



ABA Section of
International Law

The American Bar Association
Section of International Law
presents

*Cross-Border Collaboration, Convergence
and Conflict*

The Internationalization of Domestic Law and Its Consequences

9 February 2010

Banco Court, 184 Phillip Street
Supreme Court of New South Wales
Sydney, Australia

and

The Art of Persuading Judges

10 February 2010

Sydney Law School—University of Sydney

IN CONJUNCTION WITH:



THE LAW SOCIETY
OF NEW SOUTH WALES



The New South Wales Bar Association

THE LAW SOCIETY OF NEW SOUTH WALES
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Law Council
OF AUSTRALIA

*From the Office of
the President-elect*

30 November 2009

GLENN FERGUSON
president@lawcouncil.asn.au

Dear colleagues,

On behalf of the Law Council of Australia, it is with great pleasure that I invite you to attend the American Bar Association Section of International Law (ABA International) conference on “*Cross Border Collaboration, Consequences and Conflict: The Internationalisation of Domestic Law and Its Consequences*”, to be held in Sydney in February 2010.

The conference provides an opportunity to hear from some of the most respected legal minds from Australia and the US.

Headlining the impressive list of guest speakers will be US Supreme Court Associate Justice, the Honourable Antonin Scalia.

Justice Scalia will discuss, amongst other things, whether the United States’ judicial experience with the Bill of Rights provides any guidance in the current debate about a possible Charter of Human Rights for Australia.

Other key speakers include former High Court Chief Justices, the Honourable Murray Gleeson and the Honourable Sir Anthony Mason, and former High Court Justice Michael Kirby.

This event is organised by ABA International, in close collaboration with the Law Council, the Law Society of NSW and the NSW Bar Association.

The Law Council signed a Memorandum of Understanding (MoU) with ABA International in 2008, which seeks to encourage the two organisations to work together to enhance the rule of law and the profession of law.

The Law Council, on behalf of the Australian legal profession, welcomes this opportunity to further develop the MoU and its close relationship with ABA International.

The event is being held in conjunction with the ABA’s International Legal Exchange Program, which aims to promote understanding and cooperation between Australian and American legal practitioners.

This will be a stimulating and rewarding conference which I strongly encourage you to attend. I look forward to welcoming you there.

Yours sincerely,

Glenn Ferguson
President-elect
Law Council of Australia

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Dear Colleagues:

On behalf of the American Bar Association Section of International Law (ABA International), I am pleased to invite you to attend a two-part conference on **“Cross-Border Collaboration, Convergence and Conflict”** – the first part, a high-level U.S.-Australian exchange on “The Internationalization of Domestic Law and Its Consequences” at the Banco Court in Sydney on February 9, 2010, and the second, a moot court demonstration, aptly entitled the “Art of Persuading Judges,” at the Sydney University Law School on February 10. The former will offer cutting-edge insights to anyone involved in cross-border legal matters. The latter represents a once-in-a-lifetime opportunity to watch top jurists and advocates from the U.S. and Australia exhibit their skills and share their insights on the same stage.

Confirmed speakers include the **Honorable Antonin Scalia**, Associate Justice of the U.S. Supreme Court; **Sir Anthony Mason**, AC, KBE, AC; the **Honorable Murray Gleeson**, AC, QC; the **Honorable Michael Kirby**, AC, CMG; **Graeme Samuel**, AO, Chairman of the Australian Competition and Consumer Commission; **Tony D’Aloisio**, Chairman of the Australian Securities and Investment Commission; and other leaders of the legal profession from Australia and the U.S. This extraordinary gathering of legal minds is made possible by an unprecedented collaboration between the ABA and the Law Council of Australia, the Law Society of New South Wales and the New South Wales Bar Association. Planning has been over a year in the making.

The conference will be attended by a distinguished ABA delegation that includes representatives from several U.S. and multinational law firms, in-house corporate departments, and law schools. The composition of the delegation mirrors the 23,000+ membership of ABA International, which includes not only lawyers in private practice, but also 1500 in-house counsel, 800 U.S. lawyers living abroad and 1200 non-U.S. lawyers in 90 countries.

The conference is ABA International’s first-ever in Australia, and is being held in conjunction with our International Legal Exchange (ILEX) program. Together with our colleagues with the Law Council of Australia, the Law Society of New South Wales and the New South Wales Bar Association, we hope that the program will further promote collaboration, understanding and cooperation between Australian and American lawyers.

For more information about this exciting and timely conference, visit www.abanet.org/intlaw/ilexauis. I look forward to seeing you in Sydney!

Regards,



Glenn P. Hendrix



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Cross-Border Collaboration, Convergence and Conflict: The Internationalization of Domestic Law and Its Consequences

9 February 2010

Banco Court

184 Phillip Street, Supreme Court of New South Wales, Sydney



All programs on 9 February to be held in the Banco Court, Supreme Court of New South Wales, unless otherwise noted. CLE/CPD for the U.S. and Australia has been requested.

8:00 AM Conference Registration

8:30 AM Welcome and Opening Remarks

The Honorable James Spigelman, AC, Chief Justice of the Supreme Court of New South Wales (Sydney, NSW)

Sir Anthony Mason, AC, KBE, QC, Former Chief Justice of the High Court of Australia (Sydney, NSW)

8:45 AM - 10:15 AM
National Courts: Constitutional Issues and Human Rights—Is International Experience Relevant?

To what extent should international precedent and experience inform decisions of national courts, especially on constitutional questions and human rights issues? In particular, Australia is debating the introduction of a Charter of Human Rights. Does U.S. judicial experience with the Bill of Rights afford any guidance in this debate?

Speakers:

The Honorable Antonin G. Scalia, Associate Justice, United States Supreme Court (Washington, DC)

The Honorable Michael D. Kirby, AC, CMG, Former Justice of the High Court of Australia (Sydney, NSW)

Moderator:

The Honorable Murray Gleeson, AC, QC, Former Chief Justice of the High Court of Australia (Sydney, NSW)

10:15 AM Networking Break

10:45 AM - 12:00 PM
Internationalization of Commercial Law and Enforcement: The Impact of Transnational Norms and Practices in the Development of Domestic Private and Commercial Law

A harmony of commercial law systems? If so, are the results good, bad or indifferent?

This session will examine the interplay between national legal systems and conduct under them, and the norms and practices developing in a transnational framework. The speakers will not be limited to an overall theoretical or jurisprudential approach; they will discuss aspects of this issue through domestic law, in particular commercial law. Examples of such specific treatment include the United Nations Convention on the International Sale of Goods and the United Nations Commission on International Trade Law's contract and other model laws, including e-commerce practices and international commercial arbitration.

Speakers:

The Honorable Paul D. Finn, Justice of the Federal Court of Australia (Adelaide, SA)

Michael C. Pryles, Singapore International Arbitration Commission (Melbourne, VIC)

The Honorable Ronald A. Cass, Cass & Associates LLP (Great Falls, VA)

Kate Mills, Mallesons Stephen Jaques (Sydney, NSW)

Commentator:

William R. Black, BAE Systems (Santa Clara, CA)

Moderator:

The Honorable James L.B. Allsop, President of the Court of Appeal of the Supreme Court of New South Wales (Sydney, NSW)

Program Chair:

The Honorable James Spigelman, AC, Chief Justice of the Supreme Court of New South Wales (Sydney, NSW)

12:15 - 1:45 PM Luncheon
Pavilion on the Park, Art Gallery Road

The Honorable Jeffrey Bleich, U.S. Ambassador to Australia (Canberra, ACT)

2:15 - 3:30 PM **Concurrent Session**
Go Directly to Jail: Lessons Learned and Legal Minefields for Business Arising from the Criminalization of Commercial Conduct Internationally

This program explores the evolution of criminal sanctions for commercial conduct in the Australian legal system, and the lessons learned from the U.S. experience of criminal prosecution of cartels and foreign corrupt practices. Taking Australia's recent criminal cartel legislation and corruption charges against Australian and U.S. corporations as a focal point, the discussion will include an analysis of the practical challenges and pitfalls involved in criminalizing commercial conduct in an international context. How does proliferating multinational criminal liability affect the calculus of whether and where to seek amnesty? What safeguards exist to protect defendants from double jeopardy? What principles govern extradition and plea bargaining? Should criminal enforcement agencies be more mindful of the impact of prosecutorial discretion, and the collection/use of evidence in domestic proceedings on foreign prosecutions and domestic and international civil cases? These topics will be explored by a panel of leading American and Australian regulators, jurists and practitioners, with commentary from corporate counsel familiar with the magnitude of these challenges (and potential opportunities) for Australian firms operating internationally.

The Honorable Mark S. Weinberg, Justice of the Court of Appeal, Supreme Court of Victoria (Melbourne, VIC)

Graeme Samuel, AO, Chairman, Australian Competition and Consumer Commission (Canberra, ACT)

Jim Walden, Gibson, Dunn & Crutcher LLP (New York, NY)

Brett Johnson, General Counsel, Qantas (Sydney, NSW)

Karen Perret, General Counsel Australia & New Zealand, Cadbury (Melbourne, VIC)

Alexandra Wrage, President, TRACE International (Annapolis, MD)

Moderator:

Fiona Schaeffer, Weil, Gotshal & Manges LLP (New York, NY)

Program Chairs:

Fiona Schaeffer, Weil, Gotshal & Manges LLP (New York, NY)

Robert Yezerski, Weil, Gotshal & Manges LLP (New York, NY)

2:15 - 3:30 PM **Concurrent Session**
Hot Property: Emerging Forms of Property in a Global Context

Law is a dynamic force, and its constantly changing nature is evident most profoundly these days in a rapidly changing world driven by technological advances and evolving societal expectations. This interactive program will explore on an international level current and future property concepts and the

economic theories underpinning them, including carbon credits and water rights, and their interaction with and effect on traditional private law concepts, such as property, competition, securities and insolvency laws. The panel will consider the public and private law implications of these concepts in Australia, the United States and other major jurisdictions and the themes of international collaboration, convergence and conflict in this arena.

Speakers:

The Honorable Robert Hill, Chair, Australia Carbon Trust (Brisbane, QLD)

Roger Martella, Sidley Austin LLP (Washington, DC)

Martijn Wilder, Baker & McKenzie, LLP (Sydney, NSW)

Roger Wilkins, Secretary, Australian Government Attorney General's Department (Canberra, ACT)

Moderator:

Salli Swartz, Phillips Giraud Naud & Swartz (Paris, France)

Program Chair:

Erik B. Wulff, DLA Piper US LLP (Washington, DC)

3:30 PM **Networking Break**

4:00 - 5:15 PM
Fallout: The Global Financial Crisis and Its Legal Consequences

What has been the reaction to the Global Financial Crisis of legislators, regulators and courts in the U.S. and Australia, and internationally? What are the practical implications for boards of directors, including director's duties generally, duties of disclosure, the role of boards in distress situations and risk management?

Speakers:

Tony D'Aloisio, Chairman, Australian Securities and Investment Commission (Sydney, NSW)

Jeffrey B. Golden, Allen & Overy LLP (London, UK)

John O'Sullivan, Chairman, Australian Investment Banking, Credit Suisse (Sydney, NSW)

Linda Thomsen, Former Director, Enforcement Division of the U.S. Securities and Exchange Commission, Davis Polk & Wardwell LLP (Washington, DC) (*invited*)

Moderator:

Guy Alexander, Allens Arthur Robinson (Sydney, NSW)

Program Chair:

Zeke Solomon, Allens Arthur Robinson (Sydney, NSW)

5:15 PM **Closing Remarks**

5:30 - 7:00 PM **Closing Reception**
Hyde Park Barracks Café, Queens Square
Macquarie Street

PLATINUM ILEX MEETING & TRIP SPONSOR:



Moot Court Demonstration: The Art of Persuading Judges

10 February 2010

2:30-5:00 pm

University of Sydney, School of Law, Sydney
Camperdown, New Law School Building (F10), Room 101



THE LAW SOCIETY OF NEW SOUTH WALES
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The
University
of Sydney



Sydney
Law School

This event, held in conjunction with the New South Wales Young Lawyers and hosted by the University of Sydney Law School, will offer a once-in-a-lifetime opportunity to witness top advocates from Australia and the United States display their skills before some of the most distinguished jurists of the same two countries. The participants will act out a hypothetical cross-border dispute with parallel proceedings in the U.S. and Australia. This promises to be a highly entertaining lesson on the art of persuading judges. A reception will follow from 5-6:30 pm.

The list of “players”–

Acting as the U.S. judge:

The Honorable Antonin Scalia, Associate Justice of the U.S. Supreme Court (Washington, DC)

Acting as the Australian appellate bench:

The Honorable Ronald Sackville, Former Justice of the Federal Court of Australia (Sydney, NSW)

The Honorable Margaret Ackary Stone, Justice of the Federal Court of Australia (Sydney, NSW)

Professor Gillian Triggs, Dean of the Sydney Law School—University of Sydney (Sydney, NSW)

Acting as U.S. counsel:

Robert Brodegaard, Thompson & Knight LLP (New York, NY)

Barton Legum, Salans (Paris, France)

Acting as Australian counsel:

Dr. Andrew Bell, SC, Wentworth Chambers (Sydney, NSW)

Justin Gleeson, SC, Banco Chambers (Sydney, NSW)

Program Chairs:

The Honorable James L.B. Allsop, President of the Court of Appeal of the Supreme Court of New South Wales (Sydney, NSW)

The Honorable Andrew Rogers, QC, Endispute Pty Ltd (Sydney, NSW)



THE LAW SOCIETY
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The New South Wales Bar Association



ABA Section of International Law

Cross-Border Collaboration, Convergence and Conflict: The Internationalization of Domestic Law and Its Consequences

9 February 2010
Banco Court, 184 Phillip Street
Supreme Court of New South Wales

10 February 2010
Moot Court Demonstration
Sydney Law School—University of Sydney

Registration Form/Tax Invoice

STEP ONE: Registrant Information

ABA ID (if applicable): _____

Name: _____
(TYPE or PRINT CLEARLY as you wish your name to appear on badge. If you are handwriting this form, please attach your business card for clarity purposes.)

Firm/Organization: _____

Address: _____

City: _____ State/Province/Region: _____ Postal Code: _____

Country: _____ Telephone: _____

Fax: _____ E-mail: _____

STEP TWO: Program Registration Fees

Fees include admission to the Luncheon at the Pavilion Restaurant, Closing Reception at the Hyde Park Barracks and to all CLE/CPD programs on Tuesday, 9 February, as well as the Moot Court Demonstration and reception on Wednesday, 10 February.

Registration Fees	Early Bird (before 11 Jan.)	After 11 Jan.
_____ Lawyer	AUD \$375	AUD \$425
_____ Corporate Counsel	AUD \$245	AUD \$295
_____ Govt/Academic/NGO/Young Lawyer (> 35)	AUD \$175	AUD \$225
_____ Law Student	AUD \$75	AUD \$125

Group registration discounts available for early bird registrants: Group discounts are available for multiple registrations from law firms and organizations submitted prior to 11 January, 2010. For each additional registrant after the third full paying registrant, the rate is AUD \$275, so long as all individuals register at the same time. Please contact Katie Van Geem at intilex@staff.abanet.org for more information and to register at the group rate.

Young Lawyers and Law Students attending the 10 February *only* can register for free.



The New South Wales Bar Association

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STEP THREE: Ticketed Events

For those unable to attend the entire program or guests of attendees, separate tickets are available for the luncheon and reception. Tickets are not refundable within the 72 hours preceding the event or after it has taken place. **Tickets are limited and subject to space availability on a first come, first served basis.**

_____ Tuesday, Ticket for Lunch at the Pavilion Restaurant (AUD \$125) AUD\$ _____

_____ Tuesday, Ticket for Closing Reception at Hyde Park Barracks (AUD \$100) AUD\$ _____

STEP FOUR: Purchase Extra Program Materials

Program Materials will be provided to registrants on CD-ROM at no extra cost. If you would like to purchase an additional CD-ROM or are unable to attend the meeting but would like to purchase the CD-ROM, please indicate the number below and submit payment.

_____ Yes, I would like to purchase an additional CD-ROM at AUD\$90 each Total Amount: \$ _____

STEP FIVE: Make Your Payment

PAYING BY DIRECT DEPOSIT/EFT:

Please include the following information when making payment via direct deposit/EFT:

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Meeting type: **2010 ILEX Australia Conference**

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Bank Address: **730 Fifteenth Street, NW, Washington, DC 20009**

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Account Number: **002086136405**

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Please include the following information when making payment via credit card. Return this form by mail, fax (+1-202-662-1669) or email to intilex@staff.abanet.org. **Note: Refunds will not be issued for cancellations received after January 25, 2010.**

Credit Card Type: Visa MasterCard American Express

Total Payment: \$ _____

Card Number: _____ Expiration Date: _____

Signature: _____

Data Protection Notice - Please sign below: By submitting 2010 ILEX Australia Conference registration form, you are providing us with personal information. By registering and signing this form below, you consent to our use of that information to complete the registration process and to compile data which the Section may use for Section membership and programming purposes only. Your payment information, including credit card information is used only to process payment for your 2010 ILEX Australia Conference registration fees and is not retained for any other purposes whatsoever.

Signature _____ Date _____

STEP SIX: U.S. MCLE/CLE CREDIT AND AUSTRALIAN CLE/CPD HOURS

MAKE SURE YOU SIGN UP FOR MCLE/CLE CREDIT

For U.S. CLE: You will be required to fill in your **State License Number** on the MCLE/CLE sign in sheet at the 2010 ILEX Australia Conference. Please come to the meeting with your license number(s) for the U.S. states you will be obtaining MCLE/CLE credit.

_____ I would like MCLE/CLE credit.

Please check here if you will need MCLE/CLE credit in one or more of the following U.S. states:

___ DE ___ NY ___ PA ___ TX

___ Other State(s) not listed (please specify): _____

For Australian CLE/CPD: If this conference is relevant to your immediate or long-term needs in relation to your professional development and practice of the law, you may claim one CLE/CPD "point" for each hour of attendance, refreshment breaks not included. If you have any queries regarding CLE/CPD points, please check with your local law society. This conference has not been registered for CLE/CPD points in Western Australia.

CLE hours have been requested and applied

For delegates from countries where CPD/CLE is mandatory, a Conference Certificate of Attendance (as provided onsite at the conference) which, subject to the exact CPD/CLE requirements, may be used to obtain the equivalent accreditation in your jurisdiction.

STEP SEVEN: LET US KNOW IF YOU REQUIRE ASSISTANCE AND DIETARY RESTRICTIONS

Please indicate if you require specific aid or service during your attendance at the 2010 ILEX Australia Conference ___ Audio
___ Visual ___ Mobile

Please indicate if you are ___ vegetarian or have any other dietary restrictions _____.

CANCELLATION POLICY:

Cancellations must be received in writing before January 25, 2010. Cancellations made before that date will incur a \$80 administration fee. Substitutions can be made at any time.

ATTENDEE LIST:

An attendee list of pre-registered attendees will be available to registrants on the day of the conference. It will list attendees' names, firm/organization and state/territory. If you do not wish your name to appear on the attendee list, please check this box:

QUESTIONS?

Please contact Katie Van Geem at the ABA Section of International Law at intilex@staff.abanet.org or +1-202-662-1675 or Del Da Costa at the Law Council of Australia at del.dacosta@lawcouncil.asn.au or +61 (02) 6246 3721.

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