

ANGLO-AMERICAN CONTRACT MODELS NEWSLETTER – AUTUMN 2007

NEW RESEARCH ASSISTANT

We are pleased to announce that we have just employed a new research assistant, *Jens Christian Westly* (financed by the Norwegian Research Council), who will write a thesis on the clause of no oral amendments.

CURRENT WORK ON THESIS / SUBMITTED THESES

André Bjerketveit, who was employed as a research assistant in the Autumn semester 2006 (financed by the Norwegian Research Council), has just submitted for evaluation his thesis on Indemnification and Hold Harmless clauses.

Kyrre Kielland, who was employed as a research assistant in the Spring semester 2007 (financed by the law firm DLA Piper), is continuing his work on a thesis on Liquidated Damages.

We are also happy to inform that *Magrethe Buskerud Christoffersen* has submitted her thesis on “Representations and Warranties in share purchase agreements” for evaluation for the Dr.juris degree. Our project's topic and methods had relevance to parts of Magrethe's thesis, and she participated actively in some of our work.

LINKS TO THESES

On the project's site (http://www.jus.uio.no/ifp/anglo_project/index.html) you can find links to the following theses that were so far submitted in the framework of the project (the full text is in Norwegian; draft abstracts in English are available for some theses and will soon be available for all):

- [Subject to Contract clause](#), by *Christine Halvorsen Thaulow*
- [No Waiver clause](#), by *Fredrik Skribeland*
- [Conditions, Representations, Warranties and Covenants](#), by *Tor Sandsbraaten*, with [abstract](#) in English

- [Material Adverse Changes](#), by *Lars Ole Sikkeland* with [abstract](#) in English
- [Entire Agreement clause](#), by *Henrik Wærsted Bjørnstad* with abstract in English (forthcoming)
- Subject to Contract and Best Efforts to Negotiate, by *Bodil Kristine Høstmælingen* (forthcoming)
- Indemnification and Hold Harmless Clauses, by *André Bjerketveit* (forthcoming)

Links are available also to the theses that were written on specific marine insurance subjects:

- [Mortgagee's interest insurance](#), by *Silje Gundersen*
- [Norwegian Marine Insurance Plan](#), by *Ingrid Lind Groh*
- [Various reinsurance clauses](#), by *Kaja de Vibe*

FUTURE WORK

In addition to the above mentioned theses, which have been or are being written by research assistants, the project consists of three PhD theses, on hardship (Anders Mikelsen), force majeure (Herman Bruserud) and liquidated damages clauses (Ed Canuel). These theses will be available in the course of the next couple of years.

Of the originally planned research topics for the project (a full overview of the topics for research can be found at: http://www.jus.uio.no/ifp/anglo_project/essays.html) only three clauses remain:

- No Reliance clause
- Sole remedy clauses
- Retention of title, Hold in trust clauses

“No reliance” has close connection with “Entire agreement”, that was already dealt with in the project (by Henrik Wærsted Bjørnstad); “Sole remedy” has close connection with “Liquidated damages”, that is being dealt with in the project (by Kyrre Kielland). Therefore, it does not seem advisable to devote new, independent theses to these subjects.

“Retention of title” and “Hold in trust” have implications that differ from the clauses that were analysed so far in the project. The challenges that they present go beyond the questions of interpretation arising when the clauses are governed by a law different from English law or other common law system. The interesting question regarding these clauses is rather whether they are capable of being subject to a law different from the law that governs according to the applicable choice of law rules.

Hence, these clauses will be, together with numerous other clauses mainly in the area of encumbrances, insolvency and corporate law, the subject-matter of a new research project, to be launched immediately after this present project is concluded.

Therefore, the project's future activity will concentrate on completing the research that is already ongoing and on organising a final conference and publication (see below).

WORKSHOPS

On *November 8th* we held a workshop presenting the first publication of the project (see below), and in that connection we hosted a lecture by *Professor Jan Dalhuisen, King's College, London*, who spoke about the various sources of law that are relevant to the regulation of international contracts.

On *December 4th* we held a workshop for a group of practicing lawyers from the project's [user's group](#) and further selected practicing lawyers. We discussed parts of the PhD Thesis that *Ed Canuel* is working on, on the purpose and effects of liquidated damages in US law, as well as parts of the thesis that *Kyrre Kielland* is working on, on the effect of liquidated damages clauses in English and Norwegian law. *Professor Lars Gorton of the Lund and Stockholm Universities* participated and discussed the effect of liquidated damages clauses in Swedish law.

PUBLICATION OF THE PROJECT'S WORK

The project's work is being published in the Publication Series issued by the Department of Private Law at the University of Oslo. The publications will appear in a separate series entitled "*Anglo-American Contract Models*".

Project publication No 1 (169/2007) introduces the project and its method, and discusses questions of relevance to the general topic of the project: if a contract is subject to Norwegian law but is written on the basis of a Common Law contract model, which significance should the Common Law have for the interpretation of the contract and the application of the governing Norwegian law? The questions is answered from the perspective of private international law (can the parties be deemed to have chosen the law on the basis of which the contract was originally written?), of international commercial law (are there any international sources that may help interpreting these contracts?), and of comparative law (are there general differences among the legal systems that are likely to affect the interpretation of these contracts?).

The next volumes will follow in the same Publication Series, and will consist of an analysis of the specific clauses and of how the differences between English and Norwegian law affect their interpretation. The publications will be in Norwegian, with an English abstract.

In addition to the Publication Series mentioned above, the results of the project, including also the contributions by the advisors to the project and the various guest lecturers, will be coordinated and published in a separate book.

LECTURES AND PUBLICATIONS

Topics closely related to our project's subject-matter were presented and discussed in the following lectures or publications during the year 2007:

Giuditta Cordero Moss:

- THE "TROIKA" AND ITS EFFECTS ON THE HARMONISATION OF CONTRACT LAW – ILLUSTRATED BY THE DUTY OF GOOD FAITH BETWEEN THE PARTIES, Colloquium of the International Academy of Legal Sciences, forthcoming, 2007
- COMMERCIAL CONTRACTS BETWEEN CONSUMER PROTECTION AND TRADE USAGES: SOME OBSERVATIONS ON THE IMPORTANCE OF STATE CONTRACT LAW, in Schulze, R. (ed.), *Common Frame of Reference and Existing EC Contract Law*, Sellier. European Law Publishers, pp. 1-22
- [TACIT CHOICE OF LAW, PARTIAL CHOICE AND CLOSEST CONNECTION: THE CASE OF COMMON LAW CONTRACT MODELS GOVERNED BY A CIVILIAN LAW](#), in Giertsen, J., Frantzen, T. and Moss, G.C. (eds.), *Rett og toleranse - Festskrift Helge Johan Thue*, Gyldendal 2007, pp. 367-378

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