to apply for a mortgage based on a debtor's assets.

Finally, from an analysis of the new law on mediation it is possible to identify three different types of tax relief related to this: (i) complete exemption from stamp tax for all of the acts of the proceedings; (ii) partial exemption from the act of registering the transcript of the conciliation process and (iii) the recognition of tax credit for the insurance costs paid to the conciliation centre.

The validity of the new law in mediation and how it will be applied will only be seen over the passage of time, once the process has been thoroughly tested after the conclusion of a large number of mediation proceedings.

On the Bookshelves

Intellectual Property Archive Librarian, Malcolm Langley, and Queen Mary Academic Liaison Librarian (Law), Nick Holloway recommend the following new book releases.

Intellectual property, human rights and development: the role of NGOs and social movements

By **Duncan Matthews**
Cheltenham: Edward Elgar, 2011
ISBN: 9781847207852

This insightful and important new book explores the role played by non-governmental-organizations (NGOs) in articulating concerns at the TRIPS Council, the WIPO, the WHO, the CBD-COP and the FAO that intellectual property rights can have negative consequences for developing countries.

Intellectual property law: economic and social justice perspectives

By **Anne Flanagan and Maria Lillà Montagnani (eds.)**

Cheltenham: Edward Elgar, 2010
ISBN: 9781848446274

Intellectual Property Law examines emerging intellectual property issues through the bifocal lens of both economic analysis and individual or social justice theories.

Global copyright: three hundred years since the Statute of Anne, from 1709 to cyberspace,

By **Lionel Bentley, Uma Suthersanen and Paul Torremans (eds.)**

Cheltenham: Edward Elgar, 2010
ISBN: 9781848447660

This innovative book celebrates the tri-centenary of modern copyright.

Third parties in international commercial arbitration

By **Stavros Brekoulakis**
Oxford: Oxford University Press, 2010
ISBN: 9780199572083

This book considers the role of third parties in arbitration agreements and proceedings and in arbitral awards and covers significant theoretical and practical questions

Cross-border online gambling law and policy

By **Julia Hörnle and Brigitte Zammit**
Cheltenham: Edward Elgar, 2010
ISBN: 9781848443020

This highly topical book analyses the conflicts between different regulatory regimes governing online gambling in the international context and how these affect the cross-border provision of online gambling.

Design law: European Union and United States of America, 2nd ed.

By **Uma Suthersanen**
London: Sweet & Maxwell, 2010
ISBN: 9781847039064

The protection of designs traverses all aspects of intellectual property law. This edition of Design Law considers the protection of designs under EU and US laws.

International regulation of banking: Basel II, capital and risk requirements / by Simon Gleeson.

This book provides an introduction to the structure of bank financial regulation for financial lawyers and other non-statisticians interested in the regulatory drivers which shape modern financial transactions and techniques.

The modern law of patents / edited by Michael Fysh.

Edition: 2nd ed.
The first new book on the UK Law of Patents for 25 years, this title is an essential resource for patent lawyers and patent attorneys.

Crime and media : a reader / edited by Chris Greer.

Filling the need for a single resource on the subject, editor Greer (Sociology, City University London) has put together a massive volume of key readings that examine the intersection between crime and media.

The international trust.

Edition: 2nd ed. / edited by John Glasson and Geraint Thomas
The International Trust presents an in-depth analysis of a range of highly topical issues of great significance in the area of international trust law. The new edition will include for the first time chapters on: Money laundering VISTA trusts. The liabilities of trusts service providers in international financial law.

Part III contains chapters on Italy and China - jurisdictions in which recent trust law developments have generated considerable international interest.

Patents and technological progress in a globalized world : liber amicorum Joseph Straus / Wolrad Prinz zu Waldeck und Pyrmont ... (et al.).

In the last two decades, accelerating technological progress, increasing economic globalization and the proliferation of international agreements have created new challenges for intellectual property law.

The United Nations Convention on the Use of Electronic Communications in International Contracts: an in-depth guide and sourcebook / by Amelia H. Boss, Wolfgang Kilian.

The United Nations Convention on the Use of Electronic Communications in International Contracts (ECC), adopted by the United Nations General Assembly in December 2005 and currently undergoing the ratification process, provides such a system. This book is a guide and resource on the Convention: its evolution, interpretation, and relationship to domestic laws throughout the world.

Cross-Border Bank Insolvency edited by Rosa M. Lastra

This timely book analyzes and discusses the various issues associated with cross-border bank insolvency following the financial crisis.

E-BOOKS

Personal Author: Park, Yung-Chul, 1939-
Monetary and financial integration in East Asia

[electronic resource]: the relevance of European experience / Yung Chul Park, Charles Wyplosz.

Careers & Networking

The Young Member Group of the Chartered Institute of Arbitrators



By **Gonçalo Malheiro**, MA in Commercial and Corporate Law, Class of 2006

The Young Member Group (YMG) of the Chartered

Institute of Arbitrators (CI Arb) was created last July. I had the honour to be elected as chairman and my colleague Laurence Burger from Switzerland was elected as vice – chairman.

Being part of CI Arb, we aim to promote and develop all forms of private dispute resolution in order to maximize the contribution that dispute resolution practitioners make.

Since July, several working groups have been putting together action plans and working towards executing them.

As a result a newsletter was published, an YMG website is now functioning, a forum is awaiting your participation and debate on several issues related to arbitration. In order

to have your opinion and feedback on what you expect from us and from the YMG, an online poll will be set up.

Finally, we hope very much to organise our first international conference in the fall of 2011.

At this stage, our main goals are to organise internally the YMG according to the different working groups, to mobilise all the members to participate actively in the Group, to attract more members and to involve them in the daily life of the YMG. We invite all to take part in our activities.

We have been working with people from every continent and we know that this is one of our main strengths and advantages in comparison with other similar groups. This is a very international young member group and this fact provides us with an opportunity to network and share our skills and knowledge – worldwide.

Please contact us, should you have any queries or should you like to be a member of YMG – e-mails: goncalo.malheiro@pbbr.pt or LBurger@winston.com. You can also read more about our Group on our website www.ciarb.org/young-members/



Internship Opportunity in China

Innovation China UK, a subsidiary of Queen Mary Innovation Limited is looking to appoint an intern to work in our London office, identifying UK companies with innovative technologies that would benefit from our services. Focus on healthcare, new energy, low-carbon and sustainable development technology.

Responsibilities:

- Conduct research into emerging technologies and products
- Identify companies and visit them with the senior business development manager
- Regularly update the company's Chinese website

To apply, please contact Tom Saunders: t.saunders@qmul.ac.uk.

For more information about ICUK please visit our website: www.icukonline.org

Please check

www.careers.qmul.ac.uk/events/index.html for Queen Mary, University of London career events open to GradClub members.



We are pleased to announce that CCLS Alumni now has a group on LinkedIn. Join us for networking, discussions, keeping in touch and information on upcoming Alumni events.

To join please go to www.linkedin.com/e/4513cp-giua2uu8-5g/vgh/3743245/ or search for CCLS Alumni Group on LinkedIn.



AFSIA - Alumni and Friends of the School of International Arbitration at CCLS, Queen Mary, University of London

Since its foundation, more than 2,000 students from over 80 countries all over the world have graduated from the School of International Arbitration and many others have been closely involved with its activities in different capacities. The AFSIA was founded in June 2008 with the objective to bring all of these people together, to allow them to keep in touch with each other and the SIA and to thus create an invaluable network of people involved in the field of arbitration at every level and in every part of the world.

For more details and to join AFSIA please go to <http://afsia.org>

Alumni News

In our first edition Professor Loukas Mistelis updated you with some of the many achievements of the School of International Arbitration alumni. Below is a snapshot of recent news from CCLS alumni across our commercial law specialisms.

Marie-Laure Bonnaffous, Counsel, L'Oréal - International Trademarks Department (LLM) Since graduating, I have been working as in-house counsel at Procter & Gamble and moved to L'Oréal in September this year.

Dr. Christos Chrissanthis (LLM 1992) is now lecturer of commercial law at the University of Athens, Faculty of Laws. He is also practicing commercial law in Athens in the fields of intellectual property, insurance and corporate acquisitions.

Mrs Leatile Dambe has been appointed as a High Court Judge in Botswana, Africa. (LLM in Banking and Finance Law). Mrs Dambe is the current Director of Public Prosecutions in Botswana. She previously held the position of deputy attorney general (prosecutions).

Amel Makhlouf (LLM 2008 Banking and Finance Law) Back to Paris, I started a 6 months internship in BNP Paribas bank,

then passed an Islamic Finance Qualification from High Business School of Beirut & Chartered Institute for Securities and Investment. I started a banking and finance internship in Clifford Chance, from January to July 2010. Since August 2010, I am a PhD student at Sorbonne University in Paris in Financial Law.

The John Avery Jones Thesis 2010 prize was awarded to Gauthier Cruysmans (LLM in Tax Law) The prize is awarded at the discretion of the Advanced Diploma in International Taxation (ADIT) Committee, to the candidate who, in the sole opinion of the Committee, achieves the highest thesis standard in any calendar year.

Heba Shams is a Senior Financial Sector Specialist at the World Bank and the Head of the Secretariat of the London Forum for International Economic Law.

Her work profile includes advising countries on legislative and regulatory drafting, awareness raising, and training in the area of combating money laundering and the financing of terrorism. On these subjects,

she has also authored several publications, such as 'Legal Globalization: Money Laundering and Other Cases' (Sir Joseph Gold Memorial Series, April 2004) or 'A Banker's Compliance Guide to Preventing Money Laundering and Terrorist Financing' (April 2010, together with Mark Butler).

Eliesa BS Tuiloma, (LLM 2005 Intellectual Property) from Fiji. Eliesa is currently a Chief Registrar to the Supreme Court/Resident Magistrate in the Republic of Nauru and also a Traditional Knowledge Policy and Legislation Consultant in Fiji and Vanuatu. Recently, he has co-authored Fiji's policy on Indigenous Traditional Knowledge and Expressions of Culture Policy, which is of crucial importance for safeguarding the country's cultural heritage.

Alessandra Vignone and Grazia Torrente (Distance Learning Course in International Commercial Arbitration, 2007) have set up an international law firm in Milan (www.torrentevignone.com). Alessandra and Grazia have also become mediators at the ADR Centre (Member of JAMS International).