

Lecture 1

LAWS, FOREIGN LAWS, AND FACTS

Themes:

The pleading and proof of foreign law; foreign laws as facts and laws; whether the application of foreign law is mandatory; mechanisms for proof; foreign law on appeal; the foreign law problem and European integration; the foreign law problem and the viability of the conflicts process.

Reference:

Dicey and Morris, ch. 9; Cheshire and North, ch. 7

Further reading:

Fentiman, *Foreign Law in English Courts* (1998); Fentiman, (1992) 108 LQR 142;
Hartley, (1996) 45 ICLQ 271

The legal framework:

1980 Rome Convention on the Law Applicable to Contractual Obligations, arts. 1, 2, 3

◆ *Bumper Developments Corpn. v. Commr. of Police* [1991] 1 WLR 1362 (CA)

◆ *MCC Proceeds Inc. v. Bishopsgate Investment Trust plc.* [1999] CLC 418 (CA)

The Spirit of Independence [1999] 1 Lloyd's Rep. 43

The Polessk [1996] 2 Lloyd's Rep. 40

Case study 1:

Alphaco wishes to commence proceedings in England against Betaco for breach of contract. The contract contains the following provision: 'This contract shall be governed and construed in accordance with the laws of Utopia'.

Alphaco has been advised that it has an arguable case under English law, but a stronger case under Utopian law. Alphaco is concerned that the proof of foreign law in English proceedings is expensive and unpredictable, and that the cost of establishing foreign law would be out of proportion to the amount which it is claiming.

Both parties accept that Utopian law governs the contract. Betaco's liability under Utopian law depends upon the interpretation of various articles of the Utopian Civil Code.

Advise Alphaco. How, if at all, would your advice be different if Betaco's liability had turned on controversial questions of Utopian law, which have never been considered by a Utopian court, and on which academic opinion in Utopia is divided?