SCHOOL OF LAW

POST-GRADUATE RESEARCHERS' PRESENTATIONS

7 October 2015
Venue: MR028

WELCOME TEA: 8.30 – 8.55
All attendees welcomed.

OPENING REMARKS: 8.55 – 9.00
Anne-Michelle Slater, Head of School, Law.

9.00 – 9.30
Donya Moin (Year 1 PhD Candidate)
Supervisors: **Mr Derek Auchie** and **Mr Greg Gordon**

Settlement of Oil Nationalization Disputes between International Oil Companies and Host States

Oil nationalization disputes between international oil companies and host states should be settled through a method which is capable of reducing the risk of damaging parties' relationship for future businesses, and considering the cyclical nature of such disputes. In fact, the cycle of nationalization disputes implies the interdependence of the parties and the inevitability of their business relationship in the future. This in turn highlights the importance of finding a dispute resolution strategy which can mitigate the negative effects of disputes on disputants' relationship.

Traditionally, arbitration has been utilized for resolving nationalization disputes. However, there are three qualities of arbitration which makes it disadvantageous for resolving such disputes: its partiality, adjudicative nature and difficulty in the enforcement of arbitral awards. Considering the negative effect of these traits on the disputants' relationship, mediation as a neutral,

non-adjudicative and consensual dispute resolution method can be suggested as a suitable alternative. However, there are also limitations in using mediation, particularly the disputants' unfamiliarity with this method and its inadequacy in dealing with the political overtone of nationalization disputes. By proposing remedies to the deficiencies of mediation, this paper attempts to show that resolving oil nationalization disputes via mediation rather than arbitration can reduce the relationship risk for both parties.

9.30 – 10.00

Aysun Bolaca (Year 1 PhD Candidate)
Supervisors: **Mr Derek Auchie** and **Dr Chris Kee**

The Lack of Precedent-based System as a Reason for Inconsistency in International Arbitration

One of the most significant drawbacks identified in international investment arbitration is the possibility of inconsistent arbitral decisions. As the success of dispute settlement mechanisms relies upon the confidence of the users, the risk of inconsistent decisions is particularly detrimental. Predictability, one of the key values of any rule-based system of law, cannot be provided where arbitral tribunals produce inconsistent arbitral decisions.

The absence of a precedent-based system in international arbitration contributes to an inconsistency between arbitral decisions to a great extent. There is no formal rule of precedent in international arbitration; therefore, arbitral tribunals are not legally obliged to follow previous decisions when the same fact pattern occurs for determination in a subsequent case. However, the attitudes of arbitral tribunals show that there is a special role for precedents in investment arbitration practice on a *de facto* basis.

This presentation first gives an overview of the consistency question in international arbitration. It then discusses the lack of precedent-based system as a reason for inconsistency and analyses the role of precedents in the process of investment arbitration. The final part critically evaluates the proposed solutions regarding the question of how, and to what extent, strong reliance on previous arbitral awards can be provided.

10.00 – 10.30

Onyoja Momoh (Year 1 PhD Candidate)

Supervisors: **Dr Katarina Trimmings** and **Prof Paul Beaumont**

Domestic Abuse in the context of Article 13 (1) b) of the 1980 Hague Convention

The aim of the 1980 Hague Convention on the Civil Aspects of International Child Abduction is to secure the prompt and safe return of children who have been wrongfully removed or retained away from the country of their habitual residence, in breach of the custody rights of another parent. However, in exceptional cases, a departure from this principle may be justified. Article 13(1) b) provides that a return may be refused if there is a grave risk that the return would expose the child to physical or psychological harm, or otherwise place the child in an intolerable situation. It is arguably the most frequently litigated provision albeit a difficult defence to establish. This is because the defence is often met with the rigours of the court's obligations to consider a swift return as well as acceptance of undertakings from the parent who caused the alleged harm. Domestic and family violence in the context of the 1980 Hague Convention has been raised as a matter in need of urgent attention in a number of spheres. The starting point is a theoretical analysis of the issues, a comparative analysis of case law and an element of empirical research with a focus on judges from selected common law and EU civil law jurisdictions. The principal objective is that the interpretation and application of Article 13(1) b) is afforded clear and good guidance. This research project which this paper examines aims to achieve this.

TEA BREAK: 10.30 – 10.45

All attendees welcomed.

10.45 – 11.15

Lela Melon (Year 1 PhD Candidate)

Supervisors: **Dr Justin Borg-Barthet** and **Dr Patrick Masiyakurima**

The Architecture and the Substance of EU Company Law

As the technological and political developments in the world paved the way to the globalised environment we are facing today, the corporations grew in size and economic power, but their regulatory framework stayed more or less the same as it has been in the past. The progressive role of company law faded away. As the EU stands united today in international trade, the US seems to be its biggest rival and it has been suggested in academic circles that the US should also be its role model in corporate law-making. While there are theories claiming that in the end, there is no substantive EU law and that the US is leading the way with its efficient company law framework, others seem to support that notion with claiming that the common law legal systems in any case seem to be offering the more efficient solutions for the modern legal issues. The combined influence of these theories can be strongly felt through *Doing Business* reports of the World Bank, which have since 2004 been advocating the use and adoption of common law institutes as more efficient to countries all over the world. The inherent dangers to such an approach are clear when it is based on theoretically and empirically unstable theory. Can it be that actually the EU has found the balanced approach to governance and that the US should follow its lead?

11.15 – 11.45

Yuwadee Amornsirivipa (Year 1 PhD Candidate)

Supervisors: **Dr Mark Igiehon** and **Dr Matyas Bodig**

Mandatory CSR reporting in the EU: can the new Directive meet the objective?

In Europe, the disclosure of environmental, human rights, and social risk is moving from voluntary reports to mandatory legal requirements as stipulated in the new EU Directive 2014/95/EU. It is the first step towards embedding into EU law the concept of Corporate Social Responsibility (CSR) and possibly the future trend of CSR.

Directive 2014/95/EU requires the companies concerned to disclose in their management report, information on policies, risks and outcomes as regards environmental matters, social and employee-related matters, respect for human rights, anti-corruption and bribery issues. The Directive's objective is to provide a sufficient level of comparability to meet the needs of investors and other stakeholders in order to measure and monitor the corporate performance and impact on society.

Can the objective be met where the Directive allows for "significant flexibility" in the way in which companies can choose to follow whatever national, European, or international disclosure standards of their choice? These standards differ significantly in their purpose and content. This research argues that with the flexibility in the new Directive, it is difficult for investors and other stakeholders to accurately compare the relevant information from different companies and that would render non-financial reporting requirements meaningless.

11.45 – 12.15
Nikolaos Trigkas (Year 1 PhD Candidate)
Supervisors: **Dr Abbe Brown** and **Mr Derek Auchie**

Challenging the Presumption of Reliability of Social Networking Website Evidence in US Law

In the developed world, the last century has witnessed the phenomenal rise of social media, which has progressively found its way into the courtroom as digital evidence.

In the US the admissibility of social networking website (SNW) evidence is decided pursuant to the Federal Rules and respective state rules, yet widely disparate outcomes are produced. A line of thought infers that information from such sites does not suffice for the establishment of the authenticity threshold due to a high potential for manipulation. Contrarily, the prevailing opinion deduces that authenticity may be ascertained on the basis of social

media page content itself, because text and photographs constitute sufficient circumstantial evidence.

The apparent inconsistency is facilitated by the existing legal framework governing electronic evidence admissibility, which remains in disarray and affords a fertile ground for arbitrariness. Since this phenomenon appears to contravene the constitutional principle of equality in the eyes of the law, this presentation aspires to serve a twofold purpose. Firstly, it challenges the rebuttable presumption of SNW evidence credibility that has been adopted by the prevailing opinion. Secondly, it calls for a consistency of judicial rulings on SNW information authentication, which can be ensured through the standardization of computer forensics methodologies.

12.15 – 12.45

SIMUKAI DZUDA (Year 1 PhD Candidate)
Supervisors: **Dr Abbe Brown** and **Dr Chris Kee**

Making Technology Transfer at the WTO a Reality At Last: the argument for creating a transfer scheme for renewable technologies which promotes trade, investment and safeguards core labour standards

Article 66.2 in the Agreement on Trade Related Intellectual Property Rights obliges developed countries to

> provide incentives to enterprises and institutions in their territories for the purpose of promoting and encouraging technology transfer to least-developed country Members in order to enable them to create a sound and viable technological base.

Developed countries are in violation of this provision. Therefore, least-developed country Members ought to make violation complaint to the WTO's Dispute Settlement Body in order to secure compliance from developed countries with that provision. While this is the desired outcome, it produces another problem. There is no guidance for developed countries on how to discharge the obligation. This calls for the creation of a technology transfer scheme at the WTO. The model scheme propounded in this presentation is for renewable technologies and is designed to promote (i.e. create opportunities for) trade and investment while safeguarding core labour

standards in least-developed countries. The model scheme links intellectual property, trade, investment, and core labour standards.

This presentation will explain the interrelationship between these seemingly unrelated fields from the perspective that the WTO ought to overturn its historic refusal to accept linkage, and that the arguments against linkage are flawed.

LUNCH: 12.45 – 13.30
All attendees welcomed.

13.30 – 14.00
Emem Eze Chioma (Year 1 PhD Candidate)
Supervisors: **Dr Tina Hunter** and **Prof John Paterson**

Commercialisation under the Structure of a Statutory Corporation as the Source of NNPC's Unprofitability

In line with the growing popularity of the practice of commercialising state-owned enterprises (SOEs) in the world, in 1999 the Nigerian National Petroleum Corporation (NNPC) was commercialised to operate profitably without depending on government intervention. However, despite the commercialisation, NNPC has today remained dependant on government for funding. This underlines that there is something fundamentally wrong with the commercialisation strategy, which from the point of view of this paper is not unconnected with the retention of NNPC's corporate form as a statutory body. Perhaps, the Nigerian commercialisation policy programme unwittingly thought it right not to corporatize NNPC as part of the commercialisation process, ignoring that corporatisation has been recognised as being a necessary component of the strategy of commercialisation of SOEs in the world.

The crucial question then is how has the ability of NNPC to make profit been hampered by the retention of its corporate status as a statutory body rather than a separate legal entity under the NNPC Act 1977? This paper therefore

identifies NNPC's current corporate form as the root cause of its unprofitability, arguing that until and unless NNPC is restructured into a separate corporate legal entity under the Nigerian corporate laws, its commercial viability and profitability will remain impeded.

14.00 – 14.30
Eddy Wifa (Year 1 PhD Candidate)
Supervisors: **Dr Tina Hunter** and **Prof John Paterson**

Developing an Effective Health and Safety Regulatory Framework for the United Kingdom Offshore Wind Energy Industry: lessons from its offshore oil and gas industry

The quest for cleaner, healthier sources of energy has led to current expansions and growth in the United Kingdom's offshore wind energy industry, particularly as it ensures energy security, meets EU renewable energy targets, as well combats the twin challenges of climate change and global warming. Ironically, while this development is worthy of commendation, the current health and safety challenges such as increase in accidents, skills shortage, and lack of safety data call to question the effectiveness of the current health and safety regulatory regime.

A critical evaluation of the regulatory architecture principally governed by the Health and Safety at Work etc Act 1974 reveals that the regime is fragmented and lacks a comprehensive and proactive form of health and safety risk assessments that is capable of addressing the potential risks associated with a complex, technologically advanced industry such as this. While the offshore wind energy industry is not the first to encounter such challenges, there are significant lessons to be drawn from the experiences of the United Kingdom's offshore oil and gas industry in this regard particularly as both offshore energy industries share some synergy and similarities in health and safety risk. Such lessons as the need for comprehensive risk assessments and proactive health and safety risk regulation will ensure a balance between offshore wind energy maximisation and health and safety regulatory requirements and considerations.

14.30 – 15.00
Jaai Kunchur (Year 1 PhD Candidate)
Supervisors: **Dr Tamas Gyorfi** and **Dr Martin Mills** (Anthropology)

Reformation of the Indian Constitutional Law on the Basis of 'Hindutva' and Social Democracy Principles

The cultural, religious, and the social diversity of the Indian society creates a highly complex social structure in India. It also creates conflicting social, economic and political interests, thereby making the Indian society vulnerable to divisive and separatist politics. The Indian Constitutional Law does not have any provisions that mandate transparency and discipline in political actions.

This research will propose a reformation of the Indian Constitutional Law for the integration of the Indian society by regulating the unequal treatment of the constituents by the Indian politicians.

Vinayak D Savarkar has proposed a non-religious concept of 'Hindutva' based on fierce nationalism to integrate the Indian society against the separatist forces. Along the same lines, Dr Babasaheb Ambedkar has given a theory for the systematic integration of the vulnerable sections into mainstream society. The socio-political views of these thinkers will be analysed, contextualised and consolidated to form the basic skeleton of the reformatory scheme.

This research also involves the study of political structure of the nations that have a highly divided society but have been successful in diffusing the social tensions. The principles and norms extracted from these sources will be used to form a reformatory framework for the Indian Constitution.

TEA BREAK: 15.00 – 15.15
All attendees welcomed.

15.15– 15.45
Constantinos Yiallourides (Year 3 PhD Candidate)

Supervisors: **Prof John Paterson** and **Mr Scott Styles**

Ghana/Cote d'Ivoire: Petroleum, Protest and Provisional Measures

This presentation examines the most recent decision of the International Tribunal of the Law of the Sea (ITLOS) on the Ghana/Cote d'Ivoire case concerning the latter's request for the prescription of provisional measures under article 290, paragraph 1 of the 1982 LOS Convention. Specifically, Cote d'Ivoire requested the ITLOS to prescribe that Ghana shall, *inter alia*, "suspend all oil exploration and exploitation operations under way in the disputed area". This is only the first time in the history of the 1982 LOS Convention that a special chamber, formed by the ITLOS, has received a request for provisional measures and only the second time in international judicial practice that provisional measures have been sought against the undertaking of unconsented petroleum operations in contested waters (the first one being the Aegean Sea Case of 1976).

The presentation reviews critically the Order of the special chamber and draws a number of conclusions with practical implications for the future conduct of petroleum operations and for the associated protection of sovereign rights in disputed maritime areas. In particular, it highlights the importance of state protest over unilateral oil and gas activities in disputed waters as well as the legal prerequisites for the successful protection against such activities through the prescription of provisional measures.

15.45 – 16.15
Marianthi Pappa (Year 1 PhD Candidate)
Supervisors: **Dr Mark Igiehon** and **Mr Scott Styles**

The Potential Implications of the Prospective Somali-Kenyan Maritime Delimitation for Kenya's Exploratory Permits and their Holders

The United Nations Convention on the Law of the Sea 1982 provides littoral states with certain rights within their maritime spaces. On that basis, Kenya has granted a number of permits for the exploration of its asserted maritime zones in the Indian Ocean. Somalia, which also claims the area under exploration, has challenged the legality of its neighbour's unilateral actions.

The case was brought to the International Court of Justice, which is expected to delimit the disputed area by 2017.

This study contends that, although the prospective maritime delimitation can resolve the Somali-Kenyan boundary dispute, it may ultimately have an adverse legal impact on the domestic relationship between Kenya and its contractors. More precisely, the consequences of a judgement that redistributes the explored area (entirely or partly) to Somalia will be grave for Kenya's existing permits and their holders. This raises further concerns as to the oil companies' legal responses to this challenge. In order to address these issues, the paper examines the legal status of Kenya's permits in disputed waters, pending and post delimitation. It supports that, albeit *ab initio* valid, Kenya's permits will be cancelled to the extent that the explored area is redistributed to Somalia, which will then give grounds for their holders' restitution claims.

16.15 – 16.45

Augustinus Mohn (Year 1 PhD Candidate)
Supervisors: **Dr Matyas Bodig** and **Mr James Wyllie** (Politics)

Under Pressure:
German strategic culture, human rights and the use of force

The paper is about how the German strategic culture has been challenged since the end of the Cold War and how human rights serve as a narrative to overcome the German (culturally conditioned) military restraint in foreign policy. The core idea is that the German strategic culture is under pressure insofar as it has to fulfil two demands: carrying the burden of the past (implying military restraint) and being a responsible member of the international community (necessitating more military engagement).

The pressure is managed by framing responsibility as protecting human rights – rendering the use of force less incoherent with the German anti-imperialist culture of military restraint.

END OF PROCEEDINGS