

## Lecture 2

### JURISDICTION AND THE APPROPRIATE FORUM

#### Themes:

The regime of the European jurisdiction conventions; the traditional rules of English law; the staying of actions; *antisuit* injunctions; the interface between national law and the European regime; the control of forum shopping; the regulation of parallel proceedings; problems of discretion and appropriateness; problems of comity and justice

#### Reference:

Dicey and Morris, ch. 11; Cheshire and North, chs. 10-13; Jaffey, ch. 3; Fentiman, Tagaras, Watte, Nuyts, eds., *L'espace judiciaire européen: les Conventions de Bruxelles et de Lugano* (1999)

#### a. Jurisdiction and the staying of actions

##### Further reading:

Fentiman, (1993) 26 Cornell Int. L.J. 58; Briggs and Rees, 160-173, 191ff; Harris (1997) 113 LQR 557

##### The legal framework:

1968 Brussels Convention on Jurisdiction and the Enforcement of Judgments, articles 2, 5, 16, 17, 21, 22

♦ *The Spiliada* [1986] AC 460 (HL)

##### The regulation of parallel proceedings:

♦ *Case C-406/92, The Tatry* [1994] ECR I-5439 (ECJ)

♦ *Kurz v. Stella Musical GmbH* [1992] Ch. 196

##### The Brussels Convention and national law:

♦ *Case C-412/98, Group Josi Reinsurance Company SA v. UGIC* [2000] 3 W.L.R. 1625 (ECJ)

♦ *Re Harrods (Buenos Aires) Ltd.* [1992] Ch. 72 (CA)

*Haji-Ioannou v. Frangos* [1999] 2 Lloyd's Rep. (CA)

*Ace Insurance SA v. Zurich Insurance Co.* [2000] 2 Lloyd's Rep. 423

#### b. Foreign Jurisdiction and *antisuit* injunctions

##### Further reading:

Hartley (1987) 35 Am. J. Comp. L. 487; Fentiman, (1997) 56 CLJ 46, (1998) 57 CLJ 467, (2000) 59 CLJ 45; Fentiman, in Fentiman, Tagaras, Watte, Nuyts, op. cit.; Briggs and Rees, 264ff

*The legal framework:*

- ♦ *SNI Aerospatiale v. Lee Kui Jak* [1987] AC 871 (PC)
- ♦ *Continental Bank NA v. Aeokos SA* [1994] 1 WLR 588 (CA)

*The Brussels Convention and national law:*

Brussels Convention, arts. 16, 17, 21, 24

Case C-351/89, *Overseas Union Ince. Ltd. v. New Hampshire Ince. Co.* [1991] ECR I-117 (ECJ)

Case C-365/88, *Kongress Agentur Hagen GmbH v. Zeehaghe BV* [1990] ECR I-1845 (ECJ)

- ♦ *Continental Bank NA v. Aeokos SA* [1994] 1 WLR 588 (CA)
- Fort Dodge Animal Health Ltd. v. Akzo Nobel NV* [1998] FSR 222 (CA)
- ♦ *Turner v. Grovit* [1999] 3 All ER 616 (CA)

*Case study 2:*

Alco, an Alaskan company, entered into a contract to sell goods to Iberco, a Spanish company. The contract, which is governed by English law, provides that any disputes shall be referred to the non-exclusive jurisdiction of the English courts. The goods were to be delivered, and payment made, in Alaska. Alco failed to deliver the goods.

On 1 January Alco applied to a court in Spain for a declaration that it is not liable to Iberco for failing to deliver the goods. The Spanish court accepted jurisdiction, but has yet to give judgment.

On 1 February Iberco began proceedings against Alco in England. Iberco is claiming damages for non-delivery of the goods, and in addition seeks an injunction to restrain the Spanish proceedings. Alco has argued that the English court has no jurisdiction, and in the alternative seeks a stay of the English proceedings on the basis that Alaska is the *forum conveniens*.

Advise Iberco and consider any issues of policy or principle arising from your advice.

You should assume that Alaska is the *forum conveniens*, and that the only issue between the parties concerning the staying of actions is whether in principle Alco may seek a stay in such a case.