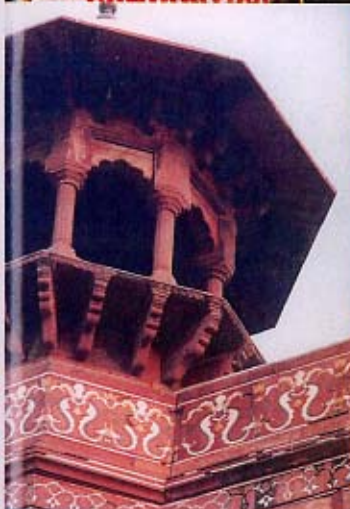




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1997



International Bar Association
Section on Business Law
Section on General Practice
1997 Conference

Programme

New Delhi, India
2 to 7 November 1997

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'mega-deals' have been driven by strategic and business objectives and not just cutting concerns. With the advent of telecommunication outsourcing, many of these mega-deals have also been global in focus. Among the topics to be discussed are:

- structuring 'mega' outsourcing transactions: single vendor or multiple vendors, or a customer/vendor joint venture?
- how global are outsourcing vendors (or customers)?
- restructuring 'old' main-frame transactions.
- pricing distributed environments and network services.
- beyond IT&T?

The last topic of discussion will cover typical challenges in large and complex IT and business integration projects. It is often not possible to define the exact scope of the deliverables at the time the agreement is concluded. The speakers will discuss how to address this problem in the agreement, project organisation, acceptance criteria and financial mechanisms. An emphasis will thereby be put on the "best practices" provisions.

Speakers

- Mark L Gordon *Gordon & Glickson PC, Chicago, Illinois, USA*
 Thomas Heymann *Clifford Chance, Frankfurt am Main, Germany; Chairman, Subcommittee R5 (Information Technology Transactions)*
 Michael E Hughes *Andersen Worldwide Organisation, Paris, France*
 Jeffrey S Kingston
 Martin Kurer *Walder Wyss & Partner, Zürich, Switzerland*
 Trevor Nagel *Shaw Pittman Potts & Trowbridge, Washington DC, USA*
 Harry Rubin *Shaw Pittman Potts & Trowbridge, Washington DC, USA*
 Mark Turner *Garrett & Co, London, England*

WEDNESDAY 5 NOVEMBER

0900 – 1200 5th Floor Hall

The world of electronic commerce

*Joint session with Committee M.
 See Committee M, page 44, for details.*

1400 – 1700 Margosa Hall

Telemedicine

*Joint session with Committee 2.
 See Committee 2, page 65, for details.*

FRIDAY 7 NOVEMBER

0900 – 1200 Kadamba

Legal updates relating to technology law

Joint session with Committee L

Session Co-Chairmen

- Robyn Durie *Linklaters & Paines, London, England; Vice-Chairman, Committee L*
 Antonio Millé *Estudio Millé, Buenos Aires, Argentina; Vice-Chairman, Committee R*

As during previous IBA Conferences, this session is devoted to an update on important areas of technology law. The focus of this session, which in Berlin (October 1996) was on data protection, will be on developments in the management, use and control of digital technology. This topic will be covered in four presentations:

The copyright agenda and the new WIPO treaties

Professor Michael Blakeney *Murdoch University, Perth, Western Australia*

The administration of intellectual property rights in cyberspace

- Shlomo Cohen *Dr Shlomo Cohen & Co, Tel Aviv, Israel*
 Don Martens *Knobbe Martens Olson & Bear, San Diego, California, USA*

Encryption/digital signature

Sylvia Khatcherian *American Express, New York, USA; Vice-Chairman, Committee R*

Consumer oriented electronic commerce

Heather Rowe *Lovell White Durrant, London, England*

A panel discussion will be held following the presentations.

S

Products Liability, Advertising, Unfair Competition and Consumer Affairs

Chairman

David McIntosh *Davies Arnold Cooper, London, England*

TUESDAY 4 NOVEMBER

0900 – 1200 Silver Oak Patio

When selling food becomes infectious: the distribution of contaminated foodstuffs

Session Chairman

Colin Loveday *Clayton Utz, Sydney, New South Wales, Australia; Vice-Chairman, Committee S*

The session will examine the legal implications and practical difficulties that arise when contaminated foodstuffs are distributed. The session will ask:

- what product liability laws are appropriate;
- what product recall provisions apply?
- what access to justice mechanisms are appropriate?

The distribution of contaminated foodstuffs is an ever present concern for those who work in the food industry. In most cases, serious consequences are avoided either through prompt product recall action or the intervention of public health authorities. However, what happens when safeguards that are otherwise in place fail to identify the problem before it becomes serious and widespread? What happens when people become seriously ill before the particular contaminated product is identified?

Once the contaminated product is identified, what regime for compulsory product recall provisions exist? What remedies are available to those people who have suffered personal injury and against whom? In circumstances where a large number of people have been injured, what difficulties may exist in investigating relevant facts, establishing or verifying injuries and obtaining expert evidence on causation? What kind of practical problems arise for lawyers and judges in handling many claims for

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compensation at once? What sort of provisions exist for criminal prosecution and when do they apply?

We aim to examine these problems on a comparative, global basis. Committee members from around the world have been invited to respond before the Conference to a short questionnaire. The written comparative outlines will be available at the session. Particularly significant aspects of national law and practice will be highlighted.

Speakers

Damian Clowes *Deacons Graham & James Ltd., Ho Chi Minh City, Vietnam*

Kannan Menon *Delaney & Co Indochina Limited, Bangkok, Thailand*

Jorge Santiago Neves *Santiago Neves & Associados, Lisbon, Portugal*

Ravinder Singhania *Singhania & Co, New Delhi, India*

Lawrence Teh *Rodyk & Davidson, Singapore*

Roderich C Thümmel *Thümmel Schütze & Partner, Stuttgart, Germany*

THURSDAY 6 NOVEMBER

0900 – 1200 Amalfi

Legal and cultural issues in the advertising and marketing of consumer products – East meets West

Moderator

Elizabeth Toni Guarino *Collier Shannon Rill & Scott, Washington DC, USA; Vice-Chairman, Committee S*

An examination of ways that business opportunities for marketing consumer products across Eastern/Western political boundaries might be exploited in light of formal (legal and regulatory) and informal (societal) rules based primarily on cultural differences. The Eastern focus will be on India, and one or two other Asian countries. The Western focus will be on

Europe and North America. The session will also look at South Africa, where a number of diverse cultures co-exist within a single political jurisdiction with elements of both East and West.

The panel of speakers will use actual advertisements and packaged products to illustrate how cultural and societal 'rules' – sometimes formally embodied in law and sometimes not – affect Western companies seeking to market products to the East, and vice versa. The panel will address legal/regulatory issues involving the advertising, labeling, manufacture and composition of consumer products. Cultural issues such as religious strictures and gender-based customs will be discussed. Consumer products that are the subject of worldwide legal and consumer controversy will be analysed: tobacco, genetically-engineered products, 'novel' foods such as fat substitutes, and dietary supplements such as herbal and botanical products said to possess health-related properties.

The purpose of the session will be to use a limited number of situations to illustrate typical issues that lawyers and business people are likely to face in many jurisdictions, with many different types of consumer products. The session will aim to give attendees not the answers to specific questions, but analytical tools they can use to address the kinds of advertising and marketing challenges that consumer product companies face when they seek to sell products globally.

Europe/EU

Jürgen Brandstätter *Foglar-Deinhardstein & Brandstätter Key, Vienna, Austria*

Jacques Salès *Salès Vincent & Associés, Paris, France*

India

Rajiv Desai *Indian Public Affairs Network, New Delhi, India*

US

Elizabeth Toni Guarino

Africa (focus on South Africa)

Louis J Van Wyk *Spoer & Fisher, Pretoria, South Africa*

Far East (Japan, China)

Ashok Chhabra *General Counsel, Procter & Gamble India Limited, Mumbai, India*

T

International Construction Projects

Co-Chairmen

Marc Frilet *Bureau Francis Lefebvre, Paris, France*

Gregory Hummel *Rudnick & Wolfe, Chicago, Illinois, USA*

MONDAY 3 NOVEMBER

0900 – 1200 Silver Oak 1

The role of the expert in the construction industry

Session Chairman

Arne Bierfreund *Bech-Bruun & Trolle, Copenhagen, Denmark; Vice-Chairman, Committee T*

In the construction industry, perhaps more often than in other industries, when a problem arises, the parties, willingly or not, often refer a substantial part of the matter to an expert or to a college of technical experts for mediation, arbitration or another form of alternative dispute resolution.

Depending on the terms of reference of the expert, of their judicial or non judicial status and the court ultimately exercising jurisdiction over the project, an expert may be required to play different roles – ranging from adjudicator to mere advisor.

This session will analyse the role of the expert in various jurisdictions both in theory and in practice, in a number of different roles. It will also discuss how the expert is chosen in various systems. The possible liability of the expert will also be explored. This session will set the stage for future discussions of the appropriate roles of the expert given the many uses to which experts can be put.

Speakers

Robert Briner *Chairman, ICC International Court of Arbitration, Paris, France*

Peter Caldwell *Secretary General, International Arbitration Centre, Hong Kong*

Michael Lee *Norton Rose, Paris, France*

André Moquet *Moquet Borde Dieux*

Geens & Associés, Paris, France

D M Popat *Mulla & Mulla & Craigie Blunt & Carde, Mumbai, India*

1300 – 1530 Silver Oak 1

Key clauses for BOT contracts in public infrastructure*Session Chairman*Marc A Lane *Masons, London, England*

BOT contracts for public infrastructure have several original features at the border of contracting and partnership laws.

The traditional doctrine of sanctity of contract may have to be modified in order to adapt the contract documents and the works and services to the needs of the public authority and the public at large. Various factors such as the duration of the venture, often decades, do not always permit foreseeability of each and every future situation in a single contractual document in a realistic and workable manner.

In a number of recent projects, the parties have developed various techniques and clauses tailored to the specific needs of these unusual projects.

This session will analyse these key clauses and the legal environment in which they operate in order to facilitate the development of the BOT projects in public infrastructure.

*Speakers*Emmanuel Fontaine *Gide Loyrette Nouel, Paris, France*Nicholas Gould *Lovell White Durrant, London, England; Section on Business Law Council Member*Agne Sandberg *Head of the Legal Department, Skanska International Civil Engineering AB, Stockholm, Sweden*Cyril Shroff *Amarchand & Mangaldas & Suresh A Shroff & Co, Mumbai, India*Daisuke Tsuda *Ishikawajima-Harima Heavy Industries Co Ltd., Tokyo, Japan***TUESDAY 4 NOVEMBER**

0900 – 1700 Auditorium

Sustainable development of public/private partnership in major infrastructure projects using BOT and other project delivery techniques: the emerging principles for a secure and workable legal framework satisfactory to the public and the private partner

*Joint session with Committees E and K**Session Co-Chairmen*

Marc Frilet

Gregory Hummel

BOT projects in their more traditional form of concession contracts have been tested and implemented for many years in some jurisdictions. However, in most parts of the world, their development has taken place in the last decade only. Recent history has led to mixed results; it is worth exploring the reasons behind both the success stories and the failures.

Indeed, complex contracting schemes based on long-term ventures and project financing techniques are a true challenge, not only for lawyers but also for legal systems since many features of these transactions are not readily addressed by existing law. This is even more so when a BOT scheme is used for the building of large infrastructure servicing the public directly (such as water distribution network or toll roads).

0900 – 1200

Part 1

The underlying economic and political factors which influence the prospects for the success or failure of these projects.

*Speakers*G K Kwatra *Executive Director, India Council for Arbitration, New Delhi, India*Rakesh Mohan *Director General, National Council of Applied Economic Research/Autor of the Indian Infrastructure Report, New Delhi, India*Mauro Rubino-Sammartano *Rubino-Borghesi de Tilla & Valensise, Milan, Italy***Part 2**

An analysis, by reference to several well-known projects, of the difficulties faced, the lessons learned from, and the underlying legal conditions of success for these projects, including, among other things, the desirability of framework laws and a regulator. The perspective of the public authority, the private lender and the project company will be addressed.

*Speakers*Andrew Balfour *Slaughter and May, London, England*Katherine Hope Gurun *Senior Legal Counsel, International Generating Company, Bechtel Group, Boston, Massachusetts, USA*K M L Naresimhan *Head of the Legal Department, Larsen & Toubro Limited, Mumbai, India*H P Schulz-Gebeltrig *Oppenhoff & Rädler, Frankfurt am Main, Germany*

1400 – 1700

A BOT power project in the Asia regions*Speakers*Scott Brodsky *Ashurst Morris Crisp, Singapore*Bruce Johnston *Wilde Sapte, London, England*Jacques Salès *Salès Vincent & Associés, Paris, France*Michael Sonnenberg *Phillips Fox, Perth, Western Australia***A BOT water distribution network in a large Asian city***Speakers*Jeremy Connick *Clifford Chance, Hong Kong*Tim Reynolds *Constant & Constant, London, England*R A Shah *Crawford Bailey & Co, Mumbai, India*Gilbert Klajnman *Head of the Legal Department, Compagnie Generale des Faux, Paris, France*

Each case will also be addressed from the perspective of the public authority, the private lender and the project company.

WEDNESDAY 5 NOVEMBER

0900 – 1700 Auditorium

Arbitration and ADR for infrastructure projects*Joint session with Committees D and F**Session Chairman*Michael E Schneider *Lalive & Partners, Geneva, Switzerland; Chairman, Subcommittee T7 (Resolution of Construction Disputes)*

Large infrastructure projects require the joint efforts of many different players and the use of their resources and expertise in construction and operation. These projects affect a large segment of the public as well as a great number of individuals, companies and institutions. With the growth of privatisation, models of co-operation have been developed for organising the complex relationships in