



THE UNIVERSITY OF
SYDNEY

Commercial Issues in Private International Law Conference



Friday 16 February 2018

9am – 5.20pm

Sydney Law School

**New Law School Building (F10), Eastern Avenue
Camperdown, The University of Sydney**



Commercial Issues in Private International Law

In its 2017 report on *The Future of Law and Innovation in the Profession*, the Law Society of New South Wales recognised that '[a]n increase in cross-border transactions and disputes mean that a knowledge of private international law is increasingly important to the practice of law'. Such statements have been made before. They continue to hold true.

With that in mind, on 16 February 2018, the University of Sydney Law School will convene a conference on Commercial Issues in Private International Law. The program will bring together members of the judiciary, the profession, and academia to discuss private international law as it relates to commercial law in Commonwealth jurisdictions.

The pages that follow detail a program which deals with fundamental and current problems for private international law. In their keynotes, Dickinson and Yeo will consider jurisdiction over absent defendants, and the rise of party autonomy, respectively. Across four sessions, panellists will consider the fundamental issues of private international law – jurisdiction, choice of law, and recognition and enforcement of foreign judgments – as well as practical matters of evidence and proof. There will be a dedicated session on developments at the Hague Conference on Private International Law, and how those developments could impact Australian commercial law in 2018. The program will be bookended by speeches by Justice Rares and Justice Brereton.

The program should be of interest not merely to scholars in this area, but also to practitioners who deal with cross-border issues in the course of their practice. CPD points are available for attendees.

We hope that you will join us in February to discuss this increasingly important area of law.

Vivienne Bath and Michael Douglas

Conference Convenors



Overview of Sessions

16 February 2018

9am – 5.20pm

TIME	SESSION
8.30am	Registration
9.00am	Welcome and Conference Opening: Rares
9.30am	Keynote: Dickinson
10.15am	Morning tea
10.45am	Panel 1: Hague Developments
11.55am	Panel 2: Choice of Law
1.10pm	Lunch & Panel 3: Evidence and Proof
2.20pm	Keynote: Yeo
3.05pm	Afternoon tea
3.35pm	Panel 4: Jurisdiction and Judgments
4.50pm	Commentary: Brereton
5.20pm	Close
5.30pm	Drinks



8.30 – 9.00am	Registration and refreshments
9.00 – 9.30am	WELCOME Vivienne Bath, University of Sydney
	CONFERENCE OPENING Justice Rares, Federal Court of Australia
9.30 – 10.15am	KEYNOTE Presentation title: <i>In Absentia</i> Keynote speaker: Andrew Dickinson , University of Oxford Chair: Vivienne Bath, University of Sydney
10.15 – 10.45am	<i>Morning tea</i>
10.45 – 11.55am	PANEL 1 Developments at the Hague Conference on Private International Law Chair: Michael Douglas, University of Sydney Mary Keyes , Griffith University Melissa-Jane Ford , Attorney-General's Department Brooke Adele Marshall , Max Planck Institute
11.55am – 1.10pm	PANEL 2 Choice of Law Chair: James Stellios, Australian National University Benjamin Hayward , Monash University Maria Hook , University of Otago Michael Douglas , University of Sydney
1.10 – 2.20pm	LUNCH & PANEL 3 Evidence and Proof Chair: Albert Dinelli, Victorian Bar Dominique Hogan-Doran , NSW Bar Donald Robertson , Herbert Smith Freehills Andrew Bell , NSW Bar
2.20 – 3.05pm	KEYNOTE Presentation title: <i>The Rise of Party Autonomy in Commercial Conflict of Laws</i> Keynote speaker: TM Yeo , Singapore Management University Chair: Vivienne Bath, University of Sydney
3.05 – 3.35pm	<i>Afternoon tea</i>
3.35 – 4.50pm	PANEL 4 Jurisdiction and Judgments Chair: Justin Hogan-Doran, NSW Bar Jeanne Huang , University of New South Wales Reid Mortensen , University of Southern Queensland Vivienne Bath , University of Sydney
4.50 – 5.20pm	COMMENTARY Justice Brereton, Supreme Court of New South Wales
5.20 – 5.30pm	Close
5.30pm -	Drinks



Professor Vivienne Bath

University of Sydney

Panel presentation: Service out of the jurisdiction and the issue of overlapping jurisdictions

The recent expansion of the rules of NSW, Victoria, South Australia and the ACT on service outside the jurisdiction is directed at harmonization with the New Zealand rules. It also potentially opens up even more avenues for jurisdictional overlap between Australian and foreign courts. This paper reflects on some of these issues and the possibilities for their resolution.

Vivienne Bath is Vivienne Bath is Professor of Chinese and International Business Law at the University of Sydney Law School, where she teaches private international law. She is also Director of the Centre for Asian and Pacific Law and Director of Research at the China Studies Centre. She has published widely on Chinese law with a focus on investment and commercial law. Her most recent publication in the area of private international law is 'Overlapping Jurisdiction and the Resolution of Disputes before Chinese and Foreign Courts' (2015-2016) 17 *Yearbook of International Private Law* 111-150 (November 2016).

Dr Andrew Bell SC

NSW Bar

Panel presentation: Some aspects of foreign evidence gathering in a commercial case: familiar problems and recent developments (with Donald Robertson)

With transnational disputes ever on the increase, and broad rules for the assumption of jurisdiction and a relaxed inappropriate forum test firmly embedded in rules of court and caselaw, one of the remaining problematic and cumbersome issues for those engaged in transnational dispute resolution concerns the obtaining of evidence from abroad. Formal processes can entail both great delay and expense, inimical to the efficient resolution of disputes, and doctrinal constraints related to respect for territorial sovereignty and comity can impede developments in the case law. These themes will be illustrated by reference to a series of recent cases, and point to the need for institutional arrangements that facilitate the efficient disposition of disputes by making national borders less intrusive as an element in the overall approach.

Andrew Bell has a broad national practice and has appeared in almost 30 High Court appeals across a broad range of fields, and in numerous special leave applications. He also regularly appears in the New South Wales and Western Australia Courts of Appeal and the Full Court of the Federal Court, as well as at first instance and in domestic and international arbitrations. His practice includes corporate and commercial litigation, class actions, general appellate matters, public and constitutional law including electoral law, sports law and shipping and transport disputes. He specializes in private international law and transnational litigation and arbitration, in which areas he has taught and written extensively. He has also acted as an arbitrator and appeared in many domestic and international arbitrations. He has regularly been named in the Litigation, Alternative Dispute Resolution and Bet-the-Company Litigation categories in the annual AFR survey of top Australian lawyers, and is ranked Band 1 of all Australian barristers by Chambers Asia Pacific. He is co-author of *Nygh's Conflict of Laws in Australia* (LexisNexis, 9th ed, 2014), with Martin Davies and Paul Brereton, and is author of *Forum Shopping and Venue in Transnational Litigation* (OUP, 2003).



The Honourable Justice Paul le Gay Brereton AM RFD

Supreme Court of New South Wales

His Honour will comment on the day's proceedings

Justice Brereton was educated at the University of Sydney, admitted as a solicitor in New South Wales in 1982, called to the Bar in 1987 and appointed Senior Counsel in 1998. At the Bar, he had a diverse general practice. In 2005, he was appointed a Judge of the Supreme Court of New South Wales, where he is assigned primarily to the Equity Division, and is the Corporations List Judge and Adoptions List Judge. He is also the judge with oversight of the Costs Assessment Scheme.

He is also a member of the Harmonisation of Rules Committee, and occasionally sits in the Family Provision List. Since 2013 he has been a member of the Defence Force Discipline Appeals Tribunal. He was appointed a part-time Commissioner of the NSW Law Reform Commission on 1 June 2016 and Deputy Chairperson on 1 July 2016. He is one of the three authors of the current (ninth, 2014) edition of Nygh's Conflict of Laws in Australia, and the revising author of the Conflict of Laws title in Halsbury's Laws of Australia.

As a Defence Reservist, he was Head of Reserves in the rank of Major General and he is currently an Assistant Inspector General of the Australian Defence Force.

Professor Andrew Dickinson

University of Oxford

Keynote presentation: *In Absentia*

From the early 19th Century, Australia's legal systems have wrestled with the problem of absent defendants: how to balance the competing demands of justice between a claimant who might otherwise be left without an effective remedy when a transaction turns sour and a defendant at risk of being condemned without the opportunity to learn of the case against him and to be heard. This paper traces the development of the rules governing such cases, with a focus on the law and procedure of New South Wales, before turning to consider whether the currently applicable rules are fit for purpose.

Andrew Dickinson is Professor of Law at the University of Oxford. He joined the Faculty in 2013, and is a fellow of St Catherine's College. From 2011-2013, Dickinson was Professor of Private International Law at the University of Sydney. He is one of the contributing editors of *Dicey, Morris & Collins on the Conflict of Laws*, the author of a well-regarded work on the Rome II Regulation, and is co-editor of *Australian Private International Law for the 21st Century – Facing Outwards* (Hart, 2014), with Keyes and John.

Dr Albert Dinelli

Victorian Bar

Dinelli will chair the panel on Evidence and Proof

Albert Dinelli practises in a wide range of complex commercial and public law matters at the Victorian Bar. He has substantial experience in commercial trials in the Supreme and Federal Courts, as well as before arbitral tribunals. Albert has appeared in numerous appeals in intermediate appellate courts and in the High Court of Australia in commercial, constitutional, administrative and criminal law matters.

Before coming to the Bar, Albert was Associate to the Honourable Murray Gleeson AC, the then Chief Justice of the High Court of Australia. Prior to that, he practised as a solicitor with Mallesons Stephen Jaques (now King & Wood Mallesons) in the dispute resolution group. He completed his D.Phil and BCL at the University of Oxford, specialising in private international law, having earlier graduated from Monash University with first class honours in his undergraduate Law degree.

Albert maintains his interest in academia by teaching regularly at the Law School at the University of Melbourne, where he is a Senior Fellow. He will teach International Commercial Litigation in the LLM course in September 2018.

Albert has also been called to the Bar of England and Wales, and is a member of chambers at 20 Essex Street, a leading international law and arbitration set. He was recognised in the 2017 edition of Who's Who Legal as a "Future Leader" in international arbitration.



Michael Douglas

University of Sydney

Panel presentation: The Policy of the Australian Consumer Law

In *Akai Pty Ltd v The People's Insurance Co Ltd* (1988) 188 CLR 418, Toohey, Gaudron and Gummow JJ held that courts may refuse to give effect to contractual provisions which, while not directly contrary to any express or implied statutory prohibition, nevertheless contravene 'the policy of the law' as discerned from the scope and purpose of a particular statute. The 'policy of the law' may thus trump a choice of law clause in favour of foreign law in a cross-border contract. Recently, in *Valve Corporation v Australian Competition and Consumer Commission* [2017] FCAFC 224, the Court affirmed a decision of Edelman J that statutory protections of the Australian Consumer Law would apply to a cross-border contract notwithstanding an express choice of foreign law, and notwithstanding the fact that a foreign jurisdiction had the closest and most real connection to the transaction. In January 2018, Valve sought special leave in respect of the Full Court's position on s 67 of the Australian Consumer Law. This presentation will consider how the 'policy of the Australian Consumer Law' may justify the extraterritorial application of the *Competition and Consumer Act 2010* (Cth) to a cross-border contract, notwithstanding an inconsistent express choice of law.

Michael Douglas is a Lecturer at the University of Sydney Law School, where he convenes the compulsory course in private international law. He is a doctoral candidate in private international law and media law under the supervision of David Rolph and William Gummow. His work in private international law has been accepted in leading publications, including the *Melbourne University Law Review*, the *Journal of Contract Law* (forthcoming), and *The Law Quarterly Review* (forthcoming). He was a UWA Fogarty Foundation scholar, and holds an LLM (Dist) and an MBA (Dist).

Melissa Ford

Australian Attorney-General's Department

Panel presentation: Update on the implementation of the Hague Choice of Court Convention and negotiations on the draft Hague Judgments Convention on the Recognition and Enforcement of Judgments in Civil and Commercial matters

In 2016, the Australian Attorney-General's Department (AGD) was granted approval to enact legislation to give effect to the 2005 Hague Choice of Court Convention and the Hague Principles on Choice of Law. The International Civil Law Bill will implement the 2005 Choice of Court Convention. The Bill will promote party autonomy in civil and commercial contracts by making the process of determining jurisdiction transparent and predictable. The Bill will only apply to exclusive choice of court agreements and will impose certain obligations on courts within countries which are party to the Choice of Court Convention. The Bill is currently being drafted and, following a limited exposure draft, is expected to be ready for introduction in mid to late 2018.

As a member of The Hague Conference on Private International Law, Australia is negotiating an international convention for the recognition and enforcement of civil and commercial judgments (the draft Judgments Convention). The draft Judgments Convention aims to create an effective regime for the recognition and enforcement of foreign judgments and will facilitate cross border commercial arrangements and trade. Such a regime would give parties greater certainty about the effectiveness of judicial decisions and the capacity to enforce those decisions against assets located abroad. Australian delegates have actively participated in negotiations since early 2015, including attending three Special Commission meetings and other working groups associated with the draft Judgments Convention. A fourth Special Commission meeting is expected to continue negotiations in mid-2018. Officers from AGD will attend this meeting after conducting extensive consultations on the draft Convention throughout the first half of 2018.

In my presentation, I will provide an update on the development of the International Civil Law Bill and the negotiations relevant to the draft Judgments Convention, while noting some of the outstanding issues that are still to be resolved.

Melissa Ford is currently the Principal Legal Officer of the Private International Law and Commercial Policy Unit at AGD. This Unit is Australia's designated National Organ to the Hague Conference on Private International Law and is the Central Authority for the Hague Service, Evidence and Apostille Conventions. Melissa has worked at the Attorney-General's Department since 2009 and has developed expertise in areas including Mutual Assistance in Criminal Matters and Extradition, International Legal Assistance and Criminal Law Policy.



Dr Benjamin Hayward

Monash University

Panel presentation: Paying attention to choice of law in international commercial arbitration

International commercial arbitration is a preferred means of settling cross-border business disputes, and raises many interesting (and difficult) private international law issues - including identification of the governing substantive law. Parties often exercise their rights to choose the governing substantive law, though a not insignificant number of arbitrated disputes involve no choice of law clause, requiring the arbitrators to themselves identify the governing law. The literature often treats party choice of law and arbitrator identification of the governing law as binary alternative processes - though they are not actually mutually exclusive, and have a sophisticated interaction. This presentation will explore why it is important for commercial parties to carefully consider the drafting of their choice of law clauses in international commercial arbitration, and to understand the inherent limits of those clauses - in aid of appreciating that choice of law clauses will not necessarily solve all issues regarding the governing law in an international commercial arbitration.

Benjamin Hayward is a Senior Lecturer at Monash University with research interests in private international law, international commercial arbitration, and the international sale of goods. He is the author of *Conflict of Laws and Arbitral Discretion: The Closest Connection Test* (OUP, 2017).

Dominique Hogan-Doran SC

NSW Bar

Panel presentation: Proof of foreign law

Jura novit curia ("the court knows the law") is a maxim known both to the civil law and common law worlds. However, whether this maxim also applies to *foreign* law is something on which various legal systems disagree. The litigant's burden of having to invoke and prove foreign law continues to prove challenging. Failure to discharge the burden could harm a litigant's case, including dismissal of their claim or defence, or the application of unfavourable forum law. Should judges be entitled to rely on paid witnesses to "spoon feed" them foreign law that can be found well explained in treatises and articles readily available on the Internet? This presentation will consider troubles with proof of foreign law and consider recent cases from Australian and UK courts, as well as comparative law approaches.

Dominique Hogan-Doran has a broad national practice with chambers in Sydney, Melbourne and Adelaide. She was Recommended by *Doyle's Guide* as a Leading Commercial Litigation and Dispute Resolution Senior Counsel (2016, 2017) and received the *Lawyers Weekly* Barrister of the Year Award (2016). She is an accredited arbitrator and Fellow of the Chartered Institute of Arbitrators, with numerous panel appointments, including for the Australian Energy Regulator, the Essential Services Commission of South Australia, the National Broadband Network, and the Australian Superannuation Transactions Network. Prior to coming to the Bar, she was Research Director to the Chief Justice of New South Wales, the Hon. A.M. Gleeson AC, and a lawyer with Mallesons Stephen Jacques. She is author of the *Laws of Australia* title "Trial Courts and Jurisdiction" and an Adjunct Associate Professor with the University of New South Wales.



Justin Hogan-Doran

NSW Bar

Hogan-Doran will chair the panel on Jurisdiction and Judgments

Justin Hogan-Doran practices as a barrister and arbitrator in International Commercial & Construction Arbitration & Litigation, Maritime & Transport Law, and Insolvency & Bankruptcy including cross-border insolvency. For a number of years he has been recognised as one of Australia's leading lawyers in Alternative Dispute Resolution (arbitration). Justin is also recommended by Doyle's Guide in Australia in both Construction and Transport litigation (2017). Prior to coming to the Bar, Justin practised as a solicitor in the Banking and Finance division of Mallesons Stephen Jaques, was an Associate to H.E. the Rt Hon Judge Sir Ninian Stephen in the International Criminal Tribunal for the former Yugoslavia in The Hague, and was a consultant in the Financial Services Practice Group of the Boston Consulting Group. He was a Menzies Scholar to Oxford where he won the Dacey & Morris Prize for Conflict of Laws in the BCL, and lectures part-time in private international law at the University of Sydney.

Dr Maria Hook

University of Otago

Panel presentation: The cross-border application of statutes – a conflict of methodologies

Australasian courts use two principal ways of determining the cross-border application of statutes. The first is to rely on orthodox conflict of laws rules: to characterise the issue in question, apply limitations on subject-matter jurisdiction and give effect to applicable choice of law rules. The second is to rely on principles of statutory interpretation. These approaches represent distinct methodologies, and choosing one over the other may determine the outcome of a case. In *Brown v New Zealand Basing* [2017] NZSC 139, for example, the Supreme Court treated the territorial scope of the *Employment Relations Act 2000* as a "question of interpretation", while the Court of Appeal had approached the matter as a problem of the conflict of laws. The Court of Appeal held that the Act did not apply; the Supreme Court allowed the appeal. Despite its practical significance, this conflict of methodologies tends to play out in the background. It is under-explored and –theorised, yet it is desperately complex. We – academics, practitioners, judges – should make a more concerted effort to solve it.

Maria Hook is a Senior Lecturer in the Faculty of Law at the University of Otago, New Zealand. She is author of *The Choice of Law Contract* (Hart, 2016), and is the co-author of a forthcoming text on *The Conflict of Laws in New Zealand* (LexisNexis).

Dr Jeanne Huang

University of New South Wales

Panel presentation: Reciprocal recognition and enforcement of foreign judgments in China: Promising developments, prospective challenges and proposed solutions

Recently, Chinese courts unprecedentedly recognized and enforced two commercial monetary judgments rendered in Singapore and the US, based on the principle of reciprocity. This promising development should not be over-evaluated because of its prospective institutional, doctrinal and practical challenges. This paper proposes a registration system for foreign judgment recognition and enforcement (JRE) to resolve these challenges. It is a timely effort to help develop Chinese JRE system in the context of the 'One Belt One Road' initiative. This paper also has broad international implications for other jurisdictions contemplating JRE, as it discusses the controversial values, contents, and practical regime to realize JRE based on reciprocity. Further, this paper has special implications for realizing mutual JRE between Australia and China.

Jeanne Huang is Senior Lecturer in the Faculty of Law at the University of New South Wales. Previously, she was an Associate Professor and Associate Dean at Shanghai University of International Business and Economics School of Law in China. Huang teaches and researches in the fields of international investment law and dispute resolution (international litigation and arbitration). She has published articles on private international law, including a review article in the latest issue of the *Journal of Private International Law*: 'Partially Modernized Chinese Conflicts System: Achievements and Challenges'.



Professor Mary Keyes

Griffith University

Panel presentation: Developing Australian Private International Law: Adopting the Hague Choice of Courts Convention and the Hague Principles of Choice of Law

Australia has been a member of the Hague Conference on Private International Law since 1973. Australians have participated in the work of the Conference on many of its projects, and Australia has acceded to or ratified 11 Conventions. Hague Conventions have therefore had a significant influence in developing Australian private international law. The Australian federal government's proposal to accede to the Hague Choice of Court Convention is generally regarded as likely to improve the Australian law, although some issues have been raised about the way the Convention will interact with the existing law and about some matters affecting the enforcement of choice of court agreements which are not addressed in the Convention. The proposal accepted by the Joint Standing Committee on Treaties in 2016 also recommended that legislation giving effect to the Choice of Court Convention should enact the Hague Principles on Choice of Law in International Contracts. This part of the proposal has, perhaps surprisingly, attracted less attention in Australia than the proposal to give effect to the Choice of Court Convention. Australia has enacted legislation based on various UNCITRAL Model Laws, so there is a precedent for using international model laws as the basis of Australian legislation. While some aspects of the Principles would improve the Australian law, others are less clearly consistent with, or clearly desirable changes to, the Australian law. In my presentation, I will describe how adoption of these two instruments will change the Australian law dealing with the effect of choice of court and choice of law agreements, indicate some outstanding issues which will not be resolved simply by enacting these instruments, and make some suggestions as to how those issues might be addressed.

Mary Keyes is Professor at Griffith Law School and a Barrister of the Supreme Court of Queensland and of the High Court of Australia. She is author of *Jurisdiction in International Litigation* (Federation Press, 2005), and is co-author of *Private International Law in Australia* (LexisNexis Butterworths, 3rd ed, 2015, 4th ed forthcoming 2018), with Mortensen and Garnett. She is review articles editor of the *Journal of Private International Law*, and editor of *Australian Private International Law for the 21st Century – Facing Outwards* (Hart, 2014), with Dickinson and John.

Brooke Adele Marshall

Max Planck Institute

Panel presentation: Recognition of judgments based on non-exclusive jurisdiction agreements

The 2005 Hague Convention on Choice of Court Agreements is in force in the European Union, Singapore and Mexico. Australia is considering accession. The convention only applies to jurisdiction based on exclusive jurisdiction agreements. But the convention also allows contracting states to extend its provisions on recognition and enforcement to judgments rendered by courts pursuant to a non-exclusive jurisdiction agreement. The convention provides for states to do so by way of a reciprocal declaration. Where two states whose courts are involved have made a declaration, the court addressed shall recognise the judgment of the court of origin, provided certain conditions are satisfied. This paper comprises two parts. It examines, first, what constitutes a non-exclusive jurisdiction agreement under the convention. Secondly, it scrutinises the content and effect of the conditions that a judgment, based on a non-exclusive jurisdiction agreement, must fulfil before it can be recognised. The purpose of the paper is to consider whether a reciprocal declaration is something which Australia, and other contracting states, should make if Australia accedes to the convention.

Brooke Adele Marshall is Senior Research Fellow at the Max Planck Institute for Comparative and International Private Law in Hamburg. In 2016 she was awarded the Diploma of The Hague Academy of International Law in Private International Law. Marshall is a doctoral candidate in private international law and international civil procedure at the University of Hamburg under the supervision of Professor Jürgen Basedow and Professor Mary Keyes, and has published several articles in the field of private international law.



Professor Reid Mortensen

University of Southern Queensland

Panel presentation: Concurrent proceedings, case management and Brussels I

In its insistence on uniformity across the European Union in the application of the Brussels I Recast Regulation and its predecessors, the European Court of Justice has consistently ruled that different common law institutions that place litigation in the most appropriate court (*forum non conveniens* and anti-suit injunctions) cannot be applied by courts in cases captured by the Regulation. The ECJ's jurisprudence has nevertheless not prevented English courts from exercising discretionary powers to stay proceedings on 'case management grounds' when there are concurrent proceedings (*lis pendens*) in a foreign court – even when jurisdiction in the English proceedings is governed by the Regulation. Case management stays have uncomfortable parallels to stays granted on the ground of *forum non conveniens*. Although they are only to be used in exceptional cases, it could be suggested that the rise of case management stays represents a polite common law resistance to the ECJ's Brussels I jurisprudence. Although Brexit promises the possibility that English courts may eventually re-introduce *forum non conveniens* and anti-suit injunctions to litigation that would once have fallen under the Regulation, there is still a question whether case management is now established as an alternative ground for addressing *lis pendens* – in England and beyond.

Reid Mortensen is Professor and Head of the School of Law and Justice at the University of Southern Queensland. He is the lead author of *Private International Law in Australia* (LexisNexis Butterworths, 3rd ed, 2015), with Mary Keyes and Richard Garnett. His research in recent years has concentrated on trans-Tasman jurisdiction and judgments. He is a member of the Editorial Board of the *Journal of Private International Law*, and the Centre for Private International Law at the University of Aberdeen.

The Hon Justice Steven Rares

Federal Court of Australia

His Honour will open the conference

Steven Rares was appointed a judge of the Federal Court of Australia in 2006. He is also an additional judge of the Supreme Court of the Australian Capital Territory. He graduated in Arts and Law from the University of Sydney and after two years working in a solicitors' firm he was called to the New South Wales Bar in 1980. He was appointed a Senior Counsel in 1993. In 2004 and 2005 he was a member of the Judicial Commission of New South Wales. Justice Rares is currently a National co-convening judge and the New South Wales registry convening judge for the Admiralty and Maritime National Practice Area and a member of the Comité Maritime International's International Working Group on Offshore Activities. Between October 2014 and October 2016, he was President of the Judicial Conference of Australia. He is a Vice President and a member of the Board of Management of the Australasian Institute of Judicial Administration. He is also the Chairman of the Consultative Council for Australian Law Reporting.

Donald Robertson

Herbert Smith Freehills

Panel presentation: Some aspects of foreign evidence gathering in a commercial case: familiar problems and recent developments (with Andrew Bell SC)

With transnational disputes ever on the increase, and broad rules for the assumption of jurisdiction and a relaxed inappropriate forum test firmly embedded in rules of court and caselaw, one of the remaining problematic and cumbersome issues for those engaged in transnational dispute resolution concerns the obtaining of evidence from abroad. Formal processes can entail both great delay and expense, inimical to the efficient resolution of disputes, and doctrinal constraints related to respect for territorial sovereignty and comity can impede developments in the case law. These themes will be illustrated by reference to a series of recent cases, and point to the need for institutional arrangements that facilitate the efficient disposition of disputes by making national borders less intrusive as an element in the overall approach.

Donald Robertson is a Partner in disputes at Herbert Smith Freehills. His practice covers all aspects of international law, including international contract and commercial law. He has an emphasis on the regulation and protection of cross-border investments and contracts by means of international investment treaties and international contract law. He is an Adjunct Professor of Law at The University of Sydney Law School, where he has taught international contract law, private international law, and international economic law.



Professor James Stellios

Australian National University

Stellios will chair the panel on Choice of Law

James Stellios is a Professor at the ANU Law School, where he teaches Conflict of Laws. His primary research areas are constitutional law and federal jurisdiction, and he has a particular interest in intra-national choice of law in Australia. He is also the Director of the ANU Centre for International and Public Law, a Fellow of the Australian Academy of Law, a Senior Fellow at the Melbourne Law School and a barrister at Six St James Chambers. Prior to joining the ANU, he spent a number of years in legal practice working for the Attorney-General's Department and the Australian Government Solicitor, principally in constitutional litigation and as Counsel Assisting the Solicitor-General of the Commonwealth, David Bennett QC. James has also been a consultant to Clayton Utz and Sparke Helmore.

Professor TM Yeo

Singapore Management University

Keynote presentation: The rise of party autonomy in commercial conflict of laws

Party autonomy stands out as a key feature of recent worldwide developments in private international law, especially in the commercial sphere. This paper will review a number of landmark developments across the three traditional aspects of the subject: jurisdiction, choice of law, and foreign judgments.

TM Yeo was previously the Dean of the School of Law at Singapore Management University, where he is currently the Yong Pung How Chair Professor of Law. He serves as an expert in Singapore's delegation to the Hague Conference on Private International Law for the Judgments project, and Academic Director of the Asian Business Law Institute in Singapore. He is the author of *Choice of Law for Equitable Doctrines* (OUP, 2004), and the "Conflict of Laws" volume in *Halsbury's Laws of Singapore*.



Location

Sydney Law School
New Law Building (F10),
Eastern Avenue,
Camperdown,
The University of Sydney

